Received 10/15/2021 10:22:11 PM Commonwealth Court of Pennsylvania

Filed 10/15/2021 10:22:00 PM Commonwealth Court of Pennsylvania
1 SHP 2020

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In re: Senior Health Insurance Company of Pennsylvania in Rehabilitation	:	No. 1 SHP 2020

ORDER

AND NOW, THIS _____ day of _____, 2021, upon consideration of the Intervenor State Insurance Regulators' Application for Stay Pending Appeal, and the Rehabilitator's response thereto, IT IS ORDERED that the Application is DENIED.

_____

MARY HANNAH LEAVITT
PRESIDENT JUDGE EMERITA

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In re: Senior Health Insurance Company of Pennsylvania in Rehabilitation	:	No. 1 SHP 2020

REHABILITATOR'S ANSWER AND BRIEF IN OPPOSITION TO THE INTERVENOR STATE INSURANCE REGULATORS' APPLICATION FOR STAY PENDING APPEAL

COZEN O'CONNOR
Dexter R. Hamilton, PA ID 50225
Michael J. Broadbent, PA ID 309798
Haryle Kaldis, PA ID 324534
1650 Market Street, Suite 2800
Philadelphia, PA 19103
(215) 665-2000

TUCKER LAW GROUP
Leslie M. Greenspan, I.D. 91639
Ten Penn Center
1801 Market Street, Suite 2500
Philadelphia, PA 19103

Counsel for Jessica K. Altman, Insurance Commissioner of the Commonwealth of Pennsylvania, as Statutory Rehabilitator of Senior Health Insurance Company Of Pennsylvania

Filed October 15, 2021

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

INTRODUCTION

Jessica K. Altman, Insurance Commissioner of the Commonwealth of Pennsylvania, in her capacity as the Statutory Rehabilitator ("Rehabilitator") of Senior Health Insurance Company of Pennsylvania ("SHIP"), hereby submits this Answer and Brief in Opposition to the Intervenor State Insurance Regulators' ("Intervening Regulators") Application for Stay Pending Appeal ("Stay Application"). This Court should deny the Stay Application because it fails to meet every criterion necessary for a stay. The Intervening Regulators fail entirely to show irreparable harm to themselves in the absence of a stay; they fail entirely to negate harm to the Rehabilitator and policyholders if a stay is imposed; they fail entirely to show a strong likelihood of success on the merits of their appeal; and they fail entirely to show that public policy supports a stay.[1]

---

[1] The Stay Application does not comply with Pa. R.A.P 123 and Pa. R.A.P. 1732, because an application must stand alone even if accompanied by a brief. The rules require an application to "state with particularity the grounds on which it is based, and . . . set forth the order or relief sought." Pa. R.A.P. 123. The Stay Application includes an introduction, eleven numbered paragraphs stating the "essential facts" but without an assertion of authority or request for relief, and the text of a brief. The Intervening Regulators also suggest that "most of the basic facts" necessary to the Stay Application were referenced in the Court's Approval Opinion approving the Plan but others were "omitted, understated or only noted in passing." (Stay Application at 7.) There is no explanation of which facts fall into these latter categories, and there is no verification attached to the Stay Application despite the Intervening Regulators' admission that it relies on facts outside of the record and the inclusion of two documents that post-date the hearing and are not authenticated by any party. These defects are procedural, yet they implicate substantive problems with the Stay Application which this Court should consider in ruling on its merits.

ANSWER TO STAY APPLICATION

APPLICATION:

1. SHIP's policies are enforceable contracts, and the premiums charged on the policies historically and on the rehabilitation date were lawfully approved rates. Tr. 227-229, 282.

RESPONSE:

Denied. The statements in Paragraph 1 are legal conclusions to which no response is required. To the extent a response is required, the statements are denied, as they are immaterial to the merits of the Stay Application. Moreover, the record cited by the Intervening Regulators does not affirmatively support these statements. The cited testimony from Mr. Cantilo states only that he has no reason to believe that the policies are not enforceable contracts and no reason to believe that the policies were not approved. Mr. Cantilo further explained in the cited testimony that he is not contending that the policies are unlawful and he assumes the rates were lawfully approved.

APPLICATION:

2. SHIP is insolvent, with a deficit or "funding gap" of approximately $1.2 billion. Ex. RP-55 (the Plan) at 87.

RESPONSE:

Admitted in part, denied in part. It is admitted that SHIP had a funding gap of approximately $1.2 billion at the time of the rehabilitation proceedings. The

statement in Paragraph 2 that SHIP is insolvent is a legal conclusion to which no response is required. To the extent a response is required, neither the Second Amended Plan cited by the Intervening Regulators nor the Approved Plan filed October 3, 2021 state that SHIP is insolvent. No finding of insolvency has been made by any court.

APPLICATION:

3. Under the Plan, the burden of reducing or eliminating the $1.2 billion funding gap will rest on the 30,000 remaining SHIP policyholders who have not taken non-forfeiture options. Tr. 290-292; Ex. RP-55 at 102-103. The Plan seeks to reduce the funding gap by reducing policy benefits and increasing premiums. Ex. RP-55 at 10, 102-103.

RESPONSE:

Denied as stated. The statements in Paragraph 3 are characterizations of the Approved Plan, which is in writing, and thus the characterizations in this paragraph are denied. The Plan attempts to reduce the funding gap using a variety of mechanisms, including by offering policyholders options through which they can decide for themselves how to allocate the relationship between premiums and benefits under their SHIP policies.

APPLICATION:

4. The Plan requires policyholders to select among options, only one of which (Option 4) retains the policyholders' full benefits in Phase One. The other options (Options 1, 2, 2a, and 3) all reduce benefits in Phase One. Ex. RP-55 at 23-24; Tr. 113-117. Policyholders who choose Options 1 or 4 in Phase One face the possibility of additional substantial rate increases or benefit reductions in Phase Two. Ex. RP-55 at 15, 58.

RESPONSE:

Admitted in part, denied in part. It is admitted that the Plan requires policyholders to elect one of the offered options; any remaining characterization of the Plan options is denied. Option 1 will retain a policyholder's full benefits if that policyholder is currently paying the If Knew premium. Depending on a policyholder's election, Options 2 and 2a involve a reduction of benefits to match the future premiums, and Option 3 will provide a set amount of benefits without requiring any future premiums. Not all policyholders electing Option 1 or Option 4 in Phase One will face additional rate increases or benefit reductions in Phase Two; the scope and impact of Phase Two has not yet been decided, and, as explained in the Plan, no adjustments will be made to Option 1 or Option 4 policies unless those policies exceed guaranty association limits and are not already at a self-sustaining premium level.

