

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

:

:

ORDER

AND NOW, THIS ____ day of _____, 2022, upon consideration of the Rehabilitator's Petition for Issuance of Rule to Show Cause as to Plan Injunction Actions on Louisiana Insurance Commissioner James J. Donelon and Acting South Carolina Director of Insurance Michael Wise ("Respondents"), it is hereby ORDERED that a Rule is issued upon each Respondent named in the said Petition to show why the Rehabilitator is not entitled to the relief requested. The Rehabilitator shall serve this Order and Rule upon each Respondent. It is hereby further ORDERED that Respondents shall file an answer to the Petition by _____, 2022.

MARY HANNAH LEAVITT, President Judge Emerita

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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**REHABILITATOR’S PETITION FOR ISSUANCE OF RULE TO SHOW
CAUSE AS TO PLAN INJUNCTION ACTIONS**

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 Petition for Issuance of Rule to Show Cause as to Plan Injunction Actions on Louisiana Insurance Commissioner James J. Donelon (“Commissioner Donelon”) and Acting South Carolina Director of Insurance Michael Wise (“Acting Director Wise” and, with Commissioner Donelon, the “Respondents”).¹ In support thereof, the Rehabilitator avers as follows:

Introduction

1. This Petition addresses troublesome issues that have arisen as a result of collateral challenges on this Court’s Approved Rehabilitation Plan (the “Plan” or

¹ Acting Director Wise is the successor to Director Raymond G. Farmer, who served in that role at the time the preliminary injunction in question was issued.

“Approved Plan”) for SHIP. As developed below, regulators in two states have procured preliminary injunctions against SHIP, the Rehabilitator, and the Special Deputy Rehabilitator that purport to bar implementation of the Plan as to those states. These injunctions are premised on the incorrect propositions that the Plan usurps their regulatory authority and is harmful to policyholders when compared to liquidation. This Court has already addressed and overruled these arguments in deciding to approve the Plan. (*See* Approval Opinion at 48-61 (regulatory authority), 62-65 (comparison to liquidation)).

2. Among other defects, these injunctions and the underlying proceedings ignore this Court’s exclusive *in rem* jurisdiction over SHIP and its assets. *See, e.g., Ballesteros v. New Jersey Prop. Liab. Ins. Guar. Ass’n*, 530 F. Supp. 1367 (D.N.J. 1982), *aff’d sub nom. Appeal of Ballesteros*, 696 F.2d 980 (3d Cir. 1982) (“[a] rehabilitation proceeding is an *in rem* action in which the state court generally has exclusive control over the assets of the impaired insurance company”); *All Star Advert. Agency, Inc. v. Reliance Ins. Co.*, 898 So. 2d 369, 382–83 (La. 2005) (holding because Pennsylvania is a reciprocal state under Louisiana’s receivership statutes, Louisiana courts are deprived of subject matter jurisdiction over matters over which a Pennsylvania receivership court has asserted exclusive control). SHIP’s insurance policies are the vehicle through which policyholders gain access

to those assets. Modification of those policies (as envisioned in the Plan) is the mechanism through which the Approved Plan and this Court regulate how the assets in the Court's jurisdiction will be distributed to policyholders. Thus, contrary to Respondents' arguments in their state courts, this Court absolutely has jurisdiction to approve modification of SHIP's policies for the reasons set forth in the Court's opinion approving the Plan, and the exercise of the Court's jurisdiction in these circumstances does not violate state laws intended to govern the manner in which companies in the marketplace (not in receivership) are regulated. Put simply, unlike SHIP and its assets, the business and assets of other companies in the marketplace are not within any court's exclusive *in rem* jurisdiction.

3. In proposing and implementing the Plan, the Rehabilitator has an obligation to protect the interests of SHIP's policyholders and other stakeholders consistent with statutory and constitutional requirements to make SHIP's receivership fair and equitable. *See, e.g.*, 40 P.S. § 221.1(c)(iv) (receivership statutes designed to "protect the interests of insureds, creditors, and the public generally . . . through . . . equitable apportionment of any unavoidable loss"); *Foster v. Mut. Fire, Marine & Inland Ins. Co.*, 614 A.2d 1086, 1094 (Pa. 1992) (rehabilitation plan should be approved "[s]o long as the rehabilitation properly conserves and equitably administers the assets of the involved corporation in the interest of investors, the

public and others, with the main purpose being the public good”) (internal punctuation and citation omitted); *Grode v. Mut. Fire, Marine & Inland Ins. Co.*, 572 A.2d 798, 802 n.5, 804-05 (Pa. Commw. Ct. 1996) (recognizing “the equitable purpose of rehabilitation and liquidation is to protect first of all consumers of insurance”).

4. The preliminary injunctions obtained by Respondents threaten the rights of policyholders, including (a) policyholders purportedly covered by an injunction to the extent those policyholders are deprived of the opportunity to make Plan elections and (b) policyholders in other states to the extent those policyholders subsidize the coverage of policyholders who are paying insufficient premiums as a result of the preliminary injunctions. This Petition seeks the Court’s assistance and guidance in addressing that inequitable outcome.

Background

5. On January 22, 2020, Jessica K. Altman, Insurance Commissioner of the Commonwealth of Pennsylvania (“Commissioner”) filed an Application asking this Court to place SHIP in rehabilitation due to its dire financial condition.

6. On January 29, 2020, the Court granted the application and appointed the Commissioner as the Statutory Rehabilitator (“Rehabilitator”) of SHIP. Michael

Humphreys is the successor as Acting Insurance Commissioner and, thus, is now the Rehabilitator of SHIP.

7. On the same day the Commissioner appointed Patrick H. Cantilo as Special Deputy Rehabilitator (“SDR”), authorizing Mr. Cantilo to exercise the authority of the Rehabilitator as he deems necessary in his judgment to conduct the rehabilitation of SHIP.

8. As the Rehabilitator and SDR began evaluating and developing plans for SHIP’s rehabilitation, they engaged in an unprecedented course of informing and including state insurance regulators around the country (including Respondents) in their deliberations. This included the distribution of extensive actuarial and other relevant information, establishment of a secure data site available to all regulators, holding dozens of conference calls and meetings which commenced even before SHIP was placed in rehabilitation, and opportunities for such regulators to participate formally or informally in the proceedings before this Court to evaluate, and eventually approve, the Proposed Rehabilitation Plan.

9. A handful of regulators submitted formal comments, and three (*i.e.*, the Superintendent of the Maine Bureau of Insurance and the Insurance Commissioners of Massachusetts and Washington—the “Intervening Regulators”) intervened formally in the proceeding.

10. The Rehabilitator filed a Proposed Rehabilitation Plan on April 22, 2020, and filed amended rehabilitation plans on October 21, 2020, and May 3, 2021, copies having been sent in each instance to the chief insurance regulator of each affected insurance department, including Respondents.

11. At no point did Respondents or any other regulator suggest to the Rehabilitator an alternative, let alone a preferable, rehabilitation plan for SHIP.

12. The Court approved the proposed rehabilitation plan on August 24, 2021 (“Approval Order”). This approval followed a weeklong hearing commencing on May 17, 2021, and extensive briefing by the parties, including the Intervening Regulators. Notably, in their opposition to the Plan, the Intervening Regulators advanced substantially the same arguments as those on which the Respondents relied in procuring the preliminary injunctions. The Court amended its Approval Order on November 4, 2021, but those amendments are not material to this Petition. The approved second amended plan was refiled with minor corrections as the Approved Plan.

