IN THE IOWA DISTRICT COURT FOR POLK COUNTY

JOSEPH M. BELTH,	)	
	)	**No._____**
Plaintiff,	)	
	)	**PETITION IN EQUITY**
v.	)	**REQUEST FOR DECLARATORY**
	)	**JUDGMENT, INJUNCTIVE**
IOWA INSURANCE DIVISION	)	**RELIEF and ORDER OF MANDAMUS**
and	)	**and REQUEST FOR**
NICK GERHART, COMMISSIONER,	)	**JUDICIAL REVIEW OF FINAL**
IOWA INSURANCE DIVISION,	)	**AGENCY ACTION RE:—**
	)	**PUBLIC RECORDS**
Defendants.	)	

COMES NOW, Plaintiff JOSEPH M. BELTH, by and through his attorney, JAMES C. LAREW, Larew Law Office, pursuant to Iowa R. Civ. P. 1.401 and 4.402,the Iowa Examination of Public Records (Open Records) Act, Iowa Code chapter 22, and, alternatively, the Iowa Administrative Procedures Act, Iowa Code chapter 17A, as well as Iowa Code provisions that provide the framework for the disclosure of records held by the Iowa Insurance Division, including Iowa Code chapters 501.2, 505.1, 508, and 521A. For his PETITION IN EQUITY, REQUEST FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF AND ORDER OF MANDAMUS and REQUEST FOR JUDICIAL REVIEW OF A FINAL AGENCY ACTION—PUBLIC RECORDS, Plaintiff brings this action against Defendant IOWA INSURANCE DIVISION ("IID") and Defendant NICK GERHART, COMMISSIONER, IOWA INSURANCE DIVISION ("Commissioner Gerhart"), in his official capacity, and hereby states as follows:

THE PARTIES

1. Plaintiff Joseph M. Belth ("Mr. Belth") is a resident of the State of Indiana, is Professor Emeritus of Insurance in the Kelley School of Business at Indiana University, and is the author of several books and many articles on the subject of insurance.

2. Defendant Iowa Insurance Division ("IID") is the agency of state government duly constituted within the Department of Commerce to regulate and supervise the conduct of the business of insurance in the State of Iowa. Iowa Code § 505.1. The IID qualifies as a "government body" as defined under the Iowa Examination of Public Records (Open Records) Act, Iowa Code chapter 22 (the "Act"), and, therefore, is subject to open records requests. Iowa Code § 22.1(1) (2016).

3. Defendant Nick Gerhart, Commissioner of Insurance ("Mr. Gerhart" or "Commissioner Gerhart" or "the Commissioner"), was appointed to that position by Governor Terry E. Branstad, subject to the confirmation of the Iowa Senate. Iowa Code § 501.2. Mr. Gerhart serves both as the chief administrator of the IID and also as its public records custodian. Iowa Code § 22.1(1). As described herein, Mr. Belth submitted to Defendants, and was denied, access to certain records in the custody of Defendants and, for that reason, they may be named defendants in a lawsuit under Chapter 22 of the Iowa Code. Iowa Code § 22.10(1) (2016).

FACTUAL BACKGROUND

4. Mr. Belth brings this lawsuit seeking the disclosure of public records held in the custody of Defendants. He believes that the withholding of such records violates the intent and purpose of Iowa Code chapter 22, applicable to public records. He asserts that the manner in which the decision was made to withhold the requested records violates the Iowa Administrative

Procedures Act, Iowa Code chapter 17A. He raises legal issues of first impression that arise from risky new life insurance industry practices authorized by Iowa Code chapter 521A that, as interpreted by Defendants, provide insufficient transparency, thereby adversely affecting the interests of shareholders, policyholders, and taxpayers.

5. More specifically, Mr. Belth seeks all appropriate Court Orders to allow him, as a member of the public, to have access to information and documents related to certain kinds of now-secret financial instruments used in the life insurance industry that have the consequence of hiding critical information from policyholders, shareholders, and the public, of the life insurance companies' potential risks and also lowering the amount of capital that state regulators require life insurance companies to maintain.

6. These financial instruments have been created by parent life insurance companies after substantial quantities of life insurance policy liabilities have been transferred to wholly-owned subsidiaries, sometimes referred to as "limited purpose subsidiaries" (LPSs).

7. To mask the liability exposure carried by the LPSs, parent companies create secret financial instruments that purport to cover those liabilities. The LPSs, on their books, characterize the instruments as "assets" to balance against the liabilities. The parent companies, in the meantime, having rid themselves of the liabilities, then appear, falsely, to have excess capital.

8. In short, the financial instruments used to support these practices, whose cumulative uses sometimes are described as "shadow insurance," are both attractive to the life insurance companies and have been blocked from public scrutiny.

9. The names assigned by parent life insurance companies to these financial instruments range widely. They are variously described, for example, as "contingent notes,"

"irrevocable standby letters of credit," "LLC note guarantees," "non-transferrable variable funding puttable notes," "note guarantees," "parental guarantees," "surplus notes," "variable funding notes," "variable funding promissory note agreements," "variable funding puttable notes," "variable principal amount surplus notes," or "variable surplus notes."

10. By whatever names given to them, once issued by parent life insurance companies domiciled in Iowa to their "captive" or "shadow" wholly owned subsidiaries, also domiciled in Iowa, illusions of "excess" capital are shown on balance sheets. Once shown, the parent life insurance companies are able to pull cash and other liquid assets away from the capital that is legally required to assure that the companies will be able to honor their life insurance policy obligations.

11. Parental life insurance companies can then use the "excess" capital to pay executive salaries and bonuses, to distribute shareholder dividends, to make acquisitions, and to invest in other projects.

12. Such schemes pose real risks to the public. Existing and prospective life insurance policyholders and their beneficiaries rely on sufficient capital to pay benefits; shareholders are unable to determine the true financial strength of life insurance companies; and taxpayers are left holding the bag when large life insurance companies fail.

13. The risks posed by shadow insurance are growing nationally, in large part due to practices allowed in Iowa and certain other states.