APPLICATION:

5. In a liquidation, virtually all of SHIP's policies would be covered by one of the guaranty associations created by statute in each state, subject to the individual state statutory limits on guaranty association coverage. Ex. RP-55 at 93.

RESPONSE:

Admitted.

APPLICATION:

6. If SHIP were liquidated now so that guaranty associations are triggered, policyholders will absorb only approximately $397 million of the funding gap, based on the Rehabilitator's comparison file. Ex. SIR 5-1, Table 1; Tr. 564. This is because guaranty associations would provide approximately $837 million in additional support to benefit policyholders, also based on the Rehabilitator's comparison file. Ex. SIR 5-1, Table 2; Tr. 565-66. The Plan does not trigger the guaranty associations, Ex. RP-55 at 92, so these additional funds will not be available to benefit policyholders under the Plan.

RESPONSE:

Admitted in part, denied in part. The first phrase in the third sentence of Paragraph 6 is admitted, and the remaining statements in Paragraph 6 are legal conclusions and characterizations of evidence, all of which are denied. To the extent a response is required, the first and second sentences cite to documents prepared by the Intervening Regulators' expert which were not accepted by the Court. The

second phrase of the third sentence is denied because, while guaranty association funds are not available in rehabilitation, they remain available to policyholders in the event liquidation is later ordered.

APPLICATION:

7. The policyholder elections under the Plan will be permanent in that guaranty association coverage may be given up. If SHIP is placed in liquidation after the Plan is implemented, the policies to which guaranty association coverage will apply will be the policies as modified as a result of the elections. Ex. RP-55 at 14, 92; Tr. 300-301, 313.

RESPONSE:

Admitted in part, denied in part. It is admitted that the Plan calls for permanent changes to policies based on the elections made during the process and that policies may be modified based on those elections. The remaining statements in Paragraph 7 are denied. Policyholder elections will not cause any policyholders to give up guaranty association coverage because state guaranty associations have not yet been triggered. Instead, the options offered to policyholders will allow them to retain their existing policies by paying the appropriate premium or voluntarily give up their benefit-rich policies in favor of a more affordable option that better suits their needs. Whether policies modified as a result of elections in Phase One

will remain effective and in force at the time of any potential liquidation order will not be known until a liquidation order is entered, assuming one is entered at all.

APPLICATION:

8. The Plan is highly unlikely to eliminate the funding gap and restore SHIP to solvency, even considering both Phase One and Phase Two. Tr. 80, 306. In all likelihood, the Plan will not eliminate the deficit, just reduce it materially. Tr. 189-190.

RESPONSE:

Denied as stated. The statements in the first sentence of Paragraph 8 mischaracterize the cited record. The Special Deputy Rehabilitator testified that "it is not likely that we will magically restore SHIP to solvency, but it is likely that the plan that we were trying to design would substantially reduce the deficit and substantially improve the inequitable rate structure for the company." (Tr. 80:6-12.) Later, the Special Deputy Rehabilitator testified that Phase Two would seek to eliminate any remaining funding gap, and while it "would be ideal" if the funding gap was eliminated after Phase Two, the Rehabilitator could not "guarantee that will be the result." (Tr. 306:6-19.) The Intervening Regulators' counsel, not the Special Deputy Rehabilitator, used the term "highly unlikely." (Tr. 306:11-14.) The second sentence of Paragraph 8 accurately characterizes the cited portion of the Special Deputy Rehabilitator's testimony, but it is not the only testimony on this issue.

APPLICATION:

9. The Plan will not provide all policyholders with an option with a net present value (present value of future benefits less present value of future premiums) at least as great as the net present value in liquidation. Only 85% of policyholders will have at least one Phase One option with a net present value equal to or greater than liquidation. Ex. RP-7; Tr. 183, 185, 510, 512. This 85% rests principally on Option 4. Tr. 510, 512-513, 572; Ex. SIR 5-2. Option 4 has the least impact on the funding gap, and it is subject to further adjustment in Phase Two. Tr. 259, 513; Ex. RP-55 at 14.

RESPONSE:

Admitted in part, denied in part. The Rehabilitator denies that any of the statements in Paragraph 9 are material to the Stay Application, and she further denies that any of the statements in Paragraph 9 are decisive on the question of whether Plan approval was properly entered. As the Rehabilitator established during the hearing, net present value is only one possible metric, and it is one that has no meaning for policyholders—making it very unlikely or perhaps impossible that an individual policyholder would care whether the policies offered have an equal, greater, or lower net present value than the policy that might be offered in liquidation. (*See* Ex. RP-43 through Ex. RP-47 (multiple metrics); Tr. 347:1-348:12 (Cantilo), 437:13-438:9 (Bodnar).) The Rehabilitator showed that 100% of

policyholders have the option to elect a policy which matches their existing maximum policy value, and Option 1 allows policyholders to elect a policy which matches their existing premiums even if a benefit reduction is applied. (*See* Ex. RP-47 (MPV analysis); Ex. RP-56, Cantilo Slides at 109, 110; Tr. 184:12-15 (Cantilo Testimony).) These are the data points on which policyholders will assess the options. Moreover, even if net present value were the only test, an 85% equivalence rate would be more than enough to pass any required comparison to liquidation. Notwithstanding these denials, it is admitted that approximately 85% of policyholders will be presented with a Phase One option carrying a net present value equal to or greater than the net present value of their theoretical liquidation policy. It is also admitted that Option 4 is, in most cases, the option through which policyholders would obtain a policy with net present value equal to their theoretical liquidation policy, and that an Option 4 election, standing alone, has the least impact on the funding gap. It is denied that Option 4 elections are subject to further adjustment in Phase 2; rather, Option 4 elections are eligible for further adjustment in Phase 2, but only if the policy as elected exceeds guaranty association limits and the policy as elected is not self-sustaining with respect to premiums and benefits. Additionally, policyholders electing Option 4 in Phase One are not necessarily subject to further adjustment in Phase Two even if they meet the eligibility criteria, because such policyholders will have the opportunity to elect a different policy.

