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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

INTERVENING AGENTS' AND BROKERS'
REBUTTAL PRE-HEARING MEMORANDUM
ON THE AMENDED REHABILITATION PLAN FOR
SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA

Intervenors ACSIA Long Term Care, Inc. ("ACSIA"), Global Commission Funding LLC ("GCF"), LifeCare Health Insurance Plans, Inc. ("LifeCare"), Senior Commission Funding LLC ("SCF"), Senior Health Care Insurance Services, Ltd., LLP ("SCIS"), and United Insurance Group Agency, Inc. ("UIG") (together, "Agents and Brokers"), by and through their counsel, hereby submit this rebuttal pre-hearing memorandum in further support of their specific objection to the Rehabilitator for Senior Health Insurance Company of Pennsylvania's ("SHIP") amended plan of rehabilitation for SHIP ("Amended Plan").

In their pre-hearing memorandum, the Agents and Brokers delineated the bases for their objection, namely that section VI(N) of the Amended Plan should be struck because, under Pennsylvania law: (i) the Rehabilitator only enjoys authority over the "assets of the insurer" and therefore may not use property of the Agents and Brokers to pay claims against the estate; (ii) commission on earned premiums are the assets of SHIP's Agents and so are not within the

assets of SHIP's rehabilitation estate; and therefore (iii) earned commissions cannot be subject to suspension by the Rehabilitator.

In their respective pre-hearing memoranda, the Rehabilitator and the Health Insurers[1] argue against this objection and invite this Court to make new law by diverting the Agents' and Brokers' property rights to the benefit, however slight, of the rehabilitative estate. In so doing, the Rehabilitator and Health Insurers set aside Pennsylvania statute, Pennsylvania jurisprudence, and the former Commissioner's own statutory interpretation of the Insurance Department Act of 1921 ("Act"). Instead the Rehabilitator and Health Insurers primarily rely on *Health Market*, discussed below, which is not only inapposite but should be afforded no weight here because the same court in the same liquidation under facts and a disposition more similar to that *sub judice* ruled that commission from earned premium is not within the insolvent insurer's estate.[2] The Rehabilitator's and Health Insurers' reliance on this case as well as inapposite case law from other jurisdictions speaks volumes about the strength and support of their position.

For the reasons that follow, the Agents and Brokers ask this Court to decline the Rehabilitator's and Health Insurers' invitation to skirt established Pennsylvania law and to instead modify that portion of the Amended Plan that purports to cease payment of earned commissions prior to liquidation by striking section VI(N) of the Amended Plan.

THE REHABILITATOR LACKS THE AUTHORITY TO SUSPEND OR TERMINATE COMMISSIONS OF THE AGENTS AND BROKERS

The Act instills the Rehabilitator with broad power to control the business of the insurer, however it is axiomatic and fixed by the Act's plain words that such authority does not extend to

[1] The so-called Health Insurers consist of Anthem, Inc., Health Care Service Corporation, Horizon Healthcare Services, Inc., d/b/a Horizon Blue Cross Blue Shield of New Jersey, and UnitedHealthcare Insurance Company.

[2] *Foster v. Health Market, Inc.*, 604 A.2d 1198 (Pa. Commw. Ct. 1992); *Pennsylvania Ass'n of Life Underwriters v. Foster*, 645 A.2d 907, 910 (Pa. Cmwlth Ct. 1994), *aff'd*, 668 A.2d 1113 (Pa. 1995).

the property of third parties. *See* 40 P.S. § 221.16(b) (the rehabilitator "has full power … to deal with the property… **of the insurer**") (emphasis added). Here, the commissions at issue are paid by SHIP's insureds as part of gross premium and are vested property of SHIP's Agents. As such, the commissions fall outside of SHIP's estate and are not subject to the Rehabilitator's authority. The Agents and Brokers provided the corresponding statutory and case law support, as further discussed below, in their formal comments submitted on September 15, 2020, as well as their pre-hearing memorandum.

