





1. By his Petition, the Rehabilitator of SHIP seeks to have this Court enjoin or nullify administrative orders issued in Maine and Washington.

Proceedings on the Petition should be stayed for several reasons.

First, the Petition rests on the Court's August 24, 2021 order approving the Plan. That order is on appeal, and a successful appeal will moot these proceedings.

Second, the distribution of election packages in Maine and Washington, and return of policyholder elections in those states, has already occurred, and the Rehabilitator has voluntarily delayed implementation of the policy modifications pursuant to those elections. Litigation over administrative proceedings regarding election packages and policy modifications for Maine and Washington policyholders thus serves no present purpose.

Third, injunctions and cease and desist orders issued in many other states presently prevent implementation of mailings and/or policy modifications under the Plan as to policyholders in those states.

Fourth, the Rehabilitator has recently revealed that the initial results of Phase One of the Plan show Phase One will only reduce SHIP's deficit – now \$1.3 billion – by half, and stated his intention not to implement Phase Two for at least five years, if ever. In the circumstances, litigation concerning Maine and Washington is only a small piece of a much larger situation and should await the clarification the Pennsylvania Supreme Court's decision may bring.

**I. THESE PROCEEDINGS SHOULD BE STAYED BECAUSE THE PENDING APPEAL MAY DISPOSE OF OR MOOT THE PETITION.**

2. The Petition is an attempt by the Rehabilitator to use the Court's August 24, 2021 order approving the Plan ("Approval Order") to preclude administrative proceedings in Maine and Washington. However, the Approval Order is presently on appeal. The Maine Superintendent and the Washington Commissioner, together with the Massachusetts Commissioner of Insurance (collectively, "State Insurance Regulators"), have appealed from the Approval Order to the Supreme Court of Pennsylvania (No. 71 MAP 2021). That appeal is pending. Proceedings on the Petition should accordingly be stayed.

3. The Court has inherent power to stay proceedings in one case during the pendency of an appeal in another case which may resolve or moot the case which has been stayed. *See In re Appeal of Penn-Delco School District*, 903 A.2d 600, 606-607 (Pa. 2006); *Gwynedd Properties, Inc. v. Board of Supervisors of Lower Gwynedd Township*, 635 A.2d 714, 718 (Pa. Cmwlth. 1993).

4. Here, the Petition rests on the Approval Order. *See* Petition ¶¶ 9-20, 22-24, 26-27, 42-43. If the State Insurance Regulators succeed in their appeal and the Approval Order is reversed, that foundation will be removed and the Petition will need to be dismissed. In the circumstances, a stay of these proceedings until the Pennsylvania Supreme Court issues its decision on the appeal is appropriate.

Where the order that the Rehabilitator relies upon in the Petition is on appeal, proceedings on the Petition should be stayed to avoid waste of the resources of the parties and of the Court.

5. Indeed, in moving to stay another case, the Rehabilitator has recognized that a stay of proceedings concerning the Plan until the Supreme Court of Pennsylvania has ruled on the appeal “will conserve judicial resources and avoid deepening a jurisdictional dispute unless and until it is necessary to address that issue.” Defendants’ Motion to Stay Proceedings ¶ 23, filed April 26, 2022 in *Mike Causey, as Commissioner of Insurance of the State of North Carolina v. Jessica K. Altman, Insurance Commissioner of the Commonwealth of Pennsylvania, as Rehabilitator*, Case No. 22-CVS-2814 (North Carolina Superior Court, Wake County). A copy of that motion is attached as Exhibit 1.

6. In addition, the administrative order against SHIP in Maine is final and the order in Washington will become so soon. The Rehabilitator manages SHIP pursuant to the Order of Rehabilitation and 40 P.S. § 221.16(b). However, he chose not to have SHIP appear (or to appear himself) and contest those proceedings in Maine and Washington, as SHIP was entitled and required to do. The Pennsylvania statutes require the Rehabilitator to address litigation and administrative proceedings in other states in those states. *See* 40 P.S. § 221.5(b),

221.17(a). The statutes do not authorize the Rehabilitator to disregard other state regulatory actions.

7. The Rehabilitator has not exercised SHIP's rights to contest administrative proceedings or appeal adverse decisions provided by Maine and Washington law. *See* 24-A M.R.S. § 236, 5 M.R.S. §§ 1101 et seq.; R.C.W. 48.04.010, WAC 284-02-070, WAC 10-08-110. SHIP, and thus the Rehabilitator, is accordingly bound by the Maine order and will soon become bound by the Washington order. The Maine order, unchallenged by appeal, has preclusive effect. *See State v. Thompson*, 958 A.2d 887, 890-891 (Me. 2008); *Town of Boothbay v. Jenness*, 822 A.2d 1169, 1175-1177 (Me. 2003). The Washington order, if not appealed, will also have preclusive effect. *See Renenger v. State Dept. of Corrections*, 951 P.2d 782, 788 (Wash. 1998); *Matter of Marriage of Shortway*, 423 P.3d 270, 277 (Wash. App. 2018).

8. The Rehabilitator chose not to contest matters in Maine and Washington, but instead chose to commence new proceedings regarding those proceedings by Petition in the Commonwealth Court. The Petition itself presents complex questions of law, including issues of jurisdiction and comity between states. Since all these matters will be affected by the outcome of the appeal pending in the Pennsylvania Supreme Court, proceedings on the Petition should be stayed.

**II. THE REHABILITATOR HAS VOLUNTARILY STAYED IMPLEMENTATION OF POLICY MODIFICATIONS NATIONWIDE, AND THE MAINE AND WASHINGTON POLICY ELECTIONS HAVE OCURRED, SO THERE IS NO PRESENT DISPUTE.**

9. The Petition does not present a live dispute because the Rehabilitator has voluntarily delayed implementation of policyholder elections under the Plan in all states and the policyholder mailings and elections in Maine and Washington have already taken place.

10. In his March 31, 2022 Annual Report, the Rehabilitator reported that he has “directed the rehabilitation team to delay implementation of policy modifications until the earlier of October 1, 2022, or the date of the final order of the Supreme Court.” Annual Report of the Rehabilitator on the Status of the Rehabilitation of Senior Health Insurance Company of Pennsylvania (the “Rehabilitator’s Annual Report”) at 8 (filed March 31, 2022) (emphasis added). The Rehabilitator will be mailing notice to policyholders of this delay. *See* Rehabilitator’s Annual Report, Exhibit C (form letter to policyholders notifying them of this delay). The Rehabilitator’s Annual Report and its Exhibits B and C are attached hereto as Exhibit 2.

11. The Rehabilitator has thus voluntarily chosen to delay implementation of the policyholder elections across the country, regardless of whether there is an administrative proceeding in that state, until this fall. Where the Rehabilitator has

himself stayed implementation of the Plan, it would be a waste of the resources of the parties and of the Court to litigate over the administrative orders in two states.

12. Furthermore, the Rehabilitator has already mailed and received responses to the election packages in many states, including Maine and Washington. According to the Rehabilitator's Annual Report, the Rehabilitator mailed election packages to approximately 21,000 policyholders (out of approximately 26,000) in January 2022. Rehabilitator's Annual Report, Exhibit B. The mailings were made before the Maine and Washington administrative proceedings began in early February 2022. See Petition ¶¶ 21, 25. The mailing included policyholders in Maine and Washington. See the Rehabilitator's SHIP Election Package Status Report as of 4/10/2022 ("Election Package Report") at 1. The Election Package Report is attached as Exhibit 3.<sup>1</sup> As of April 10, 2022, the Rehabilitator had received responses from 86.26% of the 21,000 policyholders, including responses from over 81% of the policyholders in Maine and 84% in Washington. *Id.*

13. The mailing and response activity that might have been affected by the Maine and Washington cease and desist orders has thus already occurred.

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<sup>1</sup> The Rehabilitator circulated the Election Package Report to insurance regulators across the United States under cover of his letter dated April 12, 2022 attached as Exhibit 16 below.

14. The fact that the mailings of concern have already been sent and responded to, combined with the Rehabilitator's voluntary delay in implementation of policy modifications until the fall, means that SHIP is not presently in violation of either the Maine or Washington administrative orders. There is thus no live dispute between the Rehabilitator and the Maine Superintendent and the Washington Commissioner concerning the administrative orders. Where there is no present dispute, it would be a waste of resources to litigate over the administrative proceedings.

**III. INJUNCTIONS AND CEASE AND DESIST ORDERS  
AFFECTING THE PLAN HAVE BEEN ENTERED  
AROUND THE COUNTRY.**

15. Injunctions or cease and desist orders preventing implementation of the Plan as to policyholders have been entered in many other states, not just Maine and Washington. As briefly mentioned in the Rehabilitator's Annual Report, regulators in Iowa, Louisiana, New Jersey, North Carolina, South Carolina, and North Dakota have filed suit against SHIP. Rehabilitator's Annual Report at 7. In fact, after appearance and argument by the Rehabilitator, the state courts in Louisiana and South Carolina have entered injunctions barring application of the Plan in those states. Copies of the injunctions entered in Louisiana and South Carolina are attached as Exhibits 4 and 5.

16. Further, cease and desist orders have been entered in administrative proceedings in Alaska, Arkansas, Connecticut, the District of Columbia, Maryland, Montana, New Hampshire, Ohio, Utah, and Vermont. *See* Rehabilitator’s Annual Report at 7. Copies of the cease and desist orders are attached as Exhibits 6-15.

17. Court injunctions or administrative orders thus presently bar implementation of the Plan as to policyholders in twelve states in addition to Maine and Washington.

18. Where the Rehabilitator’s efforts to implement that Plan have been so widely opposed (twenty-seven jurisdictions joined in an amicus brief in support of the State Insurance Regulators’ appeal) and resulted in injunctions and orders in many states, and there is no live controversy over the Maine and Washington orders, it makes little sense to devote resources to litigating over Maine and Washington while the other injunctions continue in effect.

**IV. THE REHABILITATOR HAS ANNOUNCED  
PHASE ONE RESULTS AND DEFFERED PHASE TWO  
FOR YEARS.**

19. The Rehabilitator has recently announced initial results of the policyholder elections in Phase One and deferred Phase Two, and these developments warrant review by this Court as the Court supervising the SHIP rehabilitation proceeding. On April 12, 2022, the Rehabilitator advised insurance regulators that (1) he expects Phase One of the Plan “to reduce SHIP’s deficit of

approximately \$1.3 Billion, by at least half after modifying policies in Phase 1”;<sup>2</sup> and (2) he intends to stay in Phase One and not move to Phase Two of the Plan for a period of “at least five years and maybe longer.” *See* Rehabilitator’s Letter to Insurance Regulators dated April 12, 2022 attached as Exhibit 16.

20. Where the Rehabilitator has delayed Phase Two by at least several years, in addition to delaying implementation of Phase One until the fall, the Petition serves no present purpose and the difficult conflicting jurisdictional questions it raises need not be addressed. Especially where the Rehabilitator has expressed a goal of resolving concerns without litigation (*see* Rehabilitator’s Annual Report at 8), proceedings on the Petition should be stayed.

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<sup>2</sup> As of December 31, 2021, SHIP’s deficit was \$1.3 billion, a deterioration of \$83 million over year-end 2020. Rehabilitator’s Annual Report at 2.

## Conclusion

For the foregoing reasons, the Court should grant this Application and order that all proceedings on the Petition be stayed until decision of the appeal pending in the Supreme Court of Pennsylvania.

May 3, 2022

Respectfully submitted,

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# Exhibit 1

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
CASE NO. 22-CVS-2814

MIKE CAUSEY, IN HIS OFFICIAL )  
CAPACITY AS THE COMMISSIONER )  
OF INSURANCE OF THE STATE OF )  
NORTH CAROLINA, )

Plaintiff, )

vs. )

JESSICA K. ALTMAN, INSURANCE )  
COMMISSIONER OF THE )  
COMMONWEALTH OF )  
PENNSYLVANIA AND HER )  
SUCCESSORS IN OFFICE, IN THEIR )  
CAPACITY AS REHABILITATOR OF )  
SENIOR HEALTH INSURANCE )  
COMPANY OF PENNSYLVANIA; )  
PATRICK CANTILO, IN HIS )  
CAPACITY AS SPECIAL DEPUTY )  
REHABILITATOR OF SENIOR )  
HEALTH INSURANCE COMPANY OF )  
PENNSYLVANIA; and SENIOR )  
HEALTH INSURANCE COMPANY OF )  
PENNSYLVANIA IN )  
REHABILITATION, )

Defendants.

**DEFENDANTS' MOTION TO STAY  
PROCEEDINGS**

NOW COME the Defendants, Michael Humphreys, Acting Insurance Commissioner of the Commonwealth of Pennsylvania,<sup>1</sup> in his capacity as Rehabilitator of Senior Health Insurance Company Of Pennsylvania (“Rehabilitator”); Patrick Cantilo, in his capacity as Special Deputy Rehabilitator of Senior Health Insurance Company of Pennsylvania (“SDR”); and Senior Health Insurance Company of Pennsylvania In Rehabilitation (“SHIP,” and, together with the Rehabilitator and SDR, “Defendants”), seeking to stay the case entirety until a ruling of the

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<sup>1</sup> As Acting Insurance Commissioner of Pennsylvania, Michael Humphreys is the successor to named defendant Jessica K. Altman, the former Insurance Commissioner of Pennsylvania.

Supreme Court of Pennsylvania is entered in the pending proceedings of *In re Senior Health Insurance Company of Pennsylvania*, 71 MAP 2021. In support thereof, Defendants state as follows:

### **BACKGROUND**

1. On January 29, 2020, as a result of its long financial decline, the Commonwealth Court of Pennsylvania (the “Commonwealth Court”) ordered SHIP placed in rehabilitation under the Pennsylvania Insurance Department Act, 40 P.S. §§ 221.1-221.63. (*See* Compl. ¶ 5.)

2. No order of insolvency has been entered, but SHIP’s deficit at the time of the rehabilitation order exceeded \$1 billion. (*Id.* ¶ 19.)

3. At the direction of the Commonwealth Court of Pennsylvania, the Rehabilitator prepared a rehabilitation plan for SHIP.

4. The Commonwealth Court approved the Second Amended Plan on August 24, 2021 (“Approved Plan”). (*Id.* ¶ 42.)

5. The Rehabilitator, acting under the direction and supervision of the Pennsylvania courts, is now implementing that Approved Plan, including through the election package process that may result in modifications to policyholders’ premiums or benefits. (*Id.* ¶ 45.)

6. On March 4, 2022, Plaintiff Mike Causey filed the operative Complaint in this Court. Plaintiff’s Complaint challenges the Rehabilitator’s authority and ability to implement the Approved Plan through Plaintiff’s request for various forms of declaratory and injunctive relief. (*See generally id.*)

7. Specifically, Plaintiff seeks a Declaratory Judgment that the Approved Plan is unlawful and may not be enforced in North Carolina (Count I), Temporary and Preliminary Relief prohibiting implementation of the Approved Plan pending the outcome of this matter (Count II),

and a Permanent Injunction against implementation of the Approved Plan (Count II). (*Id.*) Plaintiff asks this Court to declare that the August 24, 2021 decision of the Commonwealth Court of Pennsylvania in which it approved and authorized implementation of the Approved Plan, *and* any potential decision of the Supreme Court of Pennsylvania, are not entitled to Full Faith and Credit in North Carolina. (*See id.* at WHEREFORE 1-4.)

8. On March 9, 2022, Defendants removed this matter to the United States District Court for the Eastern District of North Carolina. On April 25, 2022, that court remanded the matter to this Court for further proceedings.

### **STATUS OF REHABILITATION IMPLEMENTATION**

9. Plaintiffs seek to stop implementation of the Approved Plan permanently as well as temporarily while this matter proceeds.

10. The Commonwealth Court of Pennsylvania authorized implementation—and specifically, speedy implementation—when it approved the Approved Plan. (*See Approval Opinion*, attached as Exhibit 1, at 46-47.)

11. That decision was opposed by three insurance regulators who intervened in the proceedings to raise identical arguments to those raised by Plaintiff here. (*See id.* at 6, 21.)

12. The intervening regulators filed an appeal from the Approval Opinion to the Supreme Court of Pennsylvania. (*See Notice of Appeal*, attached as Exhibit 2.)

13. The intervening regulators also sought a stay of implementation in the Commonwealth Court of Pennsylvania and in the Supreme Court of Pennsylvania. Both stay requests were denied, permitting implementation to continue moving forward. (*See Stay Denials* attached as Exhibits 3 (Commonwealth Court) and 4 (Supreme Court).)

14. The stay application filed by those regulators observed that election packages were scheduled to be mailed “around year-end 2021,” with policy modifications according to those elections “effective in April 2022.” (See Stay Application filed in Supreme Court, attached without exhibits as Exhibit 5, at 5.)

15. Plaintiff knew of this schedule—and thus the timing of any election packages to be mailed to policyholders in North Carolina—as evidenced by his signing of an *amicus* brief supporting the (later denied) stay application to the Supreme Court of Pennsylvania filed by the intervening regulators. (See *Amicus* Brief, attached as Exhibit 6.)

16. With respect to policies issued in North Carolina, the Rehabilitator and rehabilitation team have mailed all election packages required by the Approved Plan in January 2022, slightly later than intended (see ¶ 14) but well before the filing of Plaintiff’s Complaint. (See Declaration of Robert L. Robinson, Chief Rehabilitation Officer of SHIP, attached hereto as Exhibit 7, at ¶¶ 5-6.)

17. The unifying principle for the Plan and Plan options is that policyholders should pay a reasonable premium rate for their coverage based on a widely accepted premium rate methodology, the *If Knew* methodology. The options presented under the Plan are aimed at enabling policyholders to choose alternatives best suited to their individual circumstances—*i.e.*, the right mix of premium and benefits for that policyholder. (*Id.* at ¶¶ 7-8.) Thus, and contrary to the suggestions of Plaintiff and others, the Plan does not unfairly attempt to rehabilitate SHIP on the “backs of its policyholders.”

18. The Rehabilitator has received responses from 91% of the recipients of election packages for all policyholders of policies issued in North Carolina. (See *id.* at ¶ 9.) More than 72% of those policyholders chose an option not available to them in liquidation—the outcome

Plaintiffs seek to compel through litigation—and the majority of those policyholders elected to pay rate increases to keep coverage they would not have in liquidation. (*See id.* at ¶ 10.)

19. Originally intending to modify policies in April 2022, the Rehabilitator voluntarily determined that he would delay modification of policies until at least the earlier of October 1, 2022, or a ruling of the Supreme Court of Pennsylvania on appeal (the “Delay Dates”). (*See id.* at ¶ 11; *see also* Annual Report, attached without exhibits as Exhibit 8, at 8.)

20. Thus, while policyholders of policies in North Carolina have made their elections, their policies will remain in force as-is until the earlier of the two Delay Dates.

**A STAY SHOULD BE ENTERED HERE**

21. Defendants respectfully request a stay of all proceedings until a decision of the Supreme Court of Pennsylvania with respect to the appeal of the Approval Order.

22. Whether to stay proceedings is a matter within this Court’s discretion. *See, e.g., Bryant & Assocs., LLC v. ARC Fin. Servs., LLC*, 238 N.C. App. 1, 4 (2014).

23. In this case, a stay will conserve judicial resources and avoid deepening a jurisdictional dispute unless and until it is necessary to address that issue. The question of whether the Approval Opinion will stand is currently pending and fully briefed before the Supreme Court of Pennsylvania, and this Court should await that decision before proceeding.

24. Although Defendants contend that the Commonwealth Court’s decision is entitled to Full Faith and Credit on its own, that is certainly true of any ruling of the Supreme Court of Pennsylvania, which will moot or frame the issues before this Court:

- a. Should the Supreme Court of Pennsylvania reverse the Commonwealth Court’s order in its entirety, it will moot Plaintiff’s action, as the Approved Plan will no longer be approved.
- b. Should the Supreme Court of Pennsylvania affirm in part and reverse in part the Commonwealth Court’s decision, the scope of Plaintiff’s claims will be defined by

the scope of the Supreme Court of Pennsylvania’s order on what implementation, if any, may proceed.

- c. Should the Supreme Court of Pennsylvania affirm the Commonwealth Court’s order in its entirety, the record will be clear and settled, thereby allowing this Court to focus on the facts rather than hypothetical outcomes.

25. In contrast, should this Court rule now—and in particular, should this Court enter any temporary relief—it must assert jurisdiction over state-agent actors (Defendants Humphreys and Cantilo) and find that Plaintiff is likely to prove that a hypothetical decision of the Supreme Court of Pennsylvania will not be entitled to full faith and credit in North Carolina.

26. There is no reason for this Court to address complex jurisdictional and constitutional issues when Plaintiff’s claims may be redefined or mooted by the pending Supreme Court of Pennsylvania action. Indeed, to do so risks issuing an advisory opinion on the decisions of another state’s Supreme Court based on an incomplete record.

27. Moreover, a stay preserves the status quo, because implementation has already started in North Carolina: policyholders have received election packages already and 91% of those policyholders have mailed their election responses.

28. This Court should avoid issuing orders that may call that process into question and thus upset and disrupt policyholders’ understanding and expectations.

29. Independent of any final ruling of this Court on the merits, a stay is consistent with principles of comity, which permit this Court to respect Pennsylvania’s sovereignty and authority as a matter of discretion even if not required by law. *See, e.g., Cox v. Roach*, 218 N.C. App. 311, 318 (2012). Comity often involves practical considerations because it “has substantial value in securing uniformity of decision.” *Id.* (quoting *In re Chase*, 195 N.C. 143 (1928)). Indeed, “comity is encouraged in North Carolina as long as extending comity to a particular situation would not be against public policy.” *Id.* (citing same).

30. North Carolina, like Pennsylvania here, would expect that its state court's judgments would receive full faith and credit or comity in other states—or, at the very least, that other states would defer interference while a matter remained open in North Carolina. This is particularly true in the rehabilitation context, where North Carolina public policy encourages “[i]mproved methods for rehabilitating insurers” and “[l]essening the problems of interstate rehabilitation,” including “by extending the scope of personal jurisdiction over debtors of the insurer outside of [North Carolina].” N.C. Gen. Stat. 58-30-1(c)(2), (5). Affording comity at this time by withholding judgment on Plaintiffs’ claims lessens the problems of interstate rehabilitation by avoiding a premature (and perhaps unnecessary) finding that the Pennsylvania courts lacked jurisdiction or otherwise acted without authority, findings which Plaintiff’s Complaint would require this Court to make to grant Plaintiff’s requests for injunctions and declaratory orders.

31. Finally, no prejudice will result from a stay. Plaintiff elected not to intervene in the rehabilitation proceedings despite notice and an opportunity to do so, then allowed the rehabilitation proceedings to move forward without him into the plan review and approval phase, allowed the plan to be approved, and then waited more than six more months to bring his claims seeking to stop implementation *despite* knowing that election package mailings had already occurred.

32. The Rehabilitator has voluntarily decided to delayed modification of policyholder elections, meaning there is no urgency—even Plaintiff’s imagined urgency—to resolving Plaintiff’s claims regarding the Plan.

33. Should circumstances change, Plaintiff is free to request that this Court lift the stay and address these issues on a preliminary injunction, but given the expected impact of the Pennsylvania decision, there is no reason for such an order to be entered now.

WHEREFORE, Defendants respectfully request that this Court enter a stay pending a decision in the Supreme Court of Pennsylvania, with leave granted to Plaintiff to move to lift the stay should circumstances change.

Respectfully submitted, this 26th day of April, 2022

COZEN O'CONNOR

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she has this day electronically filed the foregoing DEFENDANTS' MOTION TO STAY PROCEEDINGS with the Clerk of Court of Wake County, North Carolina, and served a copy upon all parties to this action by placing a copy of same in the United States mail, postage prepaid, addressed as follows:

Joshua H. Stein, Attorney General  
Daniel Snipes Johnson, Special Deputy Attorney General  
NORTH CAROLINA DEPARTMENT OF JUSTICE  
P.O. Box 629  
Raleigh, N.C. 27602-0629  
Copy by email sent to [djohnson@ncdoj.gov](mailto:djohnson@ncdoj.gov)

This the 26th day of April, 2022

COZEN O'CONNOR

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STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
CASE NO. 22-CVS-2814

COUNTY OF WAKE

MIKE CAUSEY, IN HIS OFFICIAL )  
CAPACITY AS THE COMMISSIONER )  
OF INSURANCE OF THE STATE OF )  
NORTH CAROLINA, )

**ORDER GRANTING  
DEFENDANTS' MOTION TO STAY  
PROCEEDINGS**

Plaintiff, )

vs. )

JESSICA K. ALTMAN, INSURANCE )  
COMMISSIONER OF THE )  
COMMONWEALTH OF )  
PENNSYLVANIA AND HER )  
SUCCESSORS IN OFFICE, IN THEIR )  
CAPACITY AS REHABILITATOR OF )  
SENIOR HEALTH INSURANCE )  
COMPANY OF PENNSYLVANIA; )  
PATRICK CANTILO, IN HIS )  
CAPACITY AS SPECIAL DEPUTY )  
REHABILITATOR OF SENIOR )  
HEALTH INSURANCE COMPANY OF )  
PENNSYLVANIA; and SENIOR )  
HEALTH INSURANCE COMPANY OF )  
PENNSYLVANIA IN )  
REHABILITATION, )

Defendants.

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2022, upon consideration of Defendants' Motion to Stay Proceedings, and for good cause shown, this Court hereby GRANTS Defendants' Motion to Stay Proceedings. It is hereby ORDERED that this matter is STAYED a decision of the Supreme Court of Pennsylvania in the matter *In re Senior Health Insurance Company of Pennsylvania*, No. 71 MAP 2021, or as further ordered by this Court.

BY THE COURT:

\_\_\_\_\_

# **Exhibit 2**

## IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

**ANNUAL REPORT OF THE REHABILITATOR  
ON THE STATUS OF THE REHABILITATION OF  
SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA**

Michael Humphreys, Acting Insurance Commissioner of the Commonwealth of Pennsylvania,<sup>1</sup> in his capacity as the Statutory Rehabilitator (“Rehabilitator”) of Senior Health Insurance Company of Pennsylvania (“SHIP”), hereby submits this second Annual Report on the status of the rehabilitation of SHIP.

