

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

**REHABILITATOR’S COMBINED OPPOSITION TO APPLICATION FOR
STAY AND REPLY IN FURTHER SUPPORT OF APPLICATION FOR
RULE TO SHOW CAUSE**

Michael Humphreys, Acting Insurance Commissioner of the Commonwealth of Pennsylvania, in his capacity as the Statutory Rehabilitator (“Rehabilitator”) of Senior Health Insurance Company of Pennsylvania (“SHIP” or the “Company”), respectfully submits this Combined Opposition to Intervening Regulators’ Application for Stay and Reply in Further Support of Application for Rule to Show Cause. As set forth herein, no stay should be entered, and the Intervening Regulators of Maine and Washington should appear before this Court to address the basis for and effects of their efforts to undermine this Court’s jurisdiction and authority during the pendency of their appeal.

**Response to the Application for Stay
and the Opposition to the Show Cause Application**

The Intervening Regulators of Maine (“Schott”) and Washington (“Kreidler”)¹ confess—as they must—to all of the material factual allegations of the Rehabilitator’s Application and Petition for Issuance of Rule to Show Cause on Intervenor, the Superintendent of the Maine Bureau of Insurance and the Commissioner of Insurance of Washington (“Show Cause Application”). Indeed, Schott admits to issuing an Emergency Cease and Desist Order and that the Maine Bureau of Insurance proceeded with administrative proceedings based on that Emergency Cease and Desist Order, leading to an administrative order Schott claims is final and will have preclusive effect in the future. (Response to Application ¶¶ 21.) Kreidler admits that he issued a Cease and Desist Order and sent a letter to Washington policyholders, which, as the Rehabilitator has explained, provides inaccurate information regarding the Plan and seeks to generate complaints about the Plan where no such complaints have existed to date.

Despite appearing before this Court voluntarily as intervenors, Schott and Kreidler contend that collateral orders sought during the pendency of their appeal are permissible, that they did not seek to undermine the Court’s authority, and that

¹ “Schott” refers to Timothy Schott, the Acting Superintendent of the Maine Bureau of Insurance and successor to former Superintendent, Eric Cioppa, who appeared on the Intervening Regulators papers through March 31, 2022. “Kreidler” refers to Myron (Mike) Kreidler, the Insurance Commissioner for the State of Washington.

the orders and letters are merely the exercise of their rights as regulators to take action against SHIP. These claims are plainly false and must be rejected immediately (and without a stay of these proceedings), because Schott and Kreidler are not above or outside of the authority of this Court. Having admitted to the acts described in the Show Cause Application, Schott and Kreidler must appear in this Court to explain the scope of their actions and how they intend to mitigate the damage caused by those actions.

It appears the cease and desist orders were designed to obtain by other means the stay of implementation which was denied to Schott and Kreidler by this Court and the Supreme Court of Pennsylvania, but Schott and Kreidler had no right or authority to enter administrative orders for that purpose while they remain parties to this action. Ultimately, the Application to Stay Proceedings on the Rehabilitator's Application and Petition for Issuance of Rule to Show Cause ("Stay Application") fails to show that delay is warranted here, and Schott's and Kreidler's response to the Show Cause Application fails to demonstrate that the Rehabilitator's requested relief is not appropriate.

A. The Show Cause Application is not mooted by the possibility of a decision on the merits in favor of the Intervening Regulators' appeal.

By entering or obtaining administrative orders, Schott and Kreidler assert a right to relief independent of the Approval Order and thus superior to this Court's authority over SHIP's receivership. This challenge to the Court's jurisdiction and

to the jurisdiction of the Supreme Court of Pennsylvania is problematic regardless of the success or failure of the Intervening Regulators’ appeal. Mootness arises only if there is no case or controversy and the litigating parties lose any stake in the outcome as a result of a change in the facts or the law, none of which has or will occur here. *See, e.g., Cmwlth. Dep’t of Env’tl. Protection v. Cromwell Twp.*, 613 Pa. 1, 21, 32 A.3d 639, 652 (2011). This Court is entitled to know *now* whether Schott and Kreidler, as intervenors voluntarily appearing before this Court, agree that they are bound by this Court’s orders, a proposition that should be noncontroversial. *See, e.g., Henderson v. Delaware River Joint Toll Bridge Comm’n*, 362 Pa. 475, 491, 66 A.2d 843, 851 (1949) (intervenors cannot “question [the] court’s jurisdiction of a proceeding to which they voluntarily submitted themselves”).² Yet by claiming the unilateral power to enter orders and take other actions that—according to Schott and Kreidler, albeit mistakenly—could have preclusive effect overriding this Court’s

