

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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

**INTERVENOR NOLHGA'S RESPONSE TO  
POST-HEARING FILINGS OF ALL PARTIES**

Pursuant to the Court's May 24, 2021 Order, Intervenor The National Organization of Life and Health Insurance Guaranty Associations ("NOLHGA") respectfully submits this Response to Post-Hearing Filings of All Parties. On June 14, 2021, NOLHGA submitted its Post-Hearing Memorandum along with Proposed Findings of Fact and Conclusions of Law and alternative Proposed Orders ("NOLHGA's Post-Hearing Filing") with respect to the Second Amended Plan of Rehabilitation (the "Plan") for Senior Health Insurance Company of Pennsylvania ("SHIP"). Post-hearing filings also were submitted by the Rehabilitator, the three intervening state insurance regulators (the "State Regulators"), the four intervening health insurers (the "Health Insurers"), and Mr. James Lapinski. NOLHGA responds to the other parties' post-hearing filings as outlined below. NOLHGA's recommended revisions and additions to the other parties' proposed findings are also summarized in the attached Appendix.

NOLHGA believes an accurate record as to the rights and obligations of the guaranty association ("GA") system is important for this proceeding. As explained

in NOLHGA's Post-Hearing Filing, NOLHGA seeks both to illuminate those issues for this Court and further to ensure that policyholders receive accurate and transparent information in SHIP's receivership proceeding, particularly in light of the possibility of SHIP's eventual liquidation. Consistent with that objective, NOLHGA is proposing limited revisions to certain proposed findings of fact offered by the Rehabilitator and State Regulators. NOLHGA also asks the Court to make certain additional findings that NOLHGA considers necessary to provide clarity to certain proposed findings (or in response to comments in briefing). NOLHGA further incorporates its request for all of its suggested modifications and directions to the Rehabilitator as set forth in NOLHGA's Post-Hearing Filing. NOLHGA submits that these provisions may be incorporated as submitted by NOLHGA in either an order approving or disapproving the Plan that uses findings and conclusions of either the Rehabilitator or the State Regulators.

Finally, consistent with its neutrality as to (1) this Court's approval or disapproval of the Plan and (2) the legal questions being debated in that context, NOLHGA has not commented on either the Rehabilitator's or the State Regulators' conclusions of law. By declining to comment, NOLHGA does not intend to express agreement with or endorsement of any stated conclusion of either

party. NOLHGA reserves the right to express views in the future on these or related legal questions.

**A. GAs have flexibility to offer meaningful choices to policyholders in liquidation.**

The following proposed findings of fact imply that policyholders will not have meaningful choices from the GA system in the event of liquidation:

- Rehabilitator FF 57 – "The Plan offers policyholders meaningful choices that would not be available in liquidation. (Tr. 99:22-107:19 (Cantilo Testimony on plan options); 113:2-124:11 (same).)"
- Rehabilitator FF 61 – "As noted, the Rehabilitator and her team considered and analyzed the ways in which the Plan could offer policyholders meaningful choices that would not be available in liquidation. (Tr. 99:22-107:19 (Cantilo Testimony on plan options); 113:2-124:11 (same).)"
- Rehabilitator FF 95 – "The Rehabilitator has offered expert and factual testimony supporting the proposition that the Plan offers policyholders options that would not be available in liquidation. (Tr. 186:23-189:1, 350:4-22 (Cantilo Testimony).)"
- Rehabilitator FF 132 – "The Rehabilitator has offered expert and factual testimony supporting the proposition that the Plan offers policyholders options that would not be available in liquidation. (Tr. 187:11-188:5; 250:19-251:17 (Cantilo Testimony).)"
- Rehabilitator FF 133 – "The Intervening Regulators have not offered any evidence contravening the Rehabilitator's contention described and cited herein that the Plan offers policyholders options that would not be available in liquidation."

NOLHGA disagrees with the implication that policyholders will not have meaningful choices in liquidation. Rather, as NOLHGA's witnesses testified, GAs

have flexibility in designing rate increase programs and offering benefit modifications to policyholders in the alternative—and have exercised that flexibility. Tr. 640:9-641:12; 802:2-803:3; 809:13-810:7.

As NOLHGA's witness also testified, however, the GAs could not offer a benefit modification option under which GA covered benefits would exceed statutory GA coverage limits. Tr. 811:6-9. Some of SHIP's LTC policyholders (approximately 36%) have policies with maximum policy values that exceed the applicable GA coverage limit. *See* Ex. RP 29 (15,468 out of 42,559 policyholders had an uncovered gross premium reserve greater than \$0 as shown in column FL; data as of 6/30/20). Under the Plan, those policyholders would have the option to increase premiums to maintain full benefits (including benefits in excess of GA limits) by choosing Option 4, at least in Phase One. NOLHGA agrees that, in liquidation, GAs would not be able to guarantee such benefits in excess of GA coverage limits and, in that sense, a rate increase option for those policyholders in liquidation would be different than Option 4 under Phase One of the Plan. *Id.*

The GAs otherwise may offer a wide variety of options to policyholders in liquidation (subject to statutory limits on coverage and any approvals required by statute). As written, the proposed findings mischaracterize both the circumstances in which the GAs would not be able to provide comparable benefits in liquidation, and the evidence in the record about options that may be available in liquidation.