APPLICATION:

10. Under state statutes, long term care insurance rates are reviewed and approved by the insurance regulatory official of the state in which the policy is issued. Tr. 155, 157. Each state has its own approach to reviewing rates. Tr. 413-414. The Plan does not follow this issue state rate approval process. Ex. RP-55 at 33-34, 96; Tr. 158-159. It removes state insurance regulators from their role in reviewing rates, which is "unprecedented." Ex. RP-55 at 33-34; Tr. 82. Under the Plan, the Rehabilitator will not seek approval of rates from state regulators under their statutes but instead from the Commonwealth Court. Ex. RP-55 at 33-34, 96.

RESPONSE:

Denied as stated. The first sentence of Paragraph 10 is not supported by the record, because it cites to testimony of the Special Deputy Rehabilitator and not any specific state statute. Moreover, the first sentence of Paragraph 10 overstates the meaning of the Special Deputy Rehabilitator's cited testimony, in which the Special Deputy Rehabilitator was describing and summarizing the Intervening Regulators' arguments, including that they arise out of "a tradition that has been codified in most of the states of having the state of issue of an insurance policy be the principal regulator for the rates for those policies." (Tr. 155:11-158:24.) The second sentence of Paragraph 10 accurately summarizes the cited testimony of the Rehabilitator's actuarial expert Vincent Bodnar, but it is incomplete and thus inaccurate, as Mr. Bodnar also testified that a lifetime loss ratio of at least 60%—*i.e.*, the ratio resulting

from the Rehabilitator's proposed use of If Knew premium—is generally used across the country and is treated as a benchmark by regulators in determining what is actuarially justified. (Tr. 455:5-22.) It is true that, as stated in the third sentence of Paragraph 10, the Plan rightfully does not follow exactly the standard approval process, but the Plan has not removed regulators from their role in reviewing rates, as the Intervening Regulators and other state regulators have the opportunity to assert their authority over the rate review process by opting-out. The fourth sentence of Paragraph 10 is incomplete; the Rehabilitator will obtain approval for rates within the Plan pursuant to the procedure described in the Memorandum Opinion and Order, but, as described in the Issue-State Rate Approval Option, the Rehabilitator also intends to seek rate approval from the regulators of states opting-out of the Plan.

APPLICATION:

11. The Plan has an "issue state rate approval" section under which state regulators purportedly may "opt-out" of having the Commonwealth Court approve rates. Ex. RP-55 at 108. The section provides that, unless the "opt-out" state approves the Rehabilitator's rate application, in full, within 60 days, it is deemed denied. Ex. RP-55 at 111. In that case, the options available to policyholders in that state will be more limited than the options available in other states, and the state's policyholders will be disadvantaged. Ex. RP-55 at 109, 116; Tr. 169-170.

RESPONSE:

Admitted in part, denied in part. It is admitted that the Plan provides state regulators with an opportunity to opt-out of the Plan and review rates for policies issued in their state, but it is denied that such option is "purported[]," because regulators—including the Intervening Regulators—will have the actual opportunity to opt-out. Indeed, the Intervening Regulators rely on the opt-out process as proof that the Rehabilitator is implementing the Plan and as (a misguided attempt at) proof of the potential harm of implementation. It is admitted that a regulator who elects to opt-out has sixty days to approve or deny the application, but Paragraph 11 mischaracterizes the impact of that decision. A regulator who approves in full the requested rate increases shall be treated as if his or her state did not opt-out, while a regulator who does not approve in full the requested rate increases shall be treated as having opted-out, exactly as requested. Policyholders in an opt-out state are not disadvantaged by the decision to opt-out. Consistent with the state-based system for which the Intervening Regulators advocated, residents of an opt-out state that own policies issued in a state that did not opt-out will have the full range of options available. Policyholders who own policies issued in an opt-out state that does not approve the Rehabilitator's rate application are likely to have rates set on a group basis and receive fewer options than under the Plan, outcomes which may be disadvantageous to some of those policyholders regardless of where they reside.

BRIEF IN OPPOSITION TO THE STAY APPLICATION

A. INTRODUCTION

SHIP is currently in dire financial condition requiring immediate action. On August 25, 2021, this Court filed herein its Memorandum Opinion and Order ("Approval Opinion") approving the Rehabilitation Plan proposed by the Rehabilitator ("Approved Rehabilitation Plan" or "Approved Plan"). As this Court recognized, it is imperative that the Rehabilitator move expeditiously and take the necessary steps to begin to implement SHIP's Approved Plan to address the causes of SHIP's financial distress and adequately preserve its assets. Notwithstanding, the Intervening Regulators now request that the Court stay implementation of the Approved Plan pending appeal, completely ignoring the significant harm this delay will cause to SHIP, its policyholders and creditors, and the public.

At the outset, the Intervening Regulators' Stay Application is fundamentally flawed and should be rejected. The vast majority of the Intervening Regulators' contentions are focused on purported policyholders' interests. This is true with respect to both the underlying merits of the appeal (*e.g.*, Stay Application at 5 (contending that the Plan "does not serve the best financial interest of policyholders")), as well as the purported harm that will occur absent a stay (*id.* at 29). But the Intervening Regulators do not speak for or represent ***any*** of SHIP's policyholders. Indeed, the Intervening Regulators have expressly disavowed that

they are acting in a representative capacity for ***even the policyholders in their own respective states***, which in any event comprise only a small fraction of SHIP's overall policyholders. (Tr. 543:9-18.) Thus, the Stay Application's entire discussion of purported harm to interests the Intervening Regulators do not represent is irrelevant. Notably absent from the Stay Application is any discussion of some actual harm to the Intervening Regulators themselves that would result from not staying implementation of the Approved Plan. This alone is fatal to the Intervening Regulators' Stay Application.