The Campaign to Impede SHIP's Rehabilitation

13. Despite these efforts by the Rehabilitator to include other regulators in the deliberations, Respondents, Commissioner Donelon and Acting Director Wise,² declined the opportunity to intervene in this Court's proceeding.

14. On information and belief, Respondents instead launched a campaign to engender opposition to the proposed rehabilitation plan and eventually to the Approved Plan among other regulators. Respondents contend that SHIP should be immediately liquidated, and their campaign against the plan is designed to achieve that goal by any means necessary, despite that the Rehabilitator has raised the concern that this campaign will cause harm to policyholders.

15. Respondents lack authority to petition for liquidation in this Court or in any other court. It is not theirs to decide whether SHIP (an insurer domiciled in Pennsylvania) should be rehabilitated or liquidated because those decisions are reserved for the Pennsylvania Insurance Commissioner as domiciliary regulator in

² For ease of understanding, the Rehabilitator will refer to Acting Director Wise interchangeably with former Director Farmer because Acting Director Wise is the named respondent. To be clear, however, the acts described herein were taken by, and during the directorship of, Director Farmer.

consultation with and under the supervision of this Court. *See* 40 P.S. § 221.4(a) (providing for exclusive jurisdiction in Commonwealth Court; 40 P.S. § 221.15 (authorizing Pennsylvania Insurance Commissioner to petition for rehabilitation of domestic insurer); 40 P.S. § 221.18 (authorizing Pennsylvania Insurance Commissioner to seek conversion of rehabilitation to liquidation); 40 P.S. § 221.20 (authorizing Pennsylvania Insurance Commissioner to petition for liquidation of domestic insurer)

16. This campaign of opposition commenced long before the Plan was finalized and eventually approved by this Court. On information and belief, the campaign has included meetings or conferences sponsored or organized by Respondents and their proxies to encourage other regulators to oppose SHIP's rehabilitation *outside* of this Court's process. Their steps included enlisting these regulators to sign onto *amici* briefs prepared by counsel for Commissioner Donelon and Acting Director Wise challenging this Court's approval of the Plan in the Supreme Court of Pennsylvania, and encouraging other states to commence collateral litigation or administrative proceedings against the Rehabilitator and the Special Deputy Rehabilitator, despite the obvious confusion, harm, and damage which the Rehabilitator has explained will be imposed on policyholders as a result of those actions.

17. Indeed, in support of their campaign against the Plan, Respondents commenced collateral litigation in courts in their own states rather than bring their arguments to this Court for consideration. But just as Respondents cannot force SHIP into liquidation, the courts in each of Respondents' home states have no authority to control SHIP's rehabilitation, to decide the proper distribution or use of SHIP's assets, to order SHIP's liquidation, or to provide preferential treatment for any of SHIP's policyholders.

18. Respondents purport to be concerned about their regulatory authority over insurance rates and benefits, but it appears that their true purpose may be to compel liquidation through other means—*i.e.*, by making SHIP's rehabilitation slower, costlier, and more difficult, in the hopes that the Pennsylvania Insurance Commissioner will be forced to withdraw any rehabilitation plan and feel compelled to seek liquidation.

The South Carolina and Louisiana Preliminary Injunctions

19. On September 11, 2020, Commissioner Donelon commenced a lawsuit in Louisiana seeking to enjoin the Rehabilitator from even presenting the Plan to this Court for consideration. Three months later, on December 10, 2020, Acting Director Wise's predecessor, Director Farmer, commenced a lawsuit in South Carolina state court similarly seeking to enjoin presentation of the Plan by the Rehabilitator, the

Special Deputy Rehabilitator, and SHIP. This was long before this Court’s hearing regarding the Plan, and certainly at a time when Respondents could have sought to intervene in this Court’s proceeding, just as had their fellow chief regulators from Maine, Massachusetts and Washington.³ Instead, Respondents made the deliberate decision to disregard this Court’s proceeding and challenge the rehabilitation effort through collateral litigation. Neither regulator appeared in this Court’s proceeding or at the hearing on the Plan.

20. Both lawsuits were filed long before the Plan was finalized and before this Court’s hearing on the Plan. Both lawsuits raised issues that had been raised by the Intervening Regulators before this Court and addressed at the hearing on the Plan and in in this Court’s Approval Order. These issues have also been raised by the Intervening Regulators in their appeal to the Supreme Court of Pennsylvania.

21. The South Carolina suit was filed in state court. Commissioner Donelon’s first suit was dismissed from federal court for lack of jurisdiction, but he

³ The Court’s scheduling order set July 31, 2020—just two months before Commissioner Donelon’s suit—as the deadline for applications to intervene, but the Court was flexible where needed. On September 15, 2020—four days *after* Commissioner Donelon’s suit—the Washington Insurance Commissioner requested leave to join the intervening regulators of Maine and Massachusetts. That request was granted without opposition on September 18, 2020.

later refiled in Louisiana state court, adding the Special Deputy Rehabilitator and SHIP as defendants.

22. Acting in good faith, the Rehabilitator appeared in the Louisiana and South Carolina state courts in an effort to halt these collateral challenges. Both courts summarily rejected the Rehabilitator's opposition to the entry of any temporary injunction against plan implementation and then the entered preliminary injunctions described herein.

South Carolina

23. On January 20, 2022, the South Carolina Fifth Circuit Court of Common Pleas entered its Order Granting Plaintiff's Motion for a Temporary Injunction ("South Carolina Injunction"), which purports to forbid SHIP, the Rehabilitator, and the Special Deputy Rehabilitator from implementing the Approved Plan as to, or communicating with, certain SHIP policyholders. It includes policyholders who reside in South Carolina (no matter in what states their SHIP policies may have been issued), and policyholders who hold SHIP policies issued in South Carolina (no matter in what states they may reside). (A copy of the South Carolina Injunction is attached hereto as Exhibit 1.)

24. As of July 31, 2021 (the measurement date for the Plan), there were 278 SHIP policyholders whose policies were *issued* in South Carolina, of whom 46

resided in other states, including one in Pennsylvania. There were 361 SHIP policyholders *residing* in South Carolina, of whom 129 have policies that were issued in other states, 15 in Pennsylvania. As to these 129 policyholders, the chief insurance regulators in 19 other states have determined what benefits they should receive under the Plan. That would enable them to select from among the five opt-in options or the four opt-out options, depending on each chief insurance regulator's decision.

25. Despite the professed concerns over regulatory usurpation, in procuring the South Carolina Injunction, Acting Director Wise has effectively substituted his judgment for that of these 19 other chief insurance regulators in whose states these policies were issued and thereby purported to cancel their decisions to maximize benefit options for policyholders under the Plan. In fact, the South Carolina Injunction purports to grant Acting Director Wise the sole authority to decide the fate of all 407 policyholders described in the South Carolina Injunction.

26. On information and belief, Acting Director Wise has not provided these policyholders any options, purporting instead to have them involuntarily withdrawn from the Plan without any say in the matter. Acting Director Wise also has not provided any alternative protection to these policyholders, and, on information and belief, he has no plan to provide any protection to these policyholders, leaving them

vulnerable to significant losses. (*See* Letter to Counsel and Response related to protection for policyholders covered by injunction, attached as Exhibit 2.)

27. On information and belief, Acting Director Wise maintains that he is exempt from any future ruling of the Supreme Court of Pennsylvania with respect to SHIP's rehabilitation, placing the fate of SHIP's policyholders in South Carolina in extreme jeopardy.

