Received 4/5/2021 11:05:22 AM Commonwealth Court of Pennsylvania

Filed 4/5/2021 11:05:00 AM Commonwealth Court of Pennsylvania
1 SHP 2020

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

STATE INSURANCE REGULATORS' PRE-HEARING MEMORANDUM

Stephen G. Harvey
Steve Harvey Law LLC
steve@steveharveylaw.com
1880 John F. Kennedy Blvd.
Suite 1715
Philadelphia, PA 19103
Tel. 215-438-6600

Attorneys for the Maine Superintendent of Insurance, the Massachusetts Commissioner of Insurance, and the Washington Insurance Commissioner

Of Counsel:

J. David Leslie
dleslie@rackemann.com
Eric A. Smith
esmith@rackemann.com
Rackemann, Sawyer & Brewster P.C.
160 Federal Street
Boston, MA 02110-1700
Tel. 617-951-1131
Tel. 617-951-1127
(admitted *pro hac vice*)

Counsel to the Maine Superintendent of Insurance, the Massachusetts Commissioner of Insurance, and the Washington Insurance Commissioner and Massachusetts Special Assistant Attorneys General and Washington Special Assistant Attorneys General

TABLE OF CONTENTS

Table of Authorities

Cases

Constitutional Provisions

Statutes

Regulations

Other Authorities

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

STATE INSURANCE REGULATORS'
PRE-HEARING MEMORANDUM

In accordance with the Court's Order of February 25, 2021, the Intervenors Superintendent of Insurance of the State of Maine, Commissioner of Insurance of the Commonwealth of Massachusetts, and Insurance Commissioner of the State of Washington (collectively, "State Insurance Regulators") submit this pre-hearing memorandum regarding the Amended Plan of Rehabilitation ("Plan") for Senior Health Insurance Company of Pennsylvania ("SHIP") submitted by the Insurance Commissioner of the Commonwealth of Pennsylvania as Rehabilitator ("Rehabilitator"). The State Insurance Regulators are filing separately their witness narrative and their exhibit list (with copies of exhibits).

The State Insurance Regulators also submit letters of support from insurance regulators of other States who agree that the Amended Plan of Rehabilitation is not in the best interest of policyholders, is inconsistent with the national scheme for protecting the policyholders of insolvent insurers, does not appear viable, and is unlawful. To offer some context, each of the current chief regulators who is a past president of the National Association of Insurance Commissioners, as well as the

chief insurance regulator who has served the longest in that office, oppose approval of the Amended Plan of Rehabilitation. The letters of support from Connecticut, Louisiana, Maryland, Mississippi, New Jersey, South Carolina, Vermont and Wisconsin are attached as Appendix A to this memorandum.

Introduction

The State Insurance Regulators believe the Plan should be disapproved for the reasons set forth in this memorandum. There are, however, three critical points that should be noted before turning to the detailed issues.

First, the Plan is worse for policyholders than a liquidation. The Plan imposes the entire cost of SHIP's insolvency on policyholders, directly contrary to the purpose of the insurer rehabilitation and liquidation statutes and the insurance guaranty association statutes to protect policyholders. The Plan proposes to "eliminate" SHIP's $1.224 billion "Funding Gap" solely through benefit cuts and premium increases on SHIP's remaining policyholders. It concentrates the consequences of insolvency on those roughly 33,000 policyholders, who must absorb the entire $1.224 billion deficit resulting from SHIP's operations over the years. This is essentially a "workout" plan, under which the policyholders of an insolvent insurer are forced, notwithstanding the legislatively created guaranty fund system, to bear the entire shortfall to restore the company to fiscal "health."

Such a plan is fundamentally misconceived. The purpose of the insurer rehabilitation and liquidation statutes is to protect policyholders from the consequences of an insurer's insolvency by preferring them. Legislatures across the nation have created insurance guaranty associations to ensure that a minimum level of protection is available to policyholders, regardless of insolvency, by making additional funds available. The statutes spread loss broadly to protect policyholders. They do not concentrate the loss and force policyholders to bear it.

The Rehabilitator's own numbers show the harm to policyholders that would result from the Plan. Under the Plan, policyholders will bear the $1.224 billion Funding Gap through benefit cuts and premium increases. In the liquidation scenario in the Rehabilitator's "2020-11-12 SHIP Comparison of Rehabilitation to Liquidation" file ("Comparison File"), by contrast, policyholders will absorb approximately $397 million (the difference between the $2.549 billion of SHIP's policyholder obligations (baseline benefits) and the $2.246 billion of benefits expected in a liquidation plus the $93 million of additional premium expected to be charged by guaranty associations). In the liquidation scenario, guaranty associations are expected to infuse an additional approximately $837 million.

In sum, the Plan would require policyholders to absorb more than $800 million more than a liquidation. The Plan balances the SHIP deficit on the backs of the policyholders rather than bringing in additional funds through the

guaranty associations. This is contrary to the intent of the statutory scheme across the United States designed to protect policyholders. The only evident purpose of the Plan is to avoid triggering the guaranty associations, when they were created to protect policyholders in the event of an insolvency such as this.

Second, the Plan is not viable in Phase One even on its own terms, and the Rehabilitator has not addressed the viability of Phase Two. The Rehabilitator's "Phase I Funding Gap Reduction Exhibit" shows that the $1.224 billion Funding Gap is not eliminated in any of the ten original scenarios of the Rehabilitator's November 20, 2020 "Summary of Rehabilitation Plan Results (Phase I)" ("Phase I Results Exhibit") and January 26, 2021 Actuarial Report ("Actuarial Report"). The Funding Gap remaining after Phase One in the scenarios ranges from $699 million in scenario 1 to $186 million in scenario 10. However, these scenarios are not predictive but merely "illustrative." The Rehabilitator has not said any of these scenarios are likely to occur but offered them only to illustrate possible results.[1]

In the State Insurance Regulators' view, the most plausible scenario is one assuming that each policyholder would choose the rehabilitation option that would provide them with the greatest value (that is, the option that, all else being equal, is

[1] The Oliver Wyman actuary discussing the scenarios during the Rehabilitator's March 5, 2021 actuary call said scenario 1 was "loosely" based on Penn Treaty data, which suggests that it may be more predictive than the other scenarios. The Rehabilitator's March 2, 2021 Funding Gap Reduction Exhibit ("Funding Gap Exhibit") added a scenario 11 that eliminated the Funding Gap, but the Oliver Wyman actuary expressly offered "no comment on whether it will happen."

in their best interest). The State Insurance Regulators have calculated this "best interest" scenario using the data in the Rehabilitator's Comparison File. The Funding Gap remaining after Phase One in that scenario is $1.039 billion.