Even setting aside this critical defect, the Intervening Regulators utterly fail to satisfy their burden for a stay. *First*, the Intervening Regulators fail to show that they are likely to prevail on the merits—let alone make a *strong* showing that they are likely to prevail, as required for a stay. The parties extensively briefed all of the issues raised on appeal, in both pre-hearing and post-hearing submissions. The Court carefully considered—and rejected—the Intervening Regulators' arguments on three separate occasions: first, on a motion for a directed verdict on the Issue-State Rate Approval Option; then, in denying the Intervening Regulators' application for reconsideration; and finally, in a detailed eighty-one page memorandum opinion addressing each and every one of the contentions they now raise on appeal. Nor was this a close call. As the Court recognized, the Intervening Regulators failed to present any evidence supporting their challenge to the Issue-

State Rate Approval Option, failed to offer any evidence disputing any material fact that the Rehabilitator set forth in support of the Plan, and lacked standing to assert claims on behalf of policyholders. (Opinion at 68, 77, 79.) Moreover, the Intervening Regulators' legal arguments essentially boiled down to the proposition that they would have exercised their discretion differently—hardly a basis for finding that the Rehabilitator abused her broad discretion in formulating a plan that balances the competing interests of policyholders, general creditors, other stakeholders, and public policy. The Stay Application's rehashing of the very same arguments that the Court has already thoroughly rejected fails to make a strong showing that the Intervening Regulators are likely to prevail on appeal.

Second, the Intervening Regulators fail to demonstrate that they will suffer any harm, let alone irreparable injury, without a stay. As noted above, the Stay Application does not identify how the Intervening Regulators themselves will be harmed in any way. Instead, they point to supposed harm to policyholders and others. Of course, they do not, and cannot, speak for policyholders or other state regulators not a party to these proceedings. But even setting that aside, their argument that policyholders will suffer if the Plan is implemented and the policies "right-sized" is similarly without merit. There is no irreparable harm in SHIP's policyholders paying actuarially justified rates for their insurance coverage during the pendency of this action or in discontinuing the involuntary subsidies of some

policyholders by others. Nor is there irreparable harm based on the mere possibility of policyholder "confusion" should the process be reversed after appeal. In short, implementation of the Approved Plan will not cause irreparable harm to the Intervening Regulators or to any other interested party.

Moreover, even the purported harm to policyholders (not the Intervening Regulators themselves) of which the Stay Application complains is speculative on its face and factually unsupported. At its core, the supposed harm arises from taking away from some policyholders the ability to continue buying long-term care coverage at inadequate premium rates at the expense of other policyholders. The Intervening Regulators, however, have introduced no evidence or authority in this proceeding supporting the proposition that any policyholders have an inviolate right to subsidization of their long-term care insurance. Neither is any supporting evidence or authority identified in the Stay Application, because there is no such right. In the absence of any record on this issue, this baseless argument cannot now constitute the requisite showing of irreparable injury.

Finally, a stay will significantly harm SHIP, its policyholders, creditors, and the public. Tellingly, the Stay Application hardly discusses these factors (Stay Application at 31–33) because any delay obviously causes significant harm to SHIP's financial health. Delay in implementation of the Plan will allow for one of the primary conditions that led to SHIP's poor financial condition to continue

unabated—that is, underpriced policies that are far from actuarially justified. It is critical that the Rehabilitator move quickly to implement the Plan, and a stay pending appeal imperils the prospects for a successful rehabilitation of SHIP.

Perhaps inadvertently signaling the little confidence they have in their Stay Application, the Intervening Regulators also fail entirely to address the issue of a supersedeas bond. Even if the Court were inclined to consider granting a stay (for which the Rehabilitator submits there is no basis), it would also have to consider what bond to require of the Intervening Regulators to insulate the Rehabilitator and SHIP's policyholders and creditors from the harm resulting from delay in implementation of the Plan. The Rehabilitator believes that even a conservative estimate of the cost of a one-year delay is in the range of $55 to $70 million. The Rehabilitator does not seek here to make the case for a specific bond amount, as the Court can address the amount of a bond in a subsequent hearing in the event it is inclined to permit a stay. Instead, the Rehabilitator's argument seeks only to highlight that this critical element of an application for stay has been wholly ignored as well, and the Stay Application should be denied for this additional reason.

B. THE STAY APPLICATION IS PREMISED ON PURPORTED POLICYHOLDER INTERESTS THAT THE INTERVENING REGULATORS LACK STANDING TO ASSERT.

The Intervening Regulators implicitly concede that they cannot satisfy the requisite showing for a stay based on any alleged harm to them or any other interest that they have in SHIP's rehabilitation. Instead, the Intervening Regulators attempt

to substitute the purported interests of SHIP's policyholders nationwide for their own, when they do not speak for or represent *any* of SHIP's policyholders in these proceedings—not even with respect to the relatively small fraction of policies issued in their own respective states. The Intervening Regulators' misguided attempt to shift the focus of the Stay Application to the merits of arguments that they lack standing to assert and purported harms to parties they do not represent is defective on its face. The Stay Application may be denied on that basis alone.

This Court should not impose he requested stay unless the Intervening Regulators can demonstrate a strong likelihood of success on appeal. Insofar as their asserted harm is what they allege will be adverse effects for policyholders, their complete failure to adduce supporting evidence of such harm in the underlying proceeding vitiates entirely any likelihood of success, let alone a strong likelihood, on appeal.

The Intervening Regulators' position in SHIP's rehabilitation proceedings is uncontroverted: they do not—and cannot—speak on behalf of any policyholders, *including* any policyholders in their own respective states. The Court granted the Intervening Regulators' request for limited intervention in these rehabilitation proceedings based on their own purported interests as regulators, and not in any *parens patriae* or other representative capacity for policyholders. Indeed, the Intervening Regulators have expressly disavowed that they are acting in any "sort of

parens patriae capacity on behalf of . . . policyholders [from their respective states] who have chosen not to intervene." (Tr. 543:9-18; *accord* Intervening Regulators' Pre-hearing Memorandum at 50 (conceding that the Intervening Regulators are not acting "as some sort of agent for the policyholders in their States").) As a result, the Court held that the Intervening Regulators lacked standing to assert claims on behalf of policyholders that they do not purport to represent. (Opinion at 68.)

Notwithstanding, the Stay Application is focused almost *exclusively* on the interests of policyholders. That is, the Intervening Regulators' arguments regarding the merits of the appeal are focused on purported financial interests of and burdens on policyholders through rehabilitation. (*E.g.*, Stay Application at 5 (arguing that the Plan "does not serve the best interests of policyholders" and "fails to place policyholders in at least as good a position as in liquidation") and at 14–22.) Similarly, the Stay Application focuses on purported harm to policyholders absent a stay. (*Id.* at 29–30 (arguing that the Plan will affect "the contractual rights of the 30,000 affected policyholders"); (*id.* at 30 (policyholder "confusion"); *id.* (asserting benefit of appeal to policyholders).)