14. Nationally, competing states have blocked the implementation of uniform insurance laws aimed to regulate the use of wholly owned subsidiaries to create phantom assets and to dissipate capital. For example:

a. The New York State Department of Financial Services (DFS) conducted an investigation and found captive reinsurance to be dangerous. It found that many parent life insurance companies caused third parties to obtain inaccurate pictures of the parent companies' financial strength. It also found that by entering into the "captive reinsurance transactions" with their LPSs, parent companies artificially boosted the amount of capital that they reported to regulators, investors, and the broader public. The DFS concluded that the shadow insurance practices were "…reminiscent of certain practices used in the run up to the [2008] financial crisis…watering down capital buffers, as well as temporarily boost[ing] quarterly profits and stock prices." See: Charles Wilbanks, *Insurers Fattening Books With Loads of Risk*, CBS NEWS MONEYWATCH (June 13, 2013, 10:49 AM), http://www.cbsnews.com/news/insurers-fattening-books-with-loads-of-risk/.

See: Exhibit C, attached;

BENJAMIN M. LAWSKY, N.Y. STATE DEP'T OF FIN. SERVICES, *Shining a Light on Shadow Insurance* (June 2013), http://www.dfs.ny.gov/reportpub/shadow_insurance_report_2013.pdf.

See: Exhibit D, attached.

b. Similarly, and more recently, troubling findings have been described by the Financial Stability Oversight Council ("FSOC"), a federal agency established by Congress after the sudden and unanticipated collapse of financial companies in 2008 had a crippling effect on the U.S. financial system and exposed significant gaps in the existing regulatory structure. The FSOC investigations have focused

on a few life insurance companies, including MetLife, Inc. ("MetLife"), one of the nation's largest life insurance companies. Congress instructed the FSOC, which is chaired by the U.S. Secretary of the Treasury, to identify nonbank financial companies whose material financial distress could pose a threat to the financial stability of the United States. 12 U.S.C. § 5323(a)(1). Companies designated by the FSOC are subject to additional supervision and regulation. Recently, and after focusing on some of MetLife's riskiest practices, including shadow insurance instruments exchanged with its wholly owned subsidiaries, FSOC designated MetLife as a nonbank financial company whose material financial distress could pose a threat to the financial stability of the United States. The FSOC found that:

i. Regulation of MetLife's insurance subsidiaries by state insurance regulators—who, the FSOC observed, generally focus on protecting the policyholders of specified entities within their jurisdiction, rather than the stability of the financial system as a whole—was insufficient to address all of the risks posed by MetLife. See: Brief of Financial Stability Oversight Council at 26, Metlife, Inc. v. Financial Stability Oversight Council, USCA for Case No. 16-5086 (Filed June 16, 2016), Document No. 1619952;

ii. The efficacy of state regulation s further undermined by MetLife's use of "captive reinsurance," transactions that move risk between the company's various subsidiaries while the parent company continues to bear the ultimate economic risk. *Id*. at 26;

iii. These arrangements "reduce the transparency of the organization's potential risks" and also lower the amount of capital that state regulators require MetLife to keep on hand. *Id.* at 26;

iv. MetLife takes advantage of the limitations of state regulatory supervision of individual subsidiaries by using "captive reinsurers," which are created to assume insurance risk while being permitted to hold lower quality capital and lower reserves than MetLife's commercial insurance subsidiaries. *Id.* at 46;

v. Instead of holding assets that they could sell to back their insurance liabilities, MetLife's captive reinsurers are often supported by financial arrangements such as letters of credit issued by large financial institutions, to meet regulatory reserve requirements. *Id.* at 46;

vi. The parent company guarantees these letters of credit, the FSOC found, and could therefore face liquidity risks arising from any need to satisfy obligations under the guarantees. *Id* at 46, 117;

vii. The use of captive reinsurance subsidiaries, the FSOC concluded, enables MetLife, Inc., to hold lower-quality capital and lower reserves and "creates a greater risk that MetLife could be required to engage in asset sales to satisfy an increase in demand for liquidity." *Id* at 47; and

viii. These findings, along with others, caused the FSOC to determine that material distress at MetLife, Inc., could pose a threat to U.S. financial stability.

See: Exhibit E, attached.

c. Similarly, the Office of Financial Research (OFR), another federal agency created by Congress after the 2008 collapse, issued a report about life insurance companies' use of captive reinsurance companies. OFR concluded that the use of captives has increased sharply since 2002, and that "they can cloud regulatory reporting of an insurer's financial positions and create 'blind spots' in the monitoring of threats to financial stability." See: JILL CETINA ET AL., OFFICE OF FINANCIAL RESEARCH, *Mind the Gaps: What Do New Disclosures Tell Us About Insurer's Use of Off-Balance-Sheet Captives?* (March 17, 2016), https://financialresearch.gov/briefs/files/OFRbr_2016-02_Captive-Insurers.pdf

See: Exhibit I, attached.

These shadow insurance practices involve the use of financial instruments of the type that Mr. Belth, on behalf of himself and as a member of the public, seeks in this litigation.

15. Iowa Code chapter 521A establishes the framework for the establishment of subsidiaries by insurance holding companies. Iowa Code § 521A.2. That framework sets forth protocols under which Defendants may regulate the creation and operation of insurance company subsidiaries. Iowa Code §§ 521A.4, 5 and 6.

16. Iowa Code §521A.7(1) anticipates that, in the course of insurance company regulation, a company may be required to disclose to regulators information that the company deems confidential. However, that same section imposes a duty upon Commissioner Gerhart, in turn, to disclose to "policyholders, shareholders *or* the public" (emphasis added) such confidential information upon a determination that such disclosure would be in the interest of any of those named groups. That provision states as follows:

521A.7(1) CONFIDENTIAL TREATMENT.

> All information, documents and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 521A.6 and all information reported pursuant to sections 521A4 and 521A.5, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interest of the policyholders, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part thereof in such manner as the commissioner may deem appropriate.

17. Approximately six years ago, the Iowa General Assembly passed Iowa Code chapter 508A, and, shortly thereafter, the IID implemented a new chapter of administrative rules, under which life insurance companies domiciled in Iowa might create wholly-owned entities called "limited purpose subsidiaries" (LPSs), also to be domiciled in the state. Iowa Admin. Code 191—99.1-99.15.