The Rehabilitator has not offered any analysis addressing whether Phase Two of the Plan could successfully fill the remaining Funding Gap. Since the Funding Gap remaining after Phase One appears likely to be about $1 billion, the Rehabilitator has not shown that the Plan is viable. Under the Plan, this remaining Funding Gap is to be born only by those who select Options 1 or 4 in Phase One. Amended Plan at 14. The Rehabilitator has offered no analysis that would show that this limited subset of policyholders could absorb the remaining Funding Gap.

The Rehabilitator may contend that fear of Phase Two impacts will drive policyholders to choose Options 2 or 3, which are protected from Phase Two. Amended Plan at 14.[2] However, if that is the case, then the Plan offers no truly available option that provides policyholders with a value equal to or greater than liquidation. Based upon the Comparison File, Options 2, 2a and 3 provide a worse result than liquidation for an overwhelming majority of policyholders (for Option 2, 94%, for Option 2a, 94%, and for Option 3, 83%).

[2] The Plan is not clear as whether Option 2a is also protected from Phase Two. Although the Plan recites that "In Phase Two the premium for the Enhanced Basic Policy Endorsements will be at Self-sustaining Premium rates," Amended Plan at 45, there are also multiple places in the Plan, for example at 14 and 48, where it appears to say that Option 2a will be treated the same way as Option 2 in Phase Two.

Third, the Rehabilitator's contention that 85% of policyholders have an option that provides a value equal to or greater than liquidation is illusory because it fails to consider the impact of Phase Two. The 85% figure depends upon policyholders choosing Option 4. Based upon the Comparison File, Option 4 provides Phase One value greater than or equal to liquidation for 83% of policyholders. All other options provide a result worse than liquidation for a large majority. However, Option 4 has little effect on the Funding Gap – the Rehabilitator's Funding Gap Exhibit shows that if all policyholders selected Option 4, the $1.224 billion Funding Gap would only be reduced by $227 million (18.5%), to $997 million.

A substantial Funding Gap will thus remain to be addressed in Phase Two. The Plan specifies that Phase Two will impose additional benefit cuts or premium increases and that those impacts will rest exclusively on policyholders who chose Options 1 or 4 in Phase One. Amended Plan at 14. To eliminate the Funding Gap, those policyholders will have to absorb benefit cuts or premium increases that, in the "best interest" scenario, have a value of about $1 billion.

The Rehabilitator's Comparison File does not provide information about Phase Two's "Self-sustaining Premium" impacts. However, it is clear that requiring Option 4 policyholders to increase premiums in Phase Two will sharply reduce the number of policyholders who have an option better than liquidation. If

Option 4 policyholders face a Phase Two premium increase of 50% (which would still leave a Funding Gap of $858 million), then the percentage of policyholders for whom Option 4 provides a better value than liquidation drops from 79% to 34%. If premium were to increase 200% (leaving a Funding Gap of $314 million), the percentage of policyholders for whom Option 4 is better than liquidation drops to 16%. The Plan does not offer most policyholders an option better than or equal to liquidation when Phase Two is considered.

For these reasons, it is not apparent how SHIP's Funding Gap can be eliminated without a majority of SHIP policyholders faring worse that they would in a liquidation (even putting aside the absence of new guaranty association funds). As proponent of the Plan, the Rehabilitator has the burden of showing that it is viable (the Funding Gap is eliminated) without putting policyholders in a worse financial position than in a liquidation. The Rehabilitator simply has not done so.

As set forth in Part I below, the State Insurance Regulators expect that the evidence will show that the Plan does not satisfy the applicable standards. First, the Plan is not fair and equitable because it deprives the policyholders of guaranty association protection. Second, the Plan is not viable because it has no reasonable chance of eliminating the $1.224 billion Funding Gap. Third, the Plan does not satisfy the constitutional standard of *Neblett v. Carpenter,* 305 U.S. 297 (1938) because it does not offer policyholders the equivalent of what they could receive in

a liquidation. Fourth, the Plan is not fair and equitable because it treats policyholders differently across States and deprives policyholders in waiver-of-premium status of that benefit.

The Plan also suffers from facial legal flaws as set forth in Part II. First, the Plan does not treat all policyholders equally but deliberately creates subclasses based on policyholders' State of residence so that policyholders in some States will suffer greater premium increases and benefit cuts than others, which violates Pennsylvania law. Second, by creating these by-state subclasses, the Plan necessarily treats some policyholders more harshly than they would be treated in liquidation, contrary to *Neblett*. Third, the Plan seeks to displace rate regulation by other States respecting policyholders in those States, which is not authorized by Pennsylvania law, violates the Full Faith and Credit Clause, and does not accord comity to other States' rate review statutes. The new Issue-State Rate Approval section does not cure these defects.

Background

A. The following facts are found in the Amended Plan or other documents provided by the Rehabilitator in her data site and are undisputed.

1. SHIP is a Pennsylvania insurance company that specialized in long-term care coverage. Prior to rehabilitation, SHIP was licensed and transacted

business in 46 States (all but Connecticut, New York, Rhode Island and Vermont), the District of Columbia, and the U.S. Virgin Islands. Amended Plan at 76.

2. SHIP's business consists of long-term care insurance, with no policies issued later than 2003. Amended Plan at 77. The average long-term care policyholder age is 86, and the average claimant is 89 years old. *Id*. at 78.

3. SHIP is insolvent as its reported liabilities greatly exceed its assets. At December 31, 2020, SHIP had total assets of $1,369,908,000 and total liabilities of $2,592,415,000 with a deficit (negative capital and surplus) of $1,222,507,000. SHIP Balance Sheet as of December 31, 2020.

4. SHIP's Funding Gap at June 30, 2020 was $1,224,000,000. Actuarial Report at 11, Exhibit 2.5; Funding Gap Exhibits.

5. The Plan seeks to address the Funding Gap by increasing premiums and/or reducing benefits. Amended Plan at 83 (Amended Plan seeks "to narrow or eliminate that Funding Gap by a combination of an increase in revenue through rate increases and a reduction in liabilities through benefit modifications."). *See id.* at 8, 10, 17-18, 96-97.

6. The Plan is to operate in two phases. Phase One is intended to "substantially reduce or eliminate" the Funding Gap by modifying polices where the Current Premium is below the "If Knew Premium" as defined in the Plan. Amended Plan at 10. *See id.* at 19 (In Phase One, policyholders "whose premiums

are below the If Knew Premium Level will be required to elect options to modify premiums or benefits or some combination of the two.")

7. Phase Two is intended to "eliminate any Funding Gap not eliminated in Phase One." Amended Plan at 11. See *id.* at 19, 54. Modifications in Phase Two will be based on Self-sustaining Premium. *Id.* at 11, 14, 54.