The arguments to the contrary contained in the pre-hearing memoranda of the Rehabilitator and the Health Insurers fail to substantively distinguish this jurisprudence or offer any authority that may lead to a different conclusion. Indeed, the entire crux of the Rehabilitator's and Health Insurers' opposition to the Agents' and Brokers' objection relies on the misguided and unsupported contention that agent commissions constitute general creditor claims. Unable to find applicable jurisprudence on point, the Rehabilitator misconstrues the applicable section of the Act (Rehab. Memo. at 53), distorts the context and meaning of inapposite case law (*id.* at 54-57), and then primarily relies on case law from other jurisdictions that interpret statutes of other states often under readily distinguishable circumstances (*id.* at 58-63).[3] However, placing SHIP into Rehabilitation does not somehow convert the commissions into assets of SHIP's estate, when under Pennsylvania law they are, from inception, assets of the Agents and Brokers.[4]

[3] Neither do the Rehabilitator or the Health Insurers cite a precedent for a Pennsylvania statutory rehabilitator seizing agent commissions.

[4] The Health Insurers' unsupported call for an extensive contract review is likewise unavailing as nothing contained in those agreements changes the fact that the commissions at issue are not assets of the estate since the Rehabilitator's authority is statutorily prescribed.

1. The Act Makes Clear that Earned Commissions Are Not Part of SHIP's Rehabilitation Estate and so Agents and Brokers Are Not General Creditors

The Rehabilitator relies on the Act to make the unreasonable conclusion that "commissions [are] merely a contractual claim" and that the proposition is "not reasonably subject to dispute." Rehab. Memo. at 53. Yet in support of this conclusion, the Rehabilitator relies exclusively on Section 221.35, a proper reading of which contradicts this position. This section provides, as relevant:

> An insured, agent, [or] broker … shall be obligated to pay any unpaid premium for the full policy term due the insurer at the time of the declaration of insolvency whether earned or unearned as shown on the records of the insurer. The liquidator shall **also** have the right to recover from such person **any part of an unearned premium that represents commission** of such person.

40 Pa. Stat. Ann. § 221.35(a) (emphasis added). Although cited by the Rehabilitator, the first sentence is not at issue, merely stating that agents or brokers holding premium due to the insurer must pay that portion of the premium, whether that premium is earned or unearned.

The second sentence of section 221.35 actually undermines the Rehabilitator's argument and supports the Agents' and Brokers' position. It authorizes the liquidator to "also" recover "any part of an **unearned** premium that represents commission" (emphasis added). It does not authorize the liquidator to also recover any part of "earned premium" that represents commissions. The statute thereby makes clear that commission is not merely the basis of a contractual claim made after premium is collected, but rather is a "part of" the premium itself and otherwise due to the agents or brokers. If commissions due to the Agents and Brokers were merely a contractual claim akin to general creditor claims, as the Rehabilitator contends, then this second sentence would be superfluous since the Act would already obligate Agents and Brokers to pay all premium to the insurer. However, this section makes clear that commission is a distinct component of the gross premium and that the Agents and Brokers have a property right in that commission on earned premium in the first instance. The Rehabilitator's arguments are devoid of any explanation as to

how section 221.35 can be read to allow the liquidator to also have the right to recover any part of an "earned premium" that represents commission when the language is clearly limited to "unearned premium."

The Agents' and Brokers' interpretation of this section of the Act comports with the actual wording of the provision and how premiums are paid, collected and distributed generally. Insureds pay gross premium, which consists of commissions, other expenses, and the net premium ultimately due to insurers. Despite the multiple recipients to which some portion of gross premium may be owed, insureds pay only one entity directly. Generally, an insured pays either the agent who withholds his or her commission and then remits the net premium to the insurer, or the insured pays the insurer which withholds the net premium and remits the commission due to the agent. Under either arrangement, commissions are an express and distinct part of the premium paid by the insured and are due and owing to the agent as premiums are earned. Furthermore, the Rehabilitator's continued focus on services provided by the Agents and Brokers is immaterial. While the Agents and Brokers have made clear that they are available to and do service policyholders, renewal commissions are earned at the point of sale irrespective of whether future services are provided.

2. <u>Pennsylvania Jurisprudence Confirms that the Agent and Broker Commissions Are Not Within SHIP's Estate</u>

In their formal comments and pre-hearing memorandum, the Agents and Brokers directed this Court's attention to Pennsylvania case law directly supporting their position that earned Agent commissions are not subject to the Rehabilitator's authority: (i) this Court's prior ruling in *Pennsylvania Underwriters*, which held that earned commissions are not assets within an impaired insurer's estate; (ii) an order of the Commissioner that came to the same conclusion; and (iii) this Court's prior ruling in *Sheppard*, which held that commissions on premium billed directly by the insurer but not yet collected do not constitute assets of the insurer in determining solvency.