For these reasons, NOLHGA proposes that the Rehabilitator's proposed findings be modified as follows to be more precise and avoid the implication that GAs are unable to offer meaningful choices to policyholders in liquidation<sup>1</sup>:

- Rehabilitator FF 57 – "Phase One of the Plan offers policyholders meaningful choices, including at least one option that would not be available in full in liquidation for some policyholders. (Tr. 99:22-107:19 (Cantilo Testimony on plan options); 113:2-124:11 (same).)"
- Rehabilitator FF 61 – "As noted, the Rehabilitator and her team considered and analyzed the ways in which the Plan could offer policyholders meaningful choices, including at least one option that would not be available in full in liquidation for some policyholders. (Tr. 99:22-107:19 (Cantilo Testimony on plan options); 113:2-124:11 (same).)"
- Rehabilitator FF 95 – "The Rehabilitator has offered expert and factual testimony supporting the proposition that Phase One of the Plan offers policyholders options, including at least one option that would not be available in full in liquidation for some policyholders. (Tr. 186:23-189:1, 350:4-22 (Cantilo Testimony).)"
- Rehabilitator FF 132 – "The Rehabilitator has offered expert and factual testimony supporting the proposition that Phase One of the Plan offers policyholders options, including at least one option that would not be available in full in liquidation for some policyholders. (Tr. 187:11-188:5; 250:19-251:17 (Cantilo Testimony).)"
- Rehabilitator FF 133 – "The Intervening Regulators have not offered any evidence contravening the Rehabilitator's contention described and cited herein that Phase One of the Plan offers policyholders options, including at least one option that would not be available in full in liquidation for some policyholders."

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<sup>1</sup> NOLHGA encourages the Court to consider also citing Mr. Gallanis's testimony, at Tr. 641:13-25, and Mr. Morton's testimony, at Tr. 811:6-9, which provide clarification as to the options GAs may provide to policyholders in liquidation (as discussed more fully in Section B below), as support for the following proposed findings.

**B. The Plan offers different options than were offered by the GAs in the Penn Treaty liquidation, but GAs are not limited to the options offered to Penn Treaty policyholders.**

The Rehabilitator has offered several proposed findings that compare the options that GAs provided to Penn Treaty policyholders in liquidation to options available under the Plan. As framed, the proposed findings may be read to imply that because the GAs did not offer certain benefit options to policyholders in the Penn Treaty liquidation, they are not able to or will not offer such options to any policyholders in a future liquidation.

- Rehabilitator FF 96 – "The Rehabilitator has offered expert and factual testimony supporting the proposition that Option 3—known as the reduced paid-up or non-forfeiture option—as offered under the Plan is substantially more generous than that offered in the Penn Treaty liquidation by the guaranty associations. (Tr. 336:8-20 (Cantilo Testimony).)"
- Rehabilitator FF 97 – "The Rehabilitator has offered uncontroverted expert and factual testimony supporting the proposition that LTCI has no cash value, that many insurance regulators are opposed to cash-out options for policyholders, and that the Plan's Option 3 is better for policyholders than cash-out options. (Tr. 189:2-22 (Cantilo Testimony).)"
- Rehabilitator FF 98 – "The Rehabilitator has offered expert and factual testimony supporting the proposition that in the Penn Treaty liquidation the guaranty associations did not offer policyholders an option comparable to those within Option 2 under the Plan. (Tr. 336:21-337:7 (Cantilo Testimony).)"

NOLHGA does not dispute that there are differences between policyholder options offered in Penn Treaty and what is proposed in Phase One of the Plan and

acknowledges that these proposed findings reflect the Rehabilitator's qualitative assessment of various options, as to which NOLHGA takes no position.

However, the GAs are not bound in any way to provide the same benefit options in a future liquidation, of SHIP or any other company, as were provided in Penn Treaty, and statements to the contrary are not supported by the testimony in the record. For example, the Health Insurers suggest in their briefing that "the options available to policyholders under the Plan are far better than what would be offered in a liquidation. Tr. 350, 443." Health Insurers' Post-Hearing Memorandum at 12. They also suggest that, "Testimony at the hearing established that in liquidation, policyholders could not be offered the range of choices provided under the Plan. Tr. At 350, 443." Health Insurers' Post-Hearing Memorandum at 16. Such statements are not supported by the record.

It is appropriate and necessary to emphasize that GAs are not limited to the options that were offered in Penn Treaty. As NOLHGA's President Mr. Gallanis testified, the Penn Treaty rate increase program is illustrative, but it does not define or limit what GAs may do or offer in a future liquidation. Tr. 641:13-21. Mr. Gallanis stated that, if the GAs were triggered by a liquidation of SHIP or another insurer, "at least those options [that were provided to Penn Treaty policyholders] and probably more would be available to the guaranty associations." Tr. 641:21-25.