8. Phase Two will modify only policies which are not Fully Covered (i.e., within guaranty association limits) and where the policyholder did not elect Option Two (Basic Policy) or Option Three (Reduced Paid-Up policy) in Phase One, or are not already self-sustaining. Amended Plan at 11, 14, 19, 54. Policyholders who chose Option One or Option Four in Phase One may "face additional rate increases or benefit reductions (sometimes substantial) in Phase Two." *Id.* at 14.

9. The Plan treats policyholders in different States differently based on the premium rates charged in the various States. SHIP's rates have varied across States. Amended Plan at 82. The Plan seeks to "eliminate" these "nation-wide premium rate variations." *Id.* at 29. Under the Plan, policyholders in different States will receive different levels of premium increases and benefit cuts. *Id.* at 17 ("Generally, policyholders whose policies were issued in states that have approved comparatively more rate increases over preceding years will face lower premium increases or benefit reductions under the Plan.").

10. The Plan also treats policyholders in different States differently based on the limits on guaranty association coverage, which differ across States. Policyholders are supposed to be offered at least one option in Phase One that will provide potential benefits equal to or exceeding those that would be available from the applicable guaranty association. Amended Plan at 12, 89.[3] The limits on guaranty association protection vary by State. *Id.* at 88-89. The guaranty association limits range between $100,000 in Puerto Rico, $300,000 in 42 States and the District of Columbia, $500,000 in six States, $615,525 in California, and no limit in New Jersey. Actuarial Report at 77, Appendix E.

11. Rate increases and policy modifications under the Plan will not be submitted for approval by the State insurance regulators in the States in which the policies were issued. Amended Plan at 29. *See id.* at 90, 100. Instead, rate increases and benefit reductions will be submitted to the Court for approval as part of the Plan. *Id.* at 29, 90, 100. Rate increases will not be limited by, or adhere to, filed rate cards. *Id.* at 29. The Plan now proposes an "Issue-State Rate Approval" provision. *Id.* at 101-104. *See* Revised Issue-State Rate Approval Section.

[3] The Plan asserts that "Option Two will provide at least the benefit value that the Guaranty Association would provide in liquidation for every policyholder whose current policy provides benefits in excess of those limits." Amended Plan at 12. The Rehabilitator's Comparison File shows this assertion is incorrect.

12. The Plan does not contemplate involvement by guaranty associations, which are not "triggered" under the Plan. Amended Plan at 87-88. The Amended Plan proposes to address the Funding Gap exclusively by increasing the premiums and cutting the benefits to existing policyholders.

13. The benefit reductions under the Plan reduce potential guaranty association coverage and liquidation distributions in the event that SHIP is liquidated after the Plan takes effect. After polices are "restructured" by the Plan, "the amount by which the liabilities have been reduced . . . will not be an insurance obligation arising under SHIP's policies and would not constitute a contractual obligation covered by the Guaranty Associations if SHIP were liquidated." Amended Plan at 86.

B. The State Insurance Regulators expect the evidence at the hearing will also show the following.

14. The Plan would require policyholders to absorb about $827 million more than a liquidation. Under the Plan, policyholders will bear the $1.224 billion Funding Gap through benefit cuts and premium increases. Funding Gap Exhibit; Amended Plan at 83. In the liquidation scenario portrayed in the Rehabilitator's Comparison File, by contrast, policyholders will absorb approximately $397 million. The $397 million is the difference between the $2.549 billion of SHIP's policyholder obligations and the $2.246 billion of benefits expected in a

liquidation plus the $93 million of additional premium expected to be charged by guaranty associations, all as calculated by the Rehabilitator. Witness Narrative of Frank G. Edwards, Jr. ("Edwards Nar.") § 3, Exhibit 1.

15. Guaranty associations would infuse about an additional $837 million in funds to benefit policyholders in the Comparison File liquidation scenario, but not under the Plan. The $837 million is the difference between the net amount the guaranty associations will pay to policyholders ($1.641 billion, which is the $1.956 billion in guaranty association benefits less the $315 million in premiums expected to be charged by guaranty associations) and the distributions the guaranty associations would receive from the SHIP estate ($804 million, which is the $1.641 billion net amount the guaranty associations will pay to policyholders times the 49% liquidation dividend percentage provided by the Rehabilitator. Edwards Nar. § 3. The Plan does not trigger the guaranty associations, Amended Plan at 87, so these funds will not be available to benefit policyholders under the Plan.

16. Phase One will not eliminate the Funding Gap. The Rehabilitator has not offered predictions of likely actual outcomes but only "hypothetical results." *See* Amended Plan at 17-18, 87. The Funding Gap is not eliminated in any of the ten Phase One "illustrative probability weighted scenarios" presented in the Actuarial Report and Phase I Results Exhibit. The remaining Funding Gap in these

ten illustrative scenarios ranges from $186 million to $699 million. *Id*.[4] Edwards Nar. § 6, Ex. 3

17. Another scenario is one that assumes that each policyholder will choose the option that provides him or her the greatest value. That seems most plausible as it assumes policyholders will act rationally and choose the option in their best interest, all other things being equal. The remaining Funding Gap in that "best interest" scenario is $1.039 billion. Edwards Nar. § 7, Ex. 4.

18. Since Phase One will not eliminate the Funding Gap, Phase Two of the Plan appears inevitable. The Rehabilitator has not provided any information comparing the results of both Phases One and Two of the Plan with liquidation. The Plan only addresses Phase One. Amended Plan at 17-18. The comparison of results in the Comparison File is also limited to Phase One. The Rehabilitator has offered no analysis addressing whether Phase Two could successfully fill the remaining Funding Gap. The Rehabilitator recently advised that she had not made a projection incorporating Phase One and Phase Two. March 30, 2021 Letter from Michael Broadbent to David Leslie and Eric Smith ("March 30, 2021 Letter").

[4] As noted above, the Rehabilitator's Funding Gap Exhibit added a scenario 11 under which the Funding Gap would be eliminated. That scenario is an outlier assuming option elections very different from the 10 original scenarios, assumptions that appear chosen to "solve" to the Funding Gap amount. The Oliver Wyman actuary presenting the exhibit on March 5, 2021 call stated that he made "no comment on whether [that scenario] will happen." The actuary also said that scenario 1 was "loosely" based on Penn Treaty data, which suggests that scenario 1 (and its $699 million remaining Funding Gap) may be more predictive than the others.

Under the Plan, that remaining Funding Gap would need to be absorbed entirely by the policyholders who selected Options 1 and 4.

19. The Rehabilitator apparently contends that 85% of policyholders will have at least one rehabilitation option under the Plan with a value greater than or equal to liquidation. This contention rests principally on Option 4, which – in Phase One – provides a better result than liquidation for 83% of policyholders. (The other options each provide a large majority of policyholders with a Phase One result worse than liquidation (for Option 1, 62% are better off in liquidation, for Option 2, 94%, for Option 2a, 94%, and for Option 3, 83%).) Edwards Nar. § 4, Ex. 2.