**I. INTRODUCTION**

SHIP was placed in rehabilitation by this Court’s order of January 29, 2020. Events ensuing in the following year were described in the first Annual Report filed by the Rehabilitator in 2021. Descriptions of those events will not be repeated here except as necessary to provide context. This report will address significant events and developments since the date of the last report. They include SHIP’s financial condition, the effects of the COVID-19 pandemic, the disposition of reinsurance assumed, management of the company’s assets and related litigation, and the status

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<sup>1</sup> On February 28, 2022, following the departure of Jessica Altman from that office, Michael Humphreys was named Acting Insurance Commissioner by Pennsylvania Governor Tom Wolf. In that capacity, Commissioner Humphreys also succeeds to the role of SHIP’s Statutory Rehabilitator.

of the Approved Rehabilitation Plan (“Plan”), including collateral litigation regarding the Plan. The first report provides historical detail for matters discussed in this report.

## **II. REPORT**

### **A. FINANCIAL STATUS**

As with the first report, 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, 2021. In summary, and as set forth in detail in the Financial Package, as of December 31, 2021, the total value of SHIP’s assets was \$1.242 billion, a decline of \$128 million from a year earlier. SHIP’s liabilities were estimated at \$2.531 billion, a decline of \$62 million. The resulting deficit of \$1.304 billion reflects a deterioration of \$83 million over year-end 2020. Many factors contributed to these results but three that were particularly significant were the decline in yield on invested assets (*see* Exhibit A, page 14), the decline in premium collection, and increased claims payments (*see* Exhibit A, page 15). 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**

On balance, the effects of the pandemic continue not to be material to SHIP's rehabilitation. Changes in operation (*e.g.*, staff working from home and reduced travel) implemented in 2020 remain in effect. Though there has been some increase in mortality, there has also been a migration in utilization from facility care to less expensive home health care. It remains too early to determine whether these and other changes observed will be transitional or permanent. In the aggregate they are not sufficient to affect materially the rehabilitation plan and its expected outcomes.

**C. REINSURANCE ASSUMED**

Consistent with the terms of the Plan, the insurance business assumed by SHIP and its predecessors from Transamerica Life Insurance Company, Primerica Life Insurance Company, and American Health and Life Insurance Company is now the financial responsibility of these ceding carriers, although all have entered into or are pursuing Administrative Services Agreements with SHIP's subsidiary, Fuzion Analytics, Inc., for management of some or all of that business. Each of these companies retains claims for losses sustained by the necessity that they resume financial responsibility for the business assumed, but these are general creditor claims that may be paid only after policyholders have been made whole.

## **D. ASSET MANAGEMENT**

### **1. Investment Advisor**

In June 2021, the Rehabilitator transitioned management of the Company's invested assets from the prior advisors to BlackRock Financial Management, Inc., after evaluating proposals from some the largest and best-known insurance asset managers in the country. This change was motivated by a desire to obtain more comprehensive investment management services and increase the yield of the investment portfolio. Given the difference in services provided, it is difficult to make an "apples to apples" comparison between pre- and post-transition results but the Rehabilitator and Company staff believe that SHIP is now better prepared to respond to changing circumstances and to identify and take advantage of appropriate investment opportunities.

### **2. Kingdom Energy Loan**

In the first report, the Rehabilitator advised the Court of the acquisition of all outstanding interests in the Kingdom Energy mortgage loan. Efforts to complete foreclosure on the complex collateral underlying that loan (which the Court may recall includes largely coal mining and timber holdings) continue apace and the Rehabilitator remains optimistic that he will realize greater value than the Company's investment in that loan.

### **3. Beechwood Litigation**

In the first report, the Rehabilitator advised the Court of litigation that resulted from SHIP's ill-advised agreements with the Beechwood parties. The Rehabilitator continues winding down that litigation. He continues to anticipate an additional recovery of more than \$4 million from the receiver of Platinum Partners Credit Opportunities Fund. The only other remaining piece of the litigation consists of claims asserted by the Cayman Islands Joint Official Liquidators of Platinum Partners Value Arbitrage Fund L.P. against SHIP and Fuzion. The Rehabilitator has settled part of those claims and received a payment of \$4.5 million. He believes that the remaining claims *against* SHIP and Fuzion are of dubious merit, but they are complex and may require costly discovery and pre-trial procedures to resolve.

### **4. Asset Recovery Proceedings**

The Rehabilitator has commenced two lawsuits in this Court for matters related to SHIP's financial deterioration and has also commenced two confidential proceedings outside of court. The lawsuits are known to the Court and are in their infancy such that no further comment in this report would be helpful. The Rehabilitator cannot disclose details of the confidential matters other than to note that they are also in the very early stages.

**E. THE APPROVED REHABILITATION PLAN**

This Court approved the Proposed Rehabilitation Plan for SHIP in August 2021,<sup>2</sup> following a week-long hearing in May 2021 that was preceded and followed by briefing from the parties. The Intervenor Regulators from Maine, Massachusetts, and Washington have appealed that approval to the Supreme Court of Pennsylvania. This Court and the Supreme Court denied the Intervening Regulators' requests for stay of the Plan pending that appeal. The Rehabilitator has therefore commenced implementation of the Plan. In accordance with its terms, Policyholder Election Packages have been sent to more than 20,000 policyholders, a remarkable more than 85% of whom have timely submitted elections. More than 60% of these elections were for options that, based on applicable law and past experience, the Rehabilitator does not believe would have been available in liquidation. There remain several thousand Policyholder Election Packages to be distributed in coming months so that the preliminary results of this Phase of the Plan will not be known until later this year. More detail about these Policyholder Elections is provided in the Election Status Report attached as Exhibit B.

Even before this Court held a hearing on the Proposed Rehabilitation Plan, a number of insurance regulators commenced a campaign of collateral challenges.

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<sup>2</sup> The Court's approval Memorandum and Opinion were amended in November in ways not material to this report.

They began with lawsuits to enjoin implementation of the Plan in Louisiana and South Carolina. Those cases remain pending in state court in those jurisdictions, and the Rehabilitator will soon be filing an Application and Petition for Issuance of a Rule to Show Cause filed in this Court as to those two cases. Similar lawsuits were filed in the state courts of Iowa, New Jersey, North Carolina, and North Dakota after this Court's approval of the Plan. The Rehabilitator has removed all of these cases to the respective federal district courts and has filed with the Judicial Panel on Multidistrict Litigation ("JPML") a motion to consolidate these cases and coordinate them for pretrial procedures in the Eastern District of Pennsylvania. In each of the federal district courts, the Rehabilitator has filed a motion for stay pending the JPML's decision on the transfer motion.

Twelve other states have commenced administrative proceedings in which Cease and Desist Orders were entered against implementation of the Plan in their states. Two of these (Maine and Washington) are parties in this Court's proceeding and in the Supreme Court of Pennsylvania appeal. As to these, on March 28, 2022, the Rehabilitator filed in this Court an Application and Petition for Issuance of a Rule to Show Cause. As to the remaining ten (Alaska, Arkansas, Connecticut, the District of Columbia, Maryland, Montana, New Hampshire, Ohio, Utah, and Vermont) the Rehabilitator has advised those regulators that this Court has exclusive jurisdiction over challenges to the Plan and that the Rehabilitator will not participate

in those administrative proceedings.

The Rehabilitator has continued efforts to resolve without litigation concerns about the Plan expressed by other regulators. As part of those efforts, on March 8, 2022, the Rehabilitator advised other regulators that he had directed the rehabilitation team to delay implementation of policy modifications until the earlier of October 1, 2022, or the date of the final order of the Supreme Court. This direction, however, did not result in delaying other steps to implement the Plan. Attached as Exhibit C is a letter being sent by the Rehabilitator advising policyholders of this delay.

#### **F. ACTUARIAL REPORT**

The Plan was the product of extensive analysis, including actuarial analysis by Oliver Wyman. At the request of the Rehabilitator, Oliver Wyman has prepared an actuarial memorandum (“Actuarial Memorandum”) summarizing the methodology, actuarial assumptions, and results associated with the actuarial analysis of the Plan. That Actuarial Memorandum is attached as Exhibit D for the information of the Court. The Actuarial Memorandum is supported by an Inventory of Actuarial Assumptions to which it refers as Appendix A. That inventory is in the form of a complex Excel spreadsheet that cannot easily be made part of this filing. However, that Excel spreadsheet is posted on the SHIP Secure Data Site, and the Rehabilitator will provide that spreadsheet to the Court in its native form upon

request.

### **III. CONCLUSION**

Exhibit A (the Financial Package) provides much detailed information about the Company not summarized in this report. The Rehabilitator stands ready to provide the Court any additional information the Court would find helpful. Although the Plan has met with unexpected and unprecedented resistance from certain state insurance regulators, the initial results of the Policyholder Election process have been very encouraging. In particular, the high “take rates” for Options 2, 2a, and 3 (summarized in Exhibit B) reveal that the design of these novel options addressed successfully the individual preferences of a substantial number of SHIP’s policyholders. The Rehabilitator concedes that he is disappointed in regulatory resistance to the Plan, but he notes that, in the aggregate, the states that have commenced collateral attacks on the Plan or entered Cease and Desist Orders against its implementation account for less than twenty percent of SHIP’s policyholders affected by the Plan. While the Rehabilitator will continue to resist these attacks that depart so remarkably from established custom and practice of deference to the domiciliary regulator of a troubled insurer, he reports to the Court here that initial indications suggest that the Plan is likely to accomplish in substantial part the goals for which it was designed.

Dated: March 31, 2022

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

# EXHIBIT B

## SHIP Policyholder Election Status Report As of 03/31/2022

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### Policyholder Election Phases

The SHIP Policyholder Election Program consists of three planned distributions.

1. The first mailing occurred in January 2022 and included policyholders in states that did not opt out of the rate increase provisions of the Approved Rehabilitation Plan (“Plan”). Approximately 21,000 policyholders received Election Packages during this first distribution.
2. The second mailing, scheduled for May 2022, includes Additional Opt-In policyholders in states that initially opted out of the rate increase provisions of the Plan, but opted back into the Plan as a result of approving in full the rate increases filed by the Rehabilitator in these states. Approximately 2,200 policyholders will receive Election Packages during this second distribution.
3. The third and final mailing includes the Opt-Out policyholders who were not included in the first two mailings. There are approximately 3,000 policyholders included in this distribution.

### Initial Phase Election Results

The responses to the first Election Package mailing were due to be received by the end of March 2022.

Results of the first mailing were very positive. 85.3% of the policyholders responded by submitting their required Election Form before the due date. Policyholder election results by election option are as follows:

- Option 1: Downgrade Your Policy – 8.0%
- Option 2: Convert to a Basic Policy – 10.1%
- Option 2a: Convert to an Enhanced Basic Policy – 6.6%
- Option 3: Convert to an Enhanced Paid-Up Policy – 20.3%
- Option 4: Keep Your Current Coverage – 55.0%

It is very important to note that 10,614 policyholders made elections that, based on past experience and applicable law, would not have been available to them in Liquidation. This represents 63.4% of the election responses received.

### Future Election Package Mailings

The remaining two Election Package mailings are scheduled for later this year.

Election options available to policyholders for policies issued in Opt-Out States include:

- Option A: Pay the Approved Increased Premium and Downgrade Your Policy
- Option B: Maintain Your Current Premium and Downgrade Your Policy
- Option C: Convert to a Standard Paid-Up Non-Forfeiture Policy
- Option D: Voluntarily Pay the Full If Knew Premium Rate and Keep Your Current Coverage

# EXHIBIT C



#[MailingDate]

Via U.S. Mail

#[Name]

#[AddressLineCombo]

#[City], #[ResidentState] #[ZipCode]

RE: Senior Health Insurance Company of Pennsylvania (In Rehabilitation) (“SHIP”)  
Policy Number: #[LTCASPolicyNumber]

Dear #[Name]:

This Notice has been prepared to provide important information about a delay in the Rehabilitation Plan Election Effective Date. You recently received an Election Package from SHIP which stated that your election and the associated premium and policy benefits were to be effective on #[ElectionEffectiveDate]. Due to recent developments in the rehabilitation proceedings, a delay in the effective date of your election has become necessary.

As you are aware, the Pennsylvania Commonwealth Court approved SHIP’s Rehabilitation Plan in August 2021. Certain state insurance regulators appealed the Approved Rehabilitation Plan to the Supreme Court of Pennsylvania. The Commonwealth Court and the Supreme Court both rejected requests by these appealing regulators to halt the Plan pending the appeal. However, the Pennsylvania Insurance Commissioner, as the statutory rehabilitator of SHIP, recently directed the Rehabilitation Team to delay implementation of Plan modifications until the earlier of October 1, 2022, or the date of the final order of the Pennsylvania Supreme Court. This delay will apply to all states and will provide a uniform, national implementation date. In the meantime, the Rehabilitation Team continues to prepare for implementation later in the year.

Accordingly, the coverage option elected on your Coverage Election Form will be implemented at a later date. You will be notified of the new Election Effective Date approximately 30 days before your election becomes effective.

It is important for you to continue to pay your premium to maintain your coverage. With the delay of the Election Effective Date, your current premium and policy benefits will remain in place until the new Election Effective Date is established and communicated to you.

Please note that the information included in this Notice is all the information available at this time about this matter. You are encouraged to visit SHIP's website regularly at [www.shipltc.com](http://www.shipltc.com) for information about SHIP's rehabilitation. The website is updated with Court documents and related rehabilitation materials.

We apologize for the inconvenience caused by the delay in your Election Effective Date. Thank you for your patience and understanding during this rehabilitation process.

Sincerely,

A handwritten signature in cursive script that reads "Patrick H. Cantilo".

Patrick H. Cantilo  
Special Deputy Rehabilitator

# **Exhibit 3**



## SHIP Policyholder Election Package Status Report

As Of 04/10/2022

### Election Packages Mailed and Response Results

### Responses

Issue State	Responses Required	Option 1 %	Option 2 %	Option 2a %	Option 3 %	Option 4 Above GA %	Option 4 GA Covered %	Responses Received %	Responses Received #	Available in Liquidation #	Available in Liquidation %	Not Available in Liquidation #	Not Available in Liquidation %
AK	14	9.09%	27.27%	0.00%	9.09%	36.36%	18.18%	78.57%	11	3	27.27%	8	72.73%
AR	142	9.92%	10.74%	9.09%	21.49%	33.06%	15.70%	85.21%	121	31	25.62%	90	74.38%
AZ	537	7.22%	8.07%	7.01%	23.57%	27.39%	26.75%	87.71%	471	160	33.97%	311	66.03%
CO	204	5.39%	10.78%	6.59%	23.95%	25.75%	27.54%	81.86%	167	55	32.93%	112	67.07%
DE	62	12.28%	5.26%	12.28%	22.81%	21.05%	26.32%	91.94%	57	22	38.60%	35	61.40%
FL	2,548	8.59%	6.17%	9.44%	19.06%	26.71%	30.02%	87.72%	2,235	863	38.61%	1,372	61.39%
GA	437	11.17%	10.65%	5.19%	16.88%	39.22%	16.88%	88.10%	385	108	28.05%	277	71.95%
IL	1,166	6.61%	10.89%	8.56%	15.76%	36.87%	21.30%	88.16%	1,028	287	27.92%	741	72.08%
IN	625	2.91%	8.74%	7.47%	22.77%	16.76%	41.35%	87.84%	549	243	44.26%	306	55.74%
KS	523	5.84%	12.12%	3.66%	18.61%	37.66%	22.29%	88.34%	462	130	28.14%	332	71.86%
KY	301	7.28%	8.43%	4.21%	20.69%	20.31%	39.08%	86.71%	261	121	46.36%	140	53.64%
MA	222	6.81%	6.28%	8.38%	22.51%	26.18%	29.84%	86.04%	191	70	36.65%	121	63.35%
ME	231	11.17%	5.85%	3.72%	26.06%	18.09%	35.11%	81.39%	188	87	46.28%	101	53.72%
MI	422	6.60%	9.76%	6.33%	16.62%	30.08%	30.61%	89.81%	379	141	37.20%	238	62.80%
MN	325	12.00%	19.00%	4.00%	22.33%	19.33%	23.33%	92.31%	300	106	35.33%	194	64.67%
MO	649	7.34%	11.19%	2.62%	17.48%	35.49%	25.87%	88.14%	572	190	33.22%	382	66.78%
MS	115	5.43%	8.70%	2.17%	16.30%	48.91%	18.48%	80.00%	92	22	23.91%	70	76.09%
MT	124	3.77%	10.38%	12.26%	22.64%	20.75%	30.19%	85.48%	106	36	33.96%	70	66.04%
NC	644	9.20%	9.20%	11.75%	19.25%	31.86%	18.74%	91.15%	587	164	27.94%	423	72.06%
NE	320	8.00%	10.55%	2.18%	12.00%	43.27%	24.00%	85.94%	275	88	32.00%	187	68.00%
NH	13	9.09%	27.27%	18.18%	0.00%	45.45%	0.00%	84.62%	11	1	9.09%	10	90.91%
NJ	511	10.49%	9.21%	14.56%	24.41%	6.85%	34.48%	91.39%	467	210	44.97%	257	55.03%
NM	88	5.48%	16.44%	10.96%	16.44%	28.77%	21.92%	82.95%	73	20	27.40%	53	72.60%
NV	56	4.88%	4.88%	4.88%	51.22%	4.88%	29.27%	73.21%	41	14	34.15%	27	65.85%
OK	528	8.08%	13.30%	5.94%	19.48%	27.32%	25.89%	79.73%	421	143	33.97%	278	66.03%
OR	129	4.85%	11.65%	9.71%	23.30%	12.62%	37.86%	79.84%	103	44	42.72%	59	57.28%
OT	1	0.00%	100.00%	0.00%	0.00%	0.00%	0.00%	100.00%	1	0	0.00%	1	100.00%
PA	2,958	8.08%	10.48%	4.80%	18.68%	18.91%	39.06%	87.42%	2,586	1,219	47.14%	1,367	52.86%
TN	363	4.02%	12.38%	8.67%	22.91%	32.51%	19.50%	88.98%	323	76	23.53%	247	76.47%
TX	3,335	8.85%	11.98%	4.24%	21.67%	29.08%	24.18%	81.35%	2,713	896	33.03%	1,817	66.97%
UT	235	7.80%	15.61%	0.98%	34.15%	8.78%	32.68%	87.23%	205	83	40.49%	122	59.51%
VA	451	8.27%	9.52%	11.78%	21.55%	31.58%	17.29%	88.47%	399	102	25.56%	297	74.44%
VT	8	0.00%	0.00%	16.67%	50.00%	16.67%	16.67%	75.00%	6	1	16.67%	5	83.33%
WA	636	10.07%	9.33%	5.78%	26.49%	14.74%	33.58%	84.28%	536	234	43.66%	302	56.34%
WI	425	7.08%	7.90%	7.63%	22.89%	20.44%	34.06%	86.35%	367	151	41.14%	216	58.86%
WY	15	0.00%	15.38%	7.69%	30.77%	30.77%	15.38%	86.67%	13	2	15.38%	11	84.62%
<b>Total</b>	<b>19,363</b>	<b>8.00%</b>	<b>10.12%</b>	<b>6.62%</b>	<b>20.37%</b>	<b>26.22%</b>	<b>28.66%</b>	<b>86.26%</b>	<b>16,702</b>	<b>6,123</b>	<b>36.66%</b>	<b>10,579</b>	<b>63.34%</b>



## Schedule Of Future Mailings

### Future Mailing – Additional Opt-In States

<u>State</u>	<u>Target Mailing</u>	<u>Policy Count</u>
AL	May 2022	24
CA	May 2022	1,894
HI	May 2022	67
SD	May 2022	146
WV	May 2022	<u>42</u>
		<b>2,173</b>

### Future Mailing – Opt-Out States

<u>State</u>	<u>Target Mailing</u>	<u>Policy Count</u>
CT	June 2022	21
DC	June 2022	5
IA	TBD	582
ID	June 2022	47
MD	June 2022	641
ND	TBD	274
OH	June 2022	<u>950</u>
		<b>2,520</b>

### Future Mailing – Other States

<u>State</u>	<u>Target Mailing</u>	<u>Policy Count</u>
LA	TBD	208
SC	TBD	<u>201</u>
		<b>409</b>



## Policyholder Election Options: Opt-In States

### - **Option 1: Downgrade Your Policy**

**Maintain your current premium** (recognizing that benefits may be reduced in Phase Two of the Rehabilitation Plan)

*The Downgrade allows the policyholder to avoid the rate increase. Each downgrade is a single combination of one or more of the 11 benefit reductions as follows: remove Restoration of Benefits, remove Extension of Benefits, adopt Rehabilitation Plan Required Benefit Eligibility, discontinue Return of Premium accruals, remove Inflation, convert to a Reimbursement policy, modify Maximum Daily Benefits, increase the Elimination Period, modify Maximum Benefit Period, remove all Waiver of Premium provisions, and convert to a Pool of Money policy. Calculations are performed at the policy level in order to achieve the Downgrade Target Premium where downgraded benefits match current premium on an if Knew basis.*

### - **Option 2: Convert to a Basic Policy**

**Adjust your premium and benefits** (designed to balance premium and benefits)

*The Basic Policy provides a balance between reasonable premium and adequate level of coverage. This Option includes the following base modifications: four-year Maximum Benefit Period, 90-day Elimination Period, discontinue Return of Premium accruals, remove Extension of Benefits, adjust inflation to 1.5%, modify Maximum Daily Benefits, adopt Rehabilitation Plan Required Benefit Eligibility, convert to an Indemnity policy, convert to a Pool of Money policy, remove Restoration of Benefits, and remove all Waiver of Premium provisions.*

### - **Option 2a: Convert to an Enhanced Basic Policy**

**Adjust your premium and benefits** (designed to balance premium and enhanced benefits)

*The Enhanced Basic Policy is similar to the Basic policy with the following exceptions: five-year Maximum Benefit Period and inflation adjustment to 2%, if current benefits exceed these limits.*

### - **Option 3: Convert to an Enhanced Paid-Up Policy**

**Stop paying premium altogether** (while maintaining a basic level of coverage)

*The Enhanced Paid-Up Policy is a non-forfeiture option that provides a reasonable level of coverage. This Option includes the following modifications: 2.5-year Maximum Benefit Period, convert to an Indemnity policy, remove Extension of Benefits, remove Return of Premium, remove Restoration of Benefits, convert to a Pool of Money policy, 90-day Elimination Period, adopt Rehabilitation Plan Required Benefit Eligibility, remove Inflation, and modify Maximum Daily Benefits.*

### - **Option 4: Keep Your Current Coverage**

**Preserve your current benefits** (recognizing that premium may be increased in Phase Two of the Rehabilitation Plan)

*Policyholders can maintain their current level of benefits.*



## **Policyholder Election Options: Opt-Out States**

- **Option A: Pay the Approved Increased Premium and Downgrade Your Policy**  
*The Opt-Out State approved rate increase will be offered in conjunction with benefit downgrades to align benefits with the approved rate increase. The downgrades follow the downgrades in Option 1 above with the following exceptions: the downgrade will not increase the Elimination Period or remove Waiver of Premium provisions.*
- **Option B: Maintain Your Current Premium and Downgrade Your Policy**  
*This option allows policyholders to avoid the rate increase. The downgrade method is the same as Option A.*
- **Option C: Convert to a Standard Paid-Up Non-Forfeiture Policy**  
*The standard non-forfeiture benefit is equal to 100% of all premiums paid since the policy issue date, reduced by the sum of any claim payments and returned premium payments made since the policy issue date. No premium payments are required to maintain this non-forfeiture benefit option.*
- **Option D: Voluntarily Pay the Full If Knew Premium Rate and Keep Your Current Coverage**  
*Policyholders can maintain their current level of benefits by voluntarily paying the Full If Knew premium rate.*

# **Exhibit 4**

NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

**JAMES J. DONELON  
IN HIS OFFICIAL CAPACITY  
AS COMMISSIONER OF INSURANCE  
FOR THE STATE OF LOUISIANA AND  
THE LOUISIANA DEPARTMENT OF  
INSURANCE**

**NUMBER: 713794**

**SECTION: 22**

*Plaintiff*

**VERSUS**

**JESSICA K. ALTMAN, IN HER CAPACITY AS STATUTORY  
REHABILITATOR  
OF SENIOR HEALTH INSURANCE COMPANY OF  
PENNSYLVANIA  
AND  
SENIOR HEALTH INSURANCE COMPANY OF  
PENNSYLVANIA, IN REHABILITATION**

*Defendant*

**ORDER GRANTING PRELIMINARY INJUNCTION**

THIS MATTER came for hearing before the Court on January 25, 2022 on the request contained in the petition of James J. Donelon, in his official capacity as Commissioner of Insurance for the State of Louisiana, and the Louisiana Department of Insurance (collectively, Plaintiffs) for issuance of a preliminary injunction against Defendants Jessica K. Altman, in her capacity as Statutory Rehabilitator of Senior Health Insurance Company of Pennsylvania (the Rehabilitator), and Senior Health Insurance Company of Pennsylvania, In Rehabilitation (SHIP) (collectively, Defendants).

Present in Court: David S. Rubin, counsel for the Plaintiffs; and Brandon K. Black and Michael J. Broadbent, counsel for the Defendants.

CONSIDERING the pleadings of the parties, the record of this matter, the evidence introduced, the arguments of counsel, for reasons orally assigned on the record of this matter in open court,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. A preliminary injunction is issued in this matter as set forth herein.

**NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA**

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**JAMES J. DONELON  
IN HIS OFFICIAL CAPACITY  
AS COMMISSIONER OF INSURANCE  
FOR THE STATE OF LOUISIANA AND  
THE LOUISIANA DEPARTMENT OF  
INSURANCE**

**NUMBER: 713794**

**SECTION: 22**

*Plaintiff*

**VERSUS**

**JESSICA K. ALTMAN, IN HER CAPACITY AS STATUTORY  
REHABILITATOR  
OF SENIOR HEALTH INSURANCE COMPANY OF  
PENNSYLVANIA  
AND  
SENIOR HEALTH INSURANCE COMPANY OF  
PENNSYLVANIA, IN REHABILITATION**

*Defendant*

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**ORDER GRANTING PRELIMINARY INJUNCTION (continued)**

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2. The Rehabilitator and SHIP are each preliminarily enjoined from (a) attempting to enforce against any Louisiana policyholders of SHIP any increase in premium rates paid on policies issued in Louisiana based on the Approved Plan of Rehabilitation currently being implemented by the Rehabilitator without compliance with all applicable provisions of Louisiana law and regulations identified in Plaintiffs' Petition for Preliminary Injunction, Permanent Injunction, and Declaratory Judgment filed December 3, 2021, and (b) soliciting any Louisiana policyholders of SHIP to select one of the options made available under that Approved Plan without compliance with all applicable provisions of Louisiana law and regulations identified in Plaintiffs' Petition for Preliminary Injunction, Permanent Injunction, and Declaratory Judgment filed December 3, 2021.

**NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA**

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**JAMES J. DONELON  
IN HIS OFFICIAL CAPACITY  
AS COMMISSIONER OF INSURANCE  
FOR THE STATE OF LOUISIANA AND  
THE LOUISIANA DEPARTMENT OF  
INSURANCE**

**NUMBER: 713794**

**SECTION: 22**

*Plaintiff*

**VERSUS**

**JESSICA K. ALTMAN, IN HER CAPACITY AS STATUTORY  
REHABILITATOR  
OF SENIOR HEALTH INSURANCE COMPANY OF  
PENNSYLVANIA  
AND  
SENIOR HEALTH INSURANCE COMPANY OF  
PENNSYLVANIA, IN REHABILITATION**

*Defendant*

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**ORDER GRANTING PRELIMINARY INJUNCTION (continued)**

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Notwithstanding the foregoing, SHIP may (a) send communications and information to such policyholders in the ordinary course of business concerning claims under or premium payments due under policies held by such policyholders, (b) comply with any Pennsylvania statutes or orders of the Commonwealth Court of Pennsylvania regarding benefit reductions or other policy modifications that do not require premium rate increases for such policyholders, subject to (i) Defendants' agreement to provide notice to Plaintiffs at least twenty-one days before any such benefit reductions or other policy modification(s) is/are made effective and (ii) Plaintiffs' reservation of their right to return to this Court and assert that any such benefit reductions or other policy modification(s) is/are within the scope of this injunction, and (c) offer and effect for such policyholders any policy modification available in the ordinary course of business and that are unrelated to the Approved Plan that is in compliance with all applicable provisions of Louisiana law and regulations.

NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

---

JAMES J. DONELON  
IN HIS OFFICIAL CAPACITY  
AS COMMISSIONER OF INSURANCE  
FOR THE STATE OF LOUISIANA AND  
THE LOUISIANA DEPARTMENT OF  
INSURANCE

NUMBER: 713794

SECTION: 22

*Plaintiff*

VERSUS

JESSICA K. ALTMAN, IN HER CAPACITY AS STATUTORY  
REHABILITATOR  
OF SENIOR HEALTH INSURANCE COMPANY OF  
PENNSYLVANIA  
AND  
SENIOR HEALTH INSURANCE COMPANY OF  
PENNSYLVANIA, IN REHABILITATION

*Defendant*

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ORDER GRANTING PRELIMINARY INJUNCTION (continued)

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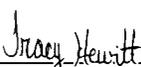
3. IT IS FURTHER ORDERED that no security is required for issuance of this preliminary injunction because the Plaintiffs are the Commissioner of Insurance for the State of Louisiana and the Louisiana Department of Insurance and as such are exempt from any requirement to post security as provided by La. Rev. Stat. 13:4581.
4. IT IS FURTHER ORDERED that this preliminary injunction shall remain in effect until further order of the Court.
5. IT IS FURTHER ORDERED that Defendants shall pay all court costs actually incurred by Plaintiffs as related to the preliminary injunction filed by Plaintiffs.

SO ORDERED at Baton Rouge, Louisiana, this        day of **February 03 2022**, 2022, at

**10:55** o'clock **a** m.

I HEREBY CERTIFY THAT ON THIS DAY A COPY OF  
THE WRITTEN REASONS FOR JUDGMENT /  
JUDGMENT / ORDER / COMMISSIONER'S  
RECOMMENDATION WAS MAILED BY ME WITH  
SUFFICIENT POSTAGE AFFIXED.  
SEE ATTACHED LETTER FOR LIST OF RECIPIENTS.

DONE AND MAILED ON February 07, 2022

  
DEPUTY CLERK OF COURT

  
HONORABLE TIMOTHY KELLEY  
JUDGE, 19th JUDICIAL DISTRICT COURT

# **Exhibit 5**

**STATE OF SOUTH CAROLINA**  
**RICHLAND COUNTY**

**IN THE COURT OF COMMON PLEAS**  
**FIFTH JUDICIAL CIRCUIT**

Raymond G. Farmer, as Director of the South Carolina Department of Insurance, and the South Carolina Department of Insurance,

Plaintiffs,

vs.

Jessica K. Altman, as Rehabilitator of Senior Health Insurance Company of Pennsylvania, Patrick H. Cantilo, as Special Deputy Rehabilitator of Senior Health Insurance, Company of Pennsylvania, and Senior Health Insurance Company of Pennsylvania in Rehabilitation,

Defendants.

Civil Action No. 2020-CP-40-05802

**ORDER GRANTING  
PLAINTIFFS' MOTION FOR A  
TEMPORARY INJUNCTION**

This matter comes before the Court pursuant to a motion for temporary injunction filed on November 12, 2021, by the Plaintiffs, Raymond G. Farmer, as Director of the South Carolina Department of Insurance, and the South Carolina Department of Insurance. The motion seeks to enjoin the Defendants, Jessica K. Altman, as Rehabilitator of Senior Health Insurance Company of Pennsylvania, Patrick H. Cantilo, as Special Deputy Rehabilitator of Senior Health Insurance, Company of Pennsylvania, and Senior Health Insurance Company of Pennsylvania in Rehabilitation, from taking any action in furtherance of their expressed plans to, without first obtaining required regulatory approval from the State, raise premium rates, reduce benefits, or both under certain binding contracts of insurance issued in the State of South Carolina or held by residents of this State, including, but not limited to, notifying policyholders of proposed rate or benefit changes or requesting that they select rates or benefits different from those authorized by

the appropriate state regulator and called for under the terms of the contract, charging additional premium, or withholding, delaying or encumbering benefits in whole or in part. Notice duly having been provided to all parties, a hearing was held before the undersigned at 10:30 a.m. on December 15, 2021, in the Court of Common Pleas for Richland County. Geoffrey R. Bonham, Associate General Counsel for the South Carolina Department of Insurance, appeared for the Plaintiffs. Tracy L. Eggleston, Esq. and Michael J. Broadbent, Esq., both of Cozen O'Connor P.C., appeared for the Defendants.

### **FINDINGS OF FACT**

After consideration of Plaintiffs' motion and the arguments presented by the parties at the hearing, I find as follows:

1. All parties were properly served notice of the hearing.
2. Plaintiff Raymond G. Farmer is the Director of the South Carolina Department of Insurance (the "Director").
3. Plaintiff South Carolina Department of Insurance (the "Department") is an agency of the State of South Carolina created and charged by the South Carolina General Assembly to regulate the business of insurance in this State. *See generally* S.C. Code Ann. §§ 38-1-10 *et seq.* ("The Insurance Law").
4. Defendant Jessica K. Altman is the Commissioner of Insurance for the Commonwealth of Pennsylvania and has been appointed Rehabilitator of Senior Health Insurance Company of Pennsylvania (the "Rehabilitator") by order of the Commonwealth Court of Pennsylvania ("Commonwealth Court") dated January 29, 2020 (the "Rehabilitation Order"). (Defs. Exh. 1.)
5. Defendant Patrick H. Cantilo was appointed by the Rehabilitator as Special Deputy

Rehabilitator (the “SDR”) of Senior Health Insurance Company of Pennsylvania. He generally has the power to act on behalf of the Rehabilitator, subject to the control and direction of the Rehabilitator. (Defs. Exh. 1 at ¶¶ 2, 14; Decl. of Cantilo at ¶¶ 2, 9.)

6. Defendant Senior Health Insurance Company of Pennsylvania (“SHIP”) is a life and health insurance company domiciled in the Commonwealth of Pennsylvania that administers a closed block of long-term care insurance policies issued in over forty states. A fraction of its business remains. (Defs. Exh. 3 at p. 2-3.)

7. SHIP was issued a certificate of authority to conduct the business of insurance in South Carolina on April 8, 1988. (Ver. Mot. at ¶ 6.) It is undisputed that, like all long-term care insurers licensed in this State, SHIP has previously submitted proposed rate increases to the South Carolina Department of Insurance for review and approval in accordance with South Carolina law. (Ver. Mot. at ¶¶ 6, 18.)

8. The average SHIP policyholder age is approximately 87 years of age and the average policyholder on claim is approximately 90 years old. At present, there are approximately 300 policies issued in South Carolina by SHIP, and there are other SHIP policyholders residing in South Carolina whose policies were issued in other states. (Defs. Exh. 3 at p. 4; Ver. Mot. at ¶ 7.)

9. SHIP has been insolvent<sup>1</sup> since at least December 31, 2018, having reported a deficit of approximately a half-billion dollars as of that date; and, SHIP’s financial condition has continued to deteriorate, with a current deficit of approximately \$1.2 billion. (Pls. Exh. A at p. 45 ln. 2-5, p. 46 ln. 9-10, p. 240 ln. 17-25, p. 292 ln. 11-12.; Defs. Exh. 3 at p. 1.)

10. The Pennsylvania Insurance Department (the “PID”) has not sought a declaration

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<sup>1</sup> Compare 40 Pa. Stat. § 221.3 (defining “Insolvency” within context of receivership) *with, e.g.*, 40 Pa. Stat. § 991.1702 (defining “Insolvent insurer” in the context of guaranty association coverage).

of insolvency, which would have triggered guaranty association coverage in the affected states; however, it did file an application to place SHIP into rehabilitation in the Commonwealth Court of Pennsylvania on January 23, 2020. (*See generally* [http://www. https://www.shipltc.com/court-documents](http://www.https://www.shipltc.com/court-documents).)

11. That application was granted by the Rehabilitation Order entered on January 29, 2020. The Rehabilitation Order is not a subject of dispute between the parties. (Defs. Exh. 1.)

12. Plaintiffs are not parties to the Pennsylvania rehabilitation proceedings, nor are SHIP policyholders represented by class representatives or legal counsel in those proceedings. (*See* Defs. Exh. 3.) Policyholders were also not provided formal legal process or service of process. (*See* Defs. Exh. 2.)

13. SHIP was the sole respondent in the Pennsylvania proceedings. (*See* Defs. Exh. 3.)

14. Three states, Massachusetts, Maine and Washington, intervened in those proceedings. (*Id.* at p. 6.)

15. A Second Amended Rehabilitation Plan (the “Plan”) was filed on or about May 3, 2021 and approved by a single judge of the Commonwealth Court of Pennsylvania by order filed on August 24, 2021, which was amended by order entered on November 4, 2021. (Defs. Exh. 3.)

16. An appeal by the intervening three states is pending before the Pennsylvania Supreme Court, as is an application for stay. Approximately twenty (20) other state insurance regulators have expressed their support for the stay as *amici curiae*. (Defs. Exh. 6.)

17. Several large insurers -- Anthem, Inc., Health Care Service Corporation, Horizon Healthcare Services, Inc. d/b/a Horizon Blue Cross Blue Shield of New Jersey, and UnitedHealthcare Insurance Company -- appeared as intervenors in the proceedings and were represented by counsel. These companies fully support the Plan and oppose a stay in the

Pennsylvania proceedings. (Defs. Exh. 3 at p. 6; *see generally* <http://www.https://www.shipltc.com/court-documents>.)

18. Under the Plan, Defendants will impose nationwide rates without filing those rates with state regulators for review and approval in accordance with each state's insurance laws. In some cases, the rate imposed will be more than double the amount of premium currently paid and can reasonably be expected to force policy lapses. Policyholders may be able to avoid some of the increases, but only if they agree to a decrease in benefits currently provided under their policies. (Pls. Exh. B.)

19. The Plan contains a so-called "opt-out" process under which SHIP submits rates to individual states that "opt-out" of the nationwide rate under those states' respective rate approval statutes. However, it also provides that if an "opt-out" state does not approve the rate demanded, that state's policyholders will incur a further downgrade to their benefits. The Rehabilitator "DOES NOT recommend that states opt out because that is generally expected to be disadvantageous to affected policyholders." (Pls. Exh. B at p. 108-118 & Pls. Exh. C, FAQ. 9.)

20. Under the Plan, Defendants gave states until November 15, 2021, to provide written notice, under oath, of their decision to "opt-out." (Pls. Exh. C.) Plaintiffs maintain that they are not subject to nor bound by the Plan.

21. Defendants do not dispute that the changes to rates, benefits or both will reduce the insurer's shortfall and that this in turn would reduce the burden of a declared insolvency on guaranty associations. (Pls. Exh. A at p.78 ln. 19-23, p. 79 ln. 4, p. 83-84 ln. 20-18, p. 289 ln. 9-18 & p. 292 ln. 11-25; Pls. Exh. B at p. 19.).

22. The rate increases and reductions in benefits would also appear to have a permanent adverse effect on policyholders' guaranty association benefits in the likely event that SHIP is

placed into liquidation at a later date: the Defendant Cantilo has admitted in previous testimony that “it is not likely that we will magically restore SHIP to solvency, but it is likely that the plan . . . would substantially reduce the deficit.” (Pls. Exh. A at p. 80 ln. 6-12; Pls. Exh. B at p. 14.)

23. Plaintiffs are concerned that, despite SHIP being inevitably headed for liquidation, or perhaps because of it, Defendants are attempting to use the rehabilitation proceedings to (1) coerce vulnerable elderly policyholders into paying exceptionally high rates, accepting substantially less benefits than what they are entitled to under their contracts, or even lapsing on their policies altogether, and (2) avoid state law, specifically restraints on premium increases and changes to policy forms, in an effort to permanently reduce the amount of guaranty association protection benefits each policyholder would receive in a liquidation, resulting in savings to large insurers in the form of substantially smaller guaranty association assessments. They are concerned that this aspect of the Plan violates the law and elevates the interests of large insurers over the rights of policyholders under their insurance contracts and applicable State law.

24. Plaintiffs seek an order temporarily enjoining Defendants from taking any measure that purports to bypass, impede, supersede, diminish or interfere in any manner with the State of South Carolina’s laws or regulatory authority over changes to the terms of policies and review and approval of insurance rates in this State, and further temporarily enjoining Defendants from communicating in any form or manner with South Carolina policyholders regarding proposed changes to policy terms or rates without required approval by the State.

## CONCLUSIONS OF LAW

### I. JURISDICTION

The question of personal jurisdiction over a nonresident defendant is one that must be resolved upon the facts of each particular case. *State v. NV Sumatra Tobacco Trading, Co.*, 379

S.C. 81, 88, 666 S.E.2d 218, 221 (2008) (citing *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 611 S.E.2d 505 (2005)). At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction either in the complaint or in affidavits. *Moosally v. W.W. Norton & Co., Inc.*, 358 S.C. 320, 328, 594 S.E.2d 878, 882 (Ct. App. 2004). Because South Carolina treats its long-arm statute as coextensive with the due process clause, the sole question is whether the exercise of personal jurisdiction would violate due process. *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. Determining whether the requirements of due process are satisfied involves a two-prong analysis: (1) the “power” prong, in which minimum contacts provide courts the “power” to adjudicate the action; and (2) the “fairness” prong, which requires the exercise of jurisdiction to be “reasonable” or “fair.” *Moosally*, 358 S.C. at 331, 594 S.E.2d at 884.

Under the power prong, minimum contacts analysis requires a finding that the defendant directed its activities to residents of South Carolina and that the cause of action arises out of or relates to those activities. *Id.* at 331-332, 594 S.E.2d at 884. It is essential that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws. *Id.* This “purposeful availment” element ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts. *Id.*

The individual Defendants authored, presented and are implementing the Plan, under which they avail themselves of the privilege of conducting activities in the State. They have sought not merely to invoke the benefits and protections of South Carolina’s laws, but to supplant them, undermining the authority of the General Assembly and Plaintiffs. By directing their activities to

South Carolina residents under the Plan that gives rise to this action, they have established sufficient contacts with the State to invoke the power of this Court.

In order to determine whether the exercise of jurisdiction over a foreign defendant meets the “fairness” prong, a court must consider the following: (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident’s acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State’s interest in exercising jurisdiction. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508; *see also Leggett v. Smith*, 386 S.C. 63, 76, 686 S.E.2d 699, 706 (Ct. App. 2009). Which state’s law controls is also a factor to be considered under the fairness prong. *Moosally*, 358 S.C. at 332, 594 S.E.2d at 885.

Under the Plan, the Defendants intend to communicate with South Carolina policyholders regarding their insurance contracts and propose to establish new policy rates and benefits. These actions would appear to affect permanently policyholders’ rights under South Carolina law, both immediately and in the event of a liquidation. It is their specific decisions and actions with regard to rates and policy benefits that have prompted the dispute between the parties. Without them, there is no Plan, and it is the unique aspects of that Plan that form the basis for Plaintiffs’ lawsuit. It would be no less inconvenient for the Plaintiffs to bring suit in Pennsylvania than for Defendants to defend their actions here; and, the State has an obvious interest in defending its sovereignty and laws, and of course its citizens. Finally, Plaintiffs’ action itself is for a declaration of South Carolina law. Under these circumstances, the Court’s exercise of jurisdiction over the individual Defendants would also be fair. Accordingly, I find that the requisite prima facie showing of personal jurisdiction over the individual Defendants has been made. *See Moosally*, 358 S.C. at 328, 594 S.E.2d at 882.

The Court clearly has personal jurisdiction of the insurer, which as a condition of its licensure has appointed the Director as its agent for service, *see* S.C. Code Ann. § 38-5-70 (2015), and has conducted the business of insurance in this State for many years.

The Court also has jurisdiction over the subject matter. No state's rehabilitation proceedings grant that state jurisdiction over "the whole field." *Smalls v. Weed*, 293 S.C. 364, 360 S.E.2d 531 (Ct. App. 1987). Although the Pennsylvania Commonwealth Court exercises *in rem* jurisdiction in the rehabilitation proceedings, the res over which that jurisdiction is exercised is the corporation itself, the fictitious entity, not all of the corporation's property for all purposes and certainly not the rights of all persons wherever situated. *See Matter of Rehabilitation of Nat'l Heritage Life Ins. Co.*, 656 A.2d 252 (Del. Ch. 1994). It does not appear that the Commonwealth Court may, simply by reason of the *in rem* nature of the Pennsylvania rehabilitation proceedings, abrogate the power and duties of Plaintiffs or adjudicate the rights of South Carolina policyholders and claimants who are neither parties in the Pennsylvania proceedings nor subject to the jurisdiction of the Commonwealth Court. *See Thormann v. Frame*, 176 U.S. 350 (1900) (judgment *in rem* binds only property within the control of the court).

## **II. GROUNDS FOR A TEMPORARY INJUNCTION**

A preliminary injunction should issue where necessary to preserve the *status quo ante*, upon a showing by the moving party that (1) without such relief it will suffer irreparable harm, (2) it has a likelihood of success on the merits, and (3) there is no adequate remedy at law. *Poynter Invs., Inc. v. Cent. Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010) (citing *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009)). "When a prima facie showing has been made entitling plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits." *Columbia*

*Broadcasting System, Inc. v. Custom Recording Co.*, 258 S.C. 465, 471-472, 189 S.E.2d 305, 308 (1972) (quoting *Transcontinental Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 167 S.E.2d 313 (1969) (citing *D.W. Alderman & Sons Co. v. Wilson*, 69 S.C. 156, 48 S.E. 85 (1904))).

**III. A PRELIMINARY INJUNCTION PURSUANT TO RULE 65, SCRPC IS WARRANTED UNDER THE CIRCUMSTANCES.**

**A. Plaintiffs have shown a likelihood of success on the merits.**

Based on the foregoing, I find Plaintiffs have shown a likelihood of success on the merits. Defendants' Plan appears to be founded on a clearly erroneous reading of the law and appears likely to be overturned on appeal. Regardless, the order approving that Plan is not binding on Plaintiffs or policyholders. Both federal and State law support Plaintiffs' position that insurers licensed by Plaintiffs must obey the laws of this State and that contracts issued in this state are subject to South Carolina law.

The primary state insurance regulatory functions remain as they have been since the enactment of the McCarran-Ferguson [Act], in which "Congress . . . declare[d] that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States." 15 U.S.C. § 1011. "This allows . . . states to perform solvency oversight of the U.S. insurance industry and to regulate insurer behavior in the marketplace." *State Insurance Regulation*, National Association of Insurance Commissioners (NAIC), Center for Insurance Policy and Research (CIPR) (2011), [https://www.naic.org/documents/topics\\_white\\_paper\\_hist\\_ins\\_reg.pdf](https://www.naic.org/documents/topics_white_paper_hist_ins_reg.pdf).

"State legislatures are the public policymakers that establish . . . broad policy for the regulation of insurance by enacting legislation providing the regulatory framework under which insurance regulators operate. They establish laws which grant regulatory authority to regulators

and oversee state insurance departments and approve regulatory budgets.” *Id.* “State insurance regulatory systems are accessible and accountable to the public and sensitive to local social and economic conditions.” *Id.* “State regulators protect consumers by ensuring that insurance policy provisions comply with state law, are reasonable and fair, and do not contain major gaps in coverage that might be misunderstood by consumers and leave them unprotected. The nature of the regulatory reviews of rates, rating rules and policy forms varies somewhat among the states depending on their laws and regulations.” *Id.*

The South Carolina General Assembly has delegated its regulatory authority under the McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015, to the Department. Pursuant to S.C. Code Ann. § 38-3-10 (2015), the General Assembly “established a separate and distinct department of this State, known as the Department of Insurance. The department must be managed and operated by a director appointed by the Governor upon the advice and consent of the Senate.” Pursuant to S.C. Code Ann. § 38-3-60 (2015), “The director or his designee must follow the general policies and broad objectives enacted by the General Assembly regarding the operation of the insurance industry in this State.” S.C. Code Ann. § 38-3-110 (2015) sets forth the Director’s responsibilities, which include the duty to:

(1) supervise and regulate the rates and service of every insurer in this State and fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be observed and followed by every insurer doing business in this State. Nothing contained in this title authorizes or requires a review by the department or the director of any order of the director's designee or the deputy director under the Administrative Procedures Act. This item does not grant any additional authority to the director or his designee with regard to insurance rates other than the ratemaking authority specifically granted to the director or his designee, or the Department of Insurance for certain kinds of insurance in other provisions of this title;

and to:

(2) see that all laws of this State governing insurers or relating to the business of insurance are faithfully executed and make regulations to carry out this title and all other insurance laws of this State, the enforcement or administration of which is not otherwise specifically provided for.

The legislature has also provided, pursuant to S.C. Code Ann. § 38-61-10 (2015), “All contracts of insurance on property, lives, or interests in this State are considered to be made in the State and all contracts of insurance the applications for which are taken within the State are considered to have been made within this State and are subject to the laws of this State.” It has enacted and approved detailed and extensive statutes and regulations governing long-term care insurance policies and rates, including provisions for the approval of rates by the Department. *See* S.C. Code Ann. §§ 38-72-10 *et seq.*; S.C. Code Regs. § 69-44. Under the Long-Term Care Insurance Act, S.C. Code Ann. §§ 38-72-10 *et seq.*, “All premium rate schedules for long-term care insurance must be filed with the [South Carolina Department of Insurance] and are subject to the prior approval of the director or his designee.” S.C. Code Ann. § 38-72-75(A) (2019); *see also* Act No. 6 of 2019. An insurer may not charge a premium to an insured under a policy or contract of long-term care insurance before the applicable premium rate is filed and approved, and an insurer may not change the premium charged to an insured under a policy or contract of long-term care insurance until the applicable premium rate change has been filed with and approved by the Director or his designee. *Id.* “The director or his designee may hold a public hearing or solicit public comments as a part of the process to review long-term care insurance rate filings received by the director or his designee.” S.C. Code Ann. § 38-72-75(C) (2019). Each decision of the Director or his designee about premium rates is subject to review under the Administrative Procedures Act (APA). S.C. Code Ann. § 38-72-75(D) (2019). S.C. Code Regs. 69-44 also provides for the comprehensive regulation of long-term care insurance policies, including rates, forms and required market practices.

In addition, our Supreme Court has held that because the authority to determine what insurance premium rates are just and reasonable is vested in the Department, not even courts should adjudicate what a reasonable rate might be in a collateral proceeding. *Cf. Temporary Services, Inc. v. American Intern. Group, Inc.*, 388 S.C. 348, 351, 697 S.E.2d 527, 529 (2010); § 2:34. Rates—Judicial review, 1 Couch on Ins. § 2:34 (“Ratemaking is generally not a judicial function. Indeed, many jurisdictions have adopted the filed rate doctrine which expressly prohibits courts from imposing rates different than those approved by the state insurance department.”) To the extent Defendants might rely on the Pennsylvania court’s order approving the Plan and the rate-setting scheme within, this would appear to violate the filed rate doctrine. This doctrine preserves the stability, uniformity, and finality inherent in rates filed with the regulatory agency and what has been determined to be a reasonable rate by that agency. *Edge v. State Farm Mut. Auto. Ins. Co.*, 366 S.C. 511, 623 S.E.2d 387 (2005).