As stated above, NOLHGA's evidence established only one limitation on GA coverage in liquidation—GAs cannot guarantee benefits in excess of GA coverage limits, and so not all policyholders can elect a rate increase to sustain full benefits if their benefits exceed statutory limits. Tr. 811:6-9. For the sake of clarity, therefore, it is imperative that, to the extent Rehabilitator's Proposed Findings 96-98 are incorporated in any order, they are clarified by adding or modifying the language to incorporate NOLHGA's originally submitted Proposed Findings, specifically NOLHGA's Proposed Findings 53-55.

Also, for the sake of clarity, if the Rehabilitator's recommended comparisons to the Penn Treaty rate increase program are included in the Court's findings of fact, it would be important to include the following additional findings, which describe the basic framework and circumstances of the Penn Treaty rate increase program:

- NOLHGA FF 62<sup>2</sup> – In the Penn Treaty liquidation, the GAs' nationwide rate increase program generally included four options: a reduced benefit option, a reduced paid-up ("RPU") option, a cashout option, and a rate increase option that permitted policyholders to retain current benefits up to GA limits. Tr. 809:13:-811:5.

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<sup>2</sup> Newly proposed findings of fact are numbered to sequentially follow NOLHGA's proposed findings of fact 1-61 filed on June 14, 2021.



- NOLHGAFF 63 – The options offered by the GAs to Penn Treaty policyholders differ from the options in Phase One of the Plan in the following primary ways:
  - (1) The GAs offered Penn Treaty policyholders a cashout option, which the Plan does not include. Tr. 810:2-5; Ex. RP 55, at 11-12 (listing options for policyholders, not including a cashout option).
  - (2) The GAs offered Penn Treaty policyholders the ability to reduce benefits and pay premium based on the reduced benefits. Tr. 640:25-641:4; 809:18-22. This option is similar but not identical to Option 1 under Phase One of the Plan. *See* Ex. RP 55, at 41-47 (description of Option 1).
  - (3) The GAs did not offer Penn Treaty policyholders a "Basic Policy" or "Enhanced Basic Policy" like those offered under Option 2 of Phase One of the Plan. Tr. 831:19-832:6.
  - (4) The GAs offered Penn Treaty policyholders a reduced paid up option that permitted policyholders to stop paying premium. Tr. 809:23-810:1. The GAs did not offer an "enhanced" reduced paid up option equivalent to Option 3 under Phase One of the Plan. *See* Ex. RP 55, at 50 (description of Option 3).
  - (5) The GAs offered Penn Treaty policyholders a rate increase option where policyholders retained full benefits under their policies, subject to the statutory GA coverage limit. Tr. 810:24-811:5. This is similar to Option 4 under Phase One of the Plan except that the GAs could only guarantee benefits up to the statutory GA coverage limit. *See* Ex. RP 55, at 51 (description of Option 4).
  - (6) There were minor variations from state to state in terms of the options offered to Penn Treaty policyholders. Tr. 770:10-21.
- NOLHGAFF 64 – 76% of Penn Treaty policyholders elected or defaulted into the rate increase; 13% elected to reduce their benefits; 8% elected the cashout; and 3% elected the RPU. Tr. 811:24-812:6; 816:19-817:8.

NOLHGA's Proposed Findings 53–55 and these additional findings should also be substituted for the State Regulators' Proposed Findings 51 and 53, which similarly address these issues. NOLHGA's Proposed Findings 53–55 and these additional findings also are more accurate than the Health Insurers' summary of options offered by GAs in the Penn Treaty liquidation. *See* Health Insurers' Post-Hearing Memorandum at 16.

Finally, Mr. Gallanis and Mr. Morton testified that only one regulator did not approve the cashout option in the Penn Treaty rate increase program (but that regulator approved a premium rate increase significantly higher than the number the guaranty associations had requested). Tr. 732:20-733:13; 810:18-20. For that reason, NOLHGA submits that Rehabilitator's Proposed Finding 97 should be modified as follows:

- Rehabilitator FF 97 – "The Rehabilitator has offered ~~uncontroverted~~ expert opinion and factual testimony supporting the proposition that LTCI has no cash value, that many insurance regulators are opposed to cash-out options for policyholders, and that the Plan's Option 3 is better for policyholders than cash-out options. (Tr. 189:2-22 (Cantilo Testimony).)"