To be clear, the Intervening Regulators do not have standing to assert any alleged harm to policyholders or any basis to argue what is in the best interests of policyholders. Again, they do not represent the interests of any policyholders—unlike the Rehabilitator, who by statute is expressly charged with protecting the

interests of SHIP's policyholders. *See* 40 Pa. Stat. § 221.1(c).[2] The Intervening Regulators have no basis for requesting a stay based on their own interests, and cannot mask that deficiency by now invoking the interests of others whom they do not represent. *See Dep't of Envtl. Res. v. Jubelirer*, 614 A.2d 199, 203 (Pa. 1989) (party failed to demonstrate a substantial case on the merits where it "had a serious standing problem"). The Intervening Regulators lack of standing to raise policyholders' interests is fatal to the Stay Application.

C. THE STAY APPLICATION FAILS TO MAKE A STRONG SHOWING THAT THE INTERVENING REGULATORS ARE LIKELY TO SUCCEED ON THE MERITS.

The Court's eighty-one page Memorandum Opinion addresses at length—and rejects—each of the Intervening Regulators' arguments that they repeat in their Stay Application. Regurgitating the same flawed arguments that this Court has already

[2] The Intervening Regulators' attempt to assert the interests of SHIP's policyholders against the Rehabilitator is particularly egregious here because collectively, fewer than 6% of SHIP's remaining 39,000 policies were issued in the Intervening Regulators' respective states. (*See* Joint Application for Intervention of Maine and Massachusetts (July 31, 2020) at ¶¶ 8, 13 (identifying 388 Maine policies and 345 Massachusetts policies subject to the Rehabilitation Plan as of November 30, 2019) and Joinder of Washington in the Joint Application for Intervention (Sep. 15, 2020) at ¶ 8 (identifying 1,509 Washington policies subject to the Rehabilitation Plan as of November 30, 2019).) Importantly, the Intervening Regulators do not speak for or represent even that limited number of SHIP's policyholders in their own states. Notwithstanding the Intervening Regulators' small share of the total policies, the Stay Application improperly attempts to focus on the alleged interests of SHIP's policyholders *nationwide*.

rejected does not satisfy the Intervening Regulators' burden of making a strong showing of likelihood of success on the merits.

The Intervening Regulators' arguments should be rejected on their face for several reasons. *First*, as explained above, the Intervening Regulators lack standing to assert claims on behalf of policyholders, and thus necessarily cannot prevail on the merits of those flawed arguments. Moreover, there is no evidence in the record supporting the Intervening Regulators' contentions whatsoever. The Stay Application overlooks that the Intervening Regulators failed to present *any* evidence supporting their challenge to the Issue-State Rate Approval Option (Opinion at 77)—which necessitated the Court's directed verdict on this issue—and failed to submit evidence disputing any material fact that the Rehabilitator set forth in support of the Plan (*id.* at 79). There is simply no evidentiary basis which would support allowing the Intervening Regulators to assert the harms purportedly suffered by policyholders or which would demonstrate that such harm exists in the first place.

Certainly, both in the underlying proceeding and now with the Stay Application, the Intervening Regulators have failed entirely to identify, let alone support with evidence and legal authority, any harm that they would suffer *as regulators* upon the Plan's implementation and in the absence of a stay.

Moreover, the substance of the Intervening Regulators' arguments regarding plan approval lack merit for the reasons this Court has already addressed in its

Approval Opinion. *First*, the Stay Application continues to assert that the Plan is not "feasible." (Stay Application at 10–14.) But as the Court explained, "Article V does not require [the approved] Plan be 'feasible' in order to be approved." (Opinion at 67.) In any event, the Court also held that the Plan *is* feasible to the extent such a requirement exists, because the Plan will materially reduce the Funding Gap, significantly improve SHIP's financial condition, and if successful, will restore SHIP to its pre-receivership condition of an insurer winding down its long-term care insurance business. (*Id.* at 65–66.) The Intervening Regulators have not offered any evidence in support of a different conclusion, nor have they shown any likelihood of success as to their attack on the public policy findings reached by the Court or on the feasibility of the Plan in satisfying the Rehabilitator's goals.

Second, the Stay Application broadly asserts (again without evidence) that the Plan is not in the best financial interests of policyholders. (Stay Application at 14–20.) Setting aside that the Intervening Regulators lack standing to assert whether the Plan is in the best financial interests of policyholders, the Intervening Regulators argument amounts to little more than suggesting that "they would have exercised their discretion differently," which the Court correctly held "is not a basis for the Court to disapprove the Plan." (Opinion at 79.) Nothing in the Stay Application or in any other filing offers a reason to believe the Intervening Regulators will succeed on appeal in convincing the Supreme Court that their judgment is entitled to the same

degree of deference—indeed, more—than that of the Statutory Rehabilitator. The Stay Application also ignores that the Plan is designed around "the core principle of policyholder choice," and the Intervening Regulators completely and wrongfully discount the value of that choice simply because they disagree with the Rehabilitator's exercise of her discretion in making that determination. (*See id.* at 9, 43, 47–48.)[3] Instead, what the Stay Application again argues is that liquidation should be favored over rehabilitation because of the availability of guaranty association coverage. As the Court recognized, however, the Intervening Regulators' views on this issue are contrary to Pennsylvania public policy favoring rehabilitation of an insurer where possible. (*Id.* at 67.) And independent of the existing Pennsylvania law favoring rehabilitation, there were numerous reasons for the Rehabilitator to exercise her discretion in choosing rehabilitation over liquidation. (*Id.* at 44–47.) The Intervening Regulators cannot make a strong showing that they are likely to prevail on the merits simply because they disagree with Pennsylvania public policy and disagree with how the Rehabilitator exercised her discretion.

[3] On this point, the Intervening Regulators cannot avoid contradicting themselves, asserting that policyholder choice is unimportant while at the same time claiming that policyholders governed by opt-out state regulators will be injured if those policyholders receive fewer choices in rehabilitation than policyholders whose premiums and benefits are set by the Plan, an implicit acknowledgement that even the Intervening Regulators believe in the value of choice.