Pennsylvania law also appears to militate in favor of Plaintiffs’ motion. That state’s highest court has made clear that as a creature of statute, an insurance commissioner acting as a rehabilitator “can only exercise those powers which have been conferred upon it by the Legislature in clear and unmistakable language.” *Aetna Cas. and Sur. Co. v. Com., Ins. Dept.*, 638 A.2d 194 (Pa. 1994) (quoting *Com., Human Relations Commission v. Transit Cas. Ins. Co.*, 387 A.2d 58, 62 (Pa. 1978)). *See also Koken v. Legion Ins. Co.*, 831 A.2d 1196 (Pa. Commw. 2003), *aff’d sub nom. Koken v. Villanova Ins. Co.*, 878 A.2d 51 (Pa. 2005). Defendants Rehabilitator and SDR have only those powers conferred upon them by 40 Pa. Stat. Ann. § 221.16. This statute prescribes the powers and duties of the rehabilitator, who has “all the powers of the directors, officers and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator” and “full power to direct and manage, to hire and discharge employees subject to

any contract rights they may have, and to deal with the property and business of the insurer.” *Id.* These powers are limited and equivalent to those of new management, and rehabilitators and insurance companies in rehabilitation, including SHIP, must therefore obey the insurance laws of each the states in which they conduct the business of insurance. *See id.* (rehabilitator has “full power to direct and manage” the insurer). The rehabilitation statutes do not appear to contain “clear and unmistakable language” permitting a rehabilitator to unilaterally set new rates and policy terms nationwide. Under Pennsylvania law, a rehabilitator’s powers are sufficiently limited as to prevent her from even amending an insurer’s bylaws. *See Koken*, 831 A.2d at 1227.

In maintaining that South Carolina is bound by the Plan, Defendants appear to rely on the Full Faith and Credit Clause of the U.S. Constitution. Assuming, *arguendo*, that the Pennsylvania approval order is a “judgment” for purposes of full faith and credit, South Carolina does not appear obligated to obey it in contravention of its own laws. As noted, the jurisdiction of the Pennsylvania court and the extraterritorial reach of the rehabilitation proceedings is limited. *See, e.g., Smalls*, 293 S.C. at 371, 360 S.E.2d at 534; *see also Heritage Life*, 656 A.2d at 259-260. Even the Pennsylvania court seems to indicate that its order is binding only on those who appeared before it. Although that order is in places ambiguous as to its intended reach, the court does plainly state, “Once this Court renders a judgment on the Second Amended Plan, it is Maine, Massachusetts, and Washington [the three intervening regulators] that owe this Court’s judgment full faith and credit.” (Defs. Exh. 3 at p. 61.)

Moreover, full faith and credit requires only that every state give a foreign judgment the *res judicata* effect which that judgment would be accorded in the state which rendered it. *Durfee v. Duke*, 375 U.S. 106 (1963). Under Pennsylvania law, application of *res judicata* requires that the two relevant proceedings possess several common elements, including identity of the parties.

*Robinson Coal Co. v. Goodall*, 72 A.3d 685 (Pa. Super. 2013). Plaintiffs were not parties to the Pennsylvania proceedings. The constitutional command of full faith and credit does not compel South Carolina to defer to a Pennsylvania court where the matter was neither fully and fairly litigated nor involved the relevant parties: “Before a court is bound by the judgment rendered in another State, it may inquire into the jurisdictional basis of the foreign court’s decree” and “[i]f that court did not have jurisdiction over the subject matter or the relevant parties, full faith and credit need not be given.” *Underwriters Nat’l Assurance Co. v. N.C. Life & Accident & Health Ins. Guar. Ass’n.*, 455 U.S. 691, 705 (1982).

To the contrary, enforcing Defendants’ apparent attempt to supplant the laws of South Carolina and other states risks adoption of a “policy of hostility to the public Acts” of each of the forty-plus affected states, resulting in a direct injury to their sovereignty in violation of the Full Faith and Credit Clause. *See Franchise Tax Bd. v. Hyatt*, 578 U.S. 171 (2016); *Allstate Ins. Co. v. Hague*, 449 U.S. 302 (1981); *Carroll v. Lanza*, 349 U.S. 408 (1955). “The very nature of the federal union of states, to which are reserved some of the attributes of sovereignty, precludes resort to the full faith and credit clause as the means for compelling a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.” *Pacific Employers Ins. Co. v. Industrial Accident Comm’n*, 306 U.S. 493, 501 (1939); *see also Alaska Packers Ass’n v. Indus. Accident Comm’n.*, 294 U.S. 532, 547 (1935).

Full faith and credit also need not be granted a judgment obtained in violation of procedural due process. *Purdie v. Smalls*, 293 S.C. 216, 359 S.E.2d 306 (Ct. App. 1987). An insurance policy is a contract between the insured and the insurance company. *Coakley v. Horace Mann Ins. Co.*, 376 S.C. 2, 656 S.E.2d 17 (2007). Statutes governing an insurance contract are part of the contract as a matter of law. *See Williams v. Government Employees Ins. Co. (GEICO)*, 409 S.C. 586, 762

S.E.2d 705 (2014). Here, policyholders appear to have had their contract rights, including the statutory rights that are part of their policies, stripped of them without the benefit of due process. There is no evidence that policyholders, who were not respondents in the Pennsylvania proceedings, received proper service of process or were represented by class representatives or independent legal counsel. Defendants have yet to offer a justification for why policyholders, who Defendants would have bound by the Plan, were not afforded the process apparently due them. *Cf. Underwriters Nat. Assur. Co.*, 455 U.S. at 712 (example of policyholders being represented by legal counsel and class representatives who engaged in “extensive negotiations” with the insurer and the receiver).

Moreover, the Defendants in their own filings appear to concede that the Pennsylvania order is not a final order, but temporary or interlocutory, and thus not entitled to full faith and credit: “Even after approval . . . the Rehabilitator and the Commonwealth Court of Pennsylvania ‘are obligated to interact in order to supervise, implement and regulate equitably the process engaged to rehabilitate an insolvent or financially hazardous insurer.’ Thus, plan approval and implementation remain in the jurisdiction of the Commonwealth Court of Pennsylvania and within its supervision throughout the proceedings.” (Defendants’ Memorandum of Law in Support of their Motion to Dismiss at 6.) *See Purdie*, 293 S.C. at 220, 359 S.E.2d at 308 (temporary or interlocutory order not entitled to full faith and credit).

**B. Plaintiffs have shown that a preliminary injunction is necessary to prevent irreparable harm and that there is no adequate remedy at law.**

A temporary injunction to preserve *the status quo ante* is necessary to prevent irreparable harm. Plaintiffs are specifically charged by the South Carolina General Assembly to uphold the insurance laws of this State. Those laws are designed to protect the policyholders, whose contracts were formed in this State and are subject to its laws and regulations. Notwithstanding the clear

mandate of South Carolina law, the insurer's past compliance with that law, the limited reach of the Pennsylvania proceedings, and the apparent defects in those proceedings, Defendants have made clear their position that SHIP is no longer subject to South Carolina law and have manifested their intention to not obey it and to move forward immediately with implementing changes to South Carolina policies and rates.

The State has a strong interest in protecting policyholders and ensuring that its laws are enforced. If those laws are not enforced, and Defendants are permitted to implement their Plan immediately, Plaintiffs will have not upheld their statutory duty and policyholders will be permanently denied basic rights and suffer permanent and substantial economic harm. In short, Plaintiffs would not have performed the very functions delegated to them by the General Assembly.

Even if Plaintiffs were to fine SHIP or suspend or revoke its license, such after-the-fact measures would not reinstate any permanent or temporary loss of benefits or premium overcharges. The same is true of any lawsuit to recover damages for lost benefits or premium overcharges, which would also be impracticable given the advanced age and typically limited means of the victims. Similarly, a suit by Plaintiffs for damages arising out of violation of this State's laws seems implausible, if not infeasible. An action at law by either Plaintiffs or policyholders would also not undo the substantial confusion and disruption of the marketplace that would have occurred. *See Nutt Corp. v. Howell Rd., LLC*, 396 S.C. 323, 328, 721 S.E.2d 447, 450 (Ct. App. 2011) ("adequate" remedy at law is one that is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity). Conversely, Defendants need do no more than refrain from violating South Carolina law. If they wish to file for a rate increase in accordance with the laws of this State, they have done so in the past and may

do so again.

On the basis of the pleadings and papers in this matter and the arguments of the parties, it appears to the Court that Plaintiffs have shown a likelihood of success on the merits, and that they will suffer immediate, irreparable injury, with no adequate means of redress at law, in that, *inter alia*, without a temporary injunction, the *status quo* would be irretrievably altered with respect to the enforcement of the insurance laws, the order and stability of the insurance marketplace and the rights of policyholders Plaintiffs have the statutory duty to protect. Plaintiffs have therefore made the necessary showing that they are entitled to a temporary injunction - irreparable harm, likelihood of success on the merits, and no adequate remedy at law - thereby establishing grounds for relief pursuant to Rule 65, SCRPC.

**IT IS THEREFORE ORDERED THAT:**

1. Plaintiffs' Motion for Temporary Injunction is hereby GRANTED;
2. Defendants are hereby enjoined from communicating, implementing or enforcing in this State the Plan, otherwise interfering with the rights of SHIP long-term care insurance policyholders or otherwise violating the insurance laws of this State pertaining to long-term care insurance, including, but not limited to, notifying policyholders of proposed rate or benefit changes or requesting that they select rates or benefits different from those authorized by the appropriate state regulator and called for under the terms of the contract, charging additional premium, or withholding, delaying or encumbering benefits in whole or in part, until such time as specified herein;
3. The temporary injunction granted is binding upon the Defendants, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or

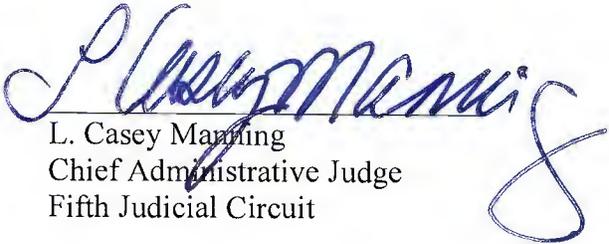
participation with them who receive actual notice of this Order for Temporary Injunction by personal service or otherwise;

4. This temporary injunction is to remain in effect for no more than thirty (30) days after there has been a final adjudication on the merits of the proceedings pending in Pennsylvania, with leave granted to Plaintiffs to apply for an extension; and

5. Pursuant to Rule 65(c), SCRPC, no bond or other security shall be required of Plaintiffs as an officer and agency of the State as a result of the granting of a temporary injunction in this case.

**AND IT IS SO ORDERED.**

JAN 20, 2022  
~~December~~ \_\_, 2021  
Columbia, South Carolina

  
L. Casey Manning  
Chief Administrative Judge  
Fifth Judicial Circuit

# **Exhibit 6**

1 **CERTIFIED MAIL**  
2 **RETURN RECEIPT REQUESTED**

3  
4 **STATE OF ALASKA**  
5 **DEPARTMENT OF COMMERCE, COMMUNITY**  
6 **AND ECONOMIC DEVELOPMENT**  
7 **DIVISION OF INSURANCE**  
8 **STATE OFFICE BUILDING, 9<sup>th</sup> FLOOR**  
9 **333 WILLOUGHBY AVENUE**  
10 **JUNEAU, ALASKA 99801**

11 **In the Matter of:** )  
12 )  
13 )  
14 **Senior Health Insurance** )  
15 **Company of** )  
16 **Pennsylvania** )  
17 **(In Rehabilitation),** )  
18 )  
19 **Respondent.** )  
20 )

21 **Case No.: D 22-03**

22 **CEASE AND DESIST ORDER AND NOTICE OF RIGHT TO HEARING; AS 21.06.080**

23 Pursuant to Alaska Statute AS 21.06.080, the Director of the Division of Insurance hereby issues  
24 this cease and desist order against Senior Health Insurance Company of Pennsylvania ("SHIP")  
25 after determining based on knowledge and belief that SHIP is engaging or is about to engage in  
26 conduct prohibited by the Alaska Insurance Code, and that immediate action is necessary to  
protect the public. The predicate for this administrative action is set forth below.

1. SHIP is a Pennsylvania-domiciled life and health insurance company that became authorized to issue long-term care insurance ("LTC") policies in Alaska as a foreign insurer beginning in 1991

STATE OF ALASKA  
DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT  
DIVISION OF INSURANCE  
P.O. BOX 110805  
JUNEAU, ALASKA 99811-0805  
PHONE: (907) 465-2515 • FAX: (907) 465-3422  
IF YOU NEED HEARING ASSISTANCE, PLEASE CALL ALASKA RELAY AT 711

1 (NAIC Company Code 76325) under the name American Travellers Life Insurance Company.  
2 The Certificate of Authority is currently suspended.

- 3
- 4 2. In recent years, SHIP experienced financial distress and faced the possibility of insolvency.
- 5
- 6 3. On January 29, 2020, upon the application of Jessica Altman, the Commissioner of Insurance for  
7 the Commonwealth of Pennsylvania, the Commonwealth Court of Pennsylvania, in suit number 1  
8 SHP 2020, entered an Order of Rehabilitation placing SHIP into rehabilitation in accordance with  
9 the provisions of Pennsylvania law.
- 10 4. The Order of Rehabilitation appointed Commissioner Altman and her successors in office as  
11 statutory rehabilitator of SHIP pursuant to the provisions of 40 P.S. §§ 221.14 – 221.18, and  
12 required the Rehabilitator to prepare a plan of rehabilitation. Commissioner Altman appointed  
13 Patrick Cantilo as Special Deputy Rehabilitator, with the power to act on the Rehabilitator’s  
14 behalf.
- 15 5. SHIP currently has 20 in force policies issued in Alaska and subject to Alaska law, with the  
16 average age of Alaska policyholders being 87 years old.
- 17
- 18 6. On April 22, 2020, the Rehabilitator filed her Application for Approval of the Plan of  
19 Rehabilitation for SHIP and contemporaneously filed a rehabilitation plan.
- 20
- 21
- 22 7. The rehabilitation plan was approved by a Memorandum Opinion and Order of the Pennsylvania  
23 Commonwealth Court on August 24, 2021, as amended on November 4, 2021.
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8. State insurance regulators from Massachusetts, Maine and Washington objected to the rehabilitation plan and appealed the Order Approving Rehabilitation Plan to the Pennsylvania Supreme Court (Middle District), No. 71 MAP 201. Approximately, 24 state insurance regulators, including the undersigned, have requested leave to support the intervening regulators as amici curiae. The appeal remains pending before the Pennsylvania Supreme Court.
9. Pursuant to the rehabilitation plan Alaska policyholders will be mailed or are already receiving a “coverage election package” that advises them to select one of five options that change their policy terms. These options are all some combination of premium increases or benefit reductions, as well as a non-forfeiture option.
10. The “coverage election package” makes no mention of the pending appeal by state regulators objecting to the plan nor does the “coverage election package” explain how a possible decision reversing the rehabilitation plan may affect the five options or the benefits policyholders may receive.
11. The “coverage election package” advises insureds that a failure to make a timely election will result in the default option of reduced benefits.
12. Pursuant to the rehabilitation plan, Alaska policyholders will be required to complete and return their election forms by mid-March 2022.
13. On February 2, 2022, the rehabilitation court approved the proposed premium rate plan and methodology established by rehabilitation plan that will be used by SHIP nationwide, including in Alaska.
14. SHIP’s rate plan and methodology established by the rehabilitation plan and approved by the rehabilitation court for the five premium and benefit options from which policyholders, including

1 Alaska policyholders, are to select, has not, in its entirety with the accompanying “coverage  
2 election package” it intends to use, been filed with Alaska for review and approval under  
3 Alaska’s form filing requirements.

- 4 15. Without complying with Alaska’s filing requirements for long-term care policies, SHIP will be  
5 using insurance forms that have not been approved; and consequently, will be relying on the  
6 rehabilitation court’s approval of the rehabilitation plan and SHIP’s rating plan and methodology  
7 filed with the Court, rather than Alaska’s, to set benefits for Alaska policyholders.
- 8 16. Further, in addition to the pending appeal of the order approving the rehabilitation plan before the  
9 Pennsylvania Supreme Court, injunctions and administrative cease and desist orders have been  
10 issued against SHIP, prohibiting the rehabilitator from implementing the rehabilitation Plan, in  
11 South Carolina, Louisiana, North Dakota, Washington D.C., Utah, Maryland, and Maine upon  
12 findings by the insurance regulator that relief was necessary to prevent irreparable harm. In each  
13 proceeding, SHIP and the Rehabilitator were named as parties.
- 14 17. In this context, the rehabilitator is requiring Alaska policyholders to make final and binding  
15 coverage elections without explaining the legal risk that the pending appeal creates for the  
16 disruption of the delivery of benefits, including medical services. Moreover, the rate increases  
17 and reductions in benefits will have a permanent adverse effect on policyholders’ guaranty  
18 association benefits in the event SHIP is placed into liquidation at a later date, which is likely  
19 given the uncertainty and necessity of additional rounds of rate increases and benefit reductions  
20 built into the multi-phased rehabilitation plan and SHIP’s previous track-record. Even the Special  
21 Deputy Rehabilitator has conceded that restoring SHIP to solvency is unlikely.
- 22 18. Based on the foregoing predicate, there is substantial cause to believe that SHIP is transacting  
23 insurance business in Alaska in a manner that is causing or is reasonably expected to cause  
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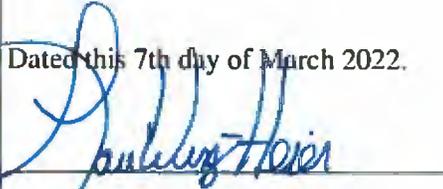
1 significant, imminent, and irreparable injury to Alaska policyholders, including in violation of the  
2 following Alaska laws and regulations:

- 3
- 4 19. The business of insurance in Alaska is regulated pursuant to Alaska Statutes Title 21.
- 5
- 6 20. Pursuant to Alaska Statutes 21.06.080, the Director is authorized to issue a cease and desist order  
7 to any person that is engaging or is about to engage in conduct prohibited by of Title 21.
- 8 21. Pursuant to Alaska Statute 21.42.120, every insurance company shall file with the Director for  
9 approval the policy forms.
- 10
- 11 22. Pursuant to Alaska Statute 21.36 et seq., no person shall engage in an unfair or deceptive act or  
12 practice in the business of insurance in Alaska.
- 13
- 14 23. Pursuant to Alaska Statute 21.36.030, a person may not make, issue, circulate, broadcast, or have  
15 made, issued or circulated, or broadcast an estimate, circular, statement illustration, comparison,  
16 assertion, or other written, electronic, or oral presentation that: (1) Misrepresents the benefits,  
17 advantages, conditions, sponsorship, source or terms of an insurance policy.
- 18
- 19 24. Pursuant to Alaska Statutes 21.36.040, a person may not make, publish, disseminate, circulate, or  
20 place before the public, or cause, directly or indirectly, to be made, published, disseminated,  
21 circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the  
22 form of a notice, circular, pamphlet, letter, or poster, or over a radio or television station, or in  
23 any other way, an advertisement, announcement, or statement containing an assertion,  
24 representation, or statement with respect to the business of insurance or with respect to a person  
25 in the conduct of the conduct of the person's insurance business, that is untrue, deceptive, or  
26 misleading.

**IT IS ORDERED**

- 1
- 2
- 3 A. That SHIP and any of its principles, agents, employees, successors, and assigns are directed to
- 4 cease and desist from implementing the rehabilitation plan in Alaska or otherwise interfering with
- 5 the rights of SHIP's Alaska policyholders or violating the insurance laws and regulations of
- 6 Alaska, including by mailing "coverage election packages" and notifying Alaska policyholders of
- 7 proposed rate or benefit modifications SHIP intends use in place of the policyholders' existing
- 8 rates and benefits, none of which has been authorized by the Director.
- 9
- 10 B. That for the duration of this cease and desist order, SHIP shall continue to abide by the current
- 11 policy terms, benefits and premium levels for Alaska policyholders in effect prior to approval of
- 12 the rehabilitation plan.
- 13
- 14 C. This Order does not prohibit SHIP from curing any of its election packet and form filing
- 15 deficiencies or from obtaining the approval thereof.

16 Dated this 7th day of March 2022.

17   
18 Lori Wing-Heier  
19 Director

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STATE OF ALASKA  
DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT  
DIVISION OF INSURANCE  
P.O. BOX 110805  
JUNEAU, ALASKA 99811-0805  
PHONE: (907) 465-2515 • FAX: (907) 465-3422  
IF YOU NEED HEARING ASSISTANCE, PLEASE CALL ALASKA RELAY AT 711

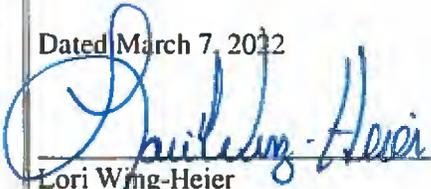
**NOTICE OF RIGHT TO REQUEST A HEARING**

SHIP may contest this Order pursuant to AS 21.06.170-.220. You have 10 days after the Order is delivered to file a written demand for a hearing.

Your written request for a hearing must be directed to:

Lori Wing-Heier  
Director  
Alaska Division of Insurance  
550 W 7th Ave, Ste 1560  
Anchorage, AK 99501-3567

Dated March 7, 2012

  
Lori Wing-Heier  
Director

# **Exhibit 7**

BEFORE THE INSURANCE COMMISSIONER  
FOR THE STATE OF ARKANSAS

IN THE MATTER OF

A.I.D. NO. 2022- 19

SENIOR HEALTH INSURANCE COMPANY  
OF PENNSYLVANIA, IN REHABILITATION;  
JESSICA ALTMAN, IN HER OFFICIAL  
CAPACITY AS STATUTORY REHABILITATOR OF  
SENIOR HEALTH INSURANCE COMPANY  
OF PENNSYLVANIA; AND  
PATRICK CANTILO, IN HIS OFFICIAL CAPACITY AS  
DEPUTY STATUTORY REHABILITATOR OF  
SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA

ORDER TO CEASE AND DESIST

Now on this day the matter of Senior Health Insurance Company of Pennsylvania, ("SHIP"), Jessica Altman, and Patrick Cantilo (collectively referred to herein as "Respondents"), is taken under consideration by Alan McClain, Insurance Commissioner for the State of Arkansas ("Commissioner"), as presented by Gray Allen Turner, Associate Counsel, Legal Division of the Arkansas Insurance Department ("Department").

Parties

Respondent Jessica K. Altman is the Commissioner of Insurance for the Commonwealth of Pennsylvania and has been appointed as Rehabilitator for Senior Health Insurance Company of Pennsylvania ("Rehabilitator") by order of the Commonwealth Court of Pennsylvania ("Commonwealth Court") dated January 29, 2020 ("Rehabilitation Order").

Respondent Patrick H. Cantilo was appointed by the Rehabilitator as Special Deputy Rehabilitator of Senior Health Insurance Company of Pennsylvania with the power to act on behalf of the Rehabilitator, subject to the control and direction

of the Rehabilitator.

Respondent Senior Health Insurance Company of Pennsylvania (“SHIP”), State-Based Services Company Number 64232124, is a stock limited life and health insurance company that administers a closed block of long-term care (“LTC”) insurance policies. SHIP is domiciled in the Commonwealth of Pennsylvania.

### Introduction

Pursuant to Ark. Code Ann. § 23-61-103(f)(1), the Arkansas Insurance Commissioner may summarily issue a cease and desist order to any person or company engaged in an unfair or deceptive act or practice in the business of insurance that has caused, is causing, or is about to cause substantial and material harm.

The Rehabilitator of Senior Health Insurance Company of Pennsylvania, the Deputy Rehabilitator, SHIP, and SHIP’s principles, employees, and agents are persons engaged in an unfair or deceptive act or practice in the business of insurance that are about to cause substantial and material harm. Therefore, consistent with the authority in Ark. Code Ann. § 23-61-103(f)(1)(A), and for the reasons explained below, the Commissioner determines a cease and desist order is appropriate.

### Findings of Fact

From the facts, matters, and other things before the Commissioner, he finds and concludes as follows:

1. On December 19, 1990, the Arkansas Insurance Department issued a certificate of authority for SHIP to conduct the business of insurance in Arkansas. SHIP and its representatives have consented to the jurisdiction of the Arkansas Commissioner. SHIP has approximately 200 current policies in Arkansas.

2. The Pennsylvania Insurance Department (“PID”) filed an application to place SHIP into rehabilitation with the Commonwealth Court of Pennsylvania on

January 23, 2020. The order appointed the Commissioner of the PID, Jessica Altman, and her successors in office as statutory rehabilitator of SHIP. SHIP's most recent financial condition estimates a deficit of approximately \$1.2 billion.

3. Respondents Altman and Castilo decided not to place SHIP in liquidation, which would have triggered the State Life and Health Guaranty Association coverage for affected policyholders, but instead, Commissioner Altman applied to the Commonwealth Court of Pennsylvania on January 23, 2020, to place SHIP in rehabilitation. On January 29, 2020, the Commonwealth Court entered an order placing SHIP in rehabilitation.

4. Neither the Arkansas Insurance Department nor Arkansas SHIP policyholders were parties to the rehabilitation proceedings in Pennsylvania, and Arkansas policyholders were not represented by class representatives or counsel.

5. Commissioner Altman filed a Second Amended Rehabilitation Plan with the Commonwealth Court on May 3, 2021. The Commonwealth Court entered a Memorandum Opinion and Order on August 24, 2021, approving the Plan. The current approved rehabilitation plan, as well as all court filings and orders discussed here, are available on the SHIP rehabilitation website at the following link: <https://www.shipltc.com/court-documents>.

6. Any LTC insurer seeking to increase rates, slash benefits or alter previously approved policy forms cannot do so until and unless submitted to the Department for review and approved by the Commissioner. *See Ark. Code Ann. § 23-67-208(a)*.

7. As of the date this order was issued, the Respondents have not filed for a rate increase or modified policy forms with the Arkansas Insurance Department.

8. The Commissioner has the final authority to determine that an LTC insurer provides reasonable benefits in relation to the premium charged and that the filing does not contain provisions that are unjust, unfair or inequitable. *See Ark. Code Ann. § 23-67-208(a)*.

9. The Respondents have indicated they will not seek or act in compliance with state regulators' approval of their changes to premium rates or benefits, and

have stated: “It is important to note that Plan premium rate increases are not based on state of issue or state of residence.”

