

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

PRAECIPE TO SUBSTITUTE ANNUAL REPORT

On March 31, 2021, Jessica K. Altman, Insurance Commissioner of Pennsylvania, in her capacity as Rehabilitator of Senior Health Insurance Company of Pennsylvania (“SHIP”) filed her Annual Report, but the filing submitted to the Court inadvertently identified itself as a Quarterly Report. The report was accurate in all other respects and was properly served on all counsel and parties of record. Accordingly, the Rehabilitator hereby requests that the Court substitute the inadvertently filed report for the attached Annual Report, which is revised only in replacing “Quarterly” with “Annual” as needed.

Dated: April 16, 2021

Respectfully submitted,

/s/ Michael J. Broadbent

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Commissioner of the Commonwealth of
Pennsylvania, as Statutory Rehabilitator of
SENIOR HEALTH INSURANCE
COMPANY OF PENNSYLVANIA

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Senior Health Insurance : No. 1 SHP 2020
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NOTICE OF FILING OF ANNUAL REPORT

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 gives notice to all interested persons currently on the Master Service List that on March 31, 2021, she has filed her Annual Report on the Status of the Rehabilitation of SHIP. An electronic copy of this filing will be available on the Court Documents page of the web site for SHIP in Rehabilitation, <https://www.shipltc.com/>. Paper copies will be distributed to the parties who requested and received placement on the hard copy service list.

Dated: March 31, 2021

Respectfully submitted,

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In Re: Senior Health Insurance : No. 1 SHP 2020
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**ANNUAL REPORT OF THE REHABILITATOR
ON THE STATUS OF THE REHABILITATION OF
SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA**

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 annual report on the status of the rehabilitation of SHIP.

I. INTRODUCTION

SHIP was placed in rehabilitation by Order of this Court on January 29, 2020. On April 22, 2020, the Rehabilitator filed a Rehabilitation Plan and provided notice to all policyholders and interested parties of the filing that plan. There followed a period for formal and informal comments and objections. The chief insurance regulators from the states of Maine, Massachusetts and Washington applied for and were granted leave to intervene, as were a group of agents and brokers, certain insurers that had ceded insurance business to SHIP, the National Organization of Life and Health Insurance Guaranty Associations (“NOLHGA”), certain Health Insurers, and two individual policyholders (collectively, the “Intervenors”). After considering the positions articulated by the Intervenors, the formal and informal

comments, and the Rehabilitator’s own continuing analysis, on October 21, 2020, the Rehabilitator filed the Amended Rehabilitation Plan. On February 25, 2021, the Court entered a Scheduling Order, *inter alia*, setting a hearing on the rehabilitation plan for May 17, 2021.

This report is intended to inform the Court about SHIP’s current financial condition and certain collateral matters that may be of interest to the Court. For the information of the Court, the Special Deputy Rehabilitator (“SDR”) has summarized information from several sources in this report. The descriptions of several matters are necessarily brief and may be incomplete. This report is not intended, and should not be interpreted, as a complete description of those matters. Its sole purpose is to advise the Court of significant developments in SHIP’s rehabilitation proceeding. The SDR stands ready to respond to the Court’s request for additional information regarding any of these matters.

II. REPORT

A. FINANCIAL STATUS

Attached as Exhibit A is a financial package prepared for the Court (“Financial Package”) by SHIP and the SDR containing a detailed summary of the financial status of SHIP as of December 31, 2020. In summary, and as set forth in detail in the Financial Package, as of December 31, 2020, the total value of SHIP’s assets is \$1,369,908,000, and the total value of SHIP’s liabilities is \$2,592,415,000.

SHIP's total adjusted capital as of December 31, 2020, is \$1,220,692,000. (Ex. A, Financial Package at 5.) The Financial Package includes financial reporting, trend tracking, professional and consulting fees, and an analytics dashboard for SHIP. The Notes set forth on page four and throughout the Financial Package should be included in any review of the information contained therein.