Third, the Stay Application continues to misconstrue *Neblett v. Carpenter*, 305 U.S. 297 (1938). (Stay Application at 20–23.) As the Court found, the Intervening Regulators' interpretation of *Carpenter*—on which they double down in the Stay Application—is flawed. (Opinion at 64–65.) But even under the Intervening Regulators' flawed metric, 85% of SHIP's policyholders will be offered at least one option with a value equal to or higher than the value of the policy that they might have in liquidation. (*Id.* at 65.) As such, the Court correctly explained that even if the Plan substantially impairs policies, it meets any test created by *Carpenter* because "it serves a legitimate and significant public purpose, and the policy modifications are reasonable and appropriate to that purpose." (*Id.* at 63.) The Stay Application offers no basis for overturning the Court's findings.

Finally, as with the Intervening Regulators prior filings, the Stay Application baldly asserts that the Plan "exceed[s] the authority granted to the Rehabilitator by the Pennsylvania statutes and violate[s] the Full Faith & Credit Clause." (Stay Application at 23.) Tellingly, the Stay Application cannot identify any specific statutory provision that the Plan would purport to violate—just as the Intervening Regulators failed to identify such a provision prior to the Court's approval of the Plan.

As this Court explained, the Plan's provisions fully comport with Pennsylvania law. (Opinion at 48–53.) Moreover, "[t]he Full Faith and Credit

Clause does not require the Rehabilitator to submit these premium rates to 46 states, the District of Columbia, and the U.S. Virgin Islands for their review and approval." (*Id*. at 60.) To the contrary, such a requirement "would fracture Pennsylvania's 'own legitimate public policy' in the rehabilitation of SHIP," in contravention of the Full Faith and Credit Clause. (*Id.*) The Intervening Regulators cannot satisfy their burden on the Stay Application by simply repeating these failed arguments.

D. THE INTERVENING REGULATORS FAIL TO PROVE THEY WOULD SUFFER IRREPARABLE HARM ABSENT A STAY.

This Court can deny the Stay Application solely because the Intervening Regulators cannot show a substantial likelihood of success on the merits. *See Maritrans G.P., Inc. v. Pepper, Hamilton & Scheetz*, 573 A.2d 1001, 1004 (Pa. 1990) ("In view of [the] failure [to show a substantial likelihood of success on the merits, the court] need not scrutinize compliance with the remaining three criteria."). Should the Court proceed to analyze the remaining elements, however, the Court will reach the same conclusion: the Stay Application should be denied.

Under the standard set forth in *Pennsylvania Public Utility Commission v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983), a stay cannot be entered unless the Intervening Regulators establish that "without the requested relief, [they] will suffer irreparable injury." 467 A.2d at 809; *see also* Pa. R.A.P. 1732 (rule governing application for stay noting that *Process Gas* determines "the criteria for the issuance of a stay pending appeal.") Irreparable injury is present only when the

movant demonstrates some imminent harm which cannot be avoided, unwound, or redressed. *See, e.g.*, *Maritrans*, 573 A.2d at 1004-05 (no irreparable harm related to disclosure of confidential information where there was no evidence of any actual or imminent disclosure); *Commonwealth Bd. of Fin. v. Rosetta Oil, Inc.*, 635 A.2d 139, 142 (Pa. 1993) (irreparable injury would arise if a lien was imposed during appeal because the lien would likely place the moving party in default with its lender, driving the moving party out of business); *Process Gas*, 467 A.2d at 809-10 (irreparable harm where plaintiff-consumers would lose benefit of lower gas rates and state agency was barred by law from using mechanisms to make up the difference in the future).

The Intervening Regulators cannot carry their burden on this issue. As set forth herein, the Intervening Regulators have no direct interest in the Plan; they gain no benefit and suffer no burden from its implementation, and the policy modifications proposed by the Plan have no impact on the Intervening Regulators. In ruling on the directed verdict and on the Rehabilitator's application for approval, this Court rightfully recognized that the Intervening Regulators lacked an interest in the proceedings sufficient to warrant disapproval of the Plan. (*See* Opinion at 74.) Absent any record evidence of any harm to the Intervening Regulators arising out of or related to the Plan as proposed, the Intervening Regulators cannot now assert an irreparable harm arising out of implementation of that same Plan once approved.

The Stay Application also fails to identify any irreparable harm warranting a stay independent of this fatal lack of interest in the Plan. The Intervening Regulators allege that a stay is necessary to prevent "harm [to] both policyholders and regulators because both will be forced to make decisions that may not be reversible even if the Court's decision is reversed on appeal." (Stay Application at 29.) This argument fails for three reasons.

First, the Intervening Regulators have no right to seek a stay based on potential irreparable harm to third parties—here, policyholders and "other regulators across the country." (Stay Application at 29.) To satisfy the second *Process Gas* factor, Pennsylvania law clearly requires a showing of irreparable harm to the movant—*i.e.*, the Intervening Regulators—rather than any other party or non-party. In *Process* Gas, adopting the existing federal law on supersedeas, the Supreme Court of Pennsylvania defined the second factor as requiring "'the petitioner [to] show[] that without the requested relief, ***he*** will suffer irreparable injury.'" *Process Gas*, 467 A.2d at 808-809 (quoting *Virginia Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 259 F.2d 921 (D.C. Cir. 1958)) (emphasis added). In granting the stay, the Court found a "sufficient showing of irreparable harm ***likely to result to the [movants]***," a group of industrial gas consumers directly impacted by the surcharge allocation at issue. *Process Gas*, 467 A.2d at 809. Thus, a stay can only be entered upon a showing of irreparable harm to the Intervening Regulators—not anyone else.

To the extent the Intervening Regulators invoke injuries allegedly suffered by other regulators or policyholders, those harms are simply immaterial to the irreparable injury analysis. The Intervening Regulators cannot speak for the regulators of more than forty other states, each of whom rejected the opportunity to intervene in these proceedings, and who may in fact support the Plan. With respect to policyholders, the Intervening Regulators explicitly disclaimed that they participated in the proceedings in a representative capacity such as *parens patriate*, and instead affirmed that they appeared on their own behalf to challenge the Plan based on their judgment as regulators. (Tr. at 541-547.)[4] Even if the Intervening Regulators could speak in a representative capacity, however, their judgment as to whether policyholders or others are harmed absent a stay is merely one opinion among many possible opinions—including the Rehabilitator's—and is not entitled to any weight. *See Jubilerer*, 614 A.2d at 204 (no irreparable harm to appellant state environmental agency claiming it could not act for protection of that state's citizens where, *inter alia*, the agency's "judgment" was not "the sole indication of the public

[4] The Stay Application also confusingly references the impact of the Plan on policyholders "in" the opt-out state—*i.e.*, residents of the opt-out state. This is incorrect. A state insurance regulator who opts out of the Plan retains his or her authority to approve or reject rates for policies issued in that state, regardless of where that policyholder lives now. During the hearing, the Rehabilitator showed that 207 of the residents of the Intervening Regulators' states had policies issued in other states, placing these policyholders beyond the regulatory authority of the Intervening Regulators. (Tr. 157:17-158-24.)

interest when there are other agencies equally responsible for protecting this interest").