10. States other than Pennsylvania where policyholders reside, including Arkansas, were given the untenable option under the Rehabilitation Plan to either opt-in or opt-out of the plan. A state which opts-out is one that elects to make its own determinations as to modifications of premium rates. If a state opts-in, then the state agrees that the Respondents may make rate increases and benefit changes to that state’s policyholders. These changes may include a reduction of benefits to an amount selected by Respondents.

11. If a state that has opted-in denies the requested premium or approves only a lower premium, Respondents’ state they will then adjust the benefits to the level they believe the approved premium supports. Policyholders will have the option of accepting the adjusted premium amount despite the fact it has not been approved by the state regulator to avoid benefit reduction. Under the scheme proposed by Respondents, states that declined to make a selection were deemed to have opted out.

12. Since the Arkansas Insurance Commissioner did not agree that Respondents had the right or ability to alter benefits or premium rates for Arkansas policyholders without his approval, and because he was concerned about the impact of the Plan on Arkansas policyholders, the Commissioner submitted a letter declining to opt in or opt out of the Plan on November 15, 2021, and SHIP now treats Arkansas as if it has opted out. The Respondents’ plan for states that have opted-out is for the Rehabilitator to file a request for approval of rate increases for policies issued in that state. If the opt-out state does not approve the rate increase requested by the Rehabilitator in full, the plan allows for election packages to be sent to policyholders offering benefits and rates not approved by the Arkansas Insurance Department. In its current form, this plan violates Arkansas insurance statutes.

13. Respondents have not submitted any policy forms detailing changes they intend to implement to policies previously approved by the Commissioner, nor

have Respondents submitted any information regarding how they intend to alter the contractual terms of those policyholders on premium waiver in order for the Commissioner to consider these matters pursuant to Ark. Code Ann. § 23-61-208(a).

14. The rehabilitator trustees, standing in the shoes of the insolvent insurer SHIP, are still obligated to comply with Arkansas law in order to change rates or benefits for Arkansas policyholders.

15. With the aim of deficit reduction, the Plan as proposed by the Respondents provides for default provisions against policyholders who do not meet the deadlines set out by the Respondents in the Plan. These default provisions impose significant cuts in benefits on policyholders without any legal service of process or right to contest, many of whom are on claim and receiving long-term care benefits.

16. The Plan and its implementation directly threaten the rights of Arkansas policyholders by breaching contractual terms of the insurance contracts, and further usurps the authority granted the Arkansas Insurance Commissioner to regulate the business of insurance for the state of Arkansas and to protect Arkansas consumers from unjust and inequitable policy provisions.

### Conclusions of Law

From the Findings of Fact contained herein, the Commissioner concludes as follows:

1. That the Commissioner has jurisdiction over the parties and the subject matter involved herein pursuant to Ark. Code Ann. §§ 23-61-103, et. seq., and other provisions so the Insurance Code.

2. The Commissioner may summarily issue a cease and desist order based upon the evidence provided and as contemplated by Ark. Code Ann. § 23-61-103(f)(1)(A), which authorizes the Commissioner to take specific injunctive powers if it appears to him that "upon sufficient grounds or evidence that any person has engaged in or is about to engage in any act or practice constituting a violation of an insurance law,

rule, or order of this state...", and further that the Commissioner may "summarily order the person to cease and desist from the act or practice."

3. Pursuant to Ark. Code Ann. § 23-61-103(f)(1)(A), sufficient grounds have been presented to show that the Respondents have engaged in or are about to engage in an act or practice that violates the Arkansas Insurance Code as set forth in Ark. Code Ann. §§ 23-67-201, et seq. Specifically, Respondents have expressed plans will directly cause substantial harm to the financial and physical well-being of Arkansas policyholders, most of whom are over the age of eighty years.

4. An order to cease and desist is proper and necessary to enforce the insurance laws of the state of Arkansas and to protect policyholders.

5. Pursuant to Ark. Code Ann. § 23-61-103, the Commissioner hereby orders the SHIP, its rehabilitators, and their representatives to immediately cease and desist in the State of Arkansas from offering any modified policies or rate to current Arkansas SHIP long-term care policyholders for the reasons stated above.

6. The Respondents are prohibited from taking any action in furtherance of their expressed plans to raise premium insurance rates, reduce benefits, and alter previously approved contracts of insurance issued in the state of Arkansas or held by residents of the state of Arkansas, without first obtaining the required regulatory approval of the Arkansas Insurance Commissioner.

7. Respondents are hereby instructed that this Cease and Desist Order is effective as of the date of the Commissioner's signature below.

8. The Company or the rehabilitator trustees may request a hearing on this Order, in writing, within thirty (30) days of its entry if the Company or the trustees desire a hearing pursuant to Ark. Code Ann. § 23-61-303.

9. The Department reserves the right to amend this Cease and Desist Order in the event it is determined that Respondents issued modified long-term care policies to Arkansas SHIP policyholders.

IT IS THEREFORE ORDERED AS FOLLOWS:

1. Respondents are ordered to cease and desist the conduct of offering to amend existing long-term care policies to current SHIP policyholders based on new rates or modified benefits because Respondents have not filed rate changes
2. Respondents are ordered to withdraw any offer made to existing Arkansas policyholders to modify policies or rates.

IT IS SO ORDERED THIS 3rd day of March, 2022.



---

ALAN MCCLAIN  
INSURANCE COMMISSIONER  
STATE OF ARKANSAS

# **Exhibit 8**



# STATE OF CONNECTICUT

## INSURANCE DEPARTMENT

IN THE MATTER OF: )  
)  
) Docket No. LH 22-13  
SENIOR HEALTH INSURANCE COMPANY )  
OF PENNSYLVANIA (IN REHABILITATION) )  
)  
Respondent )

### CEASE AND DESIST ORDER

The Insurance Commissioner of the State of Connecticut (hereinafter “the Commissioner”) has cause to believe that the acts, practices, transactions, and course of business engaged in by Senior Health Insurance Company of Pennsylvania (In Rehabilitation) (hereinafter “SHIP”) may be conducted in an illegal and improper way and that irreparable harm may be caused to the citizens of the State of Connecticut. As a result, the issuance of the following Cease and Desist Order appears warranted:

### FINDINGS OF FACT

1. SHIP is a life and health insurance company that administers a closed block of long-term care insurance policies and is organized pursuant to the laws of the Commonwealth of Pennsylvania and has its principal place of business at 550 Congressional Boulevard, Suite 200, Carmel, Indiana 46032. SHIP is domiciled in Pennsylvania.

2. SHIP is licensed in approximately forty-six (46) states as well as the District of Columbia and the United States Virgin Islands; however, SHIP does not currently hold, nor has it ever held, an insurance license issued by the Connecticut Insurance Department (“Department”).

3. Despite not holding an insurance license issued by the Department, at present SHIP insures approximately twenty-five (25) in-force individual long-term care insurance policies that were issued in Connecticut by a predecessor of SHIP from 1990 through 1994. SHIP insures approximately fifty-seven (57) other in-force individual long-term care insurance policies for policyholders residing in Connecticut but with policies issued in other states.

4. SHIP has been insolvent since at least December 31, 2018, when it reported a deficit of approximately a half-billion dollars. On January 29, 2020, upon the application of the Insurance Commissioner of Pennsylvania (“Rehabilitator”), the Commonwealth Court of Pennsylvania, entered an Order of Rehabilitation placing SHIP into rehabilitation in accordance with the provisions of Pennsylvania law.

5. Patrick H. Cantilo (“Special Deputy Rehabilitator”) was appointed by the Rehabilitator as Special Deputy Rehabilitator of SHIP generally having the power to act on behalf of the Rehabilitator, subject to the control and direction of the Rehabilitator.

6. On April 22, 2020, the Rehabilitator filed her Application for Approval of the Plan of Rehabilitation for SHIP along with a proposed Rehabilitation Plan and subsequently filed a Second Amended Rehabilitation Plan on May 3, 2021. Such Rehabilitation Plan was approved by a Memorandum Opinion and Order of the Commonwealth Court of Pennsylvania on August 24, 2021.

7. On or about August 26, 2021, the Department received a letter from the Rehabilitator concerning information for states about opting-out of the rate approval provisions of the Rehabilitation Plan. On September 30, 2021, the Department received formal notice which indicated an “opt-out deadline” of November 15, 2021.

8. On November 15, 2021, the Commissioner forwarded correspondence to the Rehabilitator and Special Deputy Rehabilitator of SHIP that the Department would withdraw from the premium rate increase approval provision of the Rehabilitation Plan for

all of the in force long-term care insurance policies currently held by SHIP and first issued by SHIP or its predecessors in Connecticut. Such correspondence stated that any application and rate request made by SHIP must be filed with the Department pursuant to applicable Connecticut law and the Department would conduct its review and assessment of such application and premium rate request pursuant to Connecticut law.

9. On December 2, 2021, SHIP filed with the Department an Application for Rate Increases (SERFF Tr Number SHPT-133065666) (“Application”) on twenty-one (21) of the in-force individual long-term care insurance policies issued in Connecticut seeking substantial premium increases on Connecticut policyholders. Such filing was made with the Department pursuant to General Statutes § 38a-501 which requires, among other items, that an issuer shall not use or change premium rates for a long-term care policy unless the rates have been filed with and approved by the Insurance Commissioner.

10. Long-term care insurance policies must comply with the basic requirements as set forth in General Statutes § 38a-501, for individual long-term care policies, and General Statutes § 38a-528, for group long-term care policies.

11. As part of the Application, the Special Deputy Regulator stated that under the Rehabilitation Plan: “your office’s decision on the rates requested in the attached memorandum must be provided to us by February 15, 2022. If a response is not provided by this date, this filing and the requested rate increases will be deemed denied in their entirety. In accordance with the Approved Rehabilitation Plan, a filing deemed denied in its entirety will result in policyholder options being calculated and presented to policyholders for selection assuming your state has approved a 0% premium rate increase.”

12. In the Q&A portion of the Opt-out Notification sent to the Department on September 30, 2021, the Rehabilitator identified that if a state rejects part or all of the requested premium rate modifications, the Rehabilitator will adjust the affected premium rates to the amount approved by the state and depending on the option elected by the

affected policyholder, benefits under the policy may be reduced to the amount that can be funded by the approved rate on an if knew basis.

13. The Application's Actuarial Memorandum further states that if a state approves an amount less than the full requested premium rate increase, policyholders will have four options provided to them, as described in the Rehabilitation, and election notification letters will be sent to such policyholders.

14. From December 2, 2021, through February 1, 2022, the Department submitted supplemental questions to SHIP concerning its Application and SHIP submitted responses.

15. Based upon the information contained in the Application and responses to Department questions, on February 14, 2022 the Department issued a Disapproval of the Application to SHIP ("Disapproval of the Application").

16. The Disapproval of the Application was based on the following:

a. According to the actuarial memorandum included in the rate filing submitted by SHIP, current premiums vary by issue age, daily benefit, benefit period, elimination period, inflation protection, any applicable riders selected, and any applicable discounts. The rate increase requested in this filing has been prepared on a policy-level basis using an If Knew Premium rating methodology. This means that the requested rate increase is dependent on each individual policyholder's characteristics (e.g., gender, issue age) and product features (e.g., benefit period, inflation protection), without regard to a policyholder's current attained age, state of issue, state of residence, health conditions, or premium-paying status.

b. The SHIP rate filing request is prepared on a seriatim basis for each individual policyholders characteristics (e.g. gender, issue age). This methodology is in direct conflict with how the original policy form defined rating classes. As a result, the Connecticut Insurance Department (CID) requested that SHIP provide equivalent

rate increases that are not based on gender, as gender was not an original defined rating class. The response the CID received from SHIP is as follows “Our actuarial model utilizes assumptions that vary by gender. Unfortunately, at this time we cannot devote the resources necessary to provide gender-neutral rate increases.”

17. Despite the issuance of the Disapproval of the Application, SHIP has affirmatively notified the Department in the Application, through responses to Department questions on the Application, and forms of general communication that on or after February 15, 2022, it intends to proceed with transmitting election notifications to the Connecticut policyholders identified in its Application in which such policyholder will be forced to elect options identified in the Rehabilitation Plan which may include either substantial increases in premium rates or substantial reductions in benefits. Such actions are in direct violation of General Statutes § 38a-501.

18. SHIP is further in violation of Connecticut law as it is not licensed as an insurer by the Department. General Statutes § 38a-272 prohibits any person or insurer from doing, directly or indirectly, any of the acts of an insurance business, as defined in General Statutes § 38a-271, unless authorized under the general statutes. General Statutes § 38a-41 prohibits any insurers or health care center from doing any insurance business or health care business in Connecticut, except if authorized by the Insurance Commissioner.

### CONCLUSIONS

The facts set forth in paragraphs 1 through 18 of the Findings of Fact herein demonstrate that SHIP is in violation of General Statutes §§ 38a-272 and 38a-41 and has further demonstrated immediate plans to violate General Statutes § 38a-501 and that the continuation of such activities would cause irreparable harm to the residents of the State of Connecticut. The public welfare, therefore, imperatively requires that SHIP, Respondent herein, be ordered to CEASE AND DESIST immediately from engaging in acts violating any provisions of Title 38a of the Connecticut General Statutes, principally from taking

any actions or transmitting any notices with the effect of reducing benefits or raising insurance rates on SHIP in-force long-term care policies issued in Connecticut, and conducting any further insurance business in Connecticut as an unlicensed entity, with the exception of continuing to administer existing Connecticut issued individual long-term care insurance policies as such insurance policies are guaranteed renewable.

Pursuant to General Statutes § 38a-17, IT IS THEREFORE ORDERED by the Insurance Commissioner:

That SHIP IMMEDIATELY CEASE AND DESIST from (1) engaging in acts in violation of any provisions of Title 38a of the Connecticut General Statutes; (2) transmitting notices identified in the Rehabilitation Plan and Application to SHIP policyholders with Connecticut issued policies the intent of which is to either elect raises to insurance premium rates or benefit reductions, or take any other action beyond those identified in the existing policies; and (3) conducting any further insurance business in the State of Connecticut as an unlicensed entity, with the exception of continuing to insure and administer existing Connecticut issued policies.

SO ORDERED this 15th day of February, 2022.



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Andrew N. Mais  
Insurance Commissioner

CERTIFICATION

It is hereby certified that the aforementioned was sent via certified mail, regular mail and electronically delivered on this 15<sup>th</sup> day of February, 2022 to the following:

SENIOR HEALTH INSURANCE  
COMPANY OF PENNSYLVANIA  
(IN REHABILITATION)

550 Congressional Blvd.

Suite 200

Carmel, IN 46032

via email: [phcantilo@cb-firm.com](mailto:phcantilo@cb-firm.com); [Rehabilitation@shipltc.com](mailto:Rehabilitation@shipltc.com)



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Jared T. Kosky, Esq.  
General Counsel

# Exhibit 9

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF INSURANCE, SECURITIES AND BANKING**

IN THE MATTER OF:

Senior Health Insurance Company  
of Pennsylvania (In Rehabilitation),

Respondent.

Case No.: IB-CD-1-22

**SUMMARY CEASE AND DESIST ORDER**

Pursuant to D.C. Official Code § 31-233, the Commissioner of the Department of Insurance, Securities and Banking hereby issues this summary cease and desist order against Senior Health Insurance Company of Pennsylvania (“SHIP”) after determining based on knowledge and belief that SHIP is engaging or is about to engage in conduct prohibited by Chapters 1-55, of Title 31, and any implementing rule thereunder, and that immediate action is in the public interest. The predicate for this administrative action is set forth below.

1. SHIP is a Pennsylvania-domiciled life and health insurance company that became authorized to issue long-term care insurance (“LTC”) policies in the District as a foreign insurer beginning in 1986 (NAIC Company Code 76325).

2. Beginning in 1995, SHIP has filed three requests for premium rate increases for its LTC policies issued in the District. SHIP’s 1995 filing for a 12% increase was approved, its 1998 filing for a 16% increase was approved, and its 2003 filing for a 25% increase was denied. SHIP has not submitted any further

rate filings with the Department since 2003.

3. In recent years, SHIP experienced financial distress and faced the possibility of insolvency.

4. On January 29, 2020, upon the application of Jessica Altman, the Commissioner of Insurance for the Commonwealth of Pennsylvania, the Commonwealth Court of Pennsylvania, in suit number 1 SHP 2020, entered an Order of Rehabilitation placing SHIP into rehabilitation in accordance with the provisions of Pennsylvania law.

5. The Order of Rehabilitation appointed Commissioner Altman and her successors in office as statutory rehabilitator of SHIP pursuant to the provisions of 40 P.S. §§ 221.14 – 221.18, and required the Rehabilitator to prepare a plan of rehabilitation. Commissioner Altman appointed Patrick Cantilo as Special Deputy Rehabilitator, with the power to act on the Rehabilitator's behalf.

6. SHIP currently has 5 in force policies issued in the District and subject to District law, with the average age of the District policyholders being 84 years-old.

7. On April 22, 2020, the Rehabilitator filed her Application for Approval of the Plan of Rehabilitation for SHIP and contemporaneously filed a Rehabilitation Plan.

8. The Rehabilitation Plan was approved by a Memorandum Opinion and Order of the Pennsylvania Commonwealth Court on August 24, 2021, as amended on November 4, 2021.

9. State insurance regulators from Massachusetts, Maine and

Washington intervened in rehabilitation proceedings and appealed the Order approving Rehabilitation Plan to the Pennsylvania Supreme Court (Middle District), No. 71 MAP 201. Approximately, 24 state insurance regulators, including the undersigned, have requested leave to support the intervening regulators as amici curie. The appeal remains pending before the Pennsylvania Supreme Court.

10. In late-January 2022, the Rehabilitator filed for approval by the Commissioner proposed premium rates for the District policyholders, which have been designated by the Rehabilitator as the “If Knew Premium Rates”. Pursuant to the Rehabilitation Plan, the District, which elected to “Opt-Out” of the Rehabilitation Plan while reserving all rights, is being forced to review SHIP’s proposed “If Knew Premium Rates” that have an average premium increase of 425%. If approved, the District policyholders will be mailed a “Coverage Election Package” for the “Opt-In” states that advises them of five policy options to select from that includes some combination of premium increases and/or benefit reductions, as well as a non-forfeiture option. Conversely, if SHIP’s proposed “If Knew Premium Rates” are denied, either in whole or in part, the District policyholders will be mailed a “Coverage Election Package” for “Opt-Out” states advising them of four policy options that are inferior to the “Opt-In” options that includes another combination of premium increases and/or benefit reductions, as well as a non-forfeiture option.

11. Pursuant to the Rehabilitation Plan, District policyholders will be required to complete and return their election forms by mid-March 2022.

12. On February 2, 2022, the Rehabilitation Court approved the proposed premium rate plan and methodology established by Rehabilitator Plan that will be used by SHIP nationwide, including in the District.

13. Notwithstanding SHIP's "If Knew Premium Rate" filing submitted to the District, SHIP's rate plan and methodology established by the Rehabilitation Plan and approved by the Rehabilitation Court for the five "Opt-In" and four "Opt-Out" premium and benefit options from which policyholders, including District policyholders, are to select, has not, in its entirety with the accompanying "Coverage Election Packages" it intends to use, been filed with the District for review and approval under the District's LTC rate and form filing requirements.

14. The Rehabilitator has set a deadline of February 15, 2022, for the Commissioner to approve SHIP's "If Knew Premium Rate" filing. According to the Rehabilitation Plan, if the Commissioner does not approve SHIP's rate filing by February 15, then "Coverage Election Packages" will be mailed to the District policyholders, whereby they will be asked to select from the four "Opt-Out" options. Without complying with the District's rating filing requirements for long-term care policies, SHIP will be using insurance rates and forms that have not been approved; and consequently, will be relying on the Rehabilitation Court's approval of the Rehabilitation Plan and SHIP's rating plan and methodology filed with the Court, rather than the District's, to set rates and benefits for District policyholders.

15. Further, in addition to the pending appeal of the order approving the Rehabilitation Plan before the Pennsylvania Supreme Court, injunctions and

administrative cease and desist orders have been issued against SHIP, enjoining the Rehabilitator from implementing the Rehabilitation Plan, in South Carolina, Louisiana, North Dakota and Maine upon findings that the insurance regulator challenges to the Rehabilitation Plan demonstrated a likelihood of success on the merits and that relief was necessary to prevent irreparable harm. In each proceeding, SHIP and the Rehabilitator were named as parties.

16. In this context, the Rehabilitator is requiring District policyholders to make final and binding coverage elections under a cloud of legal risk that creates the potential for the disruption of the delivery of medical services. Moreover, the rate increases and reductions in benefits will have a permanent adverse effect on policyholders' guaranty association benefits in the event SHIP is placed into liquidation at a later date, which is likely given the uncertainty and necessity of additional rounds of rate increases and benefit reductions built into the multi-phased Rehabilitation Plan and SHIP's previous track-record. Even the Special Deputy Rehabilitator has conceded that restoring SHIP to solvency is unlikely.

17. Based on the foregoing predicate, there is substantial cause to believe that SHIP is transacting insurance business in the District in a manner that is causing or is reasonably expected to cause significant, imminent, and irreparable injury to District policyholders, including in violation of the following District laws and regulations:

18. The business of insurance in the District is regulated pursuant to Chapters 1 – 55, of Title 31, of the D.C. Official Code.

19. Pursuant to D.C. Official Code § 31-233, the Commissioner is

authorized to issue a summary cease and desist order against any person that is engaging or is about to engage in conduct prohibited by Chapters 1 – 55, of Title 31.

20. Pursuant to D.C. Official Code § 31-4712, every life insurance company shall file with the Commissioner for approval the classification of risks and the premium rates appertaining thereto, and policy forms.

21. Pursuant to D.C. Official Code §§ 31-2231 *et seq.*, no person shall engage in an unfair or deceptive act or practice in the business of insurance in the District.

22. Pursuant to D.C. Official Code §§ 31-2231.03, no person shall make, issue, circulate, or cause to be made, issued or circulated, an estimate, illustration, circular or statement, sales presentation, omission, or comparison that: (1) Misrepresents the benefits, advantages, conditions, or terms of a policy.

23. Pursuant to D.C. Official Code §§ 31-2231.04, no person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in a notice, circular, pamphlet, letter, or poster, or over a radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with respect to the business of insurance or with respect to an insurer in the conduct of its insurance business which is untrue, deceptive, or misleading.

**WHEREFORE**, it is so Ordered this 15th day of February 2022 that SHIP and any of its principles, agents, employees, successors, and assigns are directed to cease and desist from implementing the Rehabilitation Plan in the District or otherwise interfering with the rights of SHIP's District policyholders or violating the insurance laws and regulations of the District, including by mailing "Coverage Election Packages" and notifying District policyholders of proposed rate or benefit modifications SHIP intends use in place of the policyholders' existing rates and benefits, none of which has been authorized by the Commissioner.

**WHEREFORE**, it is further Ordered that for the duration of this cease and desist order, SHIP shall continue to abide by the current policy terms, benefits and premium levels for District policyholders in effect prior to February 15, 2022.

This Order does not prohibit SHIP from curing any of its form or rate filing deficiencies or from obtaining the approval thereof.

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Karima M. Woods  
Commissioner  
Department of Insurance, Securities and Banking

## **NOTICE OF RIGHT TO REQUEST A HEARING**

Pursuant to D.C. Official Code § 31-233(b)(2), the Respondent has fifteen (15) calendar days from the date of receipt of this notice to request a hearing to determine whether the proposed action should be taken. If a hearing is requested, the Commissioner, or a designee, shall hold the hearing within thirty (30) days after the date the Commissioner receives your request. If a request for a hearing is not received by the Department within fifteen (15) days from the date of receipt of this notice, the Respondent's right to a hearing will be deemed waived and a final order may be issued.

In addition, pursuant to 26A DCMR §§ 3804.8 – 3804.11, the Respondent has ten (10) business days from the date of receipt of this notice to file a written answer. The answer should be made in writing, and shall admit, deny or admit with an explanation each charge and specification alleged. If an answer is not timely filed, the summary cease and desist order may be entered as final.

Your request for a hearing should be made in writing and addressed to Ms. Sharon Shipp, Deputy Commissioner, Department of Insurance, Securities and Banking, 1050 First Street, NE, Suite 801, Washington, DC 20002.

## **CONDUCT OF HEARING**

If a hearing is requested, the hearing will be governed in accordance with the 26A DCMR §§ 3800 – 3819; and section 10 of the District of Columbia Administrative Procedure Act, D.C. Official Code § 2-509. The Respondent may appear personally or may be represented by legal counsel. The Respondent will have the right to produce witnesses and evidence on your behalf, and to cross-examine witnesses. The strict rules of evidence will not govern the administrative hearing. The Hearing

Officer shall have authority to administer oaths to witnesses.

Anyone testifying falsely after having been administered such an oath shall be subject to the penalties of perjury. Oral or documentary evidence may be received at the hearing. However, the Hearing Officer shall exclude irrelevant, immaterial, and unduly repetitious evidence. Every party shall have the right to present in person or by counsel his or her case and defenses by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for full and true disclosure of the facts.

No motion for a continuance will be granted unless good cause is shown in writing to the Hearing Officer and is made no later than five (5) days prior to the hearing date. Correspondence requesting a continuance should be directed to the Hearing Officer. A copy of any pleading or other written communication addressed to the Department of Insurance, Securities and Banking in this matter should also be sent to the attorney of record for the Department.

If the Respondent, any corporate officer, or any witness to be called, are deaf or because of a hearing impediment cannot readily understand or communicate the spoken English language, the Respondent or the witness may apply to the Department for the appointment of a qualified interpreter. In addition, if Respondent or any witnesses to be called require any other special accommodations, please contact the Hearing Officer at least five (5) business days prior to the hearing.