B. COVID-19

In December 2019, a new virus emerged in Wuhan, China, identified in due course as severe acute respiratory syndrome coronavirus 2, resulting in a pandemic of coronavirus disease 2019 ("COVID-19"). As of the filing of this report, at least 128 million people have been infected worldwide, resulting in at least 2.8 million deaths. In the United States, the first cases were reported in January 2020, with total estimates now exceeding thirty million and fatalities exceeding 550,000. COVID-19 is particularly threatening to the elderly and those with impaired respiratory systems or other underlying health conditions. While intense work continues around the globe, no effective cure has yet emerged. There has been substantial progress in efforts to develop and distribute several effective vaccines. At this time, about 16% of the U.S. population has been fully vaccinated. The implications of COVID-19 for the Plan fall in three major areas.

Case Management: Restrictions on travel and personal contact imposed as preventive measures have caused SHIP to revise, at least temporarily, the manner in which it conducts its business and, specifically, how it confirms eligibility for benefits and other aspects of case management. The vast majority of staff for SHIP

and its subsidiary Fuzion have been working from home during the last year. The transition was successful with no material loss in productivity. Although current protocols, which have now been in effect for about a year, emphasize means of communication other than in-person visits, the Company remains attentive to the needs of its insureds as well as to the important function of preventing fraud, waste and abuse. At this juncture, these changes are not expected to have a material effect on the Plan or on the options it will offer to eligible policyholders.

Mortality and Morbidity: Although sufficient reliable data is not yet available, preliminary data indicates that COVID-19 may be causing a decrease in the number of SHIP insureds filing claims and an increase in the number of deaths among the aging population insured by SHIP. While these unfortunate developments may combine to reduce slightly SHIP's deficit, it is possible that, at least in part, they are temporary. The Rehabilitator cannot yet project what, if any, permanent impact these consequences will have on the Plan.

Suspension of Premium Payments: Many SHIP policyholders have delayed making their required premium payment. While SHIP delayed lapsing or cancelling policies for non-payment of premiums because of the exceptional circumstances, protracted delays in making these payments may aggravate SHIP's financial difficulties. These delays are waning gradually. Some regulatory agencies have requested or required that insurers (including SHIP) accommodate some premium deferrals, but many of these deferrals are also expiring or will soon expire. Continued non-payment of premium beyond the expiration of the deferral period is expected to result in an increased number of policy terminations. The Rehabilitator has already observed a slight increase in the number of policy terminations that appear not to be the result of increased insured mortality. However, in the aggregate they are not expected to be material to the Plan.

C. REINSURANCE ASSUMED

On October 11, 1994, JC Penney Insurance Company and JC Penney Life Insurance Company (collectively "JCP") entered into a Reinsurance and Purchase Agreement and Administrative Services Agreement with American Travellers Life Insurance Company ("American Travellers"). The Reinsurance and Purchase Agreement was structured on an Indemnity Reinsurance basis and a trust account

was later established pursuant to a Trust Agreement executed on December 31, 2002. American Travellers was purchased by Conseco in 1996 and subsequently changed its name to Conseco Senior Health Insurance Company and then to Senior Health Insurance Company of Pennsylvania (“SHIP”). JCP changed its name to Stonebridge Life Insurance Company in 2002 and, as a result of corporate transactions, is now Transamerica Life Insurance Company.

On December 20, 1995, Primerica Life Insurance Company (“Primerica”) and Transport Life Insurance Company (“Transport Life”) entered into a Reinsurance and Administration Agreement whereby Transport Life, on an indemnity basis, accepted 100% of the policy liabilities of Primerica’s individual and group accident and health insurance policies. Transport Life merged with Conseco Senior Health Insurance Company in November 1997 and, with the separation from Conseco, Senior Health Insurance Company of Pennsylvania (“SHIP”) became the successor under the Reinsurance and Administration Agreement. Amendment #2 to the Reinsurance and Administration Agreement, dated November 11, 2008, limits the scope of SHIP’s reinsurance and administration to long-term care insurance policies only.