² Schott’s and Kreidler’s attempt to put distance between their appearance as regulators and their authority as regulators raises a number of questions that must be answered. For example, if not appearing for policyholders or for each intervenors’ respective state interests, on whose behalf did the Intervening Regulators appear? If Schott and Kreidler believe that orders directed to them are not binding on their departments or on policyholders, to what end did they intervene and should they be permitted to participate in Phase Two or any other proceedings following the Supreme Court of Pennsylvania’s decision? This Court should not move forward—in rehabilitation or otherwise—without clarity on Schott’s and Kreidler’s views of this Court’s authority before and after a decision of the Supreme Court of Pennsylvania.

orders, Schott and Kreidler have blatantly attacked this Court's exclusive jurisdiction over SHIP's receivership proceedings. 40 P.S. § 221.4(c).

Regardless of the outcome on appeal, this Court can and should hold Schott and Kreidler accountable for acts taken while the Approval Order is in effect, and the suggestion that the Show Cause Application would be subject to dismissal as moot or lack of harm should be rejected. *See Korean Am. Ass'n of Greater Phila., Inc. v. Chung*, 871 A.2d 870, 875 (declaring "it is ridiculous to claim that [a] motion for sanctions should be dismissed" as moot because the enjoined appeal leading to sanctions had been voluntarily dismissed before sanctions were entered). Moreover, the impropriety of Schott's and Kreidler's actions is not diminished by the potential for a future decision of the Supreme Court of Pennsylvania, because the risk of punishment on SHIP and others—even if unlawful—remain in place while the cease and desist orders are in effect at a time Schott and Kreidler insist on their validity. *See Cmty. Sports, Inc. v. Denver Ringsby Rockets, Inc.*, 429 Pa. 565, 575 n.7, 240 A.2d 832, 836 n.7 (1968) (propriety of injunction scheduled to terminate prior to opinion did not present moot controversy because party "could be adjudged in contempt of court" during that time).³

³ Even if the matter were "moot" in some way, this Court could consider the Show Cause Application because, if successful, it would render incapable of review Schott's and Kreidler's argument that they may violate the Court's orders and invade its authority without consequence unless and until the appeal is decided against them. The authority of this Court over receivership, rehabilitation, and the parties

Importantly, SHIP’s receivership does not end even if the Supreme Court of Pennsylvania enters a decision reversing the Approval Order in whole or in part. In that event, the matter will return to this Court for further proceedings—on modifications to the proposed plan, on the futility of rehabilitation, on the propriety of liquidation, on the distribution of assets and administration of the estate in liquidation, or on some other matter specified by the Supreme Court. Schott’s and Kreidler’s position regarding the Court’s authority must be made clear as soon as possible to avoid any confusion upon the entry of the Supreme Court’s order.

B. A stay is not appropriate because election packages were mailed prior to the cease and desist orders or because the Rehabilitator voluntarily decided to delay implementation of policy modifications.

Schott and Kreidler incorrectly claim that there is no live dispute because the cease and desist orders were entered after election packages were mailed and because the Rehabilitator agreed to delay modifications of policies temporarily.⁴

before the Court is a matter of public importance that must be decided when presented. *See Dep’t of Entvl. Protection*, 613 Pa. at 21, 32 A.3d at 652 (exceptions to mootness doctrine).