**C. The GA rate increase program in the Penn Treaty liquidation used a somewhat different If Knew methodology than that proposed in the Plan.**

The Rehabilitator describes the Plan's If Knew premium methodology as consistent with the methodology used by the GAs in the Penn Treaty rate increase

program:

- Rehabilitator FF 112 – "In addition, the If Knew premium methodology is consistent with the premium methodology used by the guaranty associations in the Penn Treaty liquidation. (Tr. 54:8-55:14 (Cantilo Testimony); Ex. RP-56, Cantilo Slides at 65.)"<sup>3</sup>

NOLHGA agrees that the Plan's If Knew methodology is very similar to the methodology used by the GAs in the Penn Treaty rate increase program, but there are two significant differences between the Plan's use of the If Knew methodology and the If Knew methodology used in Penn Treaty. First, rate increases were sought on a cohort (or group) basis by the GAs in the Penn Treaty liquidation while the Plan intends to use a seriatim (or individual policyholder) approach. Tr. 803:13-806:4. Second, the Penn Treaty rate increases were calculated assuming policy benefits capped at GA limits if lower than the total maximum value of the policy, whereas the Plan uses total maximum value of the policy. Tr. 805:24-806:4.

The uncontroverted testimony at the hearing from NOLHGA's actuary Mr. Morton established that the use of the cohort basis is an industry standard and that use of the cohort basis can largely be expected to address inequities in premium

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<sup>3</sup> See also Health Insurers' Post-Hearing Memorandum at 8 ("In addition, the [If Knew] methodology is what would be used by the Guaranty Associations to seek premium rate increases in liquidation, assuming they took the same approach as in the Penn Treaty case.").

rates and cross-state rate subsidization. Tr. 806:5-25.<sup>4</sup> (Of course, any rate increase would need to be approved and implemented in order to be effective.)

For these reasons, NOLHGA submits that, to the extent the Rehabilitator's Proposed Finding 112 is incorporated in the Court's order, findings of fact or conclusions of law, it should be modified as follows:

Rehabilitator FF 112 – "~~In addition, t~~The If Knew premium methodology is consistent with the premium methodology used by the guaranty associations in the Penn Treaty liquidation, except that the GAs used a cohort (rather than seriatim) basis and incorporated statutory GA coverage limits into the methodology. (Tr. 54:8-55:14 (Cantilo Testimony); Ex. RP-56, Cantilo Slides at 65; Tr. 803:13-804:8 (Morton Testimony).)"

**D. Rate increases in a future liquidation cannot be determined or predicted now.**

Certain proposed findings or comments in the briefing submitted by the Rehabilitator, the State Regulators, and the Health Insurers reference predictions as to GA rate increases in a possible liquidation of SHIP. These predictions are not supported by the record and should not be included in the Court's findings of fact.

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<sup>4</sup> The Health Insurers disregard this testimony by arguing, "if rate increases in liquidation are sought on an aggregate basis state by state (as was done in the Penn Treaty liquidation), rather than on a seriatim basis nationwide (as the Plan provides), the cross-policyholder subsidization problem will not be alleviated." Health Insurers' Post-Hearing Memorandum at 12 (emphasis added). When asked on cross examination if the seriatim method would be "*more* effective in eliminating subsidies because all policyholders would only be paying If Knew Premium," Mr. Morton responded, "Effective in the manner that you're defining, yes." Tr. 818:21-819:1 (emphasis added).

Specifically, the Rehabilitator has proposed the following finding:

- Rehabilitator FF 111 – "The Plan illustrations reflect projections of liquidation premiums that are based on the Penn Treaty experience. (Tr. 131:6-9 (Cantilo Testimony); Ex. RP-48 and Ex. RP-49 (illustrations and guidance); Ex. RP-55, Second Amended Plan at 68-80 (illustrations); Ex. RP-56, Cantilo Slides at 77.)"

The State Regulators similarly suggest in their briefing that "The Guaranty Associations will be able to use If Knew premium rates in a liquidation . . . ." State Regulators' Post-Hearing Memorandum at 18. For the reasons set forth in NOLHGA's Post-Hearing Filing, predictions and projections as to rate increases in a liquidation of SHIP are speculative and inappropriate to share with policyholders at this time due to risk of policyholder confusion. Tr. 622:1-625:16. It is unknown whether the GAs would seek rate increases in the event of liquidation and, if they would, at what levels or upon what basis; any such decisions are obviously further dependent on the course of this rehabilitation proceeding.

As set forth in NOLHGA's Post-Hearing Filing, NOLHGA asks this Court to remove the projections of liquidation premiums from the Illustrative Policyholder Guidance pages (and similar policyholder communications) to avoid policyholder confusion and because such estimates are speculative and subject to change. NOLHGA's Post-Hearing Memorandum at 4, 5. Accordingly, NOLHGA requests that the Rehabilitator's Proposed Finding 111, rather than reference and cite the

Illustrative Policyholder Guidance pages, be modified as follows:

- Rehabilitator FF 111 – " The Rehabilitator has made Plan illustrations ~~reflect~~ projections of liquidation premiums that are based on the Penn Treaty experience. (Tr. 131:6-9 (Cantilo Testimony); Ex. RP-48 and Ex. RP-49 (illustrations and guidance); ~~Ex. RP-55, Second Amended Plan at 68-80 (illustrations); Ex. RP-56, Cantilo Slides at 77.)~~"

NOLHGA submits this would address its concern and otherwise leave the finding intact.