Louisiana

28. On January 26, 2022, the Louisiana Nineteenth Judicial District Court of East Baton Rouge Parish granted Commissioner Donelon's request for an Injunction ("Louisiana Injunction") barring implementation of parts of SHIP's Approved Rehabilitation Plan in Louisiana. (A copy of the Louisiana Injunction is attached hereto as Exhibit 3.)

29. The Louisiana Injunction purports to forbid the Rehabilitator from implementing the Plan as to policyholders who hold SHIP policies issued in Louisiana, no matter in what states they may reside. As of July 31, 2021, there were 289 SHIP policyholders whose policies were issued in Louisiana, of whom 36 resided in other states. The Louisiana Injunction purports to grant Commissioner Donelon the sole authority to decide the fate of these 289 policyholders.

30. On information and belief, Commissioner Donelon has not provided these policyholders any options, purporting instead to have them involuntarily withdrawn from the Plan without any say in the matter. Commissioner Donelon also has not provided any alternative protection to these policyholders, and, on information and belief, he has no plan to provide any protection to these policyholders, leaving them vulnerable to significant losses. (*See* Letter to Counsel and Response related to protection for policyholders covered by injunction, attached as Exhibit 4.)

Respondents' Campaign is Damaging to the Plan and Policyholders

31. On information and belief, the campaign commenced by Respondents to engender opposition and collateral challenges to the Plan continues unabated.

32. Lawsuits arising out of their campaign have been filed in Iowa, New Jersey, North Carolina, and North Dakota, all seeking to stop implementation of the Plan and, in some cases, to declare that any future decision of Supreme Court of Pennsylvania will not be binding. Other state regulators have initiated administrative actions purporting to override this Court's authority with respect to the Plan, including two of the Intervening Regulators (those of Maine and Washington), suggesting significant coordination amongst the Intervening Regulators and those filing collateral challenges to the Plan's implementation. Most

of these suits and administrative proceedings expressly refer to the Respondents' lawsuits, as do certain filings of the Intervening Regulators.

33. The Rehabilitator must continue to respond to each of these improper collateral challenges, thus consuming SHIP's scarce assets.

34. Moreover, because the campaign appears to continue unabated, the Rehabilitator anticipates potential future litigation and continuing damage to SHIP policyholders who may be, temporarily or (for practical purposes) permanently, unable to make elections as permitted under the Plan.

Implementation Continues Despite the Unwarranted Collateral Challenges

35. The Approval Orders and subsequent related orders have made clear the need to move quickly to implement the Approved Plan.

36. The Approval Order endorsed and adopted the findings and conclusions of the Rehabilitator, including as to the immediate implementation of the Approved Plan. (*See generally* Approval Order.)

37. The Approval Order recognized that Phase One of the Approved Plan would be "implemented...immediately upon Court approval." (Approval Order at 6.) The Court similarly explained that the Approved Plan was to be "implemented quickly." (*Id.* at 47.)

38. Echoing the concerns of policyholders seeking to avoid an unnecessarily lengthy receivership, the Court explained that it wished to “address SHIP’s financial condition swiftly, as does the Rehabilitator.” (*Id.* at 77.)

39. On October 1, 2021, the Intervening Regulators filed an application asking this Court to stay implementation of the Approved Plan (“First Stay Application”) pending the outcome of their appeal of plan approval. The First Stay Application was denied on November 4, 2021 (“First Stay Denial Order”).

40. In so ruling, this Court explained that “delay itself is damaging to the rehabilitation of SHIP and, thus, to policyholders.” (First Stay Denial Order at 9.) Any such harm to policyholders would be “irreparable.” (*Id.* at 10.)

41. Delay pending appeal would have the effect of depleting estate assets and “making the rehabilitation process more difficult.” (*Id.* at 10.)

42. The Intervening Regulators then filed a similar application for stay pending appeal in the Supreme Court of Pennsylvania. Respondents and others filed an *amicus* brief in support of that stay application; the *amicus* brief was authored and filed by counsel for Commissioner Donelon. (A copy of the *amicus* brief is attached hereto as Exhibit 5.)

43. That application was denied on January 31, 2022, and thus implementation of the Approved Plan continues pursuant to the Approval Order.

44. The Rehabilitator continues implementation of the Plan as to other policyholders. Indeed, approximately 94.5% of SHIP’s policyholders have policies issued in an opt-in state or an opt-out state that fully approved the requested rate increases. Approximately 4% of the policies were issued in truly opt-out states and approximately an additional 1.5% are within the South Carolina Injunction and the Louisiana Injunction (the “Excluded Policies,” with each being an “Excluded Policy”).⁴

45. As part of Plan implementation, all policyholders whose policies were issued in the opt-in states—more than 20,000 policyholders—have received election packages, and more than 85% have responded. (*See generally* Annual Report filed March 31, 2022.) The majority of responding policyholders elected a policy option that would not be available in liquidation. (*Id.*)

46. Holders of the Excluded Policies would have received the election packages but for the South Carolina Injunction and the Louisiana Injunction.

⁴ Of the twelve states that had originally opted out of the Plan’s rate setting provisions, five have effectively opted back in by approving the Rehabilitator’s requested rates in full. Thus, of the 2,433 policyholders (9%) that were to be treated as opt-out policyholders based on the initial opt-out decisions, only 1,177 (4%) remain in that category, because all the others have policies issued in states that have opted back into the Plan. These opt-back-in policyholders are receiving now (or will receive soon) their elections packages and will make their selections accordingly.

47. As a result, nearly all of SHIP's LTC policyholders required to make an election under the Plan have elected a policy modification from among the Plan's options, either expressly or, in a minority of cases, by default.

48. A similar process will follow for Opt-out Policyholder elections, and modification of policy premiums and benefits in accordance with policyholder elections is scheduled to begin on the earlier of October 1, 2022, or a decision by the Supreme Court of Pennsylvania with respect to the Intervening Regulators' appeal.

49. After all policyholder elections have been implemented, the Plan's operation will commence in earnest, with SHIP's in-force policies having been modified as contemplated by the Plan. This is the key step that will reduce SHIP's deficit and eliminate the inadequate and discriminatory premium rates prospectively—all while providing policyholders with the coverage options they chose, rather than the limited set of options as would be available in liquidation. Moreover, these modifications are substantially the way in which this Court exercises its exclusive jurisdiction over the distribution of SHIP's assets.

50. Because neither Commissioner Donelon nor Acting Director Wise has the authority to force liquidation or to stop implementation of the rehabilitation plan entirely, their injunctions, if made effectively permanent despite Plan approval, would have the effect of reducing the options available to the affected policyholders,

in turn leading to benefit reductions. Neither of Respondents' lawsuits demonstrates why this outcome is in the best interests of the affected policyholders. The injunctions would also constitute substantial interference with the exercise of this Court's jurisdiction over SHIP's assets.

The Injunctions and Injunction Actions are Improper Collateral Challenges That Cause Harm to Plan Implementation and SHIP's Policyholders

51. While the total percentage of the Excluded Policies is small, the intended effect of the injunctions on those policyholders is pervasive and dangerous.

52. The South Carolina and Louisiana Injunctions purport to bar completely the ability of the Rehabilitator to include the Excluded Policies in the Plan or to otherwise offer them any options available under the Plan. In effect, then, these injunctions purport to bar the ability of the Rehabilitator to implement the mechanism approved by this Court for governing the distribution of SHIP's assets.

53. As noted, the Rehabilitator has requested that Commissioner Donelon and Acting Director Wise advise the Rehabilitator of the plans they have made to protect policyholders of the Excluded Policies, but thus far neither of the Respondents has informed the Rehabilitator of any such plans. (See Exs. 2, 4.)