⁴ Schott’s and Kreidler’s discussion on this issue is a distraction from the depth of their challenge to the Court’s authority. Scott and Kreidler cannot contend that they did not know that election packages had been mailed prior to the entry of the cease and desist orders. In their initial application for stay to the Supreme Court of Pennsylvania, the Intervening Regulators noted that election packages were scheduled to be mailed “around year-end 2021.” (Stay Application at 5.) Then, in their application to supplement their stay application to the Supreme Court of Pennsylvania, the Intervening Regulators noted that the Rehabilitator informed insurance commissioners no later than December 29, 2021, that election packages

Were there truly no live controversy, however, Schott and Kreidler would withdraw or terminate their cease and desist orders because there would be no need for them to assert authority over the Plan. Yet a promise to withdraw voluntarily these actions is notably absent from Schott and Kreidler’s Stay Application or response to the Show Cause Application, clearly implying that Schott and Kreidler have a continuing belief that those administrative orders bind and prohibit the Rehabilitator from taking action permitted and authorized by this Court—*i.e.*, that a live controversy exists. In fact, the cease and desist orders go further than merely addressing election packages or modifications, for example purporting to bar the undefined actions of “interfering with the rights of SHIP’s Maine policyholders or violating the insurance laws and regulations of [Maine]” (Show Cause Application Ex. A) or making any “correspondence or communication for Washington policies that is false or deceptive; contains misrepresentations; and/or is untrue, deceptive, or misleading (Show Cause Application Ex. C.) The Maine order goes further, purporting to require the Rehabilitator to “provide all policyholders who have already made elections, or who make elections while this Order remains in force, with a meaningful opportunity to reconsider their decisions without penalty.” (Show

were being mailed and that responses would be required by the end of February 2022. (Stay Application at ¶ 2.a.) Schott and Kreidler entered the cease and desist orders when they knew or should have known that election packages were with policyholders for decision, and it would be disingenuous to claim otherwise.

Cause Application Ex. B.) Unless and until the administrative orders are withdrawn, Schott and Kreidler are continuing to assert (wrongfully) that they may act unilaterally in modifying or limiting SHIP's rehabilitation, a direct challenge to the authority of Pennsylvania courts. This Court must determine *now* whether Schott's and Kreidler's actions are in violation of and are challenges to this Court's authority because it is clear that if the Approval Order is affirmed, Schott and Kreidler will continue to contest the authority of this Court even after invoking it by intervening in this action.

C. Schott and Kreidler are not protected by the acts of other state regulators.

In seeking a stay, Schott and Kreidler draw the Court's attention to various injunctions or cease and desist orders, all of which are impermissible collateral orders seeking to control or limit Plan implementation. None of those orders has presented, or can prevent, SHIP's rehabilitation, and the presence of such orders has no bearing on Schott's and Kreidler's challenges to the jurisdiction of the Court whose authority they voluntarily invoked. Schott and Kreidler are correct that it "makes little sense to devote resources to litigating over Maine and Washington," but that would be true independent of the other orders, because there is no legitimate or lawful reason for Schott and Kreidler, as intervenors here, to challenge this Court's jurisdiction. Having started this unnecessary jurisdictional tug-of-war,

however, Schott and Kreidler must be called upon to answer to this Court regarding its impact.

In fact, the presence of other state actions is conclusive proof that Schott and Kreidler must answer for the impact of their actions *now*. Like Schott and Kreidler, the state regulators who filed for injunctions, obtained cease and desist orders, or joined the *amicus* brief all seek to challenge this Court's jurisdiction through impermissible collateral orders. The Rehabilitator seeks to know whether, as appears to be the case, these challenges are coordinated to a degree making Schott and Kreidler the representatives or proxies of those other state regulators. Thus, amongst the forms of relief sought by the Rehabilitator are disclosure of any communications or efforts by Schott, Kreidler, and their representatives seeking to “engender[] opposition to, or impair[] or prevent[] SHIP's rehabilitation.” (Show Cause Application ¶ 47.) If Schott, Kreidler, or others intend to continue their impermissible challenges to the authority of Pennsylvania courts, the Rehabilitator must obtain information on those efforts as soon as possible so that he may take any necessary action now to protect policyholders from the impact of those challenges.

This request includes information on what plan, if any, Schott and Kreidler have for the benefit of policyholders whom they purport to exclude from the Approved Plan. How do Schott and Kreidler justify their efforts to deny policyholders their right to make elections provided by the Approved Plan? Have

Schott and Kreidler devised a mechanism for avoiding financial losses to their policyholders? If Schott and Kreidler seek to tie up the Rehabilitator in useless litigation for years on the basis of their administrative orders, how will Schott and Kreidler address the inevitable benefit reductions that will be required for their policyholders while excluded from the Plan's modification provisions? Each of these questions must be answered.