Finally, NOLHGA emphasizes that any rate increase program in liquidation is entirely undetermined at this time. NOLHGA and its member GAs would evaluate all rate increase options if it becomes necessary and appropriate to do so, drawing upon past experience and analysis of the facts and circumstances available at that time. Tr. 777:13-778:9.

**E. The State Regulators are relying on the Rehabilitator's data and GA coverage estimates in their discussion of GA support in the event of a liquidation.**

The State Regulators repeatedly assert in their Post-Hearing Memorandum that GAs will provide approximately \$800 million in support to policyholders in the event of SHIP's liquidation, and that the Plan will deprive policyholders of \$800 million in GA benefits that would be provided in liquidation. *See, e.g.,* State Regulators' Post-Hearing Memorandum at 2, 11 and 17. In addition, the State Regulators have proposed the following finding:

- State Regulators FF 65 – "In a liquidation, Guaranty Associations would provide approximately \$837 million in support to benefit policyholders.

Ex. SIR 5-1, Table 2; Tr. 565. The \$837 million is the difference between the net amount the Guaranty Associations are projected to pay to policyholders (\$1.641 billion, which is the \$1.956 billion in Guaranty Association benefits less the \$315 million in premiums expected to be charged by Guaranty Associations) and the distributions the Guaranty Associations are projected to receive from the SHIP estate (\$804 million, which is the \$1.641 billion net amount the Guaranty Associations will pay to policyholders times the 49% liquidation dividend percentage), all as calculated from the Comparison File. Ex. SIR-5-1, Table 2; Tr. 565-566. The Plan does not trigger the Guaranty Associations, Ex. RP-55 at 92, so these funds will not be available to benefit policyholders under the Plan."

To the extent incorporated in any order, this proposed finding should be modified to reflect more precisely that this calculation is based on estimates made by the Rehabilitator and not any funding commitment or estimate of NOLHGA or its member GAs:

- State Regulators FF 65 – "Using data (including Guaranty Association coverage estimates) provided by the Rehabilitator, the State Regulators estimated that, in a liquidation, Guaranty Associations would provide approximately \$837 million in support to benefit policyholders. Ex. SIR 5-1, Table 2; Tr. 565. The \$837 million estimate is the difference between the net amount the Guaranty Associations are projected to pay to policyholders (\$1.641 billion, which is the \$1.956 billion in Guaranty Association benefits less the \$315 million in premiums expected to be charged by Guaranty Associations) and the distributions the Guaranty Associations are projected to receive from the SHIP estate (\$804 million, which is the \$1.641 billion net amount the Guaranty Associations will pay to policyholders times the 49% liquidation dividend percentage), all as calculated from the Rehabilitator's Comparison File. Ex. SIR-5-1, Table 2; Tr. 565-566. The Plan does not trigger the Guaranty Associations, Ex. RP-55 at 92, so these funds will not be available to benefit policyholders under the Plan.

Such modification is appropriate for clarity.

The State Regulators assert that the Plan deprives policyholders of GA coverage. As this Court observed, no order of the Court will make GA coverage unavailable to policyholders. Tr. 971:20-972:1. To make certain that this point is clear, NOLHGA proposes the following additional Finding of Fact:

- NOLHGA FF 65 – If SHIP ultimately is placed under an order of liquidation with a finding of insolvency, GA coverage will be available to policyholders. Tr. 610:23-611:19.

**F. The record does not establish a commitment by the Rehabilitator to coordinate with NOLHGA on policyholder communications.**

The Rehabilitator has not responded to NOLHGA's comments, concerns, suggestions, or questions related to policyholder communications in any of her filings with this Court or in the testimony presented during the hearing. In their Post-Hearing Memorandum, the Health Insurers suggest, "While the Rehabilitator has committed to engage with NOLHGA on these issues, NOLHGA's witness acknowledged, as he must, that it is within the Rehabilitator's discretion to describe Guaranty Association coverage or, more generally, the Guaranty Association system, in the Plan. Tr. At 681." Health Insurers' Post-Hearing Memorandum at 30. However, NOLHGA's witness, Mr. Gallanis, did not make or agree with such a blanket statement about the Rehabilitator's discretion to describe GA coverage and the GA system in the Plan. Rather, he repeated NOLHGA's position that



policyholders should receive accurate, general information about the guaranty system. Tr. 681:12-15.<sup>5</sup>

Thus far, the record also does not support the Health Insurers' characterization that "the Rehabilitator has committed to engage with NOLHGA on these issues." Health Insurers' Post-Hearing Memorandum at 30. The Health Insurers do not cite to any support for that statement in their Post-Hearing Memorandum, and the Rehabilitator did not make any such a commitment in her post-hearing filing or at the hearing.