20. This analysis fails to consider the impact of Phase Two. Where Phase One will not fill the Funding Gap, the remaining Funding Gap will need to be addressed in Phase Two through policy modifications or premium increases on the policyholders who chose Options 1 and 4 in Phase One. The assertion that 85% of policyholders have an option as good or better than liquidation assumes that those policyholders can choose Option 4 without triggering Phase Two. That possibility is unsupported. Phase Two would greatly reduce the Option 4 values through premium increases and benefit cuts and thereby reduce the percentage who have an option that is as good or better than liquidation. If Option 4 policyholders face a Phase Two premium increase of 50%, then the percentage of policyholders for

whom Option 4 provides a better value than liquidation in the "best interest" scenario drops from 79% to 34%. If premium were to increase 100%, the percentage of all policyholders whose option is better than liquidation drops to 47%. These increases would still leave remaining Funding Gaps of $858 million and $676 million, respectively. Edwards Nar. § 9, Ex. 5.

I. THE COURT SHOULD DISAPPROVE THE PLAN FOR FAILURE TO SATISFY APPLICABLE STANDARDS.

As the Rehabilitator has acknowledged, the Court "must review the plan, assess whether it meets the applicable standards, and approve or reject the plan subject to any proposed modifications or amendments." Rehabilitator's Response to Intervenor State Insurance Regulators' Renewed Application for Order Directing the Rehabilitator to Provide Reports and Analyses at 4 (November 24, 2020). To be approved, a rehabilitation plan must meet three standards. It must (1) be "fair and equitable"; (2) be "feasible" or "viable," meaning reasonably likely to succeed, and (3) satisfy the constitutional "no worse than liquidation" *Neblett* standard. *See id.* at 9-11.

In reviewing a proposed rehabilitation plan, the Court is to accord the Rehabilitator deference. *See In re Penn Treaty Network America Ins. Co.*, 632 Pa. 272, 119 A.3d 313, 322 (2015) ("*Penn Treaty II*"); *Foster v. Mutual Fire, Marine and Inland Ins. Co.*, 531 Pa. 598, 614 A.2d 1086, 1093 (1992) ("*Mutual Fire II*"), *cert. den.* 506 U.S. 1080 and 1087 (1993). Nonetheless, as the proponent of the

Plan, the Rehabilitator bears the burden of showing the Plan satisfies the applicable standards. Absent such a showing, the Court will have no basis to judge whether the plan should be approved, disapproved, or modified under 40 P.S. § 221.16(d).

A. The Plan Is Not Fair And Equitable Because It Places Policyholders In A Worse Position Than Liquidation By Depriving Them Of Guaranty Association Protection.

SHIP is massively insolvent, and the Plan places the burden of eliminating the $1.224 billion Funding Gap on policyholders by imposing increased premiums and reduced benefits. This is unfair and inequitable because it ignores the role of the guaranty associations created across the nation to protect policyholders (up to statutory limits) from the harm caused by an insurer's insolvency and to spread the financial burden of insolvency.

The guaranty associations were established to protect policyholders in the event of an insurer's insolvency. *See* National Association of Insurance Commissioners, Life and Health Insurance Guaranty Association Model Act ("LHIGA Model Act"), § 2; *e.g.*, 40 P.S. § 991.1701 ("The purpose of this article is to protect, subject to certain limitations, [policyholders] against failure in the performance of contractual obligations, under life, health and annuity policies, plans or contracts . . . because of the impairment or insolvency of the member insurer that issued the policies, plans or contracts."). *Cf. Illinois Ins. Guar. Fund v. Reliance Ins. Co. in Liquidation*, 88 A.3d 313, 317 (Pa. Cmwlth. 2014) (referring

to "the primary policy objective of the Act to protect innocent policyholders whose insurance carriers have become insolvent").

The Plan imposes the entire cost of SHIP's insolvency on policyholders, who are expected to fill the Funding Gap through benefit cuts and premium increases on SHIP's remaining policyholders. The roughly 33,000 remaining SHIP policyholders will bear the entire $1.224 billion deficit resulting from SHIP's operations over the years.

The Plan's goal of eliminating the Funding Gap at policyholder expense is utterly inconsistent with the legislatively created system for handling insurer insolvencies, which focuses on protecting policyholders. The insurer rehabilitation and liquidation statutes seek to decrease the impact of insolvency on policyholders by giving them priority. *E.g.*, 221 P.S. § 221.44(b). The guaranty association statutes seek to shield policyholders by providing a minimum level of coverage that will be funded 100%, regardless of insolvency, through additional funds paid by assessments. LHIGA Model Act § 3 (coverage and limitations), § 8(B) (association's powers and duties if a member insurer is insolvent), § 9 (assessments). *See, e.g.*, 40 P.S. § 991.1703, § 991.1706(b), § 991.1707. The statutes spread loss broadly to protect policyholders.

The Plan disregards these protections, and it deprives policyholders of the legislatively-intended benefits of the guaranty association system. The economic

impact is demonstrated by the Rehabilitator's own documents. Under the Plan, policyholders will bear the $1.224 billion Funding Gap through benefit cuts and premium increases. *See* Actuarial Report at 11; Amended Plan at 83. In the liquidation scenario portrayed in the Rehabilitator's Comparison File, however, policyholders will bear only about $397 million because guaranty associations would infuse approximately $837 million in additional funds. The Plan would require policyholders to absorb more than $800 million more than a liquidation. Edwards Nar. § 3, Ex. 1.

In choosing to impose the full burden of SHIP's insolvency on policyholders, instead of bringing in additional funds through the guaranty associations, the Plan is contrary to the intent of the statutory scheme adopted across the United States to protect policyholders. The Plan's apparent purpose of avoiding triggering the guaranty associations is illegitimate. They were created to protect policyholders in the event of an insolvency such as this.

This issue cannot be deferred to see how the Plan works out. The Plan proposes to eliminate the Funding Gap through permanent policy modifications. Amended Plan at 86. This means that if SHIP is liquidated after the Plan is implemented, the guaranty associations and liquidation estate will only cover contractual obligations as reduced by the Plan. The amount by which liabilities are reduced – the Unfunded Benefit Liability ("UBL") – "will not be an insurance

obligation arising under SHIP's policies and would not constitute a contractual obligation covered by the Guaranty Associations if SHIP were liquidated." *Id.* This "non-insurance" treatment of policy obligations deprives the policyholders of guaranty association coverage relating to the UBL. It also deprives the policyholders of distributions from the SHIP estate on the UBL. As a non-policy obligation, the UBL will not be entitled to Class (b) policy-related priority under 40 P.S. § 221.44. Adoption of the Plan would unfairly reduce the benefits that policyholders could recover in a liquidation.