D. The potential for a long rehabilitation requires a decision now.

Schott's and Kreidler's final argument for a stay is that there is no "present purpose" to exploring "the difficult conflicting jurisdictional questions" raised by their collateral challenges to the Plan. They are wrong in two respects. *First*, there are no "difficult conflicting jurisdictional questions" to consider, because the Approval Opinion addresses the relationship between the Rehabilitator's authority over SHIP and state-based regulatory regimes. To the extent there is any "question" now, it is only because Schott and Kreidler have manufactured a dispute where none would exist but for their impermissible challenges on this Court's authority. *Second*, the possibility of a long rehabilitation provides the "present purpose" for considering those issues again, to the extent it is required. The Rehabilitator and this Court should not be required to sit around and wait to see if Schott and Kreidler decide to enforce their unlawful orders or take other action to stop the Plan sometime in the future. The question of Schott's and Kreidler's willingness to respect this Court's

authority and orders—which again, should be noncontroversial—should be decided immediately.

Conclusion

Schott and Kreidler admit that they took actions which challenge this Court’s jurisdiction and authority as well as the authority of the Rehabilitator, and they are not immune from the consequences of those actions. Both must be required to appear in Court and address the issues in the Show Cause Application—specifically, (a) provide all information regarding their efforts to date to impair implementation of the Plan, to allow the Rehabilitator to understand, mitigate, and prevent any harm; (b) provide all information regarding communications with others to date in an effort to impair implementation of the Plan, to allow the Rehabilitator to understand, mitigate, and prevent any harm; and (c) address Schott’s and Kreidler’s plans to provide for relief for policyholders who may be impacted by their purported removal from the Approved Plan.

Response to Paragraphs in Stay Application

Stay Application Paragraph 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.⁵ 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.

Response to Paragraph 1:

The Rehabilitator incorporates his Response to Maine and Washington's Application for Stay and their Opposition to the Show Cause Application as stated herein, and the Stay Application should be denied accordingly. By way of further response, the Rehabilitator notes that he seeks multiple forms of relief, including not only the termination of the improper administrative actions but also information from Schott and Kreidler and whatever other relief this Court deems appropriate.

⁵ The formatting of this paragraph was modified for simplicity of presentation.

Stay Application Paragraph 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.

Response to Paragraph 2:

The Rehabilitator incorporates his Response to Maine and Washington's Application for Stay and their Opposition to the Show Cause Application as stated herein, and the Stay Application should be denied accordingly. By way of further response, the Show Cause Application is not an "attempt . . . to preclude administrative proceedings in Maine and Washington" because those proceedings were barred by the Court's exclusive jurisdiction and Approval Order regardless of the filing of the Show Cause Application. *See, e.g., Ballesteros v. New Jersey Prop. Liab. Ins. Guar. Ass'n*, 530 F. Supp. 1367, 1371 (D.N.J.) ("The need for giving one state exclusive jurisdiction over delinquency proceedings has long been recognized in the courts."), *aff'd* 696 F.2d 980 (3d Cir. 1982). As a general rule, a court's decree approving the rehabilitation plan for an insolvent insurer domiciled in its state has a res judicata effect upon out-of-state policyholders so as to preclude a subsequent attack upon the plan in another state." 1 COUCH ON INS. § 5:31. Moreover, the appeal does not change the effect of the Approval Order, a binding and final order

for which stays pending appeal were denied twice. Unless and only if the Approval Opinion is overturned by the Pennsylvania Supreme Court (or the Supreme Court of the United States) on appeal, it must be considered final and “qualifies for recognition throughout the land.” *V.L. v. E.L.*, 577 U.S. 404, 407 (2016); *see also Shaffer v. Smith*, 543 Pa. 526, 530, 673 A.2d 872, 874 (Pa. 1996) (“[a] judgment is deemed final for [preclusive] purposes unless or until it is reversed on appeal.”).

Stay Application Paragraph 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).