**CERTIFICATE OF SERVICE**

I hereby certify that on February 15, 2022, I caused a copy of the foregoing Summary Cease and Desist Order to be sent by certified mail to:

Jessica K. Altman  
Rehabilitator

Patrick H. Cantilo  
Cantilo & Bennett, L.L.P.  
Special Deputy Rehabilitator

Senior Health Insurance Company  
of Pennsylvania (In Rehabilitation)  
550 Congressional Boulevard, Suite 200  
Carmel, IN 46032

service@cb-firm.com

/s/Adam Levi  
Adam Levi

# **Exhibit 10**

**IN RE:** \* **BEFORE THE**  
**PROPOSED RATE INCREASE SUBMITTED** \* **MARYLAND INSURANCE**  
**BY SENIOR HEALTH INSURANCE** \* **COMMISSIONER**  
**COMPANY OF PENNSYLVANIA,** \* **CASE NO.: MIA-2022-02-011**  
**IN REHABILITATION** \*

\* \* \* \* \*

**ORDER OF DISAPPROVAL**

The matter before the Commissioner is the request to increase long term care rates filed by the Rehabilitator of the Senior Health Insurance Company of Pennsylvania (“SHIP”), Patrick H. Cantilo as Special Deputy Rehabilitator of SHIP, and SHIP, in Rehabilitation (collectively referred to as “Respondents”) (the “Rate Filing”).<sup>1</sup> The Rate Filing proposes to increase by as much as 1,361.09% the rates to be charged by SHIP on certain policies of long term care insurance issued in Maryland that are administered by SHIP.

A virtual quasi-legislative hearing on the Rate Filing was held on February 11, 2022<sup>2</sup> Representatives of SHIP attended the hearing, as did members of the public.<sup>3</sup>

For the reasons set forth herein, the Rate Filing is hereby DISAPPROVED.

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<sup>1</sup> Md. Ann. Code, Ins. Art., §11-703(b) (2017 Repl. Vol.) prohibits a carrier from changing the premium rate charged to an insured under a long-term care insurance policy unless and until the proposed rate change has been filed with and approved by the Commissioner.

<sup>2</sup> Notice of the hearing was issued on January 10, 2022 and posted on the MIA website. See <https://insurance.maryland.gov/Consumer/Pages/Long-Term-Care-Hearing-February-112022.aspx>.

<sup>3</sup> The hearing can be viewed in its entirety on the MIA’s website at: <https://www.youtube.com/watch?v=aB39x1UeXoo>.

## **FINDINGS OF FACT**

1. SHIP is a life and health insurance company domiciled in the Commonwealth of Pennsylvania. It administers a closed block of long-term care insurance policies issued in over forty states.

2. Prior to November 12, 2008, SHIP operated as Conseco Senior Health Insurance Company.<sup>4</sup> From 1997 to 2000, a number of other long term care insurance companies merged into, or were acquired by Conseco Senior Health Insurance Company.

3. On November 12, 2008, the Pennsylvania Insurance Department (“PID”) approved a solvent run-off plan pursuant to which the ownership of Conseco Senior Health Insurance Company was transferred to a Trust and the company was renamed “Senior Health Insurance Company of Pennsylvania,” known colloquially as “SHIP.” The Trust was formed with the authorization and input of PID with the intent to guide SHIP’s run-off as a non-profit enterprise. All of the policies administered by SHIP were issued on or before 2003.

4. Only a small fraction of SHIP’s original business remains in force. The average SHIP policyholder in Maryland is approximately 85 years of age and the average policyholder on claim is approximately 90 years old.

5. The entity now known as SHIP was issued a Certificate of Authority to conduct the business of insurance in Maryland on December 18, 1986. As of July 31, 2021, SHIP administers 901 policies that were originally issued in Maryland.

6. SHIP has been insolvent since at least December 31, 2018, having reported a deficit of approximately a half-billion dollars as of that date. Consequently, on January 23, 2020, PID

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<sup>4</sup> See, <https://www.shipltc.com/history>.

filed an Application for an Order placing SHIP into rehabilitation with the Commonwealth Court of Pennsylvania (the “Rehabilitation Proceedings”).<sup>5</sup> SHIP consented to the Application.

7. On January 29, 2020, the Commonwealth Court of Pennsylvania (the “PA CC”) granted the application and entered an Order of Rehabilitation. The Order of Rehabilitation appointed the Pennsylvania Commissioner of Insurance as the Rehabilitator. Patrick H. Cantilo was appointed by the Rehabilitator as Special Deputy Rehabilitator of SHIP.

8. The Rehabilitator filed her Application for Approval of a Plan of Rehabilitation on June 12, 2020. An Amended Plan of Rehabilitation was filed on October 21, 2020, then superseded by a Second Amended Rehabilitation Plan (the “Plan”) filed on May 3, 2021. The Order of the PA CC was issued on August 24, 2021 and amended on November 4, 2021.

9. Three states, Massachusetts, Maine and Washington (the “Intervenor States”), intervened in the Rehabilitation Proceedings. Maryland is not a party to the Rehabilitation Proceedings. Maryland did, however, submit formal comments and amended formal comments in the Rehabilitation Proceedings raising objections to the Plan.

10. SHIP’s financial condition has continued to deteriorate and its current deficit is approximately \$1.2 billion. The Special Deputy Rehabilitator has confirmed that SHIP cannot be restored to solvency and that the Plan cannot eliminate the deficit. Nonetheless, the Rehabilitator has declined to seek a declaration of insolvency or to seek to convert the rehabilitation to liquidation, actions which would trigger guaranty association coverage.

11. On September 21, 2021, the Intervenor States filed an appeal from the Order approving the Plan. That appeal is currently pending before the Pennsylvania Supreme Court.

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<sup>5</sup> The Application and all filings referenced herein can be accessed at: <http://www.shipltc.com/court-documents>.

Approximately twenty other state insurance regulators, including the Maryland Commissioner, have expressed their support for the stay as *amici curiae*. The stay was denied on January 31, 2022.

12. Anthem, Inc., Health Care Service Corporation, Horizon Healthcare Services, Inc. d/b/a Horizon Blue Cross Blue Shield of New Jersey, and UnitedHealthcare Insurance Company, entities that would be subject to assessment under a liquidation order triggering guaranty association protection, appeared as intervenors in the Rehabilitation Proceedings to fully support the Plan.

13. Under the Plan, Respondents intend to establish and implement rates increases for in force long term care policies and to offer, in lieu of or in conjunction with those rate changes, benefit reductions. The Plan authorizes the Rehabilitator to do this unilaterally and without the need to file with, and obtain the approval of, the insurance regulators of the states in which the policies subject to those changes were issued.

14. The Plan contains a so-called “opt-out” process for states that object to the Rehabilitator’s attempt to ignore the laws of the various states in which the policies were sold and pursuant to which SHIP was authorized to do business. Under these “opt-out” provisions, the Rehabilitator must file her proposed rate changes in any state that has opted out of the rate and benefit changes identified in the Plan. If a state does not approve the Rehabilitator’s rates as filed, the Plan authorizes the Rehabilitator to unilaterally implement further downgrades to individual benefits and to allow policyholders to avoid the downgrade by voluntarily paying the disapproved rate, all without authorization from the issue state.

15. Under the Plan, Respondents gave states until November 15, 2021, to provide written notice, under oath, of their decision to “opt-out.” The MIA submitted the required “opt-out” notice on November 15, 2021 (“Notice of Opt-Out letter”). The Notice of Opt-Out letter

stated that it was being submitted “in protest,” that it was submitted “in order to prevent the Rehabilitator staff from taking the position that Maryland has failed to preserve the options purportedly provided to state regulators under the Plan,” and that “[t]he State of Maryland and the MIA reserve all objections to the Plan, to jurisdiction and to all of its rights, remedies, and options.” *Id.* The letter also stated that, “SHIP must file its rates and forms, as well as any proposed adjustment in benefits to address approved rates, with the MIA for prior review and potential approval.” *Id.*

16. On December 2, 2021, Respondents submitted the Rate Filing.

#### **Details of the Rate Filing**

17. The Rate Filing includes an Actuarial Memorandum, prepared by Oliver Wyman Actuarial Consulting, Inc. (“Oliver Wyman”), which states:

**As an opt-out State, you will have until February 15, 2022 to provide a disposition as to the premium rate modifications requested herein, otherwise this filing will be deemed denied in its entirety. A filing deemed denied in its entirety will result in policyholder options being calculated and implemented as if the state had approved a 0% premium rate increase for all policies.**

If your state submits an opt-out election that is acknowledged by the Rehabilitator, but subsequently approves the requested rate increase in full, your state will be treated as if it had not opted out of the Plan (i.e., it will be deemed an Opt-In State). Policyholders issued in your state will be included in the Plan in the same manner as policies issued in states that did not opt out (“Opt-In States”).

If your state approves the requested rate increase in part, policy benefits may be reduced to amounts that can be supported by the approved rates on an IF Knew Premium rating basis depending on the Plan options elected by affected policyholders

Actuarial Memorandum at 1 (emphasis in original).

18. The Actuarial Memorandum also contains an actuarial certification which states in part:

The rate filing is being requested in accordance with and subject to the terms of the Plan. Compliance with the applicable requirements of the 2017 NAIC model Regulation and **applicable laws and regulations in your state were not considered in preparing this rate submission.**

Actuarial Memorandum at 11 (emphasis added).

19. Currently, there are 901 long-term care policies administered by SHIP in force in Maryland. According to the Actuarial Memorandum, 393 of these policies are impacted by the Rate Filing. The requested premium increases range from 0.08% to 1,361.09%. The average rate increase requested is 136.0%.

20. The current annualized premium of policies impacted by the rate increase request is \$1,187,727. If granted as filed, the Rate Filing will increase the annualized premium of policies impacted to \$2,802,962.

21. According to the Actuarial Memorandum, the proposed rate increase applies to 13 policy forms. Respondents did not indicate the policy forms applicable to the 508 policyholders who are allegedly not impacted by the proposed rate increase in the Actuarial Memorandum, but admitted at the rate hearing that at least some of the policyholders not subject to the rate increase had one of the policy forms listed below.

22. The chart below lists all Maryland policy forms, the number of Maryland policyholders for each form and the impact of the proposed rate increase that is applicable. Policy forms in bold are listed in the Actuarial Memorandum.

	Increase	No Increase	Paid-Up NFO	Total
Policy Form	Policy count	Policy count	Policy Count	Policy Count
10618	-	1	-	1
<b>10902</b>	3	0	-	3
<b>10922</b>	4	3	-	7
<b>10955</b>	104	16	18	138

<b>10956</b>	6	0	-	6
<b>11001</b>	60	6	19	85
<b>500003</b>	7	1	2	10
<b>FQ-LTC</b>	23	10	8	41
<b>HHC-1</b>	29	31	17	77
HHC-2	-	10	6	16
<b>HHC-3</b>	2	5	4	11
<b>HHC-4</b>	11	23	11	45
<b>LTC-1</b>	32	36	67	135
<b>LTC-3</b>	5	6	1	12
<b>LTC-6</b>	107	143	54	304
LTC-89	-	3	1	4
WD	-	4	2	6
<b>Total</b>	<b>393</b>	<b>298</b>	<b>210</b>	<b>901</b>

*See Seriatim File with Covered Lives and Premium Information\_20210731.xlsx.*

23. Respondents assert that there are 508 Maryland policyholders who will not be subject to the proposed rate increases. It is clear, however, that some of these policyholders will still be substantially impacted by the Plan. Of the 508 policyholders, 210 currently have paid-up nonforfeiture policies. Another 196 are policyholders for whom Respondents are not seeking a rate increase, because the current premium is either equal to or greater than the premium sought under the proposal. However, 102 are currently subject to a premium waiver and are not paying premium, but have current premium less than the calculated “If-Knew” premium. With respect to that group, the Rehabilitator intends to reduce the benefits available to these individuals to meet the benefit amounts allegedly supported by the premium calculated under the “If-Knew” methodology (described below). Actuarial Memorandum at 9.

24. All of the policies in question are “guaranteed renewable,” which means “the policyholder has the right to continue long-term care insurance in force during the lifetime of the covered person by the timely payment of premium; and [the] insurer may not decline to renew the policy or unilaterally make any change in any provision of the policy while the policy is in force, except that the insurer may revise the premium rates on a class basis.” *See* COMAR 31.14.01.01.02B(16); 31.14.01.04.A(9).

25. The requested rate increase “varies on a seriatim basis.” Actuarial Memorandum at 3. This means that the premium rate is calculated *at the policy level*. The Actuarial Memorandum explains that “the requested rate increase is dependent on each individual policyholder’s characteristics (e.g., gender, issue age) and product feature (e.g., benefit period, inflation protection), without regard to policyholder’s current attained age, state of issue, state of residence, health conditions or premium-paying status.” Actuarial Memorandum at 5-6. As discussed below, this includes consideration of rating factors that were not utilized at the time the policies were issued.

26. In addition, the rate increases have been calculated using what is known as the “If-Knew” rating methodology. “If-Knew increases have been described as “increase[s] to the premium rates such that the resulting rates, if in effect from inception of the form, would produce the greater of the initial target lifetime loss ratio or minimum loss ratio applicable to the form.”<sup>6</sup> A key element of “If Knew” rating is that the policies are re-priced so that premiums would have been adequate on a lifetime basis if charged since inception using *current* best-estimate actuarial assumptions. As the Deputy Receiver stated at the rate hearing, this means that the current rates

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<sup>6</sup> *See, Long-Term Care Insurance Approached to Reviewing Premium Rate Increases, NAIC LTC Pricing Subgroup – October 2018, at p. 10, available at: [https://www.naic.org/documents/committees\\_b\\_ltca\\_wg\\_approaches\\_ltc\\_rate\\_increases\\_final.docx](https://www.naic.org/documents/committees_b_ltca_wg_approaches_ltc_rate_increases_final.docx)*

have been determined by considering all of the actual experience and history for long term care claims experience and then calculating the rates that would have been necessary to achieve a 60% loss ratio had they been charged from inception. The actuarial memorandum did not make an attempt to demonstrate that 60% was “the greater of the initial target lifetime loss ratio or minimum loss ratio applicable to the form,” but instead “[f]or the sake of simplicity, under the plan this will be assumed to be 60%.”

27. The Actuarial Memorandum states that “[s]ome original policy forms for the policies affected by the proposed rate increase contains language that requires that any requested premium rate change apply to all policies in a given state under the respective policy form.” The Memorandum goes on to state that “[t]his requirement is eliminated by the Plan and that “this filing may request different rate increase for policies issued on the same form.”

28. A review of several of the policy forms submitted to and approved by the MIA has language similar to what is referenced in the Actuarial Memorandum. For example, Policy Form 10922 states:

The Company reserves the right, subject to 31 days prior written notice to the Insured, to change the renewal premium rates for the Policy. Any change shall apply to all policies of this form in force in the state of residence of the Insured. The rate change shall be in accordance with the underwriting class of the insured on the Policy Date.

The term “Policy Date” is defined in the policy as “[t]he Policy Date shown on the Schedule. The Policy becomes effective on the Policy Date and shall remain in force for the period for which such premium is paid.”

Similarly, Policy Form 10955 states:

The Company reserves the right to change the renewal premium rates for this Policy. Any change shall apply to all policies of this form in force in the state of residence of the insured. The rate change shall be in accordance with the Underwriting class of the Insured on the Policy Date.

In Policy Form 10955, the term “Policy Date” is defined as [t]he Policy Date shown on the Schedule: provided satisfactory evidence of insurability is accepted by and the required initial premium is paid to the Company. The Policy becomes effective on the Policy Date.”

29. The Rate Filing proposes to use gender as a rating factor even though none of the policies subject to a proposed rate increase was underwritten based on gender and gender has never been used as a rating factor in connection with any prior rate increase filed with Maryland for these policies. The Rate Filing also proposes to alter how issue age is used for the applicable policy forms. Under the proposal, the premium rate will now vary within a particular issue age by the issue age month of the policyholder.

30. Section 14 of the Actuarial Memorandum states that if the amount of the increase that is approved is less than the full requested premium rate increase:

[P]olicyholders will have four options provided to them, as described in the Plan. Depending on the option elected by an affected policyholder, benefits under their policy may be reduced to the amount that can be funded by the effective premium rate on an If Knew Premium rating basis.

The four options include:

- Option A: Pay the approved premium rate increase and have policy benefits reduced to the benefit level supported on an If Knew Premium rating basis by the increased rate.
- Option B: Do not pay the approved premium rate increase, continue paying the current rate, and have policy benefits reduced to the benefit level supported on an If Knew Premium rating basis by the current premium rate.
- Option C: Elect a reduced paid-up non-forfeiture option.
- Option D: Voluntarily pay the full If Knew Premium Rate (even if not approved by the state) and maintain the current policy benefits.

31. The Respondents have not filed policy forms with the MIA with regard to the benefit reduction options listed in Section 14 of the Actuarial Memorandum.

### **Applicable Maryland Law**

32. In Maryland, the General Assembly has given the Maryland Insurance Commissioner the exclusive review and determination of rates for those insurers licensed and

doing business in the State. This is a quasi-legislative function. *See e.g. State Ins. Comm'r v. National Bur. of Cas. Underwriters*, 248 Md. 292 (1967). The Insurance Commissioner has “exclusive jurisdiction to enforce by administrative actions the laws of the State that relate to ...rate setting practices of an insurer.” Md. Code Ann., Ins. Art. § 2-202(a)(1).

33. Long-term care insurance rates specifically must be submitted for review by the Commissioner, which includes an actuarial analysis, and increases may not be implemented unless the Commissioner determines they comply with the applicable standards. Md. Code Ann., Ins. Art. § 11-703(c)(2), § 18-116(b)(relating to across the board increase on policies or contracts of long-term care insurance that the carrier issues or delivers in the state; Code of Maryland Regulations (COMAR) 31.14.01.14(c)(5) (With one exception, an insurer may not charge a renewal premium rate for a long-term care policy which exceeds by more than 15% any premium charged for a policy during the preceding 12 months). Additionally, long-term care insurance forms must comply with § 18-116.1 of the Insurance Article and COMAR 31.14.01.36 and must be submitted to the MIA for approval before they are used. When rates are approved, they are approved with respect to the benefits that are included in the product to which the rates apply. Any changes to the benefits in order to avoid rate increases in whole or in part must be approved by the MIA in advance.

34. The Commissioner is required to disapprove or modify a premium rate filing if the proposed rates appear, based on actuarial analysis and reasonable assumptions, to be inadequate, unfairly discriminatory or excessive in relation to benefits. Md. Code Ann., Ins. Art. § 11-703(c)(2)(i). In considering whether to disapprove or modify a premium rate filing of a carrier, the Commissioner shall consider. To the extent appropriate:

1. past and prospective loss experience in and outside the State;
2. underwriting practice and judgment;
3. a reasonable margin for reserve needs;

4. past and prospective expenses, both countryside and those specifically applicable to the State; and
5. any other relevant factors in and outside of the State.

## **DISCUSSION**

Having heard all of the testimony at the quasi-legislative hearing, reviewed the premium rate filing and all of the supporting information provided on behalf of SHIP, including responses to objections submitted to SHIP by the Office of the Chief Actuary and any documents submitted by consumers or other interested parties, I find that I am not able to approve Respondents request for a rate increase at this time and based on the filing submitted. The proposed increase as filed violates both Maryland and federal law. My reasons follow.

### **1. The Proposed Rate Increase as Filed Violates Maryland Law and the Policy Forms.**

The proposed rate increase as filed by Respondents violates both Maryland law and the contract terms of the policies in question. As guaranteed renewable long-term care policies, the premium may only be increased on a class basis and in accordance with the “underwriting class” of the insureds. *See* COMAR 31.14.01.02.B(16) and Policy Forms 10922 and 10955. Respondents readily admitted at the hearing and in the Actuarial Memorandum that the premium increase is calculated not on a class basis but at the policy level using the If Knew rating methodology, which is dependent on each policyholder’s characteristics. Actuarial Memorandum at 5. Further, not all policies in a class or with regard to a particular form are subject to the rate increase. *See* Actuarial Memorandum at 3-4. Thus, the proposed rate increase methodology is inherently at odds with Maryland’s requirement that the rating be on a class basis.

Respondents also seek to add gender as a new rating characteristic. *See* Actuarial Memorandum at 5. While it is not normally prohibited to use gender as a rating characteristic for a new long-term care insurance policy, unlike for certain health benefit plans subject to the

Affordable Care Act (*see* §15-1A-07 (b)), in this case, Respondents seek to introduce gender as a rating factor for the first time with regard to the policy forms in question, many of which have been in place for 30 years. Many of the increases that are proposed are significantly higher for certain policyholders, because Respondents have applied gender as a rating characteristic. Of the 100 policyholders with the highest percentage rate increase in the proposal, 93 are women. In contrast, of the 40 policyholders with the lowest premiums increases in the proposal, 23 are men. Given that the policy forms provide that any rate change will “be in accordance with the underwriting class of the insured on the Policy Date (*see* Policy Form 10955), and that gender was not used as a rating characteristic previously, its use here is inconsistent with COMAR 31.14.01.02.B(16).

Similarly, the proposed rate increase seeks to alter the way issue age is used as a rating factor by having rates vary by issue down to the month. An example of this is shown when reviewing policy number 1348023 and 1455980. Although both policyholders were born in 1933, because one was issued the policy at 59 years and 5 months and the other was issued the policy at 59 years and 11 months, there is a 2% difference in the proposed premium for these policyholders. As with the use of gender, the application of the additional rating characteristics based on the month of the person at issue age, rather than the age at the time measured in years, creates new subclasses within each issue age year. Again, this violates COMAR 31.14.01.02.B(16). While the increase is not a large amount (at least in the case cited), it is not permitted. *See* Actuarial Memorandum at 5.

The applicable regulations also generally prohibit a renewal premium rate for a long-term care policy which exceeds by more than 15% any premium charged for the policy during the preceding 12 months. *See* COMAR 31.14.01.04.A(5). However, the Commissioner may approve “a larger increase upon a showing that a larger increase is necessary because of utilization of policy

benefits greatly in excess of the expected rate.” COMAR 31.14.01.04.A(6). In this case, the Office of the Chief Actuary of the MIA asked Respondents to provide the showing necessary for the larger than 15% increase. The actuary for Respondents stated it did not have the data to provide the information. Therefore, Respondents have not met their burden for a larger than 15% increase though, if Respondents submit a new rate increase filing consistent with this Order, they will be permitted to supply the necessary information required by the regulation.<sup>7</sup>

## **2. The Proposed Actions of Respondents in Response to Not Approving the Full Rate Increase Are Illegal Under Maryland Law.**

In addition to the proposed rate increase sought by Respondents, the Actuarial Memorandum, and the Plan itself, both state that if the proposed rate increase is not approved in full, policyholders in Maryland will be punished in the form of a unilateral downgrade to and loss of contracted-for benefits without first seeking approval from the MIA. *See* Actuarial Memorandum at 8-9; Plan at 108-118. The Pennsylvania Commonwealth Court Order approving the Plan describes the opt-out process succinctly:

Alternatively, under an Issued-State Rate Approval Option, a state may opt out of the rate approval section of the Plan. If a state opts out, the Rehabilitator will file an application to increase rates for policies issued in the State to the If Knew Premium level. The regulator for the opt-out state will render a decision on the Rehabilitator’s rate increase application; if it is only partially approved, the Rehabilitator will downgrade the benefits under the affected policies accordingly.

Plan Approval Order at 58 (emphasis added).

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<sup>7</sup> With regard to most proposed rate increases, the MIA will engage in discussions with the insurer to see if agreement can be reached regarding the proposed increase. In this case, Respondents have imposed an arbitrary deadline of February 15, 2022, after which it states the filing will be considered denied. While the MIA does not believe it is bound by the February 15 deadline, because it is anticipated that Respondents will attempt to contact policyholders with the alternative options discussed herein shortly after the deadline, the MIA has decided to act based on the information provided at this time and on the filing presented. Should Respondents submit a new filing consistent with the findings in this order, the MIA will consider the appropriateness of a rate increase based on the new filing.

This threatened action violates Maryland law because Respondents, will not first submit to the Commissioner and the MIA the policy downgrades and changes to existing policy forms sought to be imposed on Maryland policyholders. *See* Md. Code Ann. Ins. Art. §§ 2-202(a); 11-703(c)(2); 12-203. Further, Respondents refuse to be bound by any decision made by the Commissioner relating to the appropriate rates applicable to the policy forms in question, subject to their right to appeal to Maryland courts. Indeed, the Rehabilitator plans to offer and charge the rates proposed, even if disapproved, as an alternative to benefit reduction, even though such rates are illegal and cannot be lawfully charged under Maryland law. §11-703(b).

The applicable regulations allow an insurer to offer to policyholders to reduce coverage and lower the policy premium, but this is at the election of the policyholder and still requires approval of the rates. *See* COMAR 31.14.01.36.D (Premium for reduced coverage must be based on the underwriting class used to determine the premium for the coverage currently in force and be consistent with the approved rate table).

The threatened unilateral reduction in benefits also appears to have a potential permanent adverse effect on policyholders' guaranty association benefits in the likely event that SHIP is placed into liquidation at a later date. Special Deputy Rehabilitator Cantilo has admitted in previous testimony that "it is not likely that we will magically restore SHIP to solvency, but it is likely that the plan ... would substantially reduce the deficit." Transcript of Rehabilitation Plan hearing at 80. In short, the threatened action would impose substantially less benefits than what policyholders are entitled to under their contract.

### **3. The Authority of Respondents Under Pennsylvania Law.**

The Actuarial Memorandum appears to argue that the Plan eliminates the requirement to comply with the Maryland laws and regulations listed above. *See* Actuarial Memorandum at 3

(“this requirement is eliminated by the Plan...”). But, it is important to understand what Respondents authority is under Pennsylvania law.

Each jurisdiction has enacted statutes for the rehabilitation and liquidation of insurance companies. *See e.g.* § 9-201 *et. seq.* Under Pennsylvania law, as in all states, the power of the rehabilitator is prescribed and limited by law. The authority of the rehabilitator is circumscribed and limited to control of the assets and business of the insurer and does not extend to regulatory control of the insurer’s business. 40 P.S. § 221.16(b) (“The rehabilitator may take such action as he deems necessary or expedient to correct the condition or conditions which constituted the grounds for the order of the court to rehabilitate the insurer. He shall have all the powers of the director, officers, and managers, whose authority shall be suspended, except as they are delegated by the rehabilitator.”) The statute does not provide authority beyond that of the insurer and its officers and managers.