The Plan is unfair and inequitable because by cutting policy benefits it deprives the policyholders of substantial guaranty association protection. Shielding guaranty associations from SHIP's insolvency at policyholder expense is not a proper goal of rehabilitation. It is contrary to the purpose of State legislatures in establishing guaranty associations to protect policyholders. The proper goal of rehabilitation is to benefit policyholders, not just return a company to "solvency" by reducing benefits and increasing premium.

B. The Plan Is Not Viable Because Phase One Will Not Eliminate The $1.224 Billion Funding Gap But Instead Will Leave A Remaining Funding Gap Too Large To Be Borne By Option 1 and Option 4 Policyholders In Phase Two.

The Plan is not viable because it will not achieve its goal of eliminating the Funding Gap. The purpose of the Plan is to eliminate the $1,224,000,000 Funding Gap. *See* Amended Plan at 10, 83. (While the Plan also refers to "narrow[ing]"

the Funding Gap, that is not a proper measure of viability. Merely reducing the Funding Gap would still leave SHIP insolvent and make liquidation necessary.) Liquidation after implementation of Phase One will result in significantly reduced recoveries for SHIP policyholders. Accordingly, the Rehabilitator should be required to make a strong showing of viability.

1. Phase One will not eliminate the Funding Gap but will leave a large remaining Funding Gap for Phase Two.

The Plan itself offers only speculation about the possible results of Phase One. *See* Amended Plan at 17 ("[T]he Rehabilitator believes that, depending on policyholder elections, Phase One of the Plan could greatly reduce, if not eliminate, the Funding Gap.")(emphasis added). The Plan does not offer any actual predictions of the anticipated or likely results of Phase One but instead discusses "hypothetical results." *Id.* at 17-18. Indeed, the Rehabilitator's counsel stated on March 30, 2021 that they "cannot say whether the result of Phase One policyholder elections will be to eliminate the Funding Gap or how much Funding Gap will remain after Phase One." March 30, 2021 Letter.

The two documents about Phase One posted to the data site are more detailed, but they also do not offer any actual predictions. The November 20, 2021 Summary of Rehabilitation Plan Results (Phase I) provides ten "illustrative probability weighted scenarios" (emphasis added) and their "option effectiveness,"

which is the percentage of the Funding Gap reduced in the scenario. The "option effectiveness" varies from 43% to 85%. No scenario eliminates the Funding Gap.

The Funding Gap remaining after Phase One will be significant. The Actuarial Report shows that the remaining Funding Gap in the ten scenarios originally offered by the Rehabilitator ranges between $186 million (scenario 10) and $699 million (scenario 1). The State Insurance Regulators believe that the most plausible scenario would be one where all policyholders choose the option which provides the greatest value for them – the option which is in their best interest. They calculated that this "best interest" scenario would result in a remaining Funding Gap of $1.039 billion. Edwards Nar. § 7, Exs. 3, 4.

In sum, the Rehabilitator has offered no actual opinion on whether Phase One will eliminate the Funding Gap, the "illustrative" scenarios she presented indicate that the remaining Funding Gap will be hundreds of millions of dollars, and the most plausible scenario would leave a remaining Funding Gap of $1 billion. Phase Two of the Amended Plan thus appears inevitable. The Plan could only succeed in eliminating the Funding Gap through Phase Two.

2. Phase Two cannot reasonably be expected to fill the remaining Funding Gap.

The Plan and other material made available by the Rehabilitator offers little insight into the workings of Phase Two and nothing concerning its anticipated results. The Plan says only that Phase Two will be "similar in structure" to Phase One except that additional premium or benefit reductions will be based on "Self-sustaining Premium" (not "If Knew Premium") and will be limited to a subset of those who elected Options One or Four in Phase One. Amended Plan at 11, 14, 54. This does not offer a well-defined mechanism to achieve the intended result. *See id.* at 19 ("Phase Two may also include additional remedial measures.").

The Rehabilitator has not offered any projected results or impacts on policyholders for Phase Two. In particular, she has not provided any analysis to show that the benefit cuts or premium increases on Option 1 and 4 policyholders can realistically be expected to fill the Funding Gap. Indeed, the Rehabilitator's counsel recently stated that "[w]e have not made a projection as you describe that incorporates Phase One and Phase Two." March 30, 2021 Letter.

This is not sufficient to show the Plan is viable or feasible. As described above, the Funding Gap remaining after Phase One appears likely to be about $1 billion. This remaining Funding Gap will rest entirely on the policyholders who chose Option 1 or Option 4. Amended Plan at 19. Those policyholders will have to fill the hole through additional premiums or benefit cuts. Given the likely size

of the remaining Funding Gap and the limited pool of policyholders to absorb it through Phase Two, there is no reasonable basis to conclude that the Plan is viable.

C. The Plan Does Not Satisfy The "No Worse Than Liquidation" Constitutional Standard.

The Plan acknowledges that it must "place policyholders in no worse a position than they would face in a liquidation of SHIP." Amended Plan at 12. This reflects the well-established constitutional requirement of *Neblett v. Carpenter*, 305 U.S. 297 (1938). *See Mutual Fire II*, 614 A.2d at 1093-94 ("Under *Neblett*, creditors must fare at least as well under a rehabilitation plan as they would under a liquidation . . . ."), *affirming in part and remanding in part Grode v. Mutual Fire, Marine and Inland Ins. Co.*, 572 A.2d 798, 804 (Pa. Cmwlth. 1990) ("*Mutual Fire I*") ("[T]he Rehabilitator agrees that Neblett requires claimants to be treated the same or better than in liquidation. We shall not belabor this point except to agree with the parties that the Plan must also be viewed in the light of this principle."). *See also Koken v. Fidelity Mut. Life Ins. Co.*, 907 A.2d 1149, 1155 (Pa. Cmwlth. 2006) ("Under the Plan, [creditors] have received or will receive at least as much as they would receive in a forced liquidation, as is required if a rehabilitation plan is to be deemed fair and equitable," citing *Mutual Fire II*).

The State Insurance Regulators anticipate that the Rehabilitator will attempt to satisfy this standard by contending that 85% of the policyholders will have at least one option under Phase One that will provide a value greater than or equal to

the liquidation value. This does not comport with the *Neblett* standard and, in any event, the percentage is overstated because it fails to account for Phase Two.

1. *Neblett* requires that policyholders have an option that is at least as favorable as liquidation.