Response to Paragraph 3:

The Rehabilitator incorporates his Response to Maine and Washington’s Application for Stay and their Opposition to the Show Cause Application as stated herein, and the Stay Application should be denied accordingly. Moreover, Paragraph 3 is a legal conclusion to which no response is required. By way of further response, if required, this Court’s authority to enter a stay does not preclude this Court from controlling the parties and proceedings before it during the pendency of an appeal.

Stay Application Paragraph 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. - 4 - 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.

Response to Paragraph 4:

The Rehabilitator incorporates his Response to Maine and Washington's Application for Stay and their Opposition to the Show Cause Application as stated herein, and the Stay Application should be denied accordingly. By way of further response, Schott's and Kreidler's challenge to this authority must be addressed immediately because, *inter alia*, this Court is entitled to know whether Schott and Kreidler contend, despite appearing as intervenors, that this Court and the Supreme Court of Pennsylvania lack authority to bind SHIP's policyholders and that the orders of a Pennsylvania court may be overridden by administrative orders of state regulators.

Stay Application Paragraph 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.

Response to Paragraph 5:

The Rehabilitator incorporates his Response to Maine and Washington's Application for Stay and their Opposition to the Show Cause Application as stated herein, and the Stay Application should be denied accordingly. By way of further response, the Rehabilitator sought a stay of the North Carolina proceedings to avoid entry of an injunction seeking (impermissibly) to bar implementation of the Approved Plan, a different procedural posture than Schott and Kreidler seeking to avoid the consequences of their decision to enter unilaterally the cease and desist orders and otherwise challenge the Plan. As noted herein, their improper conduct is not made moot by a decision on appeal in their favor. *See Cmty. Sports, Inc. v. Denver Ringsby Rockets, Inc.*, 429 Pa. 565, 575 n.7, 240 A.2d 832, 836 n.7 (1968) (propriety of injunction scheduled to terminate prior to opinion did not present moot controversy because party "could be adjudged in contempt of court" during that time); *Korean Am. Ass'n of Greater Phila., Inc. v. Chung*, 871 A.2d 870, 875 (addressing sanctions arising out of impermissible appeal and explaining "[I]t is ridiculous to claim that the motion for sanctions should be dismissed" as moot because the enjoined appeal had been dismissed without further plans to renew it).

Stay Application Paragraph 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), - 5 - 221.17(a). The statutes do not authorize the Rehabilitator to disregard other state regulatory actions.

Response to Paragraph 6:

The Rehabilitator incorporates his Response to Maine and Washington's Application for Stay and their Opposition to the Show Cause Application as stated herein, and the Stay Application should be denied accordingly. Moreover, Paragraph 6 is a legal conclusion to which no response is required. By way of further response, if required, the alleged impact of the administrative orders is denied, and Schott and Kreidler's mischaracterization of Pennsylvania law is denied. The provision of Pennsylvania law cited by Schott and Kreidler permits but does not require action of the Rehabilitator with regard to relief outside of Pennsylvania. *See* 40 P.S. § 221.5(b) ("The receiver *may apply to any court outside of the Commonwealth...*"); 40 P.S. § 221.17(a) (Rehabilitator to "consider all *litigation*

pending outside this Commonwealth” and petition for stays “whenever necessary to protect the estate of the insurer”).⁶

Stay Application Paragraph 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).

Response to Paragraph 7:

The Rehabilitator incorporates his Response to Maine and Washington’s Application for Stay and their Opposition to the Show Cause Application as stated herein, and the Stay Application should be denied accordingly. Moreover, Paragraph 7 is a legal conclusion to which no response is required. By way of further response, if required, the alleged impact of the administrative orders is denied, and Schott and Kreidler’s continued insistence on administrative supremacy over the

⁶ Moreover, 40 P.S. § 221.17(a) refers to mandatory stays in “action[s] or proceeding[s]” pending in “any court in this State,” but makes no reference to administrative proceedings in other states, appearing limited to “litigation pending outside this Commonwealth” and “courts having jurisdiction over that litigation.” This Court could enter an injunction under the broad grant of authority in § 221.5(a) or otherwise to protect its exclusive jurisdictional authority, but nothing requires action by the Rehabilitator as proposed by Schott and Kreidler.

orders of this Court *during the pendency of their appeal* is proof that a stay should not be entered.

Stay Application Paragraph 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.