Second, the single alleged harm to the Intervening Regulators is no harm at all, and certainly not an irreparable harm. According to the Stay Application, the Intervening Regulators will be injured if they are required to decide now whether to allow the Rehabilitator and the Court to set rates and benefits or to opt-out of the Plan and exercise their regulatory authority over policies issued in their states. Indeed, the Intervening Regulators argued in these proceedings that the Plan harmed them by pre-empting their rate review process. Notably, they failed then and fail again now to explain *how* this injured them in any way. Their presentation appears limited to dubious legal argument that they—and only they—can approve premium rates in their states. Even if that legal proposition were accepted (though the Rehabilitator has shown that there is little reason to do so in this rehabilitation), the Intervening Regulators have never identified even a scintilla of harm to them from its purported violation despite intervening in these proceedings more than a year ago. Furthermore, early on, the Rehabilitator included in the Plan the Issue-State Rate Approval Option, thus giving the Intervening Regulators the ability to opt-out of the Plan in favor of their own review and approval processes. Nowhere do the Intervening Regulators show that any hypothetical harm is not wholly avoided by this provision. And, in addition, the Stay Application fails to establish any difference

between making that rate decision now and making that decision following an appeal, let alone any harm to the Intervening Regulators.

The Intervening Regulators have complained that opting-out deprives policyholders whose policies were issued in Maine, Massachusetts, and Washington of the full range of Plan options. This alleged "harm" belongs to policyholders if it exists at all; the Intervening Regulators themselves suffer no injury if policyholders whose policies were issued in their states have fewer options in rehabilitation than policyholders of policies issued in other states. Moreover, the Intervening Regulators have disagreed from the beginning with the Rehabilitator's effort to level the playing field by eliminating subsidies and right-sizing the policies in receivership because it presents a fundamentally different set of circumstances than business in the ordinary course. Any state-to-state variation in premiums and benefits during receivership is the natural consequence of the checker-board state-based process for which the Intervening Regulators have advocated—just as it would be if SHIP were not in receivership. The Intervening Regulators should not be allowed to demand the right to ensure that policies issued in different states are treated differently even in receivership, then turn around and complain that treating policies differently negatively impacts those policyholders.

Third, even ignoring these critical defects in the Stay Application, the harms cited by the Intervening Regulators are not irreparable or imminent. The only

alleged injury to the Intervening Regulators themselves—the decision to participate in the Plan or opt-out—is plainly reparable because if Plan approval is reversed then the decision to participate or opt-out is rendered moot because there is no plan being implemented. The same is true of other regulators and policyholders, assuming *arguendo* this Court permits the Intervening Regulators to rely on the alleged harms of others in satisfying the second *Process Gas* factor. In fact, after describing the opt-out and election processes, the Intervening Regulators make a revealing and fatal admission: "[t]hese steps could potentially be undone by deeming the policyholder elections and regulator opt-outs nullities in the event the Court's approval is reversed." (Stay Application at 30.) Thus, accepting the Intervening Regulators' arguments as true, their proposed stay would not prevent *irreparable* harm, only the unidentified "problems" that could arise because it could be "administratively difficult and confusing . . . to undo" implementation. (*Id.*) Assuming these claims are true—and the Intervening Regulators have not shown that they are—"difficult and confusing" is not the test under *Process Gas.*

The Intervening Regulators also argue that a stay should be entered because the Rehabilitator "may contend" that the "the appeal should be dismissed under the doctrine of equitable mootness," citing *In re Tribune Media Co.*, 799 F.3d 272 (3d Cir. 2015). (*See* Stay Application at 30.) But the Rehabilitator notes that the question of mootness is not before the Court at this time, and the mere possibility that the

Rehabilitator may raise an argument in the future is not an imminent harm. Even if the Rehabilitator were certain to make such an argument, however, "[t]he possibility that an appeal may become moot does not alone constitute irreparable harm for purposes of obtaining a stay." *In re Nuverra Envtl. Solutions, Inc.*, No. 17-10949, 2017 WL 3326453, at *4 (D. Del. Aug. 3, 2017). In contrast, a stay has been entered on equitable mootness grounds where, for example, a party has consistently and convincingly argued that "equitable mootness was a near certainty" if a stay was not entered. *See, e.g.*, *In re Adelphia Commc'ns Corp.*, 367 B.R. 84 (S.D.N.Y. 2007) (finding appellant was judicially estopped from arguing against equitable mootness after affirmatively using equitable mootness to seek stay). Here, the Intervening Regulators take no position as to whether Plan implementation will render the appeal moot.[5] The Intervening Regulators cannot rely on equitable mootness as an imminent and irreparable harm while refusing to say affirmatively that it will occur in this case absent a stay.

E. THE INTERVENING REGULATORS IGNORE THE HARM CAUSED BY A STAY AND THE CLEAR PUBLIC INTEREST IN MOVING QUICKLY TO IMPLEMENT THE PLAN.

The Intervening Regulators are the *only* party in these proceedings without a financial, equitable, or legal interest impacted by the Plan, and yet they are also the

[5] As its name implies, equitable mootness involves a weighing of numerous factors, many of which cannot be known at this time. The Intervening Regulators do not even attempt to address any of these factors, and neither the Court nor the Rehabilitator can or should address such a theoretical and incomplete argument.

only party insisting on a stay of implementation, with no regard for the impact of that stay on other parties. Having failed to prove the first two *Process Gas* requirements, the Intervening Regulators are again unconvincing in their arguments addressed to the final two factors: harm to other parties and the public interest. With respect to other parties before the Court, the Intervening Regulators assert that a stay will not cause injury to other interested persons because it retains the *status quo*—policyholders continue to receive coverage, the agents and brokers have settled, and the guaranty associations have not been triggered. With respect to the public interest, the Intervening Regulators claim their appeal is designed to benefit policyholders and other regulators, and that the requested stay supports that mission.