Pennsylvania Ass'n of Life Underwriters v. Foster, 645 A.2d 907, 910 (Pa. Cmwlth Ct. 1994), *aff'd*, 668 A.2d 1113 (Pa. 1995); *In re: The Professional Ins. Agents Ass'n of PA, MD, & DE, Inc.* (No. C89-11-12, Jan. 31, 1991) ("PIA"); *Sheppard v. Old Heritage Mut. Ins. Co.*, 405 A.2d 1325, 1323-33 (Pa. Cmwlth. Ct. 1979).

The Rehabilitator confined her analysis of these authorities to a footnote and failed to offer any meaningful argument or commentary that undermines their support for the Agents' and Brokers' position that commissions fall outside of SHIP's estate under Pennsylvania law.[5] *See* Rehab. Memo., at 54-55, n.5. Indeed, the Rehabilitator merely stated that the *Pennsylvania Underwriters* Court "offered little in way of analysis; it primarily relied upon the plain language of the statute and the Commissioner's 1991 holding in [*PIA*], reaching the same result." *Id.* It is unclear what standard the Rehabilitator seeks to impose on relevant judicial opinions, however reliance on "the plain language of the statute" and the Commissioner's lengthy analysis of that same statute under a similar factual scenario in *PIA* are well-founded bases for proper statutory interpretation and unrefuted authority for Agents' and Brokers' position.

The Rehabilitator's recitation of the Commissioner's order and opinion in *PIA* likewise offers this Court no guidance here as it is a complete misreading:

> In [*PIA*], however, the agents' agreements specifically provided that *agents* would collect premiums, deduct commissions, and hold the remaining premium in trust before sending it to the insurer. Thus, [*PIA*] turned on language in the agency agreement that no party has shown to be present here in defining the insurer's property interest in the premiums collected by the agent as the post-commission amount.

Rehab. Memo., at 54-55, n.5, *citing, PIA*, at 10, 16-17. There is simply no basis for the Rehabilitator to make this assertion that *PIA* "turned on" the agent collecting the premium from the insured rather than the insurer doing so or how this purported distinction may affect the Agents'

[5] The Agents and Brokers previously relied on these citations and explained their respective importance in their Formal Comments submitted on September 15, 2020.

and Brokers' right to receive commission paid by insureds in any event. Rather, in *PIA*, the Commissioner interpreted section 221.35 just as the Agents and Brokers do here: "the legislature clearly differentiated between ownership interest on commissions attached to the two types of premium," *i.e.*, earned and unearned. *PIA*, at 15. The Commissioner concluded: "All earned commissions are the property of the producing agent or broker and outside the reach of the Statutory Liquidator." *Id.* at 16. The Commissioner did not qualify or base this conclusion on whether the premium flowed through the insurer or agent.

Indeed, it is abundantly clear that the Commissioner's opinion and order in *PIA* did not depend on the agent collecting the premium from the insured, rather than the insurer doing so, by *PIA's* citation to *Sheppard*. *Id.* at 17. The Commissioner noted that her conclusion in *PIA* comported with the outcome in *Sheppard* wherein this Court ruled that uncollected premium—net of renewal commissions due agents—was an asset of the distressed insurer for purposes of determining solvency. *Id., citing Sheppard*, 405 A.2d at 1332-33. That is, in evaluating the distressed insurer's assets, the Court first backed out commissions from the outstanding gross premium. The *Sheppard* Court considered this to be true whether the premium was collected from agents and due to the insurer or collected by the insurer and due to agents, making no substantive distinction between the two scenarios. *Sheppard*, 405 A.2d at 1332-33.

3. The Jurisprudence Cited by the Rehabilitator Is Inapposite and Misstated

In support of its statutory interpretation that the Agents' and Brokers' commissions fall within SHIP's estate, the Rehabilitator primarily relies on its misreading of cases that are, in any event, wholly inapt to the issues *sub judice*.

a. *Health Market* Does Not Stand for What the Rehabilitator Contends and Offers Little, if any, Guidance Here

The Rehabilitator and the Health Insurers support their position through bold misreadings of *Foster v. Health Market, Inc.,* 604 A.2d 1198 (Pa. Commw. Ct. 1992), a case that offers little-to-no insight here based on its inapposite disposition, factual scenario and scope of holding. *See* Rehab. Memo. at 52, 54-55; H.I. Memo., at 41-42, *citing Foster v. Health Market, Inc.,* 604 A.2d 1198 (Pa. Commw. Ct. 1992). The Rehabilitator claims this case supports its assertions that the Agents and Brokers are general creditors and that the commissions fall within SHIP's estate; neither issue was considered, let alone decided, by the *Health Market* Court.