The *Neblett* standard cannot be satisfied by a showing that most policyholders have an option that is at least as good as liquidation. This Court has said that *Mutual Fire II* "does not stand for the proposition that every single policyholder, or other creditor, must fare as well in rehabilitation as in liquidation," *Consedine v. Penn Treaty Network America Ins. Co.*, 63 A.3d 368, 451 (Pa. Commw. 2012) ("*Penn Treaty I*"), *aff'd*, *Penn Treaty II*, 119 A.3d 313. *See id.* at 453 (same as to *Neblett*), and that "[a] rehabilitation plan is permitted to impair the contractual rights of some policyholders in order to minimize potential harm to all of the affected parties." *Id.* at 452 (discussing *Mutual Fire II* and the three-part test of *Energy Reserves Group, Inc. v. Kansas Power and Light*, 459 U.S. 400 (1983)). However, *Neblett* established that liquidation provides not just a benchmark but a floor for the treatment of all policyholders, who must have an option at least as good as liquidation. Policyholders' contract rights cannot be substantially impaired on the ground that that would benefit other policyholders where they would receive less than they would in liquidation.

The Supreme Court in *Neblett* rejected a due process challenge to a rehabilitation plan that affected contract rights. The critical fact underlying the

decision was that policyholders were not compelled to accept the modifications to their policies under the plan. The Supreme Court noted that "[t]he alternative open to all is to dissent from the plan and to prove their claims for breach of their policy contracts against the liquidator of the old company." 305 U.S. at 303. The Supreme Court upheld the plan because the policyholders were not compelled to accept the modifications "but are given the option of a liquidation which on this record appears as favorable to them as that which would result from the sale of the assets and pro rata distribution in solution of all resulting claims for breach of outstanding policies." *Id.* at 305.[5] Thus, *Neblett* is not authority for allowing policyholders to be treated worse than in liquidation because others may benefit from a rehabilitation. It established a floor of liquidation value that a policyholder should be able to obtain if desired. In this case, the Plan does not provide an alternative to allow policyholders to obtain liquidation value.[6]

The Pennsylvania Supreme Court did not address this issue in its discussion of *Neblett* in *Mutual Fire II*. It merely disagreed with the challengers' argument

[5] The Supreme Court noted that the challengers "have no constitutional right to a particular form of remedy," 305 U.S. at 305, so they were not entitled to force a liquidation as opposed to the rehabilitation plan, but this was because "[t]hey are not bound . . . to accept the obligation of the new company [created by the plan] but are afforded an alternative whereby they will receive damages for breach of their contracts." *Id.*

[6] The Plan asserts that "Option Two will provide at least the benefit value that the Guaranty Associations would provide in liquidation for every policyholder whose current policy provides benefits in excess of those limits." Amended Plan at 12. Based on the Comparison File, that is simply incorrect. *See* Edwards Nar. § 10, Ex. 6.

that the plan imposed harsher consequences than liquidation and held that a rehabilitation, to be legitimate, does not need to restore the company to its exact original condition. 614 A.2d at 1093-1094. The Pennsylvania Supreme Court then went on to separately reject Contract Clause arguments under *Energy Reserves* on the ground that the alleged contract impairments were insubstantial. *Id.* at 1094.[7] In the State Insurance Regulators' view, this Court in *Penn Treaty I* conflated the *Neblett* issue with the *Energy Reserves* issue, when the two are separate.

2. In any event, the constitutional standard requires consideration of all rehabilitation effects, including the impact of Phase Two on policyholders.

If the *Neblett* standard involved consideration of whether benefit cuts are substantial, made for a legitimate public purpose, and reasonable and appropriate, it requires consideration of <u>all</u> rehabilitation impacts. Here, the Rehabilitator's comparison of the number of policyholders who may be better or worse off than in liquidation does not suffice. The Rehabilitator concedes that 15% of policyholders are worse off in Phase One than in liquidation but is silent concerning the percentages of policyholders who are worse off after Phase Two. The State Insurance Regulators have asked about the implications of Phase Two on Option 4

[7] The Court reiterated that the impairments were insubstantial in a footnote, although it also went on to address the other two *Energy Reserves* factors. 614 A.2d at 1094 n. 4.

policyholders, but the Rehabilitator refused to respond. March 30, 2021 Letter (question 3).

As described above, Phase One of the Plan will not achieve the goal of eliminating the Funding Gap. Phase Two will be necessary. Phase Two will require increased premiums (or benefit cuts) based on "Self-sustaining Premium," and it will impose those costs only on policyholders who chose Options 1 or 4 in Phase One. These costs will be significant, as the remaining Funding Gap is likely to be about $1 billion. Even a 50% Phase Two premium increase would reduce the percentage of policyholders for whom Option 4 provides a better value than liquidation from 79% to 34%. A 100% increase on Option 4 policyholders would reduce the percentage of all policyholders with a rehabilitation option better than liquidation to 47%. Edwards Nar. § 9, Ex. 5.

The impact of Phase Two must be considered. Including it, a majority of policyholders are worse off under the Plan. The Plan does not satisfy *Neblett*, even if the standard were limited to the percentage of policyholders better or worse off in a liquidation.

D. The Plan Is Not Fair And Equitable Because It Treats Policyholders Differently By State And Deprives Them Of Waiver-Of-Premium Benefits.

1. The Plan unfairly treats policyholders differently by State.

The Plan deliberately seeks to impose different burdens on policyholders in the different States. Under the Plan, "[g]enerally, policyholders whose policies were issued in states that have approved comparatively more rate increases over preceding years will face lower premium increases or benefit reductions under the Plan." Amended Plan at 17. This approach necessarily results in policyholders in different States receiving different benefit cuts and premium increases.

The Rehabilitator chose this approach to address what she refers to as a "subsidy problem." Amended Plan at 99. However, the individual state rate review regime applicable to SHIP and all other national insurers writing types of insurance that are subject to state rate approval inevitably results in different rates and different experience. SHIP policyholders have all paid the lawful rates in their States. The Plan effectively seeks to retroactively reconsider those lawful rates by imposing premium increases and benefit cuts premised upon calculations of "If Knew" "should have been" charged premiums in Phase One and "Self-sustaining Premium" in Phase Two. *See id.* at 10-11.

This approach inflicts greater burdens on policyholders in some States and lesser burdens on those in other States. Such differing burdens are not fair or

equitable. Policyholders are not responsible for differences in rates or the many factors that may have contributed to SHIP's condition. *See* Amended Plan at 82-83. They have paid the premium required by their contracts, and they are entitled to the benefits provided by their contracts. It is not equitable to deprive some more than others, especially where the greater burdens may cause those policyholders to accept drastic reductions in their benefits or drop coverage altogether. All policyholders are equally entitled to receive as much as possible of their contractual benefits.