Under Pennsylvania law, an insurance commissioner acting as a rehabilitator “can only exercise those powers which have been conferred upon it by the Legislature in clear and unmistakable language.” *Aetna Cas. And Sur. Co. v. Com., Ins. Dept.*, 638 A.2d 194 (Pa. 1994) quoting *Commonwealth, Human Relations Comm’n v. Transit Casualty Ins. Co.*, 831 A.2d 1196 (Pa. Commw. 2003), *cjj’ d sub nom. Koken v. Villanova Ins. Co.*, 878 A.2d 51 (Pa. 2005).

Pennsylvania law authorizes Respondents to manage SHIP. It does not provide, explicitly or implicitly, authority to supplant otherwise applicable regulatory authority over the business of the insurer in rehabilitation, particularly the regulatory authority of other jurisdictions. That a rehabilitator may “prepare a plan for the reorganization, consolidation, conversion, reinsurance, merger or other transformation of the insurer,” 40 P.S. § 221.16(d), does not authorize Respondents to proceed without required regulatory approvals. Nowhere in the text of Pennsylvania’s law, or in any model law or NAIC publication) is there “clear and unmistakable language” that allows a

rehabilitator to displace or disregard the regulatory authority of an insurance regulator in another jurisdiction. Indeed, the NAIC states that a receiver in a rehabilitation proceeding should consider “rate increases needed on business and insurer’s ability to secure those increases from regulatory authorities.” National Association of Insurance Commissioners, *Receiver’s Handbook for Insurance Company Insolvencies* at 12 (2021).<sup>8</sup>

**4. State and Federal Law Make Clear that the Authority to Approve Rates and Policy Forms in Maryland Rests with the Maryland Insurance Commissioner.**

In contrast to the lack of authority granted to Respondents under Pennsylvania law to unilaterally impose rate increases and/or benefit reductions, both federal and State law make clear that insurers licensed in Maryland must obey the laws of this State and that contracts issued in this State are subject to Maryland law.

The primary state regulatory functions remain as they have since the enactment of the McCarran-Ferguson Act in which “Congress ...declare[d] that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.” 15 U.S.C. § 1011. “This allows...states to perform solvency oversight of the U.S. insurance industry and to regulate insurer behavior in the marketplace.” State Insurance Regulation, National Association of Insurance Commissioner (NAIC), Center for Insurance Policy and Research (CIPR) (2011).<sup>9</sup>

“State legislatures are public policymakers that establish...broad policy for the regulation of insurance by enacting legislation providing the regulatory framework under which insurance

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<sup>8</sup> Available at: <https://content.naic.org/sites/default/files/publication-rec-bu-receivers-handbook-insolvencies.pdf>.

<sup>9</sup> Available at: [https://www.naic.org/documents/topics\\_whiate\\_paper\\_hist\\_ins\\_reg.pdf](https://www.naic.org/documents/topics_whiate_paper_hist_ins_reg.pdf).

regulators operate. They establish laws which grant authority to regulators and oversee state insurance departments and approve regulatory budgets.” *Id.* “State insurance regulatory systems are accessible and accountable to the public and sensitive to local social and economic conditions.”

*Id.* Further:

State regulators protect consumers by ensuring that insurance policy provisions comply with state law, are reasonable and fair, and do not contain major gaps in coverage that might be misunderstood by consumers and leave them unprotected. The nature of regulatory reviews of rates, rating rules and policy forms varies somewhat among the states depending on their laws and regulations.

*Id.*

As seen above, the Maryland General Assembly has delegated its regulatory authority under the McCarron-Ferguson Act, 15 U.S.C. §§ 1011-1015, to the Maryland Insurance Commissioner and the MIA and has enacted and approved detailed and extensive statutes and regulations governing long-term care insurance policies and rates, including provisions for the approval of rates by the Commissioner. *See State Ins. Comm’r v. National Bur. Cf Cas. Underwriters*, 248 Md. 292 (1967); 1 Couch on Ins. § 2:34, Rates –Judicial review (“Ratemaking is generally not a judicial function. Indeed, many jurisdictions have adopted the filed rate doctrine which expressly prohibits courts from imposing rates different than those approved by the state insurance department”). To the extent Respondents are relying on the Pennsylvania court’s order approving the Plan and the rate setting scheme within, this would appear to violate the filed rate doctrine.

Further, the Full Faith and Credit Clause of the U.S. Constitution does not require Maryland to obey the Plan approved by the Commonwealth court in Pennsylvania in contravention of its own laws. Indeed, the Pennsylvania court seems to recognize this as its order states “[o]nce this Court renders a judgment on the Second Amended Plan, it is Maine, Massachusetts, and

Washington [the three intervening states] that owe this Court’s judgment full faith and credit.”  
Order of Approval at 61.

Additionally, full faith and credit requires only that every state give a foreign judgment the *res judicata* effect that the judgment would be accorded in the state which rendered it. *Dufee v. Duke*, 375 U.S. 106, 109 (1963). Under Pennsylvania law, application of *res judicata* requires that the two relevant proceedings possess several common elements, including identity of the parties. *Robinson Coal Co. v. Goodall*, 72 A.3d 685, 689 (Pa. Super. 2013). Neither the Commissioner nor the MIA were a party in the Pennsylvania proceedings. Rather, Respondents appear to have purposefully decided to supplant the laws of Maryland and other states. As the Supreme Court has said in *Pacific Employers Ins. Co. v. Industrial Accident Comm’n*, 306 U.S. 493, 501 (1939):

The very nature of the federal union of states, to which are reserved some of the attributes of sovereignty, precludes resort to the full faith and credit clause as means for compelling a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.

Here, the Plan specifically is meant to compel states to substitute their laws for that of the order of the Commonwealth court. We decline to do so here.

### **ORDER**

Based on the entire record in this matter, including the facts and legal issues discussed in this Order, it is hereby ORDERED this 15<sup>th</sup> day of February, 2022 that:

- A. Respondents request for rate increases on the SHIP policies at issue in this matter is denied. Respondents may file for rate increases consistent with this decision including basing the premium request on a class basis and based on the rating characteristics previously used by SHIP;
- B. Respondents are prohibited from communicating, implementing or enforcing the Amended Plan of Rehabilitation in Maryland or otherwise interfering with the rights of

SHIP long-term care insurance policyholders or otherwise violating the insurance laws of this State pertaining to long-term care insurance, including, but not limited to, notifying policyholders of proposed rate or benefit changes or requesting that policyholders select rate or benefits different from those authorized by the Maryland Insurance Administration (“MIA”). Respondents are encouraged to submit to the MIA any benefit option, along with the corresponding rate for each applicable option to the MIA for approval in conformance with Maryland law and regulations.



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KATHLEEN A. BIRRANE  
Insurance Commissioner  
Maryland Insurance Administration  
200 St. Paul Place, Suite 2700  
Baltimore, MD 21202  
410-468-2471  
Kathleen.Birrane@maryland.gov

### **Appeal Rights**

Pursuant to Title 11, subtitle 5 of the Insurance Article, Annotated Code of Maryland, an order issued after a hearing is subject to judicial review by appeal to the Circuit Court for Baltimore City. Any appeal must be filed within 30 days of the date of this order. An appeal may be commenced by filing a notice of appeal with the Circuit Court for Baltimore City and a copy of the notice of appeal with the Commissioner.

# **Exhibit 11**

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE  
OFFICE OF THE MONTANA STATE AUDITOR**

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In the Matter of the Proposed Agency  
Action Against SENIOR HEALTH  
INSURANCE COMPANY OF  
PENNSYLVANIA (in rehabilitation)

Case No.: INS-2022-55

**TEMPORARY CEASE AND  
DESIST ORDER**

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To: SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA, in Rehabilitation  
c/o Jessica Altman, Insurance Commissioner of the Commonwealth of Pennsylvania, as  
Rehabilitator.  
Office of the Insurance Commissioner  
1326 Strawberry Square  
Harrisburg, PA 17120

**TEMPORARY CEASE AND DESIST ORDER**

Pursuant to § 33-1-318, MCA, and based on the allegations of fact and conclusions of law set forth in the *Notice of Proposed Agency Action and Opportunity for Hearing* filed in this matter, it appears to the Commissioner that the Respondent has engaged in, or is about to engage in, acts or practices constituted violations of §§ 33-22-1101, 33-22-1114, 33-18-201 and 33-18-202, MCA and Administrative Rules of Montana (ARM) §§ 6.6.3121, 6.6.3122, and 6.6.3124.

Therefore, SHIP and its Rehabilitator, Special Deputy Rehabilitator, principals, employees, and agents are ORDERED to immediately cease and desist from the following actions:

- (a) dissemination of any policyholder notifications, including Election Packages,<sup>1</sup> to policyholders within Montana without review and prior approval by the Commissioner;
- (b) accepting or implementing the elections of any Montana policyholders made pursuant to the Election Packages and/or the Approved Plan.
- (c) all other implementation of the Approved Plan within Montana.

**PENALTIES**

Pursuant to § 33-1-318, a violation of this Order is a separate violation for which the CSI may impose a fine not to exceed \$5,000 per violation in addition to any other penalties imposed by law.

Dated this 2<sup>nd</sup> day of March, 2022.

  
\_\_\_\_\_  
Troy Downing  
Commissioner of Securities and Insurance,  
Office of the Montana State Auditor

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<sup>1</sup> Capitalized terms in this Temporary Cease and Desist Order have the meanings assigned in the Notice of Proposed Agency Action.

**CERTIFICATE OF SERVICE**

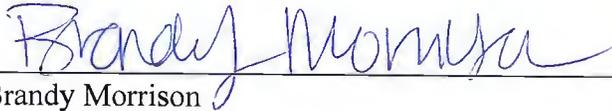
I hereby certify that on March 7, 2022, I caused a copy of the foregoing Temporary Cease and Desist Order to be served on the following persons by the following means:

X Mail

       E-Mail

SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA, in Rehabilitation  
c/o Jessica Altman, Insurance Commissioner of the Commonwealth of Pennsylvania, as  
Rehabilitator.

Office of the Insurance Commissioner  
1326 Strawberry Square  
Harrisburg, PA 17120

A handwritten signature in blue ink that reads "Brandy Morrison". The signature is written in a cursive style and is positioned above a horizontal line.

Brandy Morrison  
Paralegal

# **Exhibit 12**

**STATE OF NEW HAMPSHIRE  
INSURANCE DEPARTMENT**

**In re: Senior Health Insurance Company of Pennsylvania**

**Docket No.: INS No. 22-017-EP**

**CEASE AND DESIST ORDER**

The Commissioner of the New Hampshire Insurance Department (“NHID”), pursuant to his authority under RSA 400-A:3, orders Senior Health Insurance Company of Pennsylvania (“SHIP”) to immediately Cease and Desist from engaging in insurance business in this State that is contrary to New Hampshire law and in a manner that is causing or is reasonably expected to cause significant, imminent, and irreparable injuries to New Hampshire policyholders.

In support this Order to Cease & Desist, the NHID states as follows:

**FINDINGS OF FACT**

1. SHIP is a Pennsylvania domiciled life insurance company that has been authorized to conduct insurance business in New Hampshire in the lines of Life and Accident & Health since approximately January 21, 1998.
2. SHIP specializes in long-term care (“LTC”) coverage, and currently has approximately 39,000 policies in force.
3. Approximately 14 New Hampshire residents have LTC policies through SHIP that are current.
4. SHIP is experiencing financial distress and insolvency, and has an outstanding deficit of approximately \$1.2 billion.
5. On January 29, 2020, upon application of Jessica Altman, then Commissioner of Insurance for the Commonwealth of Pennsylvania, the Commonwealth Court of Pennsylvania entered an Order of Rehabilitation placing SHIP into rehabilitation in accordance with Pennsylvania law.
6. The Order of Rehabilitation appointed Commissioner Altman and her successors in office as statutory rehabilitator of SHIP and required the Rehabilitator to prepare a plan of rehabilitation; on April 22, 2020, the Rehabilitator filed an Application for Approval of the Plan for the Rehabilitation of SHIP.<sup>1</sup>

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<sup>1</sup> SHIP’s Special Deputy Rehabilitator has indicated that said plan in “all likelihood will not eliminate” the deficit and it is “not likely we will magically restore SHIP to solvency.”

7. The Rehabilitation Plan was approved by the Pennsylvania Commonwealth Court on August 24, 2021, and amended on November 4, 2021.<sup>2</sup>
8. Under the Rehabilitation Plan, SHIP has already sent or will send to each NH policyholder a “Coverage Election Package” that notifies the policyholder of new premium rates and instructs them to select among the coverage options that increase current premiums or reduce current benefits under the LTC policies.
9. SHIP has communicated through the NAIC that approximately half of the affected NH consumers have already responded to its “Coverage Election Package.”
10. New Hampshire law requires that a premium rate increase for LTC policy and related LTC forms be filed with the Commissioner for approval before the rates and forms take effect. NH RSA 415-D:11.
11. SHIP’s premium rate plan and its assumptions, methodology, and related forms have not been filed with the NHID Commissioner, and accordingly have not been approved.
12. SHIP’s notice to NH policyholders<sup>3</sup>, which seeks to change the policy terms without NHID approval, will cause immediate and significant harm to those policyholders. The notice compels NH policyholders to make final and binding premium and coverage elections. Those elections will affect the availability of coverage for LTC services and will affect the policyholders’ ability to recover benefits from NH’s guaranty fund when SHIP is later placed in liquidation, which SHIP admits is likely to occur.

## CONCLUSIONS OF LAW

13. The Commissioner regulates the business of insurance in New Hampshire pursuant to RSA 400-A:3.
14. Because SHIP has not complied with NH’s rate filing requirements, SHIP has violated and will continue to violate NH law by notifying NH policyholders of the new rates and instructing them to select among coverage options based on those unfiled and unapproved new rates, all in violation of NH RSA 415-D:11.

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<sup>2</sup> State insurance regulators from Massachusetts, Maine, and Washington intervened and have appealed this determination to the Pennsylvania Supreme Court; approximately 32 state insurance commissioners, including New Hampshire’s, have filed an amicus brief in support of the appeal.

<sup>3</sup> The notices also fail to inform consumers that the legality of the plan is disputed and currently under review by the Pennsylvania Supreme Court.

15. Because SHIP has not complied with NH's form filing requirements, SHIP has violated and will continue to violate NH law by sending its "Coverage Election Packages" to NH consumers, which have not been approved by the NHID, also in violation of NH RSA 415-D:11.
16. SHIP's notice to NH consumers has and will continue to violate NH RSA 417:4 I (a), as the "Coverage Election Packages" misrepresent the terms of the policies filed with and approved by the NHID.
17. SHIP's notice to NH consumers has and will continue to violate NH RSA 417:4, XII, as SHIP has and/or will collect improper premium through the Rehabilitation Plan, as those rates are/will be in excess of the rates as filed and approved by the Commissioner.
18. SHIP's notice to NH consumers has and will continue to violate INS 3601.19(b), which requires that an insurer provide notice of a pending premium rate schedule increase to the Commissioner at least 30 days prior to the notice to policyholders, which SHIP has not done.

### **ORDER**

19. Based upon the information and allegations recited above, the New Hampshire Commissioner of Insurance hereby ORDERS that SHIP immediately CEASE AND DESIST from implementing the Rehabilitation Plan in New Hampshire or otherwise interfering with the rights of SHIP's New Hampshire policyholders or violating any insurance law and rule of New Hampshire, including by mailing "Coverage Election Packages" and notifying New Hampshire consumers of proposed rate or benefit modifications SHIP intends to implement, none of which has been authorized by the Commissioner.
20. For the duration of this Order, SHIP shall continue to abide by its current policy terms, benefits, and premium levels for all New Hampshire policyholders in effect prior to the adoption of the Rehabilitation Plan.
21. SHIP is not prohibited from curing any of its form or rate filing deficiencies by the proper notice and filing of such to the Commissioner.
22. Pursuant to RSA 400-A:17, SHIP may request a hearing regarding this Order by filing a written application for hearing with the Commissioner within 30 (thirty) days of the date SHIP either knew or should have known of the issuance of this Order.

SO ORDERED

NEW HAMPSHIRE  
INSURANCE DEPARTMENT

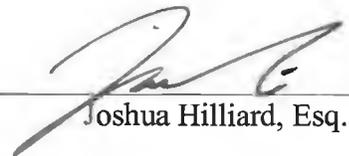
Date: 3/18/2022

  
\_\_\_\_\_  
Christopher Nicolopoulos, Commissioner

CERTIFICATION OF SERVICE

I certify that the a copy of the foregoing Cease and Desist Order has been served upon SHIP by United State first class mail, postage prepaid, at 550 Congressional Blvd, Suite 200, Carmel IN, and 27 N. Front Street, Suite 22, Harrisburg PA, 17101-1606, the mailing and statutory home office addresses for SHIP.

Date: 3/18/22

  
\_\_\_\_\_  
Joshua Hilliard, Esq.

# **Exhibit 13**

**STATE OF OHIO**  
**DEPARTMENT OF INSURANCE**  
50 WEST TOWN STREET  
3<sup>rd</sup> FLOOR, SUITE 300  
COLUMBUS, OHIO 43215

*In re:* : JUDITH L. FRENCH  
: Superintendent/Director  
Senior Health Insurance Company :  
of Pennsylvania (SHIP) :  
(in rehabilitation) :  
:

**ORDER TO CEASE AND DESIST AND NOTICE OF HEARING**

**I. INTRODUCTION**

Pursuant to R.C. 3901.221, the Superintendent of the Ohio Department of Insurance (“ODI”) may issue a cease and desist order to any person engaged in an unfair or deceptive act or practice in the business of insurance that has caused, is causing, or is about to cause substantial and material harm.

The Rehabilitator of Senior Health Insurance Company of Pennsylvania (“SHIP”), SHIP, and SHIP’s principals, employees, and agents are a person engaged in an unfair or deceptive act or practice in the business of insurance that is about to cause substantial and material harm. Therefore, consistent with the authority in R.C. 3901.221, and for the reasons explained below, the Superintendent determines a cease and desist order is appropriate.

**II. FACTS**

On September 9, 1987, ODI issued a certificate of authority for SHIP to conduct the business of insurance in Ohio. SHIP is a stock limited life and health insurance company domiciled in the Commonwealth of Pennsylvania that administers a closed block of long-term care

(“LTC”) insurance policies. SHIP has issued approximately 1,130 policies in Ohio. At present, the average age of SHIP LTC policyholders in Ohio is approximately 86 years old.

The Pennsylvania Insurance Department (“PID”) filed an application to place SHIP into rehabilitation with the Commonwealth Court of Pennsylvania on January 23, 2020. According to the application, as of December 31, 2018, SHIP’s reported deficit was approximately a half-billion dollars. SHIP’s financial condition has only declined, as a more recent projection estimates a deficit of approximately \$1.2 billion. On January 29, 2020, the Commonwealth Court entered an order granting the application of the PID to place SHIP into rehabilitation. The order appointed the Commissioner of the PID, Jessica Altman, and her successors in office as statutory rehabilitator of SHIP pursuant to the provisions of 40 Pa. Stat. 221.14, et seq.

On August 25, 2021, the Commonwealth Court issued its opinion and order approving a rehabilitation plan. The approved rehabilitation plan, as well as all court filings and orders discussed here, are available on the SHIP rehabilitation website, at <https://www.shipltc.com/court-documents>.

The approved rehabilitation plan provides for a so-called “opt-out” process that violates Ohio law.<sup>1</sup> Approved Rehabilitation Plan (“App. Rehab. P.”), p. 108-118. Pursuant to the opt-out process in the approved rehabilitation plan, when a state opts out of the premium rate modification provisions of the plan, the Rehabilitator files a request for approval of rate increases for policies issued in that state. *Id.* at p. 111. If the opt-out state does not approve the rate increases requested

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<sup>1</sup> ODI has joined with 26 other departments of insurance as amici curiae in support of the appeal filed in the Supreme Court of Pennsylvania by Appellants Superintendent of Insurance of the State of Maine, the Commissioner of Insurance of the Commonwealth of Massachusetts, and the Insurance Commissioner of the State of Washington. The appeal challenges the legality of the approved rehabilitation plan. The documents related to the appeal in the Supreme Court of Pennsylvania, Docket No. 71 MAP 2021, are available on the SHIP rehabilitation website, at <https://www.shipltc.com/court-documents>.

by the Rehabilitator in full, the unlawful plan allows for election packages to be sent to Ohio policyholders offering benefits and rates not approved by ODI.

ODI opted out of the premium rate modification provisions of the approved rehabilitation plan. On December 2, 2021, the Rehabilitator filed a request with ODI for approval of rate increases for Ohio policyholders and set a February 15, 2022 deadline for ODI to respond. On February 15, 2022, ODI concluded its review and informed the Rehabilitator of its decision on the requested rate increases.

ODI's review found that some of the Rehabilitator's requested rate increases would result in unreasonable increases. Indeed, some of the Rehabilitator's requested rate increases were well outside the rate increases ODI had traditionally approved. For example, the Rehabilitator's requested rate increases would result in at least one Ohio policyholder receiving a more than 650% rate increase. In these instances, ODI approved a premium rate less than that requested by the Rehabilitator. In other instances, ODI found that the Rehabilitator's requested premium rate increases were reasonable and fully approved them. Nevertheless, the approved rehabilitation plan treats any state not *fully* approving the Rehabilitator's requested rate increases as an opt-out state. *Id.* at p. 108-111.

Consequently, Ohio is an opt-out state. Pursuant to the approved rehabilitation plan, the Rehabilitator will send election packages to Ohio policyholders requiring them to choose between several options. The election packages will offer Ohio policyholders premium rates and benefits not approved by ODI. As discussed in section III, below, offering Ohio policyholders unapproved premium rates and benefits is unlawful.

The approved rehabilitation plan requires the Rehabilitator to send election packages after the passage of the February 15, 2022 deadline. The expectation is that the Rehabilitator will send election packages to Ohio policyholders in the near future.

### **III. ANALYSIS**

Pursuant to R.C. 3901.221 and R.C. 3901.20, the Superintendent of the ODI may issue a cease and desist order to any person engaged in an unfair or deceptive act or practice in the business of insurance that has caused, is causing, or is about to cause substantial and material harm. R.C. 3901.19 defines “person,” for purposes of R.C. 3901.221 and R.C. 3901.20, as “any individual, corporation, association, partnership \* \* \* and any other legal entity.” The “person” need not be licensed or required to be licensed by the Superintendent of the ODI. R.C. 3901.20.

R.C. 3901.19 through R.C. 3901.23 define an unfair or deceptive act or practice in the business of insurance. Among other provisions, R.C. 3901.21(A) defines an unfair or deceptive act or practice in the business of insurance to include: “Making, issuing, circulating, or causing or permitting to be made, issued, or circulated, or preparing with intent to so use, any estimate, illustration, circular, or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby \* \* \*.” R.C. 3901.21(B) further defines an unfair or deceptive act or practice in the business of insurance to include:

Making, publishing, disseminating, circulating, or placing before the public or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station, or in any other way, or preparing with intent to so use, an advertisement, announcement, or statement containing any assertion, representation, or statement,

with respect to the business of insurance or with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive, or misleading.

Because the Rehabilitator, SHIP, and SHIP's principals, employees, and agents are a person engaged in an unfair or deceptive act or practice in the business of insurance that has caused, is causing, or is about to cause substantial and material harm, the Superintendent of the ODI issues this cease and desist order pursuant to R.C. 3901.221 and R.C. 3901.20.

**A. The Rehabilitator, SHIP, and SHIP's principals, employees, and agents are all a "person."**

The Rehabilitator, SHIP, and SHIP's principals, employees, and agents are all a "person." R.C. 3901.19 defines "person" to include "any individual, corporation, association, partnership \* \* \* and any other legal entity." Altman, or any successors, as the Rehabilitator, is an "individual." Further, the Rehabilitator is also a "legal entity." *See* 40 Pa. Stat. 221.15, 221.16.

SHIP, as a stock limited life and health insurance company administering a closed block of LTC insurance policies, meets the broad definition of "person." SHIP's certificate of authority from the Superintendent of the ODI further demonstrates it is a "person," as defined in R.C. 3901.19.

SHIP's principals, employees, and agents also meet the broad definition of "person" in R.C. 3901.19. The broad definition of "person" in R.C. 3901.19 includes "any individual."

**B. The Rehabilitator, SHIP, and SHIP's principals, employees, and agents are engaged in unfair or deceptive acts or practices in the business of insurance.**

The Rehabilitator, SHIP, and SHIP's principals, employees, and agents are engaged in unfair or deceptive acts or practices in the business of insurance. R.C. 3901.19 through R.C.

3901.23 define an unfair or deceptive act or practice. The Rehabilitator, SHIP, as well as SHIP's principals, employees, and agents are engaged in at least two unfair or deceptive acts or practices.

First, the Rehabilitator, SHIP, and SHIP's principals, employees, and agents are engaging in an unfair or deceptive act or practice in the business of insurance, as defined in R.C. 3901.21(A), by "preparing with intent to so use, any \* \* \* statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby \* \* \*."

The approved rehabilitation plan treats any state not fully approving the Rehabilitator's requested rates increases as an opt-out state. App. Rehab. P., p. 108-111. Accordingly, Ohio is an opt-out state. The approved rehabilitation plan permits the Rehabilitator to send election packages to Ohio policyholders. *Id.* at p. 111-114. The expectation is that the Rehabilitator will send election packages to Ohio policyholders in the near future. As a result, the Rehabilitator is "preparing with intent to so use" the election packages for Ohio policyholders.

The election packages contain "statement[s] misrepresenting the terms of any policy \* \* \* to be issued or the benefits or advantages promised thereby \* \* \*." Specifically, by offering Ohio policyholders premium rates and benefits not approved by ODI, the Rehabilitator, through the election packages, distorts the terms of the policies to be issued and the benefits promised.