NOLHGA raised concerns about the clarity and accuracy of communications with policyholders in its Formal Comments (pp. 10 & n.8, 25-26), Amended Formal Comments (pp. 11 & n.9, 29-32), Pre-Hearing Memorandum (p. 2), hearing testimony (*see, e.g.*, Tr. 617-628 & N-1), and Post-Hearing Filing (*see, e.g.*, Findings 15-25, Conclusions 29B-E).<sup>6</sup> NOLHGA provided Exhibit N-1 to the

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<sup>5</sup> Specifically, Mr. Gallanis stated, "I think it is a good idea for a Rehabilitator to provide general information about the guaranty system, and we had some testimony about that yesterday." Tr. 681:12-15 (referencing his direct examination).

<sup>6</sup> As to the possibility of policyholder confusion, some testimony was elicited at the hearing regarding consumer research. In their Post-Hearing Memorandum, the Health Insurers state, "No other party [besides the Rehabilitator] introduced evidence at the Hearing regarding policyholder or consumer research or experience, and one of NOLHGA's witnesses expressly stated that NOLHGA has neither conducted policyholder research or focus groups, nor spoken with any policyholders. Tr. at 692." Health Insurers' Post-Hearing Memorandum at 7. NOLHGA's witness, Mr. Gallanis, actually said that he was not aware of any policyholder research or focus groups and that he did not know if NOLHGA has spoken to any policyholders directly with respect to the Plan. Tr. at 692. As NOLHGA submitted in its proposed findings, the best evidence of policyholder confusion based on information presented in the Plan came from the policyholders who elected to testify about their concerns on the Plan and who did express

Rehabilitator and the Court with its Formal Comments (and had previously provided it to the Rehabilitator). Formal Comments and Amended Formal Comments, Ex. B. In sum, NOLHGA has been raising these concerns and making the same basic suggestions since September 2020.<sup>7</sup> At no time has the Rehabilitator agreed to use or provide NOLHGA's suggested information to policyholders.

As such, NOLHGA reiterates its request that this Court direct the Rehabilitator to coordinate with NOLHGA on communications with policyholders that address the possibility of liquidation, the existence of the GA system, the rights and obligations of GAs in liquidation, or the coverage policyholders may receive from the GAs in liquidation, as reflected in Exhibit N-1 and as set forth in NOLHGA's Post-Hearing Filing, and that the Rehabilitator further be directed to coordinate with NOLHGA on policyholder communications.

**G. NOLHGA maintains all of its requests for modification and additional directions to the Rehabilitator.**

The Rehabilitator and the State Regulators did not address NOLHGA's requests in their proposed findings of fact and conclusions of law. The Health Insurers offer the opinion in their briefing that NOLHGA's concerns as to policy

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confusion, including as to language NOLHGA had identified as problematic. NOLHGA Proposed Findings 21-23.

<sup>7</sup> Instead of responding to these concerns in her Pre-Hearing Rebuttal Memorandum, the Rehabilitator stated, "The issues raised by NOLHGA will be addressed at the Plan Hearing or thereafter as needed during implementation." Page 43.

restructuring and policyholder communications either have been or will be addressed. Health Insurers' Post-Hearing Memorandum at 29-30. However, as set forth above and in NOLHGA's Post-Hearing Filing, NOLHGA disagrees and seeks specific relief and directions to the Rehabilitator from the Court with respect to providing clear and accurate information to policyholders, including about the permanence of benefit and premium modifications under the Plan, the fact that the policy restructuring under the Plan does not impact policy benefits, and GA rights and obligations in liquidation. NOLHGA also seeks the delivery of specific information that the Rehabilitator has not yet provided but which is important in the event that the GAs become obligated by an order of liquidation from this Court. NOLHGA maintains all of its requests.

#### **H. Miscellaneous Corrections**

NOLHGA identified the following additional corrections or clarifications to the Rehabilitator's post-hearing filing:

Rehabilitator's Proposed Finding 10 states that the hearing was held "May 15, 2021, through May 21, 2021." The hearing began on May 17, 2021, and so the beginning date should be revised.

Rehabilitator's Proposed Finding 13(b) mis-identifies NOLHGA. It should be modified as follows to include the word "Insurance" and correct the spelling of the acronym: "National Organization of Life and Health Insurance Guaranty

Associations ("NOLHGA")." The acronym is misspelled throughout in Proposed Finding 14(c) and page 3 of Appendix A.

Rehabilitator's Proposed Finding 14(c) cites Tr. 739:7-9 and 752:2-4 as Mr. Gallanis "affirming that he is not an expert." However, Mr. Gallanis's testimony was that he is not "an expert in federal income taxation" (Tr. 739:7-9) and that he was not "here [testifying] as a legal expert" (Tr. 752:2-5). Because it is misleading and without utility, the "*see also*" citation clause should be stricken.

Exhibit N-1 is listed in Appendix A as "NOLGHA Suggestions Overview Document." Exhibit N-1 is titled, "Summary of Policyholder Protection by Guaranty Associations in Liquidations" and would be more accurately referred to by that title.