2. The Plan unfairly deprives policyholders in waiver-of-premium status of that benefit.

The Plan's treatment of policyholders on waiver-of-premium status is inequitable. SHIP policies provided for waiver of premium in certain circumstances. *See* Amended Plan at 26. The waiver-of-premium benefit is one of the basic protections provided by long-term care insurance. Typically, once a patient has been in a long-term care facility for the waiting period specified in the policy, the patient stops paying the insurer and the insurer begins reimbursing the patient – without diminishing the policy benefit by deducting further premiums. Numerous SHIP policyholders are presently entitled to "on-claim waiver" of premium, meaning they are not paying premium because they are currently receiving long-term care, or to "active waiver" of premium, either because the policyholder's spouse is currently on claim or because the policyholder's spouse

has already died and the terms of the policy entitle the surviving spouse to a lifetime waiver of premium. *See* Amended Plan at 26.

The Plan would take this benefit away from policyholders who are already receiving it, turning their premium waiver into a premium discount. Under the Plan, a premium waiver will continue in effect only as to the Current (pre-Plan) Premium. Amended Plan at 27. If the policyholders want to maintain their benefits as provided in their policy (Option 4) or even at reduced levels (*see* descriptions, *id.* at 11), they will be required to start paying a Differential Premium – which could be substantial – while on waiver. *Id*. at 27-28. This requirement applies even to policyholders on so-called "lifetime" waiver of premium. *Id*. at 28. Otherwise, on-waiver policyholders will automatically have their benefits downgraded. *See id*. at 42 ("The Downgrade is generally the Default Option for policyholders on Premium Waiver."); *see also id.* at 47, 48, 52 (identifying Downgrade as the usual default option for both active waiver and on-claim waiver policyholders). This treatment of policyholders who are already in the difficult circumstances necessary for waiver is unfair and inequitable.

II. THE PLAN IS UNLAWFUL.

The Plan is legally unsupportable and should be disapproved as a matter of law. In preparing a rehabilitation plan, the Rehabilitator is subject to both statutory and constitutional requirements.

> Our statutory provisions . . . properly place the responsibility on both the Insurance Commissioner and the courts, the Commissioner being required to follow the statutory mandates and to use reasonable discretion in the rehabilitation of a seized company, with abuses of discretion to be checked by the judiciary.

Mutual Fire II, 614 A.2d at 1093 (quoting *Kueckelhan v. Federal Old Line Ins. Co.*, 444 P.2d 667, 674 (Wash. 1968)) (emphasis added). *Accord Koken v. Legion Ins. Co.*, 831 A.2d 1196, 1231-1232 (Pa. Cmwlth. 2003), *aff'd sub nom. Koken v. Villanova Ins. Co.*, 583 Pa. 400, 878 A.2d 51 (Pa. 2005). "Of course, the Rehabilitator is constrained by constitutional mandate." *Mutual Fire I*, 572 A.2d at 804.

A. The Plan Should Be Disapproved Because It Unlawfully Treats Policyholders in Different States Differently.

The Plan is explicitly intended to treat policyholders in different States differently by charging them additional premium and reducing benefits depending on (a) the historical premiums charged in the State, and (b) the guaranty association limits that apply in the State. These variations are unlawful because they differ from the result in a liquidation, where a liquidator would take the contracts and historical rates as a given and allocate assets to the policies equally, without regard to historical rates or applicable guaranty association limits. By placing greater burdens (higher premiums and larger benefits cuts) on policyholders in some States than in others, the Plan on its face violates the Pennsylvania statutes and the constitutional standard.

The State Insurance Regulators are not aware of any rehabilitation plan that has consciously set out to advantage policyholders in some States and disadvantage those in others. The policyholders in all States have paid the lawfully set premiums and are entitled to be treated equally as respects the benefits due them under their policies. No one would contend that life or property/casualty policyholders in a State with adverse loss experience (say due to a local flood or hurricane impact, or the state courts expansively interpreting contracts to cover more than the insurer expected) should receive less under their contracts than policyholders in other States with better loss experience. Yet that is effectively what the Plan seeks to do.

1. The Pennsylvania Act requires equal treatment of policyholders across States.

The Rehabilitator's goal of correcting what she perceives as a historical problem does not reflect any legislatively-enacted policy. It conflicts with the equal treatment mandate of the liquidation statutes, and the statutes control.

The Pennsylvania insurer liquidation statutes require that all policyholders receive equal percentage distributions regardless of their State of residence. Policyholders in every State are required to pursue their claims in the domiciliary Pennsylvania liquidation. 40 P.S. § 221.58(a).[8] The policyholders' claims are

[8] There could be ancillary receiverships in reciprocal States, in which case policyholders in those States could choose to file claims in the ancillary proceeding. *See* 40 P.S. § 221.58(b).

preferred and placed in the Class (b) priority class. 40 P.S. § 221.44(b). The policyholders must receive equal percentage distributions, as the statute expressly prohibits subclasses within a priority class. 40 P.S. § 221.44 ("No subclasses shall be established within any class."). Indeed, the Interstate Relations portion of the Article expressly requires equal priority of payment regardless of the State in which claimant resides:

> In a liquidation proceeding in this Commonwealth involving one or more reciprocal states, the order of distribution of the domiciliary state shall control as to all claims of residents of this and reciprocal states shall be given equal priority of payment from general assets regardless of where such assets are located.

40 P.S. § 221.61(a) (emphasis added). Thus, in liquidation, all policyholders nationwide would receive the same distribution percentage.

The equality of treatment mandated by these provisions applies in rehabilitation as well. *See Koken*, 831 A.2d at 1246 ("Article V does not authorize giving some policyholders greater consideration than others."). In a liquidation, all policyholders that paid the lawfully established premiums – whatever they were in their State – would be entitled to have their claims for benefits treated equally

---

However, where all material assets are under the control of the Rehabilitator (SHIP special deposits total only $19.3 million, Amended Plan at 94), there is no reason for an ancillary receivership and policyholders would have every incentive to file claims in the domiciliary proceeding.

under these provisions. The same applies in rehabilitation. *See id.* at 1247 ("the goal should be to enforce a policyholder's reasonable expectation of coverage").

The State Insurance Regulators expect that the Rehabilitator will point to the statutes allowing her to take "such action as [she] deems necessary or expedient to correct the condition or conditions which constitute the grounds for the order of the court to rehabilitate the insurer," 40 P.S. § 221.16(b), or to "prepare a plan for the reorganization, consolidation, conversion, reinsurance, merger or other transformation of the insurer." 40 P.S. § 221.16(d). However, nothing in these provisions allows a rehabilitator to discriminate among policyholders contrary to the express provisions of 40 P.S. § 221.44 and 40 P.S. § 221.61(a).