As a preliminary matter, the *Health Market* Court did not address objections to a rehabilitation or liquidation plan but rather preliminary objections to the Commissioner's complaint against agencies owned in part by the insolvent insurer's president. The complaint sought the repayment of commissions that were alleged to be unlawfully received as the result of unlawful sales. *Id.* at 1200. Therefore, the context of this case is inapposite here where agents are challenging a rehabilitation plan rather than submitting preliminary objections to a complaint with a readily distinguishable fact pattern.

Moreover, the case's disposition diminishes its precedential value here, if any. In ruling on preliminary objections, a court accepts all well-pleaded facts and inferences reasonably deducted therefrom as true, only sustaining demurrer when it appears—with certainty—that the law permits no recovery under the allegations plead. Accordingly, the *Health Market* Court concluded only that "**it would be reasonable to infer** that the agents are creditors within the

meaning of Section 503 and, therefore, that their commissions, **if determined to be preferences,** are recoverable pursuant to Section 530 of the Act." *Id.* at 1203 (emphasis added). This does not constitute a legal conclusion but simply states that the complaint's allegations survive the defendants' preliminary objections. Thus, this Court merely deemed the agents to be creditors as a reasonable inference for the purposes of ruling on preliminary objections. This inference was subject to scrutiny from further evidence and legal argumentation, and by no means operated as rule of law in that litigation, let alone the liquidation from which it stemmed, or the wholly different scenario *sub judice.*

Indeed, that same Court, within the context of the same liquidation, later granted summary judgment for a group of agents challenging the liquidation plan on the basis that the statutory liquidator lacked authority to demand the return of earned commissions that were not part of the insurer's estate. *See supra, Life Underwriters,* 645 A.2d 907, 910-11 (Pa. Cmwlth. Ct. 1994).[6]

b. The Other Pennsylvania Case Law Cited by the Rehabilitator Has No Application Here

The Rehabilitator cites *Holmes v. Wakelin* as supporting "an agent's creditor status and [the] limited impact of § 221.35," while the Health Insurers cite it for the proposition that "an insurance agent is [not] presumed to have a property interest in the premium used to measure [their] entitlement to compensation." *See* Rehab. Memo., at 55; H.I. Memo., at 42; *citing Holmes,* 48 Pa. Super. 643 (1912). To the contrary, *Holmes* is simply inapposite to any interpretation of the Insurance Department Act since it preceded the Act by almost a decade and the relevant revisions to the Act by more than six decades. *See* 40 P.S. § 221.35, May 17, 1921, P.L. 789, art. V, § 535, added 1977, Dec. 14, P.L. 280, No. 92, § 2. Moreover, the 119-year-old case does not involve an insolvent insurer, an insurer as a party, or even a contract with an insurer.

[6] The case referred to by the Rehabilitator as *Health Market* stems from the same liquidation as the case referred to by the Agents and Brokers as *Life Underwriters, i.e.,* The Commonwealth Court, No. 170 M.D. 1989

Rather, *Holmes* involved a cause of action for "account render" brought by a subagent against an agent under a contract between just the two. An action for account render requires the plaintiff to have a property right in the funds retained by the defendant. In an effort to meet this requirement, the subagent claimed a property interest in commissions owed under the agent's contract with the insurer—to which the subagent was not a party. The court ruled that the subagent's contract with the agent did not afford it any property right in premiums due to the insurance company. This holding, based on inapt disposition, facts and law, neither undermines the Agents' and Brokers' position, nor supports that of the Rehabilitator or Health Insurers.