54. The South Carolina Injunction and the Louisiana Injunction appear to contemplate an impossibility—specifically, that the Excluded Policies will be

somehow immunized completely from the consequences of SHIP's financial difficulties. Thus, while all of the rest of SHIP's policyholders with underpriced policies will have to make important premium and benefit modification decisions, policyholders with the Excluded Policies will not, thus requiring the Rehabilitator to distribute to policyholders of the Excluded Policies a greater and disproportionate share of assets when compared to the Plan and other policyholders.

55. The purported exclusion of these policies from the Plan amounts to a decision by these courts overruling the determination by the Commonwealth Court of how SHIP's assets are to be distributed.

56. Moreover, it would be manifestly unjust, and contrary to this Court's approval of the Plan, to treat these policies as if SHIP were not in dire financial difficulties and in rehabilitation. Respondents have identified no authority supporting such preferential treatment.

57. *First*, benefit payments on the Excluded Policies, if continued unaffected, would in some measure be involuntarily subsidized by the majority of SHIP policyholders already paying If Knew premiums or who will have "right-sized" their policies under the Plan.

58. *Second*, it is black letter law that this Court, and only this Court, has exclusive, nationwide, *in rem* jurisdiction over SHIP's assets, including the funds

from which policy benefits are paid. *See, e.g., Ballesteros*, 530 F. Supp. at 1370-71 (collecting cases) (“A rehabilitation proceeding is an *in rem* action in which the state court generally has exclusive control over the assets of the impaired insurance company.”); *In re Rehab. of Manhattan Re-Ins. Co.*, No. 2844-VCP, 2011 WL 4553582, at *4 (Del. Ch. Oct. 4, 2011) (finding court had exclusive “original and exclusive *in rem* jurisdiction over the insurer and its assets” based in part on statutory direction to Commissioner as Rehabilitator to “take possession of the property of the insurer and . . . conduct the business thereof and . . . take such steps toward removal of the causes and conditions which have made the rehabilitation necessary”); *Comm’r of Ins. v. Arcilio*, 561 N.W.2d 412, 422 (Mich. Ct. App. 1997) (Georgia policyholders within jurisdiction of receivership court as a result of their decision to contract with Michigan long-term care insurer); *Garamendi v. Exec. Life Ins. Co.*, 21 Cal. Rptr. 2d 578, 583–90 (Cal Ct. App. 1993) (holding “A State Court Overseeing an Insurance Insolvency Proceeding Has In Rem Jurisdiction Over the Assets of Third Parties Which Have an ‘Identity of Interest’ With the Insolvent Insurer.”); *Colonial Penn Ins. Co. v. Am. Centennial Ins. Co.*, No 92 Civ. 3791, 1992 WL 350838 (S.D.N.Y. Nov. 17, 1992) (rejecting collateral challenge on rehabilitation plan and finding, in part, that success in such an attack would deplete assets and interfere with the receivership).

59. Under these principles, neither the South Carolina nor the Louisiana state courts—nor any other court—can decide for the Rehabilitator or this Court how SHIP’s funds should be expended with respect to policyholders.

60. Respondents assert (without foundation) that the Plan “usurps” their ratemaking authority, but then propose to usurp from policyholders the ability to decide for themselves what options best suit their needs.

61. The Rehabilitator believes that these lawsuits and injunctions are motivated by disagreement on the part of Acting Director Wise and Commissioner Donelon with the decision to rehabilitate (rather than immediately liquidate) SHIP, and with the mistakenly perceived usurpation of their rate-making authority. Having elected not to participate in this Court’s evaluation of those matters (as did Maine, Massachusetts, and Washington), they have opted instead to pursue collateral challenges in their states’ courts. However, the applicable law does not permit these regulators to substitute their views and discretion for those of the Insurance Commissioner of Pennsylvania as statutory domiciliary rehabilitator (or of this Court) and thereby control implementation of the Plan, the use of SHIP’s assets, and the fate of all of SHIP’s policyholders. Nor does the law countenance that, in the service of their opinions as to the merits of the Plan, the Respondents can deprive the holders of the Excluded Policies of the means to protect themselves

62. Both of the key issues underlying these challenges (ratemaking authority and preference for liquidation) were considered extensively by this Court and found not to be grounds for rejection of the Plan. That finding is presently on appeal to the Supreme Court of Pennsylvania, which on January 31, 2022, rejected efforts to halt implementation of the Plan as described herein.

63. The Rehabilitator submits that Respondents, Acting Director Wise and Commissioner Donelon, should be required to appear and explain to this Court on what authority they purport to supplant this Court's exercise of its exclusive *in rem* jurisdiction over SHIP's assets and the voices of the affected policyholders. They should also be required to explain what steps they have taken to impede or impair implementation of the Approved Plan, so that the Rehabilitator and this Court may prevent or mitigate harm to SHIP's policyholders as a result of those actions. In addition, they should also be required to explain to this Court what steps they have taken, or propose to take, consistent with this Court's jurisdiction and orders, to protect affected policyholders and to prevent unlawful preferences given the involuntary exclusion of those policies from the Plan.

64. Should they fail to demonstrate that they have implemented (or propose to implement) satisfactory measures, the Rehabilitator believes that Acting Director Wise and Commissioner Donelon should be required to demonstrate to this Court

why the Excluded Policies issued in Louisiana and South Carolina (which did not opt out of the Plan's rate setting provisions) should not be treated as opt-in policies. As to policies issued in states other than Louisiana and South Carolina, even if they reside in those states, Respondents should be required to explain to this Court why their status should not be determined by the opt-out decisions *vel non* of the chief insurance regulators of the states in which they were issued. Neither Acting Director Wise nor Commissioner Donelon have (or even purport to have) ratemaking or policy modification authority over these policies.

65. Acting Director Wise and Commissioner Donelon should also be required to demonstrate to this Court why they should not be required to withdraw their lawsuits and cause the injunctions they have procured to be dissolved immediately to prevent interference with the Court's *in rem* jurisdiction over SHIP's assets and so that the affected policyholders can be allowed to make Plan elections.

66. If the responses (or failures to respond) by Acting Director Wise and Commissioner Donelon do not resolve the issues presented by the injunctions they have procured, the Rehabilitator submits that relief from this Court is necessary to prevent unfair and unlawful preferences for the Excluded Policies at the expense of other SHIP policyholders, and for the protection of the affected policyholders.

67. Accordingly, in that event, the Rehabilitator requests that the Court enter an order providing that:

- (a) Effective on the later of ninety days from the date of this Order or the date as of which Opt-In Policies⁵ are modified under the Approved Plan, the Maximum Benefit Period of every Excluded Policy shall be adjusted to what can be funded by the current premium (whether or not waived) on an If Knew premium basis, subject to a guaranty fund “floor” consistent with Subsection VI.5 of the Approved Plan.
- (b) Within sixty days of the date of this Order, the holder of any Excluded Policy affected by the previous paragraph may request from the Rehabilitator (a) the impact of a modified calculation of the Maximum Benefit Period consistent with the Order, and/or (b) information about how his or her policy would change if he or she elected one of the Opt-in Options as described in Section III of the Approved Plan.
- (c) Each policyholder of any Excluded Policy shall have the right to make an alternative election from among the Opt-in Options by communicating the same in writing to the Rehabilitator no later than ninety days after entry of this Order.
- (d) The Rehabilitator shall serve a copy of the Order on the policyholder of any Excluded Policy in a manner compliant with Pennsylvania Rule of Civil Procedure 404. In addition, the Rehabilitator shall post this Order on the websites of SHIP and the Pennsylvania Insurance Department, just as has been done with prior orders of this Court. Such service of the Court’s Order and posting on SHIP’s website shall not constitute a communication by the Rehabilitator with policyholders in

⁵ Capitalized terms in this section shall have the meanings ascribed to them in the Approved Plan.

violation of the Louisiana and South Carolina preliminary injunctions.