18. Under those provisions, as interpreted by Defendants, the State of Iowa has attempted to establish a competitive advantage over other states in the life insurance industry by encouraging the use of shadow life insurance practices by Iowa-domiciled companies. However, if these new laws, when interpreted in conjunction with longer-standing disclosure provisions, such as those set forth in Iowa Code § 521A.7 and Iowa Code chapter 22, are not enforced with at least one eye on the interests of the public—the interests of policyholders, shareholders, and the public, including taxpayers—parent life insurance companies and holding company systems, in a darkened regulatory environment, can invent and transfer fragile, if not phony, assets to their wholly owned subsidiaries to create the false appearance that they have sufficient capital to meet their obligations to policyholders.

19. Iowa's practices pursuant to Iowa Code chapter 508.33A and Iowa Administrative Code chapter 99 create a regulatory environment that now differs, in important respects, from those of most other states—life insurance companies domiciled here can benefit from "permitted practice" exceptions to normal practices required in those other jurisdictions.

20. Instead of using real assets, Iowa-domiciled life insurance companies, taking advantage of "permitted practice" exceptions, can create phantom assets. As noted above, such exotic techniques can conjure the appearance of capital where there is none. It is a classic shell game. See: Mary Williams Walsh, *Risky Moves in the Game of Life Insurance*, NEW YORK TIMES (April 11, 2015), http://www.nytimes.com/2015/04/12/business/dealbook/insurers-bypass-rules-to-add-hidden-risk.html?_r=0.

See: Exhibit F, attached.

21. The dangers and risks posed to the public interest by these practices, many of them identified by the FSOC in its review of MetLife, as described herein, cannot be measured by members of the public because the law invites secret practices of the type that this lawsuit challenges.

22. Although Iowa Code § 508.33A has been a statute for only a few years, it is clear that, under Defendant's new policies, risky practices whose adverse impacts may start in our state, under certain conditions will ripple and will be felt far beyond our borders. For example:

a. Iowa-based Transamerica Life Insurance Company used this state law in 2013 to increase its capital by nearly $2 billion while also avoiding an estimated $640 million in federal taxes. See: Mary Williams Walsh, *Life Insurers Use State Laws to Avoid as Much as $100 Billion in U.S. Taxes*, THE NEW YORK TIMES (December 12, 2014,

1:13 PM), http://dealbook.nytimes.com/2014/12/12/insurers-use-deals-to-avoid-as-much-as-100-billion-in-taxes/

See: Exhibit G, attached.

b. This action transferring capital to stockholders/owners—allowed by Iowa's insurance regulators under Iowa Code chapter 521A—left a hole in Transamerica's finances, resulting in its call for substantial life insurance premium increases, many of them to be imposed on older policyholders who have spent thousands of dollars over decades for their policies, but who cannot afford to pay the higher costs in their later years.

See: Julie Creswell and Mary Williams Walsh, *Why Some Life Insurance Premiums are Skyrocketing*, THE NEW YORK TIMES (August 13, 2016), http://www.nytimes.com/2016/08/14/business/why-some-life-insurance-premiums-are-skyrocketing.html.

See: Exhibit H, attached.

23. The riskiness of these practices is compounded by Defendants' interpretations of Iowa Code § 521A.7, Iowa Code chapter 508.33A and Iowa Code chapter 22 in ways that maximize secrecy with respect to the terms and the conditions of the financial instruments used by parent life insurance companies, after transferring liabilities to their wholly owned subsidiaries, that can create the illusion of adequate or excess capital.

24. In this environment, one characterized by shadow insurance practices and phantom assets exchanged between life insurance parent companies and their wholly owned subsidiaries, Mr. Belth has attempted, without success, to obtain information about these instruments, to learn of their terms and conditions. In three separate approaches to the Commissioner, Mr. Belth has been completely denied access to those instruments.

25. In Iowa, executive agencies must follow certain rules in determining whether certain records can be disclosed. The Iowa General Assembly, in passing the Examination of Public Records (Open Records) Act, Iowa Code chapter 22, imposes a set of standards concerning which all agencies must conform when responding to requests for public records held by the agencies. Iowa Code § 22.1.

26. Under Iowa Code § 22.7, the Iowa General Assembly has created a list of records that "shall be kept confidential," unless otherwise "ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information." That Code section lists 67 separate categories of "confidential" records. A substantial number of them pertain to records held by the Iowa Insurance Commissioner, with specific references to the Iowa Code sections upon which the confidentiality classification has been conferred. See, *e.g.,* Iowa Code §§ 22.7, subsections (43),(53), (54), (58) and (64). However, none of the Code sections listed in Iowa Code § 22.7 pertain to Iowa Code chapter 521A (insurance holding company systems) or to Iowa Code chapter 508.33A (limited purpose subsidiary life insurance companies).

27. That is to say, even if the shadow financial instruments that are the subject of this lawsuit were to have been classified under Iowa Code § 22.7 as "confidential" (they are not) they still could be released at the discretion of the records custodian. Further, the general confidentiality provision applicable to Iowa insurance companies, set forth in Iowa Code § 521A.7(1), provides that insurance company records deemed "confidential" by the Commissioner may nevertheless be released upon the Commissioner's determination that the "interests of policyholders, shareholders or the public will be served by the publication thereof."

28. On July 14, 2016, in a letter to the Commissioner, pursuant to the Iowa Open Records Law, Iowa Code chapter 22 and Iowa Code § 521A.7(1), Mr. Belth requested that the Commissioner produce copies of certain financial instruments-- documents relating to eight Iowa-domiciled LPSs, as follows:

> **Cape Verity 1**: According to the Independent Auditor's Report dated 5/7/16, as of 12/31/15, the company carried as an asset a "contingent note" in the amount of $467,292,000. In the report it is also referred to as a "variable funding puttable note." The report also mentions a "surplus note." I hereby request copies of the contingent note (variable funding puttable note), the surplus note, and the letters, inclusive of emails or other electronic communication, or other documents approving use of the items.
>
> **Cape Verity II**: According to the Independent Auditor's Report dated 5/7/16, as of 12/31/15, the company carried as an asset a "parental guarantee" in the amount of $779,737,000. The report states that the parental guarantee was provided by Global Atlantic Financial Group Limited. I hereby request copies of the parental guarantee and the letters, inclusive of emails or other electronic communication, or other documents approving use of the item.
>
> **Cape Verity III**: According to the Independent Auditor's Report dated 5/17/16, as of 12/31/15, the company carried as an asset a "contingent note" in the amount of $239,016,000. The report describes the item as a "variable funding puttable note" issued by Meramec Financing LLC, and also mentions a "surplus note." I hereby request copies of the contingent note (variable funding puttable note), the surplus note, and the letters, inclusive of emails or other electronic communication, or other documents approving use of the items.
>
> **MNL Reinsurance Company**: According to the Independent Auditor's Report dated 5/27/16, as of 12/31/15, the company carried as an asset an "LLC note guarantee" in the amount of $884,716,000. The report also refers to a "variable surplus note" with a principal of $0. I hereby request copies of the LLC note guarantee, the variable surplus note, and the letters, inclusive of emails or other electronic communication, or other documents approving use of the items.
>
> **Solberg Reinsurance Company**: According to the Independent Auditor's Report dated 5/27/16, as of 12/31/15, the company carried as an asset "irrevocable standby letters of credit" in the amount of $558,037,000. I hereby request copies of the irrevocable standby letters of credit and the letters, inclusive of emails or other electronic communication, or other document approving use of the items.
>
> **Symetra Reinsurance Corporation**: According to the Independent Auditor's Report dated 5/11/16, as of 12/31/15, the company carried as an asset a "variable funding