On November 1, 1996, Transport Life entered into a Reinsurance Agreement whereby Transport Life agreed to administer and reinsure, on a coinsurance basis, 100% of the liability of American Health and Life Insurance Company’s (“AH&L”)

long-term care insurance policies. As a result of certain corporate transactions, and later the separation of SHIP from Conseco, SHIP became the successor to Transport Life's interests under the Reinsurance Agreement and continues to administer the policies.

The insurance policies for which SHIP became responsible from Transamerica, Primerica and AH&L or their predecessors (the "ceding companies") are what is generally referred to in the industry as "reinsurance assumed." All of these assumed LTCI policies have historically been treated by SHIP for administrative purposes in a manner very similar to those issued directly by SHIP. However, communications with policyholders and regulators properly identified them as policies of the ceding companies.

It is important to note that while these policies have been reinsured by SHIP, they were never novated as part of the transactions. Thus, the policyholders retained, and continue to retain, their contractual rights against the ceding companies or their successors. In turn, the ceding companies retain contractual rights against SHIP.

The preliminary plan of rehabilitation filed on April 22, 2020, proposed to treat Direct Business and Reinsurance Assumed in the same way under the Plan. The Rehabilitator believed that this would be most advantageous to the affected policyholders. However, this proposal resulted in a number of objections from insurance regulators around the country, asserting that it departs from established

custom and practice and is unsupported by applicable law. In response to these objections, the Rehabilitator changed that provision of the preliminary plan of rehabilitation. The Amended Plan proposes to treat the reinsurance assumed differently from the policies issued directly by SHIP and its predecessors. As a result of this change, if the Plan is approved as proposed: (1) the reinsurance assumed policies will not be modified under the Plan and the policyholders will not be asked (or have the ability) to make elections under the Plan; (2) SHIP will not be financially responsible for claims and commissions owed under these policies and will not have the right to treat premiums paid by these policyholders as assets of SHIP; and (3) if SHIP is placed in liquidation, the terms of these policies will remain unchanged and the policyholders will not receive benefits from any life and health insurance Guaranty Association. Instead, in that case, the ceding companies (or their successors) will remain fully responsible for these policies and any claims and commissions owed under these policies.

Consistent with this change in the Plan, Transamerica and SHIP entered into a Recapture Agreement through which Transamerica assumed complete responsibility for the LTC insurance policies its predecessors had ceded to SHIP's predecessors. This Agreement was approved by the Court on December 29, 2020, and made effective October 1, 2020.

D. KINGDOM ENERGY LOAN

In June 2016, SHIP entered into a Secured Term Note loaning \$4.2 million to Kingdom Energy Resources, LLC; DDB Energy Resources, LLC; Montana Bakken, LLC; Little Creek Coal Co., Inc.; Green Equity Partners, LLC; and KEP-RMA, LLC (collectively, the “Borrowers”). At the same time, Conseco subsidiaries BRe BCLIC Primary and BRe WNIC 2013 LTC Primary loaned the Borrowers \$11.8 million and \$6 million, respectively. Collectively, SHIP and the Conseco subsidiaries loaned the Borrowers \$22 million (the “Loan”). In November 2016, the Conseco subsidiaries assigned their interests in the Loan to Washington National Insurance Company (“WNIC”) and Bankers Conseco Life Insurance Company (“BCLIC”; together, the “Conseco Lenders”) respectively. As a result, WNIC and BLIC had 27.273% and 53.636% interests in the Loan, respectively, with the remaining 19.091% being SHIP’s portion.

The Loan has been in default since late 2016. The current balance, including accrued and unpaid interest and fees, approximates \$40 million, secured by approximately 19,500 acres of land located in Harlan and Bell Counties in southeastern Kentucky known as Pathfork, Left Fork, and Brookside (the “Collateral”). In August 2020, the Rehabilitator requested authority from this Court to purchase the Conseco Lenders’ interests in the Loan for four million dollars (\$4,000,000.00), for reasons more fully explained in her August 14, 2020, verified

Application. The Court granted the Application on September 25, 2020, and SHIP now owns the entire Loan.