Both arguments are plainly without merit. The record before this Court is clear in showing that delay itself is damaging to the rehabilitation and thus to policyholders. As the Court found, rehabilitation is preferable to liquidation in part because it avoids delay: "a plan can be implemented quickly, thereby addressing the causes of SHIP's financial distress, preserving assets, and reserving flexibility." (Opinion at 47.) In reaching that conclusion, the Court noted that the Rehabilitator could learn the impact of Phase One and the potential scope of Phase Two within a year of approval—a favorable timeline over liquidation, where rate approvals could take as long as two years, and in which there would be little certainty as to the impact on policyholders for some time. (*Id.*) Unlike the opt-out and election processes

acknowledged by the Intervening Regulators to be reversible, delay in implementation is absolutely irreparable. In fact, if there were a hearing on the amount of a bond, the Rehabilitator would be prepared to demonstrate that the irreparable damage from a one-year delay, even using a conservative measure, would be at least $55 to $70 million. The Rehabilitator would demonstrate as well that such damage equates to a year of the most costly long-term care services for approximately 500 policyholders. The Rehabilitator cannot ever recover those assets through other means, and those policyholders will be left unable to make up the difference.

The Intervening Regulators first blame the Rehabilitator for any deepening of the deficit during delay, saying it "reflects the intended working of the Plan, which places the entire burden of SHIP's insolvency on policyholders through benefit cuts and premium increases." (Stay Application at 32.) But the Plan is designed to be implemented as quickly as possible, not after a delay, so that policyholders can minimize any potential loss or burden from SHIP's receivership by allocating the premiums and coverages available to best suit their individual needs. It is disappointing that the Intervening Regulators continue to misunderstand the Plan and the benefit provided to policyholders in making these elections. The Intervening Regulators also claim that any deepening of SHIP's deficit is immaterial because $800 million will be available in liquidation if the Intervening Regulators succeed.

But even assuming as the Intervening Regulators do that liquidation is inevitable, the alleged $800 million will be available independent of the stay. In contrast, if a stay is not entered and the Court's order is upheld, policyholders will benefit by having made the prompt election of policy options and through the accompanying use of SHIP's assets to pay claims during the rehabilitation.

The Intervening Regulators make similarly unpersuasive arguments with respect to the public interest. The Intervening Regulators point to the various state legislatures' allocation of the burden of policyholder losses through the guaranty association system, claiming that a deeper deficit cannot harm the public because using guaranty association funds to cover SHIP's deficit—however big or small—is simply the system functioning as intended. But SHIP is not yet in liquidation, and the Pennsylvania legislature, like that of many other states, also enacted laws reflecting a public policy favoring meaningful efforts at rehabilitation over immediate liquidation. As this Court found, "[t]he legislatively stated purpose of Article V is the protection of the interests of insureds, creditors, and the public generally [as well as] the equitable apportionment of any unavoidable loss through, *inter alia*, improved methods for rehabilitating insurers. . . ." (Opinion at 41 (citation and internal quotation marks omitted).) Similarly, "[t]he benefits of rehabilitation—its flexibility and avoidance of inherent delays—are preferable to the static and cumbersome procedures of statutory liquidation." *Grode v. Mutual Fire, Marine*

and Inland Ins. Co., 572 A.2d 798, 803 (Pa. Commw. Ct. 1990). Thus, recognizing the legislative interest in effective and meaningful efforts at rehabilitation, allowing estate assets to be depleted during an appeal can only harm the public interest by making the rehabilitation process more difficult.

F. THE INTERVENING REGULATORS FAIL TO ADDRESS THE NECESSITY OF A BOND.

The Intervening Regulators cannot make out a case on the merits for a stay, and thus the Court need not consider now whether a bond is appropriate to maintain the *status quo* as requested in the Stay Application. *See* Pa. R.A.P. 1732, 1733 (related to appeals and security). The Intervening Regulators' decision to omit any argument on the question of whether a bond is needed—and if so, in what amount—offers an additional reason to deny the motion. If the Court is inclined to grant a stay despite the numerous defects in the Stay Application, however, the Court will be required to address the bond issue at some point. Given that the Intervening Regulators made no reference at all to a bond, they have arguably waived the right to oppose the imposition of security here, and indeed the Court could find that a bond representing the Intervening Regulators' own projection of the outcome in rehabilitation—a deficit reduction exceeding $300 million—is appropriate. Alternatively, the Court may conclude that a bond representing the $55 million or more of deepening deficit during an appeal is sufficient. These are difficult fact-based questions, and thus the Rehabilitator submits that the question of appropriate

security—whether required and in what amount if so—should be considered in a separate hearing during which the parties can present evidence and argument on this specific issue.

G. CONCLUSION

For the reasons set forth herein, and for the reasons addressed in this Court's Memorandum Opinion and Order, the Rehabilitator respectfully asks that this Court deny the Application for Stay.

Dated: October 15, 2021

Respectfully submitted,

/s/ Michael J. Broadbent

Dexter R. Hamilton, PA ID 50225
Michael J. Broadbent, PA ID 309798
Haryle Kaldis, PA ID 324534
COZEN O'CONNOR
1650 Market Street, Suite 2800
Philadelphia, PA 19103

Leslie M. Greenspan, PA ID 91639
TUCKER LAW GROUP
1801 Market Street, Suite 2500
Philadelphia, PA 19103

Counsel for Jessica K. Altman, Insurance Commissioner of the Commonwealth of Pennsylvania, as Statutory Rehabilitator of Senior Health Insurance Company Of Pennsylvania

Received 10/15/2021 10:22:11 PM Commonwealth Court of Pennsylvania

Filed 10/15/2021 10:22:00 PM Commonwealth Court of Pennsylvania
1 SHP 2020

CERTIFICATE OF SERVICE

I, Michael J. Broadbent, hereby certify that on October 15, 2021, I caused to be served the foregoing REHABILITATOR'S ANSWER AND BRIEF IN OPPOSITION TO THE INTERVENOR STATE INSURANCE REGULATORS' APPLICATION FOR STAY PENDING APPEAL through the Court's PACFile system and on all parties listed on the Master Service List. In addition, I hereby certify that an electronic copy of the foregoing document will be posted on SHIP's website at https://www.shipltc.com/court-documents.

/s/ Michael J. Broadbent