> note" in the amount of $65,403,477. The report refers to a "variable principal amount surplus note" with no initial balance and a maximum capacity of $105,201,875. I hereby request copies of the variable funding note and the variable principal amount surplus note and the letters, inclusive of emails or other electronic communication, or other documents approving use of the items.
>
> **TLIC Oakbrook Reinsurance, Inc.**: According to the Independent Auditor's Report dated 5/26/16, as of 12/31/15, the company carried as an asset a "credit linked note" in the amount of $924,826,000. The report identifies it as a "twenty-year non-transferable variable funding puttable note." I hereby request copies of the credit linked note and the letters, inclusive of emails or other electronic communication, or other document approving use of the item.
>
> **TLIC Riverwood Reinsurance, Inc.**: According to the Independent Auditor's Report dated 5/27/16, as of 12/31/15, the company carried as an asset a "parental guarantee" in the amount of $2,041,490,000. The report identifies it as a guaranteed obligation of AEGON USA, LLC. The report also refers to a "short-term variable funding promissory note agreement" in the amount of $300,000. I hereby request copies of the parental guarantee and the short-term variable funding promissory note agreement and the letters, inclusive of emails or other electronic communication, or other documents approving use of the items.

See: Exhibit A, pp. 1-2, attached.

29. In support of his request, Mr. Belth noted that, even if the Commissioner deemed any of the requested documents to be confidential pursuant to Iowa Code § 521A.7(1), that the Commissioner should nevertheless, as is permitted under the same statutory provision, allow the documents to be disclosed to serve the interests of policyholders, shareholders or the public.

30. More specifically, in his July 14, 2016, records request, Mr. Belth articulated the Commissioner's power to disclose the requested documents as follows:

> As a legal matter, under Iowa Code § 521A.7(1), the Commissioner, as custodian of the public records at the IID, is not prohibited from producing copies of documents classified as "confidential" under all circumstances. Indeed, the statute empowers the Commissioner to exercise discretion in making the disclosure decision. Such confidential records "…shall not be made public . . . unless the commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, <u>determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof</u>, in which event the commissioner may publish all or any part thereof in such manner as the commissioner may deem appropriate."

See: Exhibit A, p. 3 (Emphasis in original).

31. Further, in his request, Mr. Belth, to whom the Commissioner had earlier provided copies of annual independent auditor reports of the LPSs, requested access to the underlying documentation which those auditors had been provided. That part of Mr. Belth's July 14, 2015, records request was stated as follows:

> As is appropriate, I have had access to financial information arising in the independent auditor reports, referenced above. What I seek in this request is the underlying documentation from which the information in the auditor reports is drawn. If, as I presume, IID employees and agents have access to the auditor reports and the supporting documentation used by the independent auditors in preparing the reports, it is difficult to understand how that documentation can be deemed confidential.

See: Exhibit A, p. 3.

32. Mr. Belth provided a series of policy reasons and arguments as to why, if the Commissioner deemed the requested documents to be confidential, that he, as the custodian of the public records, should nevertheless exercise his statutorily-conferred discretionary power to release the documents to Mr. Belth. Mr. Belth's rationale included the following:

> ….[I]f the Commissioner concludes that the requested documents are confidential under Iowa law, I submit that the Commissioner's exercise of his discretionary power to provide the requested records to me will serve the interests of the policyholders, shareholders, and the public. Members of each of those groups share a common interest: that life insurance companies are solvent, with sufficient assets to cover anticipated obligations. While LPSs may not mask a life insurance company's true economic condition, certain uses of LPSs can cause life insurance policies to be backed by assets that do not, in fact, exist. The documents I have requested will assist in determining the extent to which transactions with LPSs expose life insurance companies to a higher risk of default than is shown by information otherwise available to policyowners, shareholders, or members of the general taxpaying public. I believe that Iowa law and policy anticipate the kind of transparency that my records request is intended to create. And, without such transparency, if arrangements between LPS entities and life insurance companies increase the likelihood of default, policyholders can be deprived of benefits, shareholders can be deprived of assets, and taxpayers can be saddled with bail-out obligations.

See: Exhibit A, pp. 3-4.

33. Mr. Belth, quoting from investigative reports issued by the New York Department of Financial Services and published studies by academic specialists and a Federal Reserve Bank consultant, provided additional reasons to the Commissioner as to why the requested documents should be disclosed. He described serious concerns that life insurance industry specialists have about the LPS entities created under Iowa law, the domain of "shadow insurance."

34. Mr. Belth further stated, in support of his records request, that, without transparency of the type that his records request was intended to help provide, stakeholders in the life insurance industry—policyholders, investors, and taxpayers—are deprived of the ability accurately to assess the risk levels assumed at the holding company (parental life insurance company) level. See: Exhibit A, p. 5.

35. Finally, in an effort to create a consensus as to the nature and purpose of his request, and consistent with the legislative mandate set forth in Iowa Code § 521A.7(1), Mr. Belth proposed that the Commissioner convene a formal or an informal hearing, allowing his opinions in support of disclosure to be expressed in the presence of officials representing the life insurance companies whose records he had requested.

36. In response, on July 27, 2016, the Commissioner issued a letter to Mr. Belth denying disclosure of any of the requested documents and denying the request for a formal or informal hearing to consider the matter.