## **I. Conclusion**

For the foregoing reasons, NOLHGA asks the Court to revise certain proposed findings of other parties and to implement NOLHGA's additional findings, as well as its originally proposed findings of fact and conclusions of law, as may be appropriate in the Court's Order approving, modifying, or disapproving the Plan.

Respectfully submitted,

FAEGRE DRINKER BIDDLE &  
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Dated: June 28, 2021

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## **PROOF OF SERVICE**

I, D. Alicia Hickok, hereby certify that on June 28, 2021, I served the foregoing Response to Post-Hearing Filings of All Parties on the Rehabilitator by electronic delivery to the Rehabilitator's counsel and the Special Deputy Rehabilitator at the below addresses.

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## **Appendix**

### **NOLHGA's Recommended Revisions and Additions to Findings of Fact**

#### **I. Rehabilitator's Proposed Findings of Fact**

NOLHGA recommends the Rehabilitator's Proposed Findings of Fact be modified as follows:

- Rehabilitator FF 10 – The Court conducted a hearing on the Second Amended Plan of Rehabilitation ("Second Amended Plan") on May 17, 2021, through May 21, 2021 (the "Plan Hearing").
- Rehabilitator FF 13 – In addition to the Rehabilitator, the following intervenors participated in the Plan Hearing:

...

b) National Organization of Life and Health Insurance Guaranty Associations ("NOLHGA");

...

- Rehabilitator FF 14(c) – NOLHGA
  - (1) Exhibit N-1 identified in Appendix A hereto. (*See* Tr. 627:15-628:7 (introduction, identification, and admission of Exhibit N-1).)
  - (2) The oral testimony of Peter Gallanis, a fact witness ("Gallanis Testimony"). (*See* Tr. 598:22-24 (offer of Peter Gallanis).)
  - (3) The oral testimony of Matthew Morton, a fact witness ("Morton Testimony"). (*See* Tr. 794:16-18 (offer of Matthew Morton).)
  - (4) Cross-examination.
- Rehabilitator FF 57 – Phase One of the Plan offers policyholders meaningful choices, including at least one option that would not be

available in full in liquidation for some policyholders. (Tr. 99:22-107:19 (Cantilo Testimony on plan options); 113:2-124:11 (same).)<sup>1</sup>

- Rehabilitator FF 61 – As noted, the Rehabilitator and her team considered and analyzed the ways in which the Plan could offer policyholders meaningful choices, including at least one option that would not be available in full in liquidation for some policyholders. (Tr. 99:22-107:19 (Cantilo Testimony on plan options); 113:2-124:11 (same).)
- Rehabilitator FF 95 – The Rehabilitator has offered expert and factual testimony supporting the proposition that Phase One of the Plan offers policyholders options, including at least one option that would not be available in full in liquidation for some policyholders. (Tr. 186:23-189:1, 350:4-22 (Cantilo Testimony).)
- Rehabilitator FF 97 – The Rehabilitator has offered expert opinion supporting the proposition that LTCI has no cash value, that many insurance regulators are opposed to cash-out options for policyholders, and that the Plan's Option 3 is better for policyholders than cash-out options. (Tr. 189:2-22 (Cantilo Testimony).)
- Rehabilitator FF 111 – The Rehabilitator has made projections of liquidation premiums that are based on the Penn Treaty experience. (Tr. 131:6-9 (Cantilo Testimony); Ex. RP-48 and Ex. RP-49 (illustrations and guidance).)
- Rehabilitator FF 112 – The If Knew premium methodology is consistent with the premium methodology used by the guaranty associations in the Penn Treaty liquidation, except that the GAs used a cohort (rather than seriatim) basis and incorporated statutory GA coverage limits into the methodology. (Tr. 54:8-55:14 (Cantilo Testimony); Ex. RP-56, Cantilo Slides at 65; Tr. 803:13-804:8 (Morton Testimony).)

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<sup>1</sup> NOLHGA encourages the Court to consider also citing Mr. Gallanis's testimony, at Tr. 641:13-25, and Mr. Morton's testimony, at Tr. 811:6-9, which provide clarification as to the options GAs may provide to policyholders in liquidation, as support for the Rehabilitator's Proposed Findings 57, 61, 95, 132 and 133.



- Rehabilitator FF 132 – The Rehabilitator has offered expert and factual testimony supporting the proposition that Phase One of the Plan offers policyholders options, including at least one option that would not be available in full in liquidation for some policyholders. (Tr. 187:11-188:5; 250:19-251:17 (Cantilo Testimony).)
- Rehabilitator FF 133 – The Intervening Regulators have not offered any evidence contravening the Rehabilitator's contention described and cited herein that Phase One of the Plan offers policyholders options, including at least one option that would not be available in full in liquidation for some policyholders.
- **APPENDIX A: EXHIBITS ADMITTED AT SHIP HEARING**

...

<b>NOLHGA's Exhibits</b>	
N-1	NOLHGA's "Summary of Policyholder Protection by Guaranty Associations in Liquidations"

...