Response to Paragraph 8:

The Rehabilitator incorporates his Response to Maine and Washington's Application for Stay and their Opposition to the Show Cause Application as stated herein, and the Stay Application should be denied accordingly. By way of further response, there are no "complex questions of law" to consider, because the Approval Opinion addresses the relationship between the Rehabilitator's authority over SHIP and state-based regulatory regimes. To the extent there is any "question" now, it is only because Schott and Kreidler have manufactured a dispute where none would exist but for their impermissible attacks on this Court's authority.

Stay Application Paragraph 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.

Response to Paragraph 9:

The Rehabilitator incorporates his Response to Maine and Washington’s Application for Stay and their Opposition to the Show Cause Application as stated herein, and the Stay Application should be denied accordingly. By way of further response, Schott’s and Kreidler’s improper conduct is not made moot by a decision on appeal in their favor. *See Cmty. Sports, Inc. v. Denver Ringsby Rockets, Inc.*, 429 Pa. 565, 575 n.7, 240 A.2d 832, 836 n.7 (1968) (propriety of injunction scheduled to terminate prior to opinion did not present moot controversy because party “could be adjudged in contempt of court” during that time); *Korean Am. Ass’n of Greater Phila., Inc. v. Chung*, 871 A.2d 870, 875 (addressing sanctions arising out of impermissible appeal and explaining “[I]t is ridiculous to claim that the motion for sanctions should be dismissed” as moot because the enjoined appeal had been dismissed without further plans to renew it).

Stay Application Paragraph 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.

Response to Paragraph 10:

The Rehabilitator incorporates his Response to Maine and Washington's Application for Stay and their Opposition to the Show Cause Application as stated herein, and the Stay Application should be denied accordingly. By way of further response, the Annual Report is in writing and speaks for itself, and any mischaracterization is denied.

Stay Application Paragraph 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.

Response to Paragraph 11:

The Rehabilitator incorporates his Response to Maine and Washington's Application for Stay and their Opposition to the Show Cause Application as stated herein, and the Stay Application should be denied accordingly. By way of further response, the Court does not waste its time by addressing the conduct of the parties' before it, particularly when that conduct challenges the Court's authority.

Stay Application Paragraph 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 3.1 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.*

Response to Paragraph 12:

The Rehabilitator incorporates his Response to Maine and Washington’s Application for Stay and their Opposition to the Show Cause Application as stated herein, and the Stay Application should be denied accordingly. By way of further response, it is admitted that the Rehabilitator mailed election packages. The Annual Report is in writing and speaks for itself, and any mischaracterization is denied.

Stay Application Paragraph 13:

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

Response to Paragraph 13:

The Rehabilitator incorporates his Response to Maine and Washington’s Application for Stay and their Opposition to the Show Cause Application as stated herein, and the Stay Application should be denied accordingly. By way of further response, there is no promise to withdraw voluntarily the administrative actions, clearly implying that Schott and Kreidler have a continuing belief that those administrative orders bind and prohibit the Rehabilitator from taking action permitted and authorized by this Court going forward.

Stay Application Paragraph 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.

Response to Paragraph 14:

The Rehabilitator incorporates his Response to Maine and Washington's Application for Stay and their Opposition to the Show Cause Application as stated herein, and the Stay Application should be denied accordingly. By way of further response, there is no promise to withdraw voluntarily the administrative actions, clearly implying that Schott and Kreidler have a continuing belief that those administrative orders bind and prohibit the Rehabilitator from taking action permitted and authorized by this Court going forward.

Stay Application Paragraph 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.

Response to Paragraph 15:

The Rehabilitator incorporates his Response to Maine and Washington's Application for Stay and their Opposition to the Show Cause Application as stated herein, and the Stay Application should be denied accordingly. By way of further response, none of the injunctions or orders can prevent SHIP's rehabilitation, and the presence of such orders has no bearing on Schott's and Kreidler's challenges to the jurisdiction of the Court whose authority they voluntarily invoked. Given the apparent coordination amongst all regulators, the presence of other state actions is conclusive proof that Schott and Kreidler must answer for the impact of their actions now.

Stay Application Paragraph 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.