37. In support of his denial decision, the Commissioner pointed to statutory and administrative provisions, as follows: (1) information the Commissioner requires LPS life insurance companies to produce or disclose under 191 IAC 99 is considered a plan of operation or related record under Iowa Code § 508.33A(2)(b); (2) such plans of operation or related records are to be treated the same as information submitted to the Commissioner under Iowa

Code § 521A.6; (3) information submitted under Iowa Code § 521A.6 is "confidential" under Iowa Code § 521A.7; (4) the requested documents are confidential; and, therefore, (5) the Commissioner will not release them due to their confidential status.

38. In no part of his denial decision did the Commissioner mention and address the interests of policyholders, shareholders *or* the public raised by Mr. Belth—to say nothing of balancing any of those interests against any policy interests that might favor secrecy: the clear result of the Commissioner's decision was to allow the requested records to remain confidential and not subject to disclosure.

39. In fact, the Commissioner nowhere addressed Mr. Belth's expressions of concerns that the shadow insurance practices posed risks to the public (policyholders, shareholders, taxpayers), or Mr. Belth's contention that the public interest would be protected by increased transparency with respect to the terms and conditions of the specific financial instruments.

40. Nor did the Commissioner address Mr. Belth's assertion that, under the limited purpose subsidiaries statute, the Commissioner held discretionary authority to release the requested documents to protect the public.

41. Nor did the Commissioner address, in any manner, Mr. Belth's request for access to the underlying documentation from which the information in the independent auditor reports was drawn (see: *supra* p.14, paragraph 31).

42. Rather, in the name of "transparency," and without irony, the Commissioner rejected Mr. Belth's records request by concluding, in his July 27, 2016 letter to Mr. Belth, the following:

> The Iowa Insurance Division is committed to providing the utmost transparency allowed by law. However, the information that you have requested according to 521A.7 "shall be given confidential treatment" and will not be produced. As I believe the law to be very

> clear on that point, I reject the request for a formal or informal hearing and this letter can be considered a final agency action on this matter.

See: Exhibit B, attached.

43. The Commissioner instructed Mr. Belth that his denial could be considered as a final agency action.

44. It is that final agency action that is the subject of this lawsuit.

VENUE AND JURISDICTION

45. Plaintiff Joseph M. Belth files this petition under Iowa Code §§ 22.5 and 22.10, which confer jurisdiction upon the district court to hear claims against the lawful custodian to obtain relief by mandamus or injunctive relief. IOWA CODE §§ 22.5, 22.10(1).

46. Venue arises under Iowa Code § 22.10, conferring jurisdiction to the "county in which the lawful custodian has its principal place of business." The principal place of business for Defendants Iowa Insurance Division and Commissioner Gerhart are in Des Moines, Polk County, Iowa. Therefore, the Iowa District Court for Polk County has jurisdiction to adjudicate this matter. IOWA CODE § 22.10(1).

47. Jurisdiction and venue for judicial review of final agency action is also, and alternatively, conferred by Chapter 17A.19(1). This chapter confers jurisdiction and venue on the district courts of Polk County to conduct judicial review of a "final agency action." IOWA CODE §17A.19(1).

PLAINTIFF'S CAUSES OF ACTION AGAINST DEFENDANTS

DIVISION I

CAUSES OF ACTION UNDER IOWA CODE CHAPTER 17A OF THE IOWA ADMINISTRATIVE PROCEDURES ACT

I. DEFENDANTS VIOLATED PLAINTIFF'S RIGHTS UNDER THE IOWA AMINISTRATIVE PROCEDURES ACT TO HAVE PUBLISHED

CERTAIN REQUESTED PUBLIC RECORDS UNDER IOWA CODE § 521A.7(1) WHEN THE COMMISSIONER FAILED TO ADDRESS OR TO BALANCE ANY OF THE INTERESTS OF POLICYHOLDERS, SHAREHOLDERS OR THE PUBLIC AGAINST THE CONFIDENTIALITY INTERESTS OF THE INSURANCE COMPANIES USING SHADOW INSURANCE FINANCIAL INSTRUMENTS

48. Plaintiff Joseph M. Belth re-pleads paragraphs 1-47 as if fully set forth herein.

49. In his public records request of July 27, 2016, Plaintiff expressly requested the Commissioner to exercise his discretion to find that releasing the requested documents, even if confidential, is in the interests of the policyholders, shareholders, or the public. Iowa Code § 521A.7(1).

50. Mr. Belth further requested that, under the same provision, the Commissioner convene a formal or informal hearing so that any adversely affected insurance company could present its position in opposition to such a release.

51. In Commissioner Gerhart's response, July 27, 2106, he failed to consider or even to mention the interest of policyholders, shareholders or the public. Rather, the Commissioner listed a series of statutory and administrative rules and definitions that, in his opinion, characterized the requested documents as confidential. No evidence was presented that the Commissioner had either considered or weighed the interests of policyholders, shareholders, or the public, as is envisaged by Iowa Code § 521.A.7(1) or Iowa Code chapter 22. The Commissioner also indicated that his decision constituted a final agency action. See: Exhibit B.

52. The Iowa Administrative Procedures Act ("IAPA"), Iowa Code § 17A.19 (10) provides 14 grounds under which a petitioner may challenge a final agency action. The IID is an agency within the definition of the statute and its final actions are subject to judicial review. *Chartis Ins. v Iowa Ins. Com'r*, 831 N.W.2d 119 (Iowa 2013) (challenging the Commissioner's disapproval of a worker's compensation plan rate under the IAPA).

I.A. DEFENDANTS ERRED, PURSUANT TO IOWA CODE § 17A.19(10)(f), WHEN COMMISSIONER GERHART'S DETERMINATIONS OF FACT, RESULTING IN HIS REFUSAL TO PUBLISH REQUESTED PUBLIC RECORDS, WERE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD BEFORE THE COURT WHEN THAT RECORD IS VIEWED AS A WHOLE

53. Under the IAPA, the court may reverse a final agency action "[b]ased upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole." Iowa Code § 17A.19(10)(f).

54. The test for substantial evidence is whether the agency's determination is based on "the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." Id., at §17A.19(10)(f)(1).