Contrary to the Rehabilitator's contention that *Darlington v. Reilly* involves a "similar dispute[ ] over commissions or property interests," how its ruling on a lack of contractual privity with respect to the sale of burial lots applies to the present case in any substantive way remains a mystery. *See* Rehab. Memo. at 56, *citing Darlington v. Reilly*, 101 A.2d 900, 902 (Pa. 1954). Likewise, it is puzzling what may be gleaned from *Presbytery of Beaver-Butler v. Middlesex Presbyterian Church*, which involved a ruling that no trust of local church property existed in favor of the parish. *See* Rehab. Memo. at 56, *citing Presbytery of Beaver-Butler v. Middlesex Presbyterian Church*, 489 A.2d 1317, 1324 (Pa. 1985).

c. The Case Law from Other Jurisdictions Cited by the Rehabilitator Does Not Apply Here

Agents and Brokers have supported their position that their earned commissions are not within SHIP's estate, and therefore beyond the reach of the Rehabilitator, with Pennsylvania statute and jurisprudence. In response, or perhaps as the basis for its position, the Rehabilitator has presented no relevant Pennsylvania authority which undermines Agents' and Brokers' position. Instead, the Rehabilitator tries to stretch case law from other jurisdictions to fit her argument. *See* Rehab. Memo. at 58-63. It is a bridge too far.

This Court operates under Pennsylvania law and, in the present case, is asked to determine the authority granted to the Rehabilitator by Pennsylvania statute. Of course, it is not contested that none of the foreign cases cited by the Rehabilitator interpret an agent's right to commissions under Pennsylvania law. Respectfully, this Court should decline the Rehabilitator's invitation to rewrite Pennsylvania law by incorporating the holdings, however inapposite, to the case before this Court.

While a deep analysis of each of the foreign cases cited by the Rehabilitator is not warranted, it is worth noting that each is distinguishable in important ways, in addition to relying on different statutory authority and jurisprudence than applies here. *See Myers v. Protective Life Ins. Co.*, 342 So. 2d 277 (Ala. 1977) (rejecting former agents' right to **post-liquidation commission** from reinsurer operating under treaty approved by receivership court, contemporary with liquidation order, that "expressly insulated" reinsurer from agents' claims—Rehabilitator cited *dicta* in footnote); *Liberty Nat'l Ins. Co. v. Reins. Agency Inc.*, 307 F.2d 164 (9th Cir. 1963) (holding that federal courts lack jurisdiction to decide agent's right to commission under contracts canceled by rehabilitator and approved by state court where agents did not object at hearing or appeal order); *Layton v. Ill. Life Ins. Co.*, 81 F.2d 600 (7th Cir. 1936) (involving agents' demands to receive present value of renewal commissions on **unearned premium** based on insurer's insolvency) (emphasis added); *Layton v. Ill. Life Ins. Co.*, 83 F.2d 277 (7th Cir. 1936) (same); *Thacher v. H.C. Baldwin Agency, Inc.*, 283 F.2d 857 (7th Cir. 1960) (affirming trial court's determination that insolvency and order of liquidation did not constitute breach of agency agreement); *Four Star Ins. Agency, Inc. v. Hawaiian Elec. Indus., Inc.*, 974 P.2d 1017, 1025 (Haw. 1999) (holding that commissioner enjoyed exclusive standing to bring claims against parent

company of insolvent insurer on behalf of policyholders and creditors);[7] *D.R. Mertens, Inc. v. State ex rel. Dep't of Ins.*, 478 So. 2d 1132, 1135 (Fla. Dist. Ct. App. 1985) (involving agents' demands to receive contingent commissions on **unearned premium** based on insurers' insolvency) (emphasis added).

Notably, the New York statutory liquidator's claims in *H.C. Baldwin Agency* actually comport with the Agents' and Brokers' position here because the liquidator sought wrongfully withheld premium owed the insolvent insurer, less the agency's commissions on earned premium. 283 F.2d at 861. Yet, the liquidator did seek recovery of offsets and counterclaims claimed by the agency. *Id.* This indicate that the New York liquidator, and as a result the Seventh Circuit Court of Appeals, treated commissions on earned premium different from other general creditor claims such as offsets.

