

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA**

**JAMES J. DONELON**, *in his official capacity*  
*as Commissioner of Insurance for the*  
*State of Louisiana,*

*Plaintiff,*

v.

**JESSICA K. ALTMAN**, *Insurance*  
*Commissioner of the Commonwealth of*  
*Pennsylvania, in her capacity as Statutory*  
*Rehabilitator of Senior Health Insurance*  
*Company of Pennsylvania,*

*Defendant.*

**No. 3:20-cv-00604**

**Judge Dick**

**Magistrate Wilder-Doomes**

**DEFENDANT’S OPPOSITION TO PLAINTIFF’S MOTION TO SUPPLEMENT  
OPPOSITION TO MOTION TO DISMISS AMENDED COMPLAINT**

Briefing on Defendant’s Motion to Dismiss the Amended Complaint closed on January 29, 2021, when Defendant filed her Reply in Further Support of that motion. Now, nearly three months after filing his Opposition to the Motion to Dismiss, Plaintiff seeks to supplement that Opposition with a 52-page Pre-Hearing Memorandum filed by other state insurance regulators in the ongoing rehabilitation proceedings of Senior Health Insurance Company of Pennsylvania (“SHIP”).<sup>1</sup> Plaintiff’s attempt to “supplement” his Opposition with new legal arguments—in truth, to submit out of context an entirely new brief filed in another action on the merits of the plan of rehabilitation—is plainly improper and should be denied.

<sup>1</sup> Plaintiff previously applied for and received leave to supplement the record with pleadings from another collateral attack on the plan in South Carolina filed by the Director of Insurance for that state. (Dkt. 32.) In that instance, Plaintiff filed for leave two weeks after the pleadings at issue were filed in South Carolina, but the legal questions in that case—specifically, the viability of a collateral challenge to the Rehabilitator’s efforts to rehabilitate SHIP—overlapped with the questions before this Court. There is no such overlap with the current motion for leave, which asks this Court to consider arguments addressed to the merits of Plaintiff’s claims as opposed to the jurisdictional and other defects raised in Defendant’s Motion to Dismiss.

The Court should deny Plaintiff's request for several reasons. *First*, Plaintiff fails to establish good cause for belatedly seeking to supplement his Opposition. *See Shepherd on behalf of Est. of Shepherd v. City of Shreveport*, 920 F.3d 278, 288 (5th Cir. 2019) (plaintiff failed to demonstrate "good cause" necessary for supplementing opposition to motion for summary judgment). Indeed, Plaintiff offers *no* explanation as to why the arguments in the proposed supplement should be considered so long after the briefing on Defendant's motion closed. Plaintiff appears to rely solely on the fact that the state insurance regulators who intervened and are participating as parties in SHIP's rehabilitation proceedings (the "Participating State Insurance Regulators") recently filed the brief on which Plaintiff now seeks to rely, but the mere recent filing of a brief in a different action by different parties is not good cause for leave to supplement. Plaintiff fails to proffer any reason why his Opposition failed to include any of the legal arguments made in the brief that he now wishes the Court to consider. *See Arnold v. Williams*, No. CV 17-344-SDD-RLB, 2019 WL 2471866, at \*2 (M.D. La. June 13, 2019) (denying motion to supplement opposition filed two days after filing of opposition), *aff'd in relevant part and rev'd in part on unrelated grounds*, 979 F.3d 262, 271 (5th Cir. 2020); *Texas v. Ysleta Del Sur Pueblo*, No. EP-17-CV-179-PRM, 2018 WL 2426580, at \*1 (W.D. Tex. Apr. 2, 2018) (denying motion to supplement and explaining that "Defendants cite no Federal Rule of Civil Procedure entitling them to 'supplement' their Initial Motion with completely new arguments months after filing it"). If any of the legal arguments were relevant to the outstanding Motion to Dismiss, Plaintiff was free to make them at the time of his Opposition. He chose not to do so, and he never explains to this Court why he should be permitted to change his mind.

*Second*, and more fundamentally, the arguments raised in the Participating State Insurance Regulators' brief filed in the ongoing rehabilitation proceedings are irrelevant to any of the issues currently before this Court. That is, nothing in that filing addresses how a collateral attack on the rehabilitation process is ripe and justiciable in federal court. Nor does the filing address why a federal

court is the proper forum to resolve disputes regarding the validity of the rehabilitation plan. In fact, by intervening in the rehabilitation proceedings, the Participating State Insurance Regulators' acknowledged that the Commonwealth Court of Pennsylvania is the proper forum to raise any objections to any provision in SHIP's rehabilitation plan—not through a collateral attack in federal court.

Ironically, Plaintiff's attempted reliance on the Participating State Insurance Regulators' filing underscores precisely why this Court should abstain from exercising jurisdiction (to the extent it exists at all) in favor of the ongoing rehabilitation proceedings. The Commonwealth Court of Pennsylvania is already considering the very issues central to Plaintiff's claims in this case—that is, whether it has the power and jurisdiction to approve the challenged provisions in the rehabilitation plan, and whether the proposed plan would impede impermissibly on the interests of other states.<sup>2</sup> Those arguments have been raised by the Participating State Insurance Regulators who, unlike Plaintiff, elected to participate in the rehabilitation proceedings. Plaintiff's collateral attack on the rehabilitation proceedings—seeking to have this Court separately determine the validity of SHIP's rehabilitation plan and the powers and jurisdiction of the rehabilitation court—would effectively eviscerate Pennsylvania's comprehensive scheme for the rehabilitation of insolvent insurers. And Plaintiff's attempt to have this Court consider entire briefs filed in the rehabilitation proceedings confirms that this suit was commenced purely as an exercise in forum shopping, perhaps in coordination with the Participating State Insurance Regulators and the Director of Insurance for South Carolina, and that abstention in favor of the rehabilitation proceedings is warranted.

Defendant submits emphatically that the brief in the proposed supplement is wholly irrelevant to the issues before the Court and neither necessary nor helpful for their resolution. However, to the

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<sup>2</sup> For the reasons already explained above, the underlying merits of Plaintiff's claims are not currently before the Court because they are not relevant to the outstanding Motion to Dismiss.

extent the Court is inclined to permit Plaintiff to supplement his Opposition, Defendant respectfully requests that she likewise be permitted to supplement her Motion to Dismiss with the Rehabilitator's Pre-Hearing Memorandum, which she filed on April 5, 2021 in the rehabilitation proceedings, as well as any other briefs filed in the rehabilitation proceedings which address the merits of the policy modification process proposed by Defendant in her capacity as Rehabilitator of SHIP and to which Plaintiff objects. Although Defendant believes firmly that the proposed supplemental briefs are irrelevant to the pending Motion to Dismiss, it would be patently unfair and prejudicial to allow Plaintiff to selectively present this Court with merits briefing at this stage of the proceedings without affording Defendant the same opportunity.

Respectfully submitted,

/s/ Covert J. Geary

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**CERTIFICATE OF SERVICE**

I, Covert J. Geary hereby certify that on this 8th day of April, 2021, I caused a true and correct copy of the foregoing Defendant's Opposition to Plaintiff's Motion to Supplement Opposition to Motion to Dismiss Amended Complaint, to be served via the Court's CM/ECF system and electronic mail upon the following:

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/s/ Covert J. Geary  
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