Since acquiring the Conseco Lenders' interest in the Loan, SHIP has been exploring ways to maximize recovery, including negotiations with the Borrowers. Recognizing that foreclosure on the loan and obtaining the collateral may be necessary to effect a reasonable recovery, SHIP has engaged in due diligence on the Collateral. Also, anticipating the steps necessary to foreclose, SHIP has formed a Delaware limited liability company (HBKY, LLC) to serve as a special purpose entity that would hold the loan and the collateral, insulating SHIP from any associated potential liabilities.

As of the date of this report, SHIP is preparing to convey the loan to HBKY, LLC while continuing negotiations with the borrowers and related parties. If those negotiations prove fruitless, the Rehabilitator anticipates that HBKY, LLC will foreclose on the loan, secure the collateral, and attempt to dispose of it on the best terms possible.

E. COLLATERAL LITIGATION

There are very few pending litigation matters to which SHIP is a party. One is the remainder of the Beechwood litigation described below. Two are regulatory challenges to the Proposed Rehabilitation Plan, and the last is a small claim case.

1. Beechwood Litigation

Beginning in 2014 SHIP began investing what eventually became \$320 million with Beechwood Capital Group, LLC and its affiliates (“Beechwood”). The relationship became complex and by 2016 it became evident that Beechwood had become embroiled in the collapse of the Platinum Partners Credit Opportunities Fund (“Platinum”) and its affiliates. Seeking to recover losses under the Beechwood Investment Management Agreements, SHIP eventually joined in pending litigation by other Platinum and Beechwood clients. SHIP then became the target of a number of cross claims and counterclaims. SHIP was able to recover most of its defense costs for these proceedings from its liability insurers. In addition, SHIP recovered about \$84 million of assets from the investment program. In due course, the SDR oversaw the wind-down of all but one aspect (discussed below) of the Beechwood litigation. The final piece was an agreement to settle the claims of the receiver appointed for Platinum by the United States Securities and Exchange Commission (SEC) against SHIP and SHIP’s claims against Platinum (except as noted below), which resulted in an additional \$9.5 million payment to SHIP with a possible additional \$4.5 million recovery as the Platinum receivership winds down.

Remaining open are the claims related to the liquidation in the Cayman Islands of Platinum’s affiliate, Platinum Partners Value Arbitrage Fund (“PPVA”). The claims in this proceeding (now pending in Delaware Chancery Court) include

competing claims by SHIP and PPVA’s Joint Official Liquidators (“JOL”) to certain collateral underlying Beechwood investments and claims by the JOL against SHIP for losses suffered by PPVA investors in a complicated transaction partially funded by SHIP under the Beechwood program but outside the Investment Management Agreements. That matter is currently the subject of a mediation proceeding.

2. Regulatory Challenges to the Proposed Plan

The proposed plan of rehabilitation provides policyholders with multiple options by which they can change the premiums and benefits of their existing insurance policy, avoiding certain future losses to SHIP by allowing policyholders to align their future coverage with their potential needs and ability to pay. The state insurance regulators of Louisiana and South Carolina have filed complaints in other jurisdictions to prevent this Court from considering such a plan and to prevent the Rehabilitator from implementing it.¹

a. Louisiana

On September 11, 2020, James J. Donelon, in his capacity as the Commissioner of Insurance for the State of Louisiana, filed a Complaint in the United States District Court for the Middle District of Louisiana, naming as a defendant Commissioner Altman in her capacity as Rehabilitator of SHIP. *Donelon v. Altman*, Case No. 3:20-cv-00604 (M.D. La.). In the Complaint, Commissioner

¹ The insurance regulators of Louisiana and South Carolina elected not to intervene in this action.

Donelon seeks a declaratory judgment that the Rehabilitator cannot impose rate and benefit modifications on Louisiana policies without complying with Louisiana's laws and regulations, and seeks as well a permanent injunction against implementation or enforcement of the proposed plan if approved. The Rehabilitator disagrees strongly with the allegations in the Complaint and, should further litigation be necessary, will defend vigorously her ability to offer the policyholder choices provided by the Plan and Amended Plan.