- (e) The Rehabilitator is hereby authorized to take any steps reasonably necessary to implement the requirements of this Order.
- (f) This Order is within the Court's ancillary authority under Rule 1701 and does not constitute an amendment to the Approved Plan.

Request for Relief

68. By statute, the rehabilitation of SHIP is a matter within the Court's original jurisdiction. *See* 42 Pa. Cons. Stat. § 761(a)(3) ("The Commonwealth Court shall have original jurisdiction of all civil actions or proceedings . . . [a]rising under Article V of the act of May 17, 1921....known as 'The Insurance Department Act of 1921'").

69. The "practice and procedure" in all matters within this Court's original jurisdiction "shall be in accordance with the appropriate general rules applicable to practice and procedure in the courts of common pleas, so far as they may be applied." Pa. R.A.P. 106.

70. Pennsylvania Rule of Civil Procedure provides for rules to show cause to be issued directing a respondent to answer within twenty days of the issuance of the rule. *See* Pa. R.C.P. 206.4 – 206.7.

71. In addition, Pennsylvania law grants this Court the authority to enter any order “necessary and proper to prevent,” *inter alia*:

- “interference with the receiver or with the proceeding,”
- “waste of the insurer’s assets,”
- “the obtaining of preferences....”
- “the institution of further prosecution of any actions or proceedings,” and
- “any other threatened or contemplated action that might lessen the value of the insurer’s assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of the proceeding.”

40 P.S. § 221.5.

72. By asserting the legal authority to prevent implementation as to policyholders within and outside of their borders, Respondents seek to interfere with this Court’s *in rem* jurisdiction over SHIP’s assets and the Rehabilitator’s efforts to rehabilitate SHIP, as well as to usurp this Court’s authority over SHIP through these rehabilitation proceedings. 40 P.S. § 221.5(iii).

73. By initiating litigation in their home jurisdictions and asserting the authority to prevent implementation as to policyholders within and outside of their borders, Respondents effectively cause the waste of SHIP’s assets through delay, unnecessary legal fees and expenses, and potential preferences. 40 P.S. § 221.5(iv).

74. By asserting the authority to stop implementation of the Approved Plan as to policyholders within and outside of their borders, Respondents seek the

authority to manufacture non-existent rights to obtain impermissibly preferential treatment for the policyholders of their choosing. 40 P.S. § 221.5(vii).

75. By asserting authority over SHIP's rehabilitation through collateral litigation in their home jurisdictions, Respondents have taken actions which might lessen the value of SHIP's assets (*see* ¶ 57), prejudice the rights of SHIP's policyholders through potential preferences (*see* ¶ 58), and ultimately prejudice these proceedings. 40 P.S. § 221.5(xi).

76. Accordingly, the Rehabilitator requests that the Court enter an order requiring Acting Director Wise and Commissioner Donelon to appear before this Court and explain:

- (a) On what authority they purport to supplant this Court's exercise of its exclusive *in rem* jurisdiction over SHIP's assets and the voices of affected policyholders;
- (b) On what basis the Excluded Policies should be treated differently from all other SHIP policies;
- (c) Why the pending proceeding before this Court and the Supreme Court of Pennsylvania are not and should not be the exclusive fora for management and distribution of SHIP's assets, and for evaluation of the Approved Rehabilitation Plan;
- (d) The legal foundation for their assertion that the courts in South Carolina and Louisiana have sufficient jurisdiction and authority to circumvent the orders of this Court and the Supreme Court of Pennsylvania, and to direct the Rehabilitator and Special Deputy Rehabilitator regarding implementation of the Plan;

- (e) What steps Acting Director Wise and Commissioner Donelon have taken to date to impede and impair SHIP's rehabilitation or otherwise force SHIP into liquidation, including but not limited to any legal or administrative proceedings begun or pursued by Respondents, any other communications related to SHIP or the Approved Plan sent to SHIP's policyholders, and any communications with the regulators of any other state designed to impair or prevent SHIP's rehabilitation.
- (f) What measures Acting Director Wise and Commissioner Donelon, have implemented or propose to implement as to the Excluded Policies to avoid unlawful preferences, harm to the holders of the Excluded Policies and other adverse consequences of their injunctions;
- (g) Why the Excluded Policies issued in Louisiana and South Carolina should not be treated as opt-in policies under the Plan;
- (h) Why Excluded Policies issued in states other than Louisiana, and South Carolina, even if they reside in those states, should not be treated under the Plan as determined by the opt-out decisions *vel non* of the chief insurance regulators of the states in which they were issued;
- (i) Why Respondents should not be ordered to withdraw their litigation and cause the injunctions they have procured against implementation of the Plan to be dissolved immediately so that the Excluded Policyholders may make elections under the Plan; and
- (j) Why, in the event Respondents cannot address these issues to the Court's satisfaction, the Court should not enter an order providing that:

- (i) Effective on the later of ninety days from the date of this Order or the date as of which Opt-In Policies⁶ are modified under the Approved Plan, the Maximum Benefit Period of every Excluded Policy shall be adjusted to what can be funded by the current premium (whether or not waived) on an If Knew premium basis, subject to a guaranty fund “floor” consistent with Subsection VI.5 of the Approved Plan.
- (ii) Within sixty days of the date of this Order, the holder of any Excluded Policy affected by the previous paragraph may request from the Rehabilitator (a) the impact of a modified calculation of the Maximum Benefit Period consistent with the Order, and/or (b) information about how his or her policy would change if he or she elected one of the Opt-in Options as described in Section III of the Approved Plan.
- (iii) Each policyholder of any Excluded Policy shall have the right to make an alternative election from among the Opt-in Options by communicating the same in writing to the Rehabilitator no later than ninety days after entry of this Order.
- (iv) The Rehabilitator shall serve a copy of the Order on the policyholder of any Excluded Policy in a manner compliant with Pennsylvania Rule of Civil Procedure 404. In addition, the Rehabilitator shall post this Order on the websites of SHIP and the Pennsylvania Insurance Department, just as has been done with prior orders of this Court. Such service of the Court’s Order and posting on SHIP’s website shall not constitute a communication by the Rehabilitator with policyholders in violation of the Louisiana and South Carolina preliminary injunctions.

⁶ Capitalized terms in this section shall have the meanings ascribed to them in the Approved Plan.

- (v) The Rehabilitator is hereby authorized to take any steps reasonably necessary to implement the requirements of this Order.
- (vi) This Order is within the Court's ancillary authority under Rule 1701 and does not constitute an amendment to the Approved Plan.

WHEREFORE, the Rehabilitator respectfully requests that the Court enter an Order to Show Cause as set forth herein.