55. Prior to its amendment in 1998, the IAPA limited the substantial evidence standard of review to contested cases (formal adjudication). See, e.g. *Greenwood Manor*, 641 N.W. 2nd at 830-31 (declining to review a determination of legislative fact under the substantial evidence standard of review because the former version of the IAPA provision, which read, "[i]n a contested case, unsupported by substantial evidence in the record made before the agency when that record is viewed as a whole" still applied when the agency proceedings commenced). However, the legislature specifically removed this reference to a contested case when it amended the statute. See H.F. 667, 1998 Iowa Laws Ch. 1202, § 24.

56. The Iowa Supreme Court noted in 2009 that this amendment was changed so that it "(f) now also applies the substantial evidence test to all ultimate facts found by an agency, as well as to all basic facts underlying those ultimate facts, pursuant to a clear delegation of

authority to the agency to do so, whether such facts are found in formal adjudication and, therefore, were subject to the 'substantial evidence' test under the original IAPA, or in informal adjudication or rulemaking which were subject to the 'unreasonable, arbitrary, capricious, or abuse of discretion' test under the original IAPA." *Travelers Indem. Co. v Comm'r of Ins. of State*, 767 N.W.2d, 646, 650 (Iowa 2009)(citing Arthur E. Bonfield, Amendments to Iowa Administrative Procedure Act, Report on Selected Provisions to Iowa State Bar Association and Iowa State Government 68 (1998).

57. This means that the quality and quantity of the evidence Mr. Belth was required to present to the Commissioner must have been such that a reasonable person would agree that publication of the requested documents would serve the interests of "policyholders, shareholders, *or* the public." Iowa Code § 521A.7(1) (Emphasis added).

58. Because the statute uses the word "or" instead of "and," it was only necessary for Mr. Belth to demonstrate to the Commissioner that the interest of one of those classes would be served, while the affected insurers, had a hearing been convened, would have been placed in a position of arguing that a reasonable person could not agree that the interests of any of the classes would be served.

59. The Iowa Supreme Court has clarified the definition of substantial evidence by holding that "evidence is not insubstantial merely because it would have supported contrary inferences." Nor is evidence insubstantial because of the possibility of drawing two inconsistent conclusions from it. The ultimate question is not whether the evidence supports a different finding, but whether the evidence supports the finding actually made. *Missman v Iowa Dept. of Transp.* 653 N.W.2d 363, 366 (Iowa 2002) (citation omitted); see also, *IBP, Inc., v Harpole,* 621

N.W.2d 410, 418 (2001) ("In the case of conflict in the evidence we are not free to interfere with the commissioner's findings.") (citation omitted).

60. This is a matter of first impression. Plaintiff is not aware of any case in which an agency's determination as to the public's interest (or, as here, the interests of policyholders or shareholders) in publishing documents characterized as confidential has been challenged under the substantial evidence standard of review.

61. While arguably, in some cases, the Iowa Supreme Court has described the task of proving that there is a lack of substantial evidence to support an agency's factual finding as a "heavy burden," *Missman*, 653 N.W. 2d at 366, this case is unique: while Mr. Belth need only have presented evidence that releasing the documents would be in the interest of policyholders, shareholders, or the public – something that he clearly did, in his letter of July 14, 2016 – the insurers are required to present evidence (the Commissioner has a duty to find) that the release of the requested documents will not be in the interests of any of those parties – policyholders, shareholders, or the public.

62. In sum, by statute, the insurers' burden – and the resulting weighing by the Commissioner – involves proving a negative, and that evidence must be weighed against the evidence that Mr. Belth has already described.

63. The Commissioner, arguably, could have rejected Mr. Belth's evidence. But, in his letter of July 27, 2016, he did not do so. See: Exhibit B. Insofar as the Commissioner also refused to convene either a formal or informal hearing, there is no evidence in the record countering Mr. Belth's information presented in his July 14, 2016 public records request, supporting his argument that the interests of policyholders, shareholders or the public will be served by the publication of the requested documents.

64. Moreover, there are no good reasons known to Mr. Belth as to why no contrary evidence was either presented – whether at a formal or informal hearing – in support of the Commissioner's decision. Iowa Code § 17A.19(7).

65. Further, even if the Commissioner had convened a formal or informal hearing, and even if he had weighed that evidence against other evidence produced by affected insurance companies, it is difficult to imagine what evidence the insurers could produce to demonstrate that *nobody's* interests would be served by releasing the requested documents.

I.B. DEFENDANTS ERRED, IN VIOLATION OF PLAINTIFF'S RIGHTS UNDER IOWA CODE § 17A.19(10)(k) and (n), WHEN THE COMMISSIONER REFUSED TO PUBLISH REQUESTED PUBLIC DOCUMENTS BECAUSE THE NEGATIVE IMPACT OF DOING SO ON PLAINTIFF'S RIGHTS IS SO GROSSLY DISPROPORTIONATE TO ANY BENEFITS ACCRUING TO THE PUBLIC ARISING FROM CONTINUED SECRECY OF THE REQUESTED FINANCIAL DOCUMENTS AND BECAUSE THE COMMISSIONER'S DECISION WAS MADE IN A MANNER THAT WAS ARBITRARY, CAPRICIOUS AND/OR AN ABUSE OF DISCRETION

66. The IAPA provides 14 grounds for reversal of final agency action. However, the Iowa Supreme Court has characterized these grounds as "several subsets of unreasonable, arbitrary, and capricious agency action," rather than independent categories. *Zieckler v Ampride*, 743 N.W. 2d 530, 537 (Iowa 2007).

67. Even if, in some instances, the Iowa Supreme Court gives appropriate deference to an agency's final action when deciding whether the conduct has been arbitrary, capricious or an abuse of discretion, in some instances – such as the present one – the same court has applied the concept of disproportionality as a grounds for reversal: if an agency's action is "[n]ot required by law and its negative impact on the private rights affected is so grossly disproportionate to the benefits accruing to the public interest from that action that it must

necessarily be deemed to lack any foundation in rational agency policy." Iowa Code § 17A.19(10)(k).

68. As written, the disproportionate rule provides Mr. Belth with a grounds for the reversal of the Commissioner's decision not to publish the requested documents because the "negative impact on the *private rights affected* is …grossly disproportionate to the benefits accruing to the public interest from that action." *Id.* (Emphasis added).

69. If the Commissioner's decision is not reversed by this Court, it is the public's interest in financially responsible insurance companies that will be disproportionately harmed in favor of the private interest insurance company confidentiality protected by that action—the exact opposite of the intended result of applying the disproportionate impact rule.