On November 24, 2020, the Rehabilitator filed a Motion to Dismiss the Complaint on numerous grounds—specifically, the lack of case or controversy; the absence of personal jurisdiction; the Anti-Injunction Act's bar against the requested relief; Commissioner Donelon's failure to state a claim; and various federal court abstention doctrines. That motion is fully briefed and the parties are awaiting a decision from the Court. All proceedings are stayed pending a decision on the Motion to Dismiss. If the Court rules in favor of the Rehabilitator, the matter will be dismissed and terminated.

b. South Carolina

On December 10, 2020, Plaintiffs Raymond G. Farmer, in his capacity as Director of the South Carolina Department of Insurance, and the South Carolina Department of Insurance filed a Complaint naming as defendants Commissioner Altman, in her capacity as Rehabilitator of SHIP, Patrick Cantilo, in his capacity as

Special Deputy Rehabilitator of SHIP, and SHIP in rehabilitation. That Complaint was filed in South Carolina state court, in the Court of Common Pleas for the Fifth Judicial Circuit, Richland County. *Farmer v. Altman*, No. 2020-CP-4005802 (S.C. C.C.P.). On January 11, 2021, Defendants removed the matter to the United States District Court for the District of South Carolina where it is currently pending. *Farmer v. Altman*, Case No. 3:21-cv-00097 (D.S.C.).

In the Complaint, Commissioner Farmer and the South Carolina Department of Insurance seek a declaratory judgment that the proposed plan is invalid and unenforceable to the extent it does not comply with South Carolina's regulatory authority to set rates and benefits. Plaintiffs also seek a permanent injunction against implementing or enforcing the plan coupled with certain financial penalties for any act in violation of that injunction. As with the Louisiana litigation, the Rehabilitator disagrees strongly with the allegations in the Complaint. The proposed Plan and Amended Plan comport with all applicable laws, and South Carolina's decision to pursue collateral litigation is inappropriate.

Two motions are pending in South Carolina federal court. On January 19, 2021, Defendants filed a Motion to Dismiss on numerous grounds—specifically, the lack of case or controversy; the Anti-Injunction Act's bar against the requested relief; Plaintiffs failure to state a claim; the absence of personal jurisdiction; and various federal court abstention doctrines. That motion is fully briefed. On February

10, 2021, Plaintiffs filed a Motion to Remand, asking the federal court to remand the case to state court rather than dismiss it outright. That motion is fully briefed as well, and the parties are awaiting decisions on both motions. At present, all proceedings are stayed, including discovery, pending a decision on the Motion to Dismiss and Motion to Remand. If the Court rules in favor of the SHIP defendants, the matter will be dismissed and terminated. If the Court rules in favor of the South Carolina Plaintiffs, the matter will be remanded to state court, and the SHIP defendants will file a new Motion to Dismiss addressed to the procedural and substantive defects in the Complaint.

3. Anthony vs. SHIP

On July 27, 2020, Wayne L. Anthony sued SHIP in the Court of Common Pleas in Lancaster, Pennsylvania, for the cancellation of his policy for non-payment of premiums. SHIP believes strongly that the claim is without merit and does not believe that its result will be material to SHIP's financial condition or rehabilitation.

F. OTHER MATTERS

With the help of counsel, the SDR continues to investigate and assess all potential avenues for asset recovery, including but not limited to claims against third parties where necessary. Those investigations are ongoing, and the Rehabilitator and the SDR will advise the Court of any recovery made or litigation filed as a result.

Dated: March 31, 2021

Respectfully submitted,

/s/ Michael J. Broadbent

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COMPANY OF PENNSYLVANIA

CERTIFICATE OF SERVICE

I, Michael J. Broadbent, hereby certify that on April 19, 2021, I caused to be served the foregoing Praecipe to Substitute Annual Report 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