Dated: June 8, 2022

Respectfully submitted,

/s/ Michael J. Broadbent

Dexter R. Hamilton, PA ID 50225
Michael J. Broadbent, PA ID 309798
Haryle Kaldis, PA ID 324534
COZEN O'CONNOR
1650 Market Street, Suite 2800
Philadelphia, PA 19103

Leslie Miller Greenspan, PA ID 91639
TUCKER LAW GROUP
1801 Market Street, Suite 2500
Philadelphia, PA 19103


*Counsel for Michael Humphreys, Acting
Insurance Commissioner of the
Commonwealth of Pennsylvania, as Statutory
Rehabilitator of Senior Health Insurance
Company of Pennsylvania*

VERIFICATION

I, Patrick H. Cantilo, am the Special Deputy Rehabilitator (“SDR”) for Senior Health Insurance Company of Pennsylvania in rehabilitation (“SHIP”), and I am authorized as SDR for SHIP to make this Verification. I hereby verify that the facts set forth in the REHABILITATOR’S PETITION FOR ISSUANCE OF RULE TO SHOW CAUSE AS TO PLAN INJUNCTION ACTIONS are true and correct to the best of my knowledge, information, and belief.

I understand that I make this Verification subject to the penalties of 18 Pa. Stat. § 4904 relating to unsworn falsifications to authorities.

Dated: June 6, 2022



Patrick H. Cantilo

EXHIBIT 1

EXHIBIT 2



February 1, 2022

Michael J. Broadbent

Direct Phone 215-665-4732
Direct Fax 215-701-2288
mbroadbent@cozen.com

Geoffrey R. Bonham
South Carolina Department of Insurance
1201 Main Street, Suite 1000
Columbia SC, 29201

Re: SHIP; January 20, 2022 Injunction

Dear Geoff:

As you know, at the request of Director Farmer and the South Carolina Department Insurance ("SC DOI"), the Fifth Circuit Court of Common Pleas entered its Order Granting Plaintiff's Motion for a Temporary Injunction ("Injunction") on January 20, 2022. Without prejudice to our rights to seek further relief by appeal or otherwise, I write you now because the Injunction purports to have substantial effects that Director Farmer and SC DOI may not have intended.

The Injunction purports to forbid Pennsylvania's Insurance Commissioner, as Rehabilitator, from implementing SHIP's Approved Rehabilitation Plan ("Plan") as to, or communicating with, certain SHIP policyholders. It includes policyholders who reside in South Carolina (no matter in what states their SHIP policies may have been issued), and policyholders who hold SHIP policies issued in South Carolina (no matter in what states they may reside).

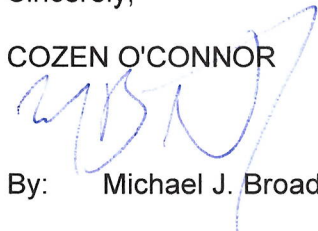
There appear to be 278 SHIP policyholders whose policies were issued in South Carolina, of whom 46 reside in other states, including one in Pennsylvania. The Injunction purports to grant SC DOI the sole authority to decide the fate of all 46 policyholders residing in these other states. In addition, there are 361 SHIP policyholders currently residing in South Carolina, of whom 129 have policies that were issued in other states, 15 in Pennsylvania. As to these 129 policyholders, the insurance commissioners in nineteen other states have determined what benefits the policyholders should receive under SHIP's Plan, thus enabling those policyholders to select from among the five opt-in options or the four opt-out options, depending on each commissioner's decision. However, in procuring the Injunction, the SC DOI has effectively substituted its judgment for that of the nineteen other commissioners in whose states these policies were issued and thereby cancelled their decisions to maximize benefit options for policyholders under the Plan.

Given that the Injunction you have obtained purports to prevent any of the 407 affected policyholders from receiving the benefits of the Plan, please advise promptly what steps the SC DOI has taken or proposes to take for the protection of these SHIP policyholders. In addition, the SC DOI can still improve the ironically extraterritorial effect of its injunction by requesting that the court limit its scope to the 232 policyholders whose SHIP policies were issued in South Carolina and who reside in your state.

Because the Plan is already being implemented as to policyholders not attempted to be excluded by the Injunction, this matter is of great urgency. Unless you advise promptly to the contrary with specificity, we will be compelled to assume that these policyholders will be left without remedy for SHIP's precarious financial condition and to take appropriate responsive measures.

Sincerely,

COZEN O'CONNOR



By: Michael J. Broadbent

Counsel for Jessica K. Altman
Insurance Commissioner and
Statutory Rehabilitator of SHIP



South Carolina Department of Insurance
1201 Main Street, Suite 1000
Columbia, SC 29201

Mailing Address
P.O. Box 100105
Columbia, SC 29202

February 18, 2022

Michael Broadbent, Esq.
Member, Cozen O'Connor
One Liberty Place
1650 Market Street, Suite 2800
Philadelphia, PA 19103

Re: *Farmer, et al. v. Altman, et al.*, 2020-CP-40-05802

Dear Mr. Broadbent:

This letter responds to your most recent correspondence. We will not consent to your request to modify Judge Manning's order for a preliminary injunction as this would create significant confusion among SHIP policyholders and constitute a major disruption to the South Carolina insurance market.

Please do not hesitate to contact me if you have any questions or concerns about this response.

With kind regards, I am

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Geoffrey R. Bonham", is written over a blue horizontal line.

Geoffrey R. Bonham
Associate General Counsel

Governor Henry McMaster

Director Raymond G. Farmer



EXHIBIT 3



19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
300 NORTH BLVD
BATON ROUGE, LA 70801

4TH DAY OF FEBRUARY, 2022

TO: BRANDON K BLACK
JONES WALKER, LLP
445 NORTH BOULEVARD., SUITE. 800
BATON ROUGE, LA 70802

JAMES J. DONELON IN HIS CAPACITY AS COMMISSIONER OF INSURANCE FOR THE
STATE OF LOUISIANA, ET AL VS JESSICA K. ALTMAN, IN HER CAPACITY AS
STATUTORY REHABILITATOR OF SENOR HEALTH INSURANCE COMPANY OF
PENNSYLVANIA, ET AL

CASE NUMBER: C-713794

JUDGE: HON. TIMOTHY E KELLEY

DIVISION: 22

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING ACTION FOR THE

AFOREMENTIONED CASE: ENCLOSED YOU WILL FIND A COPY OF AN ORDER
SIGNED ON FEBRUARY 3, 2022 BY JUDGE TIMOTHY KELLEY

DEPUTY CLERK FOR DOUG WELBORN

NOTIFIED:

BRANDON K BLACK
DAVID S. RUBIN
MICHAEL JOHN BROADBENT

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

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

NUMBER: 713794

SECTION: 22

Plaintiff

VERSUS

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

Defendant

ORDER GRANTING PRELIMINARY INJUNCTION

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

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

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

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

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

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

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

NUMBER: 713794

SECTION: 22

Plaintiff

VERSUS

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

Defendant

ORDER GRANTING PRELIMINARY INJUNCTION (continued)

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

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

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

NUMBER: 713794

SECTION: 22

Plaintiff

VERSUS

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

Defendant

ORDER GRANTING PRELIMINARY INJUNCTION (continued)

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

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

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

NUMBER: 713794

SECTION: 22

Plaintiff

VERSUS

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

Defendant

ORDER GRANTING PRELIMINARY INJUNCTION (continued)

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

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

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

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

DONE AND MAILED ON February 07, 2022


DEPUTY CLERK OF COURT


HONORABLE TIMOTHY KELLEY
JUDGE, 19th JUDICIAL DISTRICT COURT

EXHIBIT 4



February 9, 2022

Michael J. Broadbent

Direct Phone 215-665-4732
Direct Fax 215-701-2288
mbroadbent@cozen.com

David S. Rubin
Butler Snow LLP
445 North Boulevard, Suite 300
Baton Rouge, LA 70802

Re: Injunction against SHIP Rehabilitation Plan

Dear David:

On January 26, 2022, the Nineteenth Judicial District Court of East Baton Rouge Parish orally granted your request for an Injunction barring implementation of parts of SHIP's Approved Rehabilitation Plan ("Plan"), with a written order following that oral decision ("Injunction"). Without prejudice to our rights to seek further relief by appeal or otherwise, I write you now because the Injunction may have substantial effects that Commissioner Donelon may not have intended.