70. Stated alternatively, insurance companies' interest in confidentiality is grossly disproportionate to (much less than) the public's interest in a solvent, well-regulated insurance industry whose assets and liabilities are not intertwined in a shell game.

71. This Court, by reversing the Commissioner's decision, will upend an "otherwise unreasonable" agency action. Iowa Code § 17A.19 (10)(n) (final agency action may be reversed if it is "[o]therwise unreasonable, arbitrary, capricious, or an abuse of discretion.").

I.C. DEFENDANTS ERRED, IN VIOLATIONS OF PLAINTIFF'S RIGHTS UNDER IOWA CODE § 17A.19(10)(j) WHEN, IN EXERCISING DISCRETION TO REFUSE TO PUBLISH REQUESTED PUBLIC DOCUMENTS, THE COMMISSIONER FAILED TO CONSIDER RELEVANT MATTERS

72. The Court may reverse final agency action if it is "[t]he product of a decision-making process in which the agency did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action." Iowa Code § 17A.19(10)(j).

73. In the Commissioner's denial letter, July 17, 2016, he cites various statutory and administrative rules provisions that, according to the Commissioner, define the requested documents as "confidential." However, nowhere in the Commissioner's decision is there any indication that the Commissioner considered the evidence that Mr. Belth had presented.

74. There is no proof that any consideration whatsoever was given to the facts supporting Mr. Belth's belief, supported by facts and policy arguments, that producing copies of the requested documents would be in the interests of policyholders, shareholders, *or* the public. Iowa Code § 521A.7.

I.D. DEFENDANTS VIOLATED PLAINTIFF'S IMPLIED RIGHT, UNDER IOWA CODE § 521A.7(1), AND UNDER IOWA CODE §§ 17A.10 TO 17A.17 TO PARTICIPATE IN A FORMAL OR INFORMAL HEARING, CONVENED BY THE COMMISSIONER TO ALLOW PLAINTIFF A "RIGHT TO BE HEARD" WITH RESPECT TO HIS BELIEF THAT HIS REQUEST FOR THE PUBLICATION OF PUBLIC RECORDS WILL SERVE THE INTEREST OF POLICYHOLDERS, SHAREHOLDERS, OR THE PUBLIC

75. Iowa Code § 521.A.7(1) provides that the Commissioner must provide the affected insurers with notice and opportunity to be heard only before determining that the "interests of policyholders, shareholders, or the public will be served." The Commissioner, in categorically determining that statutory and administrative rules characterized the requested documents as "confidential," neither recognized any interests of policyholders, shareholders, or the public, nor attempted in any way to balance those interests against the confidentiality interests of affected insurance companies.

76. Often an agency will define whether a statute provides for a formal or informal hearing by regulation. Unfortunately, the IID's regulation associated with Iowa Code § 521A.7 offers no clarity, providing only that the records must remain confidential "unless the statutory determination in favor of publication is made." Iowa Admin. Code§ 191-1.3(11)(g)(2016).

77. This is the only instance in the entire Iowa Administrative Code known to Plaintiff in which the phrase "statutory determination" is used, and it appears in only three judicial cases – also undefined, but apparently referring simply to a determination required by statute and nothing more. See, e.g. *In re Michael*, 839 N.W. 2d 630, 636 (Iowa 2013)(using "statutory determination" to refer to a calculation of child support).

78. The relevant facts necessary to weigh the interests of life insurance companies against those of policyholders, shareholders, or the public, are adjudicative facts, the kinds of facts that Iowa law anticipates will be determined in the context of a hearing – whether it be an informal or a formal hearing.

79. However, in whatever context a hearing might be held – formal or informal – it is difficult to imagine what evidence the life insurers named in Plaintiff's public records request could provide to demonstrate that their release would not benefit the public.

80. However, Plaintiff believes that, under the circumstances involving the interests of policyholders, shareholders, or the public, some sort of hearing should have been convened by the Commissioner before issuing his (in this instance) summary and categorical denial.

DIVISION II

CAUSES OF ACTION UNDER IOWA CODE CHAPTER 22 THE IOWA EXAMINATION OF PUBLIC RECORDS (OPEN RECORDS) ACT

II.A. DEFENDANTS VIOLATED PLAINTIFF'S RIGHT TO PUBLIC RECORDS THAT ARE NOT DEFINED AS CONFIDENTIAL UNDER IOWA CODE § 22.7 BY REFUSING TO PRODUCE THEM WHEN PLAINTIFF REQUESTED ACCESS TO THEM

81. Plaintiff re-pleads paragraphs 1-47, as if fully set forth herein.

82. As a state entity and as an employee of the State of Iowa, Defendants qualify as a "government body." Iowa Code § 22.1(1).

83. The documents requested by Mr. Belth were and are subject to the open records request submitted by him on July 14, 2016. See: Exhibit A.

84. Defendants (a) are subject to the mandates of Iowa Code chapter 22, (b) have insurance company records in their possession, including the records described herein, and (c) failed to make those records available to Plaintiff upon request for the same.

85. The Iowa General Assembly, in Iowa Code § 22.7, has made a detailed list of documents defined as "confidential." The requested documents are not so listed. Even if they were listed as confidential in that Code provision, the Commissioner would still have the discretion to publish them, if the public interest were to be served.

86. Even if they were so classified in that Code section, Defendants, pursuant to that same Code provision, have the authority to release those records, upon request ("The following public records shall be kept confidential, unless otherwise ordered…by the lawful custodian of the records.").

87. In denying Plaintiff access to the requested public records on July 27, 2016, the Commissioner cited confidentiality provisions of Iowa Code § 508.33A(2)(b) and191 IAC 99, and determined that the requested documents constituted life insurance companies' "plans of operation." See: Exhibit B.

88. The requested documents do not constitute "plans of operation," warranting confidential status.

89. However, even if one were to assume, *arguendo*, that they were correctly so-characterized, the Commissioner, as records custodian, has the discretion to release such documents under Iowa Code § 527A.7(1). That provision sets forth a specific balancing test, one

under which the Commissioner, as custodian of the public records at the IID, is not prohibited from producing copies of documents classified as "confidential" under all circumstances.