Similarly, bankruptcy cases should not be afforded any weight here since the Agents and Brokers have cited to Pennsylvania insurance jurisprudence directly addressing the issue before this Court, and there has been no claim that the insurance insolvency law is ambiguous. *See* Rehab. Memo., at 59-60. *Ario*, to which the Rehabilitator cites for the use of bankruptcy law in liquidation proceedings, as well as *Pine Top* and *Wilcox*, which are cited by the *Ario* court, rely on bankruptcy law where there is an ambiguity in the insurance solvency law **and** where an analogous provision exists in the bankruptcy law to address that ambiguity—usually concerning voidable preferences. *See Ario v. Ingram Micro, Inc.*, 965 A.2d 1194, 1203 (Pa. 2009) (deciding voidable preference issue and stating: "Use of federal bankruptcy law for guidance **in interpreting ambiguous state insurance insolvency law** is commonly accepted") (emphasis added), *citing Pine Top Ins. Co. v. Bank of America Nat'l Trust and Sav. Assoc.*, 969 F.2d 321, 324 (7th Cir.1992) ("When confronted

[7] The Rehabilitator cites to *dicta* contained in a footnote before likening the case to *Health Market*, which should also be afforded little weight for the reasons mentioned above.

with a **voidable preference dispute** under state insurance law, it is customary to look to federal bankruptcy law for guidance") (emphasis added); *and Wilcox v. CSX Corp., P.3d 85, 92* (Utah 2003) ("**When there is no legislative history for the state statute**, as is the case here, we are comfortable following the Seventh Circuit's rule of thumb: '[W]hen confronted with **a voidable preference dispute…"'**) (emphasis added). The statutory and other authority underlying bankruptcy cases differs from insurance solvency law that underlies the issue of whether commissions fall within SHIP's general assets here, and the Rehabilitator has put forth no reason why this Court should examine bankruptcy jurisprudence to resolve the Agents' and Brokers' specific objection to the rehabilitation plan.

Nevertheless, the bankruptcy caselaw purportedly addressing "commissions" does not involve insurance commissions or premium but rather real estate or general sales commissions.[8] The Rehabilitator failed to disclose this fundamental distinction in most instances, including in its discussion of *Brockway Pressed Metals*, which involved general sales commissions for "highly engineered powder metal products." *In re Brockway Pressed Metals, Inc.*, 363 B.R. 431, 433 (Bankr. W.D. Pa. 2007). Unlike general sales commissions that are payable from the selling company's general funds, insurance commissions are paid by the insureds as an express part of the gross premium, and the Agents have a vested property right in that part of the premium. *Brockway Pressed Metals* makes clear this distinction: "Basically all Brockway is required to do is invoice customers, collect receivables and pay [the selling company] its specified commissions within two and one-half months regardless of when Brockway was ultimately paid." *Id.* at 441. Thus, the

[8] Among other important distinctions, none of the case law involves insurance premium or commissions. Rehab. Memo. at 59-60, *citing In re Brockway Pressed Metals, Inc.*, 363 B.R. 431, 433 (Bankr. W.D. Pa. 2007) (sales commissions for custom metal products); *Matter of Oxford Mgmt., Inc.*, 4 F.3d 1329, 1334-35 (5th Cir. 1993) (real estate commissions payable to agent by broker where agent has no contract with purchaser or seller); *In re Pauley & McDonald, Inc.*, 215 B.R. 37, 44 (Bankr. D. Ariz. 1996) (same); *In re Taylor & Campaigne, Inc.*, 157 B.R. 493, 495 (M.D. Fla. 1993) (same); *In re Bob Hamilton Real Est., Inc.*, 138 B.R. 301 (Bankr. M.D. Fla. 1992) (same).

bankruptcy law jurisprudence cited by the Rehabilitator lacks any meaningful connection to this matter.

CONCLUSION

Under Pennsylvania law, earned commissions on premium are the property of the Agents and Brokers and not considered assets of the insolvent insurer. Therefore, the Rehabilitator has no authority to suspend the payment of commissions. The Rehabilitator and Health Insurers invite this Court to make new law under the authority of foreign judicial rulings by ordering the suspension of commissions in the Amended Plan—respectfully, this Court should decline to do so. Suspending commissions not only exceeds the Rehabilitator's authority under Pennsylvania law, but doing so would have deleterious effects on the business of Agents and Brokers while having little-to-no effect on SHIP's solvency. At the hearing, the Agents and Brokers will accordingly object to Section VI(N) of the Amended Plan, and call for modification by striking that section in full.

Respectfully Submitted,

CLARK HILL PLC

Dated: April 19, 2021

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing rebuttal pre-hearing memorandum was filed electronically and by mailing a copy to the Court at the following address:

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The undersigned further certifies that service on the Rehabilitator (shipcomments@cozen.com) and Special Deputy Rehabilitator (service@cb-firm.com) has been made electronically per this Court's Case Management Order.

Dated: April 19, 2021

/s/ Scott B. Galla
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