Response to Paragraph 16:

The Rehabilitator incorporates his Response to Maine and Washington's Application for Stay and their Opposition to the Show Cause Application as stated herein, and the Stay Application should be denied accordingly. By way of further response, none of the injunctions or orders can prevent SHIP's rehabilitation, and the presence of such orders has no bearing on Schott's and Kreidler's challenges to

the jurisdiction of the Court whose authority they voluntarily invoked. Given the apparent coordination amongst all regulators, the presence of other state actions is conclusive proof that Schott and Kreidler must answer for the impact of their actions now.

Stay Application Paragraph 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.

Response to Paragraph 17:

The Rehabilitator incorporates his Response to Maine and Washington's Application for Stay and their Opposition to the Show Cause Application as stated herein, and the Stay Application should be denied accordingly. By way of further response, none of the injunctions or orders can prevent SHIP's rehabilitation, and the presence of such orders has no bearing on Schott's and Kreidler's challenges to the jurisdiction of the Court whose authority they voluntarily invoked. Given the apparent coordination amongst all regulators, the presence of other state actions is conclusive proof that Schott and Kreidler must answer for the impact of their actions now.

Stay Application Paragraph 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.

Response to Paragraph 18:

The Rehabilitator incorporates his Response to Maine and Washington's Application for Stay and their Opposition to the Show Cause Application as stated herein, and the Stay Application should be denied accordingly. By way of further response, none of the injunctions or orders can prevent SHIP's rehabilitation, and the presence of such orders has no bearing on Schott's and Kreidler's challenges to the jurisdiction of the Court whose authority they voluntarily invoked. Given the apparent coordination amongst all regulators, the presence of other state actions is conclusive proof that Schott and Kreidler must be called upon to answer to this Court regarding the impact of their actions.

Stay Application Paragraph 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"; 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.

Response to Paragraph 19:

The Rehabilitator incorporates his Response to Maine and Washington's Application for Stay and their Opposition to the Show Cause Application as stated

herein, and the Stay Application should be denied accordingly. By way of further response, the Rehabilitator has not brought Phase One results or Phase Two plans to the Court, in part because Phase One is not complete: thousands more policyholders in opt-out states (those that approved rates and those that did not approve rates) are scheduled to receive election packages in Phase One. Schott and Kreidler's inappropriate effort to address Phase One and Phase Two as part of their response to the Show Cause Application is a distraction this Court can and should ignore. The Rehabilitator intends to follow this Court's guidance with respect to Phase Two. (*See* Approval Order at 16 n.6 (noting Rehabilitator's plan to return to the Court before Phase Two).)

Stay Application Paragraph 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.

Response to Paragraph 20:

The Rehabilitator incorporates his Response to Maine and Washington's Application for Stay and their Opposition to the Show Cause Application as stated herein, and the Stay Application should be denied accordingly. By way of further response, there are no "difficult conflicting jurisdictional questions" to consider,

because the Approval Opinion addresses the relationship between the Rehabilitator's authority over SHIP and state-based regulatory regimes. To the extent there is any "question" now, it is only because Schott and Kreidler have manufactured a dispute where none would exist but for their impermissible challenges on this Court's authority. The Annual Report is in writing and speaks for itself, and any mischaracterization is denied, and, moreover, Schott and Kreidler must be held accountable for their impermissible challenges to this Court's jurisdiction regardless of the Rehabilitator's preference for avoiding unnecessary litigation. If Schott and Kreidler seek to avoid waste of SHIP's assets and believe there is no dispute to resolve, they can voluntarily dismiss their administrative actions immediately. Their failure to do so to date is reason enough for this Court to refuse to enter a stay.

Dated: May 17, 2022

Respectfully submitted,

/s/ Michael J. Broadbent

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CERTIFICATE OF SERVICE

I, Michael J. Broadbent, hereby certify that on May 17, 2022, I caused to be served the foregoing REHABILITATOR'S COMBINED OPPOSITION TO APPLICATION FOR STAY AND REPLY IN FURTHER SUPPORT OF APPLICATION FOR RULE TO SHOW CAUSE through the Court's PACFile system and on all parties listed on the Master Service List. In addition, I hereby certify that an electronic copy of the foregoing document will be posted on SHIP's website at <https://www.shipltc.com/court-documents>.

/s/ Michael J. Broadbent