90. Iowa Code § 521A.7(1) empowers the Commissioner to exercise discretion in making the disclosure decision. Such confidential records "…shall not be made public . . . unless the commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event the commissioner may publish all or any part thereof in such manner as the commissioner may deem appropriate." Id.

91. In Plaintiff's records request, he laid out facts and policy reasons why the requested documents should be produced. Exhibit A.

92. In response, and in denying the request, the Commissioner neither addressed those issues nor convened the informal or formal hearing that Iowa Code 521A.7(1) contemplates. Further, in his letter denying Plaintiff's request, the Commissioner failed to demonstrate that any of Plaintiff's evidence and arguments had been considered or that any weighing of evidence – insurance companies' confidentiality interests versus the interests of policyholders, shareholders, or the public – had occurred.

93. Therefore, the Commissioner's failure to produce requested public records violates Iowa Code chapter 22.

II.B. DEFENDANTS VIOLATED PLAINTIFF'S RIGHT TO DOCUMENTS AND INFORMATION THAT WAS ACCESSIBLE TO THIRD PARTY AUDITORS AND THAT WAS DISCLOSED IN AUDIT REPORTS, AND THEREFORE ANY CLAIM TO CONFIDENTIALITY AS TO OTHER THIRD PARTIES WAS WAIVED

94. Plaintiff re-pleads paragraphs 1-47, as if fully set forth herein.

95. Mr. Belth's request for access to the underlying documentation from which the information in the independent auditor reports was drawn was not addressed in any manner in Commissioner Gerhart's final agency action. Mr. Belth assumes, but does not know if Defendants have the requested documents in their possession.

96. Assuming, *arguendo*, that the requested documents could be characterized by statute and administrative rule as confidential, as urged by Commissioner Gerhart in his decision to deny Plaintiff access to the documents, Exhibit B, and assuming further, *arguendo*, that Defendants have the requested underlying documents in their possession, the Commissioner waived any said statutorily-created confidentiality of the documents in one or more of the following ways:

a. Under Iowa Administrative Code chapter 99, documents described as Certificates of Authority and Plans of Operation are detailed and covered by the same statutory grant of confidentiality laid out in Iowa Code chapters 508.33A(2)(b) and 521A.7. Defendants, in response to earlier public records requests, published to Mr. Belth copies of Certificates of Authority.

b. Prior to the public records request leading to this lawsuit, Mr. Belth requested from Defendants, and was provided a copy of certain Independent Audits for reinsurance entities, from which Mr. Belth first acquired knowledge of the specific contents and accounting information described in the denied records request. The audit reports to which Mr. Belth has been given access would appear to fall under the statutorily-created confidentiality provisions of Chapter 521A.7 and 508.33A that have served as a basis for the Commissioner's denial of the present request.

97. By selectively producing some, but not other, documents covered by the same statutory provisions, Defendants have waived their right to prevent the disclosure of the requested documents.

RELIEF

WHEREFORE, Plaintiff Joseph Belth respectfully requests that the Court:

A. Schedule any hearings and trial proceedings on an expedited basis and, as a part thereof, receive into evidence and review on an *in camera* basis, all of the requested documents.

B. Declare that Defendants Iowa Insurance Division and Commissioner Nick Gerhart have violated the Iowa Administrative Procedures Act, Iowa Code chapter 17A, when failing to abide by express and implied provisions of that law that are intended to provide persons with due process rights, including the use of informal or formal hearing processes to adjudicate contested facts and to make decisions in a manner that complies with the minimum requirement of law, including, but not limited to:

1) an Order finding that said Defendants have violated Mr. Belth's rights to have published certain requested public records under Iowa Code § 521A.7(1) when the Commissioner failed to address or to balance any of the interests of policyholders, shareholders or the public against the confidentiality interests of the insurance companies using shadow insurance financial instruments;

2) an Order finding that the Commissioner erred in his determination of fact, resulting in his refusal to publish requested public records,

and that the refusal was not supported by substantial evidence in the record before the Court when that record is viewed as a whole;

3) an Order finding that the Commissioner's decision in exercising his discretion to refuse to publish requested public documents was arbitrary, capricious and/or an abuse of discretion;

4) an Order finding that the Commissioner erred when, in exercising his discretion to refuse to publish requested public documents, he failed to consider relevant matters.

C. Declare that Defendants Iowa Insurance Division and Commissioner Nick Gerhart have violated the Iowa Examination of Public Records (Open Records) Act, Iowa Code chapter 22, when failing to abide by express and implied provisions of that law that are intended to provide persons access to public records, including, but not limited to:

1) an Order finding that the Commissioner erred when, under Iowa Code § 521A.7(1), he failed to allow Plaintiff to participate in a formal or informal hearing, convened by the Commissioner, to allow Plaintiff a "right to be heard" with respect to his belief that his request for publication of public records will serve the interest of policyholders, shareholders, *or* the public;

2) an Order that Defendants violated Plaintiff's right to documents and information when Defendants waived confidentiality of them when Defendants provided other similarly-classified documents to third parties, including auditors and to Plaintiff.

D. Order, by injunction and/or mandamus, that Defendants shall:

1) comply with statutory provisions set forth above, including, but not limited to, Iowa Code chapter 17A and Iowa Code chapter 22, and provide Mr. Belth with copies of the requested documents; and

2) pay all costs and reasonable attorney's fees incurred by Mr. Belth.

E. Assess damages against Defendants under Iowa Code Chapter 22.10(3)(b) and grant Mr. Belth all other relief authorized under Chapter 22 and Iowa Code chapter 17A.

F. If the Court does not grant relief requested under the claim in equity under Chapter 22 or pursuant to the claim of waiver of confidentiality, then Plaintiff requests that the Court find that the Commissioner did not meet the applicable standard under Chapter 17A.19(10) and order the Commissioner to publish the documents under Chapter 521A.7(1) in the interests of policyholders, shareholders, or the public.

G. In the alternative, Mr. Belth requests the Court find that the confidentiality under Chapters 521A.7 and 508.33A was waived by release of the Certificates of Authority and the independent audits.

H. Award Mr. Belth all other relief as would be just and proper.

Respectfully Submitted,

/s/James C. Larew

Jim Larew AT0004543
Larew Law Office
504 E. Bloomington St.
Iowa City, Iowa 52245
Email: James.Larew@LarewLawOffice.com
Phone: 319.541.4240
Fax: 319.337.7082