## **II. State Regulators' Proposed Findings of Fact**

NOLHGA recommends the State Regulators' Proposed Findings of Fact be modified as follows:

- State Regulators' Proposed Findings 51 and 53 should not be incorporated because they are superseded by NOLHGA's previously submitted Proposed Findings 53-55, which should be incorporated (particularly if the Court adopts Rehabilitator's Proposed Findings 96-98):
  - NOLHGA FF 53 – In the Pennsylvania liquidation involving Penn Treaty Network America Insurance Company and American Network Insurance Company (collectively referred to as "Penn Treaty"), NOLHGA's member GAs sought rate increases and alternatively offered policyholder benefit modification options similar to those offered in the Plan. Tr. 640:25-641:12; 802:2-803:3; 809:13-810:7.

- NOLHGA FF 54 – The options offered by the GAs in the Penn Treaty liquidation are illustrative of what GAs could offer in a future LTC liquidation; however, there is no limitation on GAs making options more or less complex than those offered in Penn Treaty. Tr. 641:13-25.
- NOLHGA FF 55 – NOLHGA's member GAs could not, however, offer a benefit modification option where GAs would guaranty benefits in excess of the statutory GA coverage limits. Tr. 811:6-9.
- State Regulators FF 65 – Using data (including Guaranty Association coverage estimates) provided by the Rehabilitator, the State Regulators estimated that, in a liquidation, Guaranty Associations would provide approximately \$837 million in support to benefit policyholders. Ex. SIR 5-1, Table 2; Tr. 565. The \$837 million estimate is the difference between the net amount the Guaranty Associations are projected to pay to policyholders (\$1.641 billion, which is the \$1.956 billion in Guaranty Association benefits less the \$315 million in premiums expected to be charged by Guaranty Associations) and the distributions the Guaranty Associations are projected to receive from the SHIP estate (\$804 million, which is the \$1.641 billion net amount the Guaranty Associations will pay to policyholders times the 49% liquidation dividend percentage), all as calculated from the Rehabilitator's Comparison File. Ex. SIR-5-1, Table 2; Tr. 565-566. The Plan does not trigger the Guaranty Associations, Ex. RP-55 at 92, so these funds will not be available to benefit policyholders under the Plan.

### **III. NOLHGA's Additional Proposed Findings of Fact**

- [Incorporate NOLHGA's Proposed Findings 1-61, as filed on June 14, 2021]<sup>2</sup>
- NOLHGA FF 62 – In the Penn Treaty liquidation, the GAs' nationwide rate increase program generally included four options: a reduced benefit option, a reduced paid-up ("RPU") option, a cashout option, and a rate

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<sup>2</sup> Newly proposed findings of fact are numbered to sequentially follow NOLHGA's proposed findings of fact 1-61, as filed on June 14, 2021.

increase option that permitted policyholders to retain current benefits up to GA limits. Tr. 809:13-811:5.

- NOLHGAFF 63 – The options offered by the GAs to Penn Treaty policyholders differ from the options in Phase One of the Plan in the following primary ways:
  - (1) The GAs offered Penn Treaty policyholders a cashout option, which the Plan does not include. Tr. 810:2-5; RP 55, at 11-12 (listing options for policyholders, not including a cashout option).
  - (2) The GAs offered Penn Treaty policyholders the ability to reduce benefits and pay premium based on the reduced benefits. Tr. 640:25-641:4; 809:18-22. This option is similar but not identical to Option 1 under Phase One of the Plan. *See* RP 55, at 41-47 (description of Option 1).
  - (3) The GAs did not offer Penn Treaty policyholders a "Basic Policy" or "Enhanced Basic Policy" like those offered under Option 2 of Phase One of the Plan. Tr. 831:19-832:6.
  - (4) The GAs offered Penn Treaty policyholders a reduced paid up option that permitted policyholders to stop paying premium. Tr. 809:23-810:1. The GAs did not offer an "enhanced" reduced paid up option equivalent to Option 3 under Phase One of the Plan. *See* RP 55, at 50 (description of Option 3).
  - (5) The GAs offered Penn Treaty policyholders a rate increase option where policyholders retained full benefits under their policies, subject to the statutory GA coverage limit. Tr. 810:24-811:5. This is similar to Option 4 under Phase One of the Plan except that the GAs could only guarantee benefits up to the statutory GA coverage limit. *See* RP 55, at 51 (description of Option 4).
  - (6) There were minor variations from state to state in terms of the options offered to Penn Treaty policyholders. Tr. 770:10-21.
- NOLHGAFF 64 – 76% of Penn Treaty policyholders elected or defaulted into the rate increase; 13% elected to reduce their benefits; 8%

elected the cashout; and 3% elected the RPU. Tr. 811:24-812:6; 816:19-817:8.

- NOLHGAFF 65 – If SHIP ultimately is placed under an order of liquidation with a finding of insolvency, GA coverage will be available to policyholders. Tr. 610:23-611:19.

Senior Health Insurance Company of Pennsylvania (in Rehabilitation)

Master Service List

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