For example, the Rehabilitator, through the election packages, will offer some Ohio policyholders an option—option four—that ODI has not approved. *See* App. Rehab. P., p. 108-111. Option four of the approved rehabilitation plan states that policyholders may choose this option "even though such a rate increase has not been approved by the [o]pt-out [s]tate." *Id.* at p. 114. Under Ohio law, however, ODI has exclusive jurisdiction to approve and disapprove insurance rates. *Lazarus v. Ohio Cas. Group*, 144 Ohio App.3d 716, 720, 761 N.E.2d 649 (8th Dist.2001). Insurers must file premium rates with ODI prior to issuing new or revised LTC

policies. R.C. 3923.46; R.C. 3923.021. ODI may approve or disapprove the rates. R.C. 3923.021. As a result, the Rehabilitator cannot offer option four or any other option not approved by ODI. Any language in the election packages offering any option not approved by ODI “misrepresent[s] the terms of any policy \* \* \* to be issued or the benefits or advantages promised thereby \* \* \*.”

Second, the Rehabilitator, SHIP, as well as SHIP’s principals, employees, and agents are engaging in an unfair or deceptive act or practice in the business of insurance, as defined in R.C. 3901.21(B), by “[m]aking, \* \* \* or causing, directly or indirectly, to be made, \* \* \* in a \* \* \* notice, \* \* \* letter, \* \* \* or in any other way, or preparing with intent to so use, [a] \* \* \* statement containing any assertion, representation, or statement, with respect to the business of insurance \* \* \*, which is untrue, deceptive, or misleading.”

The Rehabilitator is “preparing with intent to so use” the election packages for Ohio policyholders. The Rehabilitator, through the election packages, will be disregarding Ohio law by offering Ohio policyholders premium rates and benefits not approved by ODI. *See* R.C. 3923.46; R.C. 3923.021. As such, the election packages’ offering of unlawful premium rates and benefits, not approved by ODI, constitute a “statement containing any assertion, representation, or statement, with respect to the business of insurance \* \* \*, which is untrue, deceptive, or misleading.”

**C. The unfair or deceptive acts or practices of the Rehabilitator, SHIP, and SHIP’s principals, employees, and agents are about to cause substantial and material harm.**

As described in section III, B, above, the Rehabilitator, SHIP, and SHIP’s principals, employees, and agents are engaged in unfair or deceptive acts or practices in the business of insurance. The unfair or deceptive acts or practices stem from the Rehabilitator’s upcoming issuance of election packages to Ohio policyholders. The expectation is that the Rehabilitator will

send election packages to Ohio policyholders in the near future. As a result, these unfair or deceptive acts or practices are “about to cause” substantial and material harm.

Further, the Rehabilitator’s election packages, once issued, will cause “substantial and material harm.” First and foremost, the election packages will cause “substantial and material harm” to Ohio’s policyholders. The Rehabilitator cannot lawfully offer unapproved rates and benefits, and confusion will result should Ohio policyholders choose one of these unlawful options. SHIP policyholders in Ohio, with an average age of about 86 years old, have the right to know that ODI has reviewed and approved the premium rates and benefits prior to the policyholders accepting them. If the Rehabilitator issues the election packages and offers premium rates and benefits not approved by ODI, “substantial and material harm” will occur.

Second, the Rehabilitator’s election packages will cause “substantial and material harm” to ODI. ODI has an interest in protecting its exclusive jurisdiction. If the Rehabilitator issues the election packages and offers unapproved premium rates and benefits, “substantial and material harm” will occur.

Therefore, the Rehabilitator, SHIP, as well as SHIP’s principals, employees, and agents are a “person,” as defined in R.C. 3901.19. The Rehabilitator, SHIP, and SHIP’s principals, employees, and agents are engaged in an unfair or deceptive act or practice in the business of insurance that is about to cause substantial and material harm. The Superintendent of the ODI may issue a cease and desist order pursuant to R.C. 3901.221.

#### **IV. CONCLUSION**

**Pursuant to R.C. 3901.221, the Superintendent of the Ohio Department of Insurance orders the Rehabilitator, SHIP, and SHIP’s principals, employees, and agents to cease and desist the dissemination, implementation, or enforcement in this State of the election**

packages to the extent the election packages disregard Ohio law by offering Ohio policyholders premium rates and benefits not approved by ODI.

Pursuant to this order, the Rehabilitator, SHIP, and SHIP's principals, employees, and agents shall send notices to policyholders in Ohio only if the Superintendent has reviewed and approved such notices.

A hearing to determine the continuation or revocation of this cease and desist order shall be held at 1:00 p.m. on March 3, 2022 at the Ohio Department of Insurance, 50 W. Town St., Suite 300, Columbus, Ohio, 43215. At the hearing, the parties may appear in person, by their attorney, or by such other representative as is permitted to practice before the Department, or the parties may present their position, arguments, or contentions in writing and, at the hearing, the parties may present evidence and examine witnesses appearing for and against them.

This Order is effective immediately, signed this 17th day of February, 2022.



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JUDITH L. FRENCH

Director/Superintendent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Order to Cease and Desist and Notice of Hearing has been sent on this 17 day of February, 2022, by priority mail express with certified service, return receipt requested, to the following:

Commissioner Jessica Altman (as Rehabilitator)  
Pennsylvania Insurance Department  
901 North 7<sup>th</sup> St.  
Harrisburg, PA 17102

Michael Broadbent  
Cozen & O'Connor  
1650 Market St., Suite 2800  
Philadelphia, PA 19103

Patrick Cantilo (as Special Deputy Rehabilitator)  
11401 Century Oaks Terrace, Suite 300  
Austin, TX 78758

Senior Health Insurance Company of Pennsylvania (in rehabilitation)  
550 Congressional Blvd., Suite 200  
Carmel, IN 46032

Senior Health Insurance Company of Pennsylvania (in rehabilitation)  
c/o CSC-Lawyers Incorporating Service  
50 W. Broad St.  
Columbus, OH 43215

And sent via email to:

Michael Broadbent, mbroadbent@cozen.com  
Patrick Cantilo, phcantilo@cb-firm.com  
Tracy Nave, Office of the Ohio Attorney General, Tracy.Nave@OhioAGO.gov  
Amanda Baird, Ohio Department of Insurance, Amanda.Baird@insurance.ohio.gov

  
\_\_\_\_\_  
Kelly Peters  
Hearing Administrator

# **Exhibit 14**

**BEFORE THE UTAH INSURANCE COMMISSIONER**

Utah Insurance Department,

Complainant,

vs.

Jessica K. Altman and her successors in  
office as Rehabilitator of Senior Health  
Insurance Company of Pennsylvania,

Patrick H. Cantilo, as Special Deputy  
Rehabilitator of Senior Health Insurance  
Company of Pennsylvania,

and Senior Health Insurance Company of  
Pennsylvania in Rehabilitation,

Respondents.

**EMERGENCY ORDER**

Case No. 2022-4377

Pursuant to Utah Code §§ 31A-2-201(4)(a) and 63G-4-502(1), Utah Insurance Commissioner Jonathan T. Pike (“Commissioner”) hereby issues this emergency order against Jessica K. Altman and her successors in office as Rehabilitator of Senior Health Insurance Company of Pennsylvania (“Rehabilitator”), Patrick H. Cantilo, as Special Deputy Rehabilitator of Senior Health Insurance Company of Pennsylvania, and Senior Health Insurance Company of Pennsylvania in Rehabilitation (“SHIP”), (together referred to as “Respondents”), after determining based on knowledge and belief that Respondents are engaging or are about to engage in conduct prohibited by the Utah Insurance Code, Utah Code Title 31A, and any administrative rule promulgated thereunder, and that immediate action is in the public interest.

In support of this Order, the Commissioner makes the following findings of fact and conclusions of law:

## FINDINGS OF FACT

1. SHIP is a Pennsylvania-domiciled life insurance company that became authorized to issue long-term care insurance (“LTCI”) policies in the state of Utah as a foreign insurer beginning April 23, 1986 (NAIC Company Code 76325).

2. Between 1994 and 2011, the Commissioner approved multiple rate increases that averaged 127% per policy form. In addition, in 2017 the Commissioner approved a 40% rate increase for policies with 5% compound inflation. SHIP has not requested a rate increase since 2017.

3. In recent years, SHIP experienced financial distress and faced the possibility of insolvency.

4. On January 29, 2020, upon the application of Jessica Altman, the Commissioner of Insurance for the Commonwealth of Pennsylvania, the Commonwealth Court of Pennsylvania entered an Order of Rehabilitation placing SHIP into rehabilitation in accordance with Pennsylvania law.

5. The Order of Rehabilitation appointed Commissioner Altman and her successors in office as statutory rehabilitator of SHIP and required the Rehabilitator to prepare a plan of rehabilitation. Commissioner Altman appointed Patrick Cantilo as Special Deputy Rehabilitator, with the power to act on the Rehabilitator’s behalf.

6. SHIP currently has 298 policies issued in Utah and subject to Utah law, with the average age of Utah policyholders being 84 years old.

7. On April 22, 2020, the Rehabilitator filed her Application for Approval of the Plan of Rehabilitation for SHIP with a Rehabilitation Plan.

8. The Rehabilitation Plan was approved in a Memorandum Opinion and Order of the

Pennsylvania Commonwealth Court on August 24, 2021, as amended on November 4, 2021.

9. State insurance regulators from Massachusetts, Maine and Washington intervened in rehabilitation proceedings and appealed the Order approving Rehabilitation Plan to the Pennsylvania Supreme Court (Middle District), No. 71 MAP 201. Approximately, 32 state insurance regulators, including the Commissioner, have requested leave to support the intervening regulators as amici curie. The appeal remains pending before the Pennsylvania Supreme Court.

10. Under the Rehabilitation Plan:

- a. SHIP unilaterally, and without a factual or legal basis, determined that the Commissioner has agreed to SHIP's proposed premium rate plan for Utah.
- b. The proposed premium rate increases average 75%.
- c. The Rehabilitator will send or has sent to each Utah policyholder a "Coverage Election Package" that notifies them of the new premium rates and instructs them to select among coverage options that increase or reduce premium and reduce or maintain benefits under their policies.

11. Under Utah law, a premium rate for a LTCI policy and its related forms must be filed with the Commissioner before the rates and forms take effect. Utah Code §§ 31A-2-201.1, 31A-21-201, and 31A-22-1404; Utah Admin Code, Rules R 590-85, R590-148, and R590-220.

12. Utah law gives the Commissioner authority to disapprove a filed rate or form. Utah Code §§ 31A-21-201 and 31A-22-602.

13. SHIP's premium rate plan and its assumptions, methodology and related forms have not been filed with the Commissioner.

14. Because SHIP has not complied with Utah's rate and form filing requirements,

SHIP has violated or will violate Utah law by notifying Utah policyholders of the new rates and instructing them to select among coverage options based on those rates.

15. SHIP's notice to Utah policyholders is or will be deceptive because it constitutes a false representation that its rates and forms have met legal filing requirements. Utah Code §§ 31A-21-201(3) and 31A-23a-402.

16. SHIP's notice to Utah policyholders will cause immediate and significant danger to them. After receiving the notice, Utah policyholders will be compelled to make final and binding premium and coverage elections. Those elections will affect the availability of coverage for long-term care services in the future. Additionally, the elections will affect the policyholders' benefits from Utah's guaranty association if SHIP is later placed in liquidation, a likely occurrence due to SHIP's plans for future rate increases and benefit reductions.

17. Other jurisdictions, including Louisiana, Maine, South Carolina, North Dakota, Ohio, Maryland, and the District of Columbia, have enjoined SHIP's similar conduct in their states.

18. Based on the foregoing, there is substantial cause to believe that an immediate and significant danger to the public health, safety and welfare of Utah policyholders requires immediate action.

### **CONCLUSIONS OF LAW**

19. The Commissioner regulates the business of insurance in Utah pursuant to Title 31A of the Utah Code.

20. Pursuant to Utah Code § 31A-2-201(4)(a), the Commissioner is authorized to issue prohibitory orders to secure compliance with Title 31A.

21. Pursuant to Utah Code § 63G-4-502, the Commissioner is authorized to issue an

order on an emergency basis if the facts known by or presented to the Commissioner show that an immediate and significant danger to the public health, safety, or welfare exists that requires the Commissioner's immediate action.

22. Pursuant to Utah Code §§ 31A-2-201.1, 31A-21-201, and 31A-22-1404 and Utah Admin. Code Rules R590-85, R590-148 and R590-220, every LTCI insurer shall file with the Commissioner the classification of risks and their related premium rates and policy forms. Respondents violated this provision of law by not filing proposed rates and forms with the Commissioner.

23. Pursuant to Utah Code § 31A-23a-402, no person shall engage in an unfair or deceptive act or practice in the business of insurance in Utah. Respondents violated or will violate this law by falsely notifying Utah policyholders that their rates have been legally and appropriately changed.

### **ORDER**

Based upon the Findings of Fact, Conclusions of Law, it is ordered that:

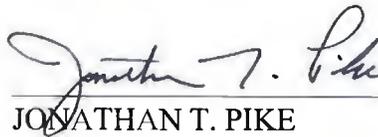
1. Respondents and any of their principals, agents, employees, successors, and assigns shall cease and desist from implementing the Rehabilitation Plan in Utah or otherwise interfering with the rights of SHIP's Utah policyholders or violating the insurance laws and regulations of Utah, including by mailing "Coverage Election Packages" and notifying Utah policyholders of proposed rate or benefit modifications SHIP intends use in place of the policyholders' existing rates and benefits, none of which has been authorized by the Commissioner.

2. For the duration of this emergency order, SHIP shall continue to abide by the current policy terms, benefits, and premium levels for Utah policyholders in effect prior to the adoption of the Rehabilitation Plan.

3. SHIP is not prohibited from curing any of its form or rate filing deficiencies or from filing their form and rate filings, including resolution of any objections issued by the Commissioner.

4. Pursuant to Utah Code § 63G-4-502 this Emergency Order is effective immediately and the Utah Insurance Department shall commence a formal adjudicative proceeding.

DATED this 22nd day of February, 2022.



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JONATHAN T. PIKE  
Utah Insurance Commissioner  
Utah Insurance Department  
4315 S. 2700 W., Suite 2300  
Taylorsville, UT 84129  
Telephone: 801-957-9321  
Email: [uidadmincases@utah.gov](mailto:uidadmincases@utah.gov)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Emergency

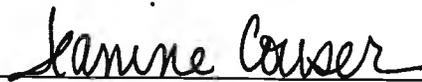
Order was mailed to:

Jessica K. Altman, and her successors in office  
Rehabilitator  
Pennsylvania Insurance Department  
1326 Strawberry Square  
Harrisburg, PA 17120

Patrick H. Cantilo  
Cantilo & Bennett, L.L.P.  
Special Deputy Rehabilitator  
550 Congressional Boulevard, Suite 200  
Carmel, IN 46032

Senior Health Insurance Company of  
Pennsylvania (In Rehabilitation)  
550 Congressional Boulevard, Suite 200  
Carmel, IN 46032

DATED this 23<sup>rd</sup> day of February, 2022.

  
\_\_\_\_\_  
Jeanine Couser  
Utah Insurance Department  
4315 S. 2700 W., Suite 2300  
Taylorsville, UT 84129801-957-9321

# **Exhibit 15**



**State of Vermont**  
**Department of Financial Regulation**  
89 Main Street  
Montpelier, VT 05620-3101

For consumer assistance:  
[Banking] 888-568-4547  
[Insurance] 800-964-1784  
[Securities] 877-550-3907  
[www.dfr.vermont.gov](http://www.dfr.vermont.gov)

VIA FIRST CLASS AND ELECTRONIC MAIL

April 28, 2022

Senior Health Insurance Company of Pennsylvania (In Rehabilitation)  
550 Congressional Boulevard, Suite 200  
Carmel IN 46032

Re: In re: Senior Health Insurance Company of Pennsylvania; Docket No. 22-005-I

Dear Sir/Madam:

Enclosed please find an additional copy of the *Ex Parte Order to Cease and Desist* in the above-captioned matter. You initially received notice of this Order on March 7, 2022.

Pursuant to 8 V.S.A. § 13(c), this Order was filed on April 26, 2022 with the Washington Unit of the Vermont Superior Court and was assigned Superior Court Docket No. 22-CV-01464. Once filed, this Order became an enforceable order of the Vermont Superior Court.

Sincerely,

/s/ Hillary Borcharding  
Hillary Borcharding  
Assistant General Counsel

Enclosures

cc: Mike Humphreys, Rehabilitator, Pennsylvania Insurance Department  
Patrick H. Cantilo, Esq.





State of Vermont  
Department of Financial Regulation  
89 Main Street  
Montpelier, VT 05620-3101  
[www.dfr.vermont.gov](http://www.dfr.vermont.gov)

For consumer assistance:  
[Banking] 888-568-4547  
[Insurance] 800-964-1784  
[Securities] 877-550-3907

April 26, 2022

Donna Waters, COM  
Superior Court, Washington Unit  
65 State Street  
Montpelier, VT 05602

RE: In Re: Senior Health Insurance Company of Pennsylvania; Docket No. 22-005-I

Dear Ms. Waters:

I enclose for filing pursuant to 8 V.S.A 13(c) a certified copy of the Commissioner's Order dated March 6, 2022.

Thank you for your cooperation.

Sincerely,

/s/ Hillary A. Borcharding

Hillary A. Borcharding  
Assistant General Counsel  
Vermont Department of Financial Regulation  
89 Main Street, Third Floor  
Montpelier, VT 05620  
(802) – 249-6512  
[Hillary.Borcharding@vermont.gov](mailto:Hillary.Borcharding@vermont.gov)



STATE OF VERMONT  
DEPARTMENT OF FINANCIAL REGULATION

IN RE: SENIOR HEALTH )  
INSURANCE COMPANY OF ) DOCKET NO. 22-005-I  
PENNSYLVANIA )

**EX PARTE ORDER TO CEASE & DESIST**

**Senior Health Insurance Company of Pennsylvania – Long Term Care**

On March 4, 2022, through counsel, the DFR Insurance Division submitted a Motion for Ex Parte Cease & Desist Order alleging that Senior Health Insurance Company of Pennsylvania (SHIP) is transacting insurance business in this State in a manner that is causing or is reasonably expected to cause significant, imminent, and irreparable injury to Vermont policyholders. See Motion attached hereto. I have reviewed the alleged violations specified in the Motion, which are incorporated herein by reference, and find, based on the allegations, that good cause exists for me to issue the requested Ex Parte Cease and Desist Order.

***Ex Parte***  
**CEASE AND DESIST ORDER**

This order is issued pursuant to 8 V.S.A. §§ 11, 12, 15, 3661(a), 8809, and DFR-2022-01 § 1.04(O). I believe that SHIP is violating Vermont law and regulations as described in the DFR Insurance Division's March 4, 2022 Motion for Ex Parte Cease & Desist Order.

Effective immediately, except as expressly provided herein, SHIP and its principals, employees, and agents (including the Rehabilitator and its deputies and agents) shall halt disseminating, implementing, or enforcing in this State the "Coverage Election Package" or otherwise interfering with the rights of SHIP's Vermont policyholders or violating the insurance

laws and regulations of this State, including, but not limited to, notifying Vermont policyholders of proposed rate or benefit modifications under SHIP policies or requesting that Vermont policyholders select rates or benefits different under SHIP policies from those authorized by the Vermont DFR and called for under the terms of the contract, charging additional premium, or withholding, delaying, or encumbering benefits in whole or in part, until such time as otherwise ordered by the Vermont DFR.

This Order does not prohibit SHIP from filing a premium increase request, or a proposed schedule of rates for proposed voluntary policy modifications, for review by the Commissioner in the manner prescribed by Vermont law, with sufficient supporting information to enable the Commissioner to determine whether the requested rates are neither inadequate, excessive, nor unfairly discriminatory. This Order does not prohibit SHIP from sending notices of any such filings to consumers if the notices have been reviewed by the Commissioner for accuracy and compliance with Vermont law and have not been disapproved.

#### **NOTICE OF RIGHT TO HEARING**

SHIP is hereby given NOTICE that a hearing will be afforded in this matter if they so request in accordance with Department of Financial Regulation Administration Procedures No. 2022-01 § 1.04(O) within thirty (30) days from the date of the mailing of this Notice. Any such request must be delivered to the attention of the Docket Clerk, Beth Sides, 89 Main Street, Montpelier, Vermont 05620-3101.

The Department of Financial Regulation is located at 89 Main Street, City Center, 3d Floor, Montpelier, Vermont. If a hearing is requested, one will be scheduled within thirty (30) days after the Department's receipt of such a request.

Such hearing in this matter will be conducted in accordance with the contested case procedures prescribed in 3 V.S.A. § 809 and Department of Financial Regulation Administrative Procedures Rule No. 2022-01. All parties have the right to represent themselves or to be represented throughout the proceedings by legal counsel.

**FAILURE TO REQUEST A HEARING IN A TIMELY MANNER OR TO ATTEND A HEARING THAT HAS BEEN SCHEDULED MAY RESULT IN THE ENTRY OF A**

DEFAULT JUDGMENT AGAINST YOU FOR THE RELIEF REQUESTED BY THE DEPARTMENT.

BY ORDER OF THE COMMISSIONER OF FINANCIAL REGULATION

Dated at Montpelier, Vermont this 6<sup>th</sup> day of March, 2022.

By:   
Michael S. Pieciak  
Commissioner of Financial Regulation  
Vermont Department of Financial Regulation

Certified to be a true copy of the original as the same appears in this office.

  
Elizabeth Sides, Docket Clerk  
Vermont Department of Financial Regulation

# **Exhibit 16**



April 12, 2022

VIA E-MAIL

**Re: Senior Health Insurance Plan of Pennsylvania (“SHIP”)**

Dear Esteemed Colleagues and Friends,

It was great to see many of you last week in Kansas City. Thank you for making my first meeting with a black badge feel as normal as possible, at least given the circumstances. This e-mail is intended to follow up on a few themes that I discussed with several of you in one-off conversations last week about the SHIP rehabilitation. Please note that my goal is to be as open and transparent as possible, while recognizing that anything I say or write, even if done so in a confidential regulator-regulator context, may nonetheless appear in any of the ongoing litigation matters surrounding SHIP.

First, attached is an updated version of the SHIP Election Package Report. This report was previously shared with you on March 11, but I wanted to share with you the most up-to-date information on the elections of policyholders in your states. For your convenience, I am also attaching the *Annual Report of the Rehabilitator* that was submitted to the Commonwealth Court on April 1. Included in that report is the updated election package figures reporting that 85 percent of policyholders had submitted elections with more than **60 percent of respondents’ electing options that we do not believe, based on experience with Penn Treaty’s liquidation, would have been available should we have immediately pursued liquidation for SHIP.**

Second, it became clear to me last week that providing additional perspective on Phase 1 and the possible transition to Phase 2 (or liquidation) would be helpful to the membership. **As I consider the future for SHIP’s rehabilitation, please know that Phase 2 is neither imminent nor definite.** Instead, as we have previously stated, we will evaluate the results of Phase 1, engage a full vetting of the data with chief insurance regulators, and approach the Commonwealth Court before taking any definitive steps after Phase 1.

**In fact, as the election packages are coming in, we now believe that we will be able to stay in Phase 1 (post policy modifications) for several years.** While we are still working to quantify that window more specifically, we currently believe “several” to mean at least five years and maybe longer before we would have to decide any next steps. With policyholders at an average age of 88, these additional years in a modified policy of their choosing may represent a benefit over liquidation for many policyholders.

So how do we figure that we will be able to stay in Phase 1, without any additional rate increases, you might ask. Based on current data, we expect to reduce SHIP’s deficit of approximately \$1.3 Billion, by at least half after modifying policies in Phase 1. That will still leave an obviously sizeable deficit, but it also provides us time to let the rehabilitation plan play itself out for a longer period before Pennsylvania must decide on Phase 2 or perhaps liquidation. In addition, halving the deficit also means that the plan is projected to save our states’ taxpayers at least \$550 Million. The rehabilitation plan has been criticized by some commissioners in court filings as being “industry friendly” when compared to liquidation, presumably because it would require smaller assessments on life and health insurance companies if we ever pursue liquidation as the current (potential assessment base) deficit will be reduced. As we all know, however, those insurance industry assessments are ultimately borne by our

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taxpayers, as insurers can offset assessments generally through inflated rates on other policyholders or by offsetting premium tax payments due, in most cases, to a state's General Fund. Thus, one might consider the rehabilitation as "taxpayer friendly" in that it substantially reduces the amount of money ultimately born by the taxpayers if SHIP were to be liquidated in the future.

**My current plan is, therefore, to run SHIP off after modifying policies in Phase 1 until we need to act in the future. We will NOT simply roll into Phase 2 after not completely closing the current SHIP deficit in Phase 1.** As insurance regulators, we all believe that insurance policyholders should pay fair premiums. Phase 1 does just that; to steal a term from our past principles-based reserving efforts, Phase 1, "right-sizes" amounts policyholders pay in premium. In doing so, it provides quality options to policyholders, including options that at least match guaranty association limits and one that provides an enhanced non-forfeiture benefit that we believe has never been offered in the context of a receivership.

The rehabilitation plan has seen its share of opposition. Some object to Pennsylvania's approach to right-sizing rates, others philosophically believe that liquidation should be pursued if we do not think we will immediately and completely fill SHIP's deficit. Still other states do not believe that a domestic state regulator through its court system may control the operations of a company in receivership without being bound by the laws of every state in the country. I understand you. I hear you. I simply disagree. I believe the rehabilitation plan is best for policyholders and taxpayers and is fully consistent with our state-based system of insurance regulation. I will be glad to continue providing updates as the rehabilitation moves forward and I welcome your thoughts and questions.

Sincerely,



Mike Humphreys

Pennsylvania Insurance Commissioner

**PROOF OF SERVICE**

I hereby certify that on this day I caused the foregoing document to be served by electronic delivery to the Rehabilitator's counsel and the Special Deputy Rehabilitator at the below addresses.

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A copy of the foregoing was also served by electronic transmission via PacFile and was served upon the email addresses shown on the master service list available as of the date of filing, and upon the persons admitted as intervenors, with address by U.S. mail on:

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Dated: May 3, 2022

/s/ Stephen G. Harvey  
Stephen G. Harvey