The Injunction requested by Plaintiffs sought to forbid Pennsylvania's Insurance Commissioner, as Rehabilitator, from implementing the Plan as to all policyholders who hold SHIP policies issued in Louisiana.

There appear to be 289 SHIP policyholders whose policies were issued in Louisiana ("Louisiana-Issued Policies"), of whom 36 reside in other states. It appears the Injunction will grant the Louisiana Department of Insurance ("LDI") the sole authority to decide the fate of these 36 policyholders residing in these other states.

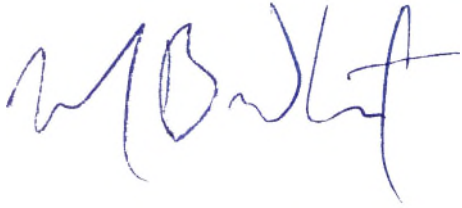
Given that the Injunction you have obtained purports to prevent any of the 289 affected policyholders from receiving the benefits of the Plan, please advise promptly what steps the LDI has taken or proposes to take for the protection of the SHIP policyholders of the Louisiana-Issued Policies. In addition, the LDI can still improve the extraterritorial effect of its injunction by agreeing that the Injunction is limited in its scope to the 253 policyholders whose SHIP policies were issued in Louisiana and who reside in your state.

Because the Plan is already being implemented as to policyholders not attempted to be excluded by the Injunction, this matter is of great urgency. Unless you advise promptly to the contrary with specificity, we will be compelled to assume that these policyholders will be left without remedy for SHIP's precarious financial condition and to take appropriate responsive measures.

David S. Rubin
February 9, 2022
Page 2

Sincerely,

COZEN O'CONNOR

A handwritten signature in blue ink, appearing to read "MJ Broadbent". The signature is stylized with a large "M" and "J" and a cursive "Broadbent".

By: Michael J. Broadbent

MJB

CC: Brandon K. Black

February 11, 2022

VIA EMAIL ONLY

Mr. Michael J. Broadbent
Cozen O'Connor
1650 Market St.
Philadelphia, PA 19103

Re: Louisiana Injunction

Dear Michael:

In response to your letter of February 9, at the present time the Louisiana Department of Insurance will not agree to make any changes to the injunction. I do not recall that the issue of policyholders who have moved out of Louisiana was mentioned in any depth, if at all, in either of our arguments and it was not mentioned by Judge Kelly when he gave his reasons. With cases moving forward in the Pennsylvania Supreme Court and other jurisdictions LDI will wait to see the results of those matters or at least get more clarity of the issues.

Very truly yours,



By: David S. Rubin

DSR:

c:
Mr. Brandon K. Black

EXHIBIT 5

IN THE SUPREME COURT OF PENNSYLVANIA

No. 71 MAP 2021

**In Re: Senior Health Insurance Company of
Pennsylvania (In Rehabilitation)**

*Appeal from the Order of the Commonwealth Court Entered on August 24, 2021 in
1 SHP 2020*

**BRIEF OF AMICI CURIAE STATE INSURANCE REGULATORS
IN SUPPORT OF APPELLANTS' APPLICATION FOR STAY
PENDING APPEAL**

November 22, 2021

Butler Snow LLP
James J. Lawless, Jr. (PA. I.D. No. 50848)
1414 Millard Street
Bethlehem, PA 18018
Telephone: (610) 691-3308 | Fax: (610) 691-8507
Jim.Lawless@butlersnow.com
Counsel for Amici Curiae State Insurance Regulators

Filed by:

**ARKANSAS INSURANCE DEPARTMENT, BY ALAN MCCLAIN,
COMMISSIONER
CONNECTICUT INSURANCE DEPARTMENT, BY ANDREW N. MAIS,
COMMISSIONER
IDAHO DEPARTMENT OF INSURANCE, BY DEAN L. CAMERON,
DIRECTOR
DOUGLAS M. OMMEN, INSURANCE COMMISSIONER OF THE STATE
OF IOWA
LOUISIANA DEPARTMENT OF INSURANCE, BY JAMES J. DONELON,
COMMISSIONER
MARYLAND INSURANCE ADMINISTRATION, BY KATHLEEN A.
BIRrane, COMMISSIONER
MISSISSIPPI DEPARTMENT OF INSURANCE, BY MIKE CHANEY,
COMMISSIONER
TROY DOWNING, MONTANA COMMISSIONER OF SECURITIES AND
INSURANCE AND STATE AUDITOR
NEW HAMPSHIRE DEPARTMENT OF INSURANCE, BY
CHRISTOPHER R. NICOLOPOULOS, COMMISSIONER
NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE, BY
MARLENE CARIDE, COMMISSIONER
HON. RUSSELL TOAL, SUPERINTENDENT OF INSURANCE FOR THE
STATE OF NEW MEXICO
NORTH CAROLINA DEPARTMENT OF INSURANCE,
BY MIKE CAUSEY, COMMISSIONER
NORTH DAKOTA INSURANCE DEPARTMENT, BY
JON GODFREAD, COMMISSIONER
OKLAHOMA DEPARTMENT OF INSURANCE, BY GLEN MULREADY,
COMMISSIONER**

[continued on next page]

**SOUTH CAROLINA DEPARTMENT OF INSURANCE, BY RAYMOND G.
FARMER, DIRECTOR**

**SOUTH DAKOTA COMMISSIONER OF INSURANCE, BY LARRY
DEITER, DIRECTOR**

**UTAH INSURANCE DEPARTMENT, BY JONATHAN T. PIKE,
COMMISSIONER**

**WISCONSIN OFFICE OF THE COMMISSIONER OF INSURANCE, BY
MARK AFABLE, COMMISSIONER**

**WYOMING DEPARTMENT OF INSURANCE, BY JEFFREY P. RUDE,
COMMISSIONER**

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INTRODUCTION

The Departments of Insurance of the Amici Curiae State Insurance Regulators through their chief insurance regulatory officials having been granted permission by this Honorable Court respectfully submit this Brief as *amici curiae* in support of the Application for Stay filed by Appellants Superintendent of Insurance of the State of Maine, the Commissioner of Insurance of the Commonwealth of Massachusetts, and the Insurance Commissioner of the State of Washington (collectively, “SIR Appellants”).

STATEMENT OF INTEREST

The Amici Curiae State Insurance Regulators are the statutory insurance regulators in their respective states. Each state regulator is charged with enforcing the insurance laws and regulations affecting policyholders within their respective jurisdiction. The policyholders of Senior Health Insurance Company of Pennsylvania (In Rehabilitation) (“SHIP”) reside in or have policies governed by the laws of each such state.

The Second Amended SHIP Rehabilitation Plan (“Plan”) approved by the Commonwealth Court violates long-standing law and jurisprudence providing that

the regulation of rates for insurance policies issued in a state is within the sole jurisdiction of the insurance regulators of each state of issuance. The Plan directly affects the authority of the Amici State Insurance Regulators and contradicts and is inconsistent with the law governing the jurisdiction and authority of a rehabilitator. The Amici Curiae State Insurance Regulators have a duty to protect the policyholders within their states from the unconstitutional exercise of the authority by the Pennsylvania Rehabilitator. They must maintain and act consistently with the regulatory authority that has been delegated to them by the legislatures of their respective states for the protection of policyholders and reject any attempts by others to exercise that police power.

This brief was prepared by counsel for the Departments of Insurance for the States of South Carolina and Louisiana, was paid for the Departments of Insurance for the States of South Carolina and Louisiana and was reviewed and approved by each of the Amici Curiae State Insurance Regulators. Pursuant to Pa. R.A.P. 531(b)(2), no other person or entity has paid for the preparation of or authored this brief in whole or in part.

ARGUMENT FOR AMICI CURIAE

This Court has broad authority to consider the interests of justice and grant the motion for a stay to ensure the implementation of the Plan does not proceed and render moot SIR Appellants' claims during the pendency of this appeal. The requested stay is necessary to preserve the status quo and prevent irreparable harm to SHIP policyholders and protect Amici Curiae State Insurance Regulators and insurance consumers while this matter proceeds on appeal. The interests in this action are not limited to the 39,000 policyholders of SHIP. Rather, the decision in this matter affects the insurance guaranty fund system – the safety net that protects insurance consumers – the regulation of insurer insolvencies, and the federal adoption of the state-based system of insurance regulation and rate-making.

The Amici Curiae State Insurance Regulators support the Application seeking a stay of the Orders approving the Rehabilitator's Plan. As set forth by SIR Appellants, each state regulator is confronted with the Rehabilitator's impending deadline for state insurance regulators requiring each to make a decision whether on behalf of the policyholders in their states to "opt-out" of the Plan. By design, states are deemed to be in the Plan unless they execute the opt-out

election.

One of the key provisions of the Plan is that the Rehabilitator will submit proposed rate increases and policy modifications to the Commonwealth Court for opt-in states but not to the insurance regulators in the states in which the policies were issued. (Plan, pp. 33-34.) The Rehabilitator will only make rate filings in states where the state regulator makes an opt-out election. Under those circumstances, if the proposed premium rate increase is not granted in full, the benefits of a policyholder under an existing policy will be downgraded or otherwise altered to a benefit level determined by the Rehabilitator that “may include a reduced number of meaningful options for affected policyholders” and “[i]n addition, some policyholders who do not make an election may face involuntary benefit reductions.” (Plan, p. 109.) Rates will be set by the Rehabilitator on a seriatim basis by policyholder; consequently, policyholders in the same state could pay different premium rates based on the benefits in their policies. Whether a state opts-in or opts-out, the Rehabilitator will be setting rates for policyholders in states other than Pennsylvania either directly via the opt-in approach or indirectly via benefit downgrades for states that decide to opt-out.

The approval of policy premiums and policy benefits is one of the principal consumer protection responsibilities of state insurance regulators. This Plan attempts to unconstitutionally usurp that authority under the guise of allowing an “opt-out” state to review and approve a rate application. However, if the opt-out state disapproves the application based on the laws and regulations in its state that it is constitutionally and statutorily bound to follow, its policyholders will pay the price through increased rates or benefit reductions.

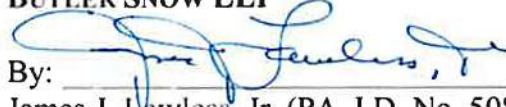
In 1945, Congress enacted the McCarran-Ferguson Act, 15 U.S.C. §1011, by which Congress stated the following as a declaration of policy: “Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.” Section 1012(a) of the McCarran-Ferguson Act provides that “[t]he business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.” The empowerment of each state with respect to the business of insurance was reinforced by Congress in 1999 with the

enactment of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6701 *et seq.* In that Act, Congress stated that the McCarran-Ferguson Act “remains the law of the United States” and that “the insurance activities of any person...shall be functionally regulated by the States.”

Granting the application for stay will allow this Honorable Court time to thoroughly review (1) this matter of utmost importance to insurance consumers and state insurance regulators and (2) the merits of the other issues regarding the Plan presented on appeal while maintaining the status quo. Therefore, the Amici Curiae State Insurance Regulators respectfully request that SIR Appellants’ Application for a Stay be granted pending the appeal of the Court Order Approving the Second Amended Plan of Rehabilitation.

Respectfully Submitted,

BUTLER SNOW LLP

By: 

James J. Lawless, Jr. (PA. I.D. No. 50848)

Jim.Lawless@butlersnow.com

1414 Millard Street

Bethlehem, PA 18018

Telephone: (610) 691-3308 | Fax: (610) 691-8507

**Counsel for Amici Curiae State Insurance
Regulators**


(None of the counsel shown below are admitted in Pennsylvania)

ARKANSAS INSURANCE DEPARTMENT, BY ALAN MCCLAIN,
COMMISSIONER



Jim Brader (Ark. Bar No.: 2001056)
Deputy Commissioner & General Counsel
Arkansas Insurance Department
1 Commerce Way, Suite 504
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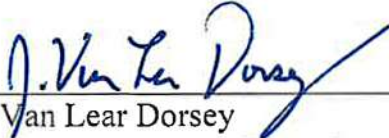
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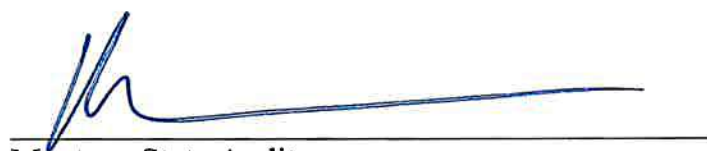
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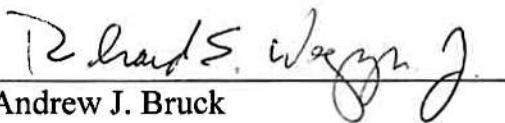
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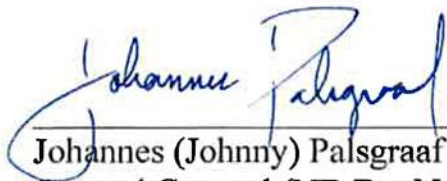
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PUBLIC ACCESS POLICY CERTIFICATE OF COMPLIANCE

It is hereby certified by the undersigned that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

I further certify that pursuant to Pa. R. App. P 531(b)3() that this Brief contains no more than 2876 words which is less than the allowable 7000 words.

November 22, 2021.

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CERTIFICATE OF SERVICE

I, Michael J. Broadbent, hereby certify that on June 9, 2022, I caused to be served the foregoing CORRECTED EXHIBIT 1 to the Rehabilitator's Petition for Issuance of Rule to Show Cause as to Plan Injunction Actions through the Court's PACFile system and on all parties listed on the Master Service List. A copy of the CORRECTED EXHIBIT 1 was sent via U.S. Mail to the Respondents at the addresses listed below and, where noted, by email. 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>.

<p>Commissioner James J. Donelon Louisiana Dep't of Insurance 1702 N 3d Street Baton Rouge, LA 70802 <i>with a copy to</i> David Rubin BUTLER SNOW LLP 445 North Boulevard, Suite 300 Baton Rouge, LA 70802 david.rubin@butlersnow.com</p>	<p>Acting Director Michael Wise South Carolina Dep't of Insurance 1201 Main Street, #1000 Columbia, SC 29201 <i>with a copy to</i> Geoffrey Bonham South Carolina Dep't of Insurance 1201 Main Street, #1000 Columbia, SC 29201 gbonham@doi.sc.gov</p>
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/s/ Michael J. Broadbent