"The best indication of the legislature's intent is the plain language of the statute." *City of Erie v. Pennsylvania Labor Relations Bd.*, 612 Pa. 661, 32 A.3d 625, 634 (2011). *See* 1 Pa.C.S. § 1921(b). "Every statute shall be construed, if possible, to give effect to all its provisions," 1 Pa.C.S. § 1921(a), construing them "with reference to the entire statute." 1 Pa.C.S. § 1922(2). Statutory sections must be read together harmoniously as a whole. *Commonwealth v. Office of Open Records*, 628 Pa. 163, 103 A.3d 1276, 1284-1285 (2014). Further, a statute should not be construed to produce an absurd result, as the Legislature "does not intend a result that is absurd, impossible of execution or unreasonable." *Mercury Trucking, Inc. v. Pennsylvania Public Utility Com'n*, 618 Pa. 175, 55 A.3d 1056, 1068

(2012). *See* 1 Pa.C.S. § 1922(1). The equality of treatment specifically required by 40 P.S. § 221.44 and 40 P.S. § 221.61(a) is not overridden by the general language of 40 P.S. § 221.16, which does not address the issue. It would be absurd to think that the Legislature required equal treatment among policyholders across States in liquidation but intended to permit discrimination among policyholders based on their State of residence in rehabilitation.[9]

2. The constitutional standard requires equal treatment of policyholders across States.

Even if the Pennsylvania statutes did not mandate treating policyholders equally across States in a rehabilitation, the equal treatment required in liquidation provides the benchmark against which the rehabilitation Plan must be measured for constitutional purposes. *See Mutual Fire II*, 614 A.2d at 1093-1094 ("Under *Neblett*, creditors must fare at least as well under a rehabilitation plan as they would under a liquidation . . . ."). The comparison of rehabilitation to liquidation necessarily must reflect the principles that would govern in a liquidation.

Under the Pennsylvania statutes, policyholder claimants in a liquidation would be entitled to share in the assets of the estate equally without distinction by State. Accordingly, the Plan can only meet the constitutional standard of *Neblett* if

[9] One of the purposes of the Act is "equitable apportionment of any unavoidable loss." 40 P.S. § 221.1(c)(iv). That general phrase is given specific meaning in the priority and "no subclass" provisions of 40 P.S. § 221.44 and the equality of treatment provision of 40 P.S. § 221.61(a). It does not allow a rehabilitator to disregard the more specific provisions.

it treats policyholders equally across States. The Plan, however, expressly seeks to avoid this result and to increase premiums and reduce benefits depending upon the policyholder's State. Under the Plan, policyholders in some States would receive more (suffering smaller benefit cuts) while those in others would get less (suffering greater benefit cuts). These differences in treatment result in by-State subclasses within the policyholder priority class. This necessarily means that some policyholders will receive less under the Plan than they would receive in a liquidation, where all would be treated equally. This violates the "no worse than in liquidation" requirement of *Neblett*.

B. The Plan Unlawfully Seeks to Override Individual State's Regulatory Authority Over Premium Rates To Be Charged To Their Residents.

The Plan expressly sets out to override the insurance laws of other States that vest regulatory authority over the rates for policyholders resident in a State in the insurance regulatory official of that State. *See* Amended Plan at 29 ("Premium increases and Policy Modifications will not be submitted to individual insurance departments for approval."). This exceeds the authority granted to the Rehabilitator by the Pennsylvania statutes, violates the statutes of the various States, is unconstitutional, and is inconsistent with the comity due other States.

1. Regulation of premium rates is committed to the individual States.

Rate regulation is a matter for the individual States. "A state may constitutionally regulate or require approval of rates and charges of insurance companies doing business within its borders." S. Plitt, D. Maldonado, J. Rogers, 1 *Couch on Insurance 3d* § 2:31 at 2-129 (2019). *See German Alliance Ins. Co. v. Lewis*, 233 U.S. 389 (1914). "[B]y June 30, 1948, all of the states had passed rate regulating legislation." *Insurance Dept. v. City of Philadelphia*, 196 Pa. Super. 221, 173 A.2d 811, 813 (1961).

Rates for long-term care insurance are regulated by the individual States under statutes that provide for review by the insurance regulator of the policyholder's State of residence and judicial review in the courts of that State. The Plan's proposal to increase rates without seeking approval from the insurance regulators of the States in which the affected policyholders live violates these statutes. For example:

- The Maine statutes provide that "[e]very insurer shall file for approval by the superintendent every rate, rating formula, classification of risks and every modification" of long-term care rates for use in Maine so that the Maine Superintendent of Insurance can determine that the filing complies with "requirements that rates not be excessive, inadequate or unfairly discriminatory." 24-A Me. Rev. Stat. § 2736. *See also* 02-031 Code Me. Rules, ch. 420, § (6)(A)(9).
- The Massachusetts statutes provide that long-term care insurance rates must be submitted for review by the Massachusetts Commissioner of Insurance, and increases may not be implemented unless the Commissioner determines

that they comply with applicable legal standards. *See* Mass. Gen. Laws ch. 175, § 108, 211 Code Mass. Reg. 42.00 and 211 Code Mass. Reg. 65. A long-term care insurance policy may be disapproved by the Commissioner "if the benefits provided therein are unreasonable in relation to the premium charged, or if it contains any provision which is unjust, unfair, inequitable, misleading or deceptive, or which encourages misrepresentation as to such policy." Mass. Gen. Laws ch. 175, § 108(8)A.

- The Washington statutes require that all long-term care insurance rates and rate increase requests be filed with and approved by the Washington Insurance Commissioner. Wash. Rev. Code § 48.19.010(2). The Commissioner's review includes an actuarial analysis, and increases may not be implemented unless the Commissioner determines that they comply with applicable legal standards. *See* Wash. Rev. Code §§ 48.83, 48.84; Wash. Admin. Code 284-54 & 284-60; Wash. Rev. Code § 48.18.110; Wash. Rev. Code § 48.18.480; Wash. Admin. Code §§ 284-83, 284-84. Long-term care insurance rate increases are not permitted if "the benefits provided therein are unreasonable in relation to the premium charged." Wash. Rev. Code § 48.18.110; *see* Wash. Admin. Code § 284-54-600. *See also* Wash. Rev. Code § 48.18.480.[10]

State insurance regulators' decisions regarding rates are subject to review by the courts of their State in accordance with applicable statutory and constitutional

[10] Forty-three States (including Maine, Massachusetts, Pennsylvania and Washington) and the District of Columbia and Puerto Rico have entered the Interstate Insurance Product Regulation Compact ("IIPRC") by enacting statutes. *E.g.*, 24-A Me. Rev. Stat. ch. 28; Mass. G.L. ch. 175K; 40 P.S. ch. 41; Wash. Rev. Code ch. 48.130. One of the powers of the Commission created by the IIPRC is to review rate filings for disability income and long-term care insurance and approve rate filings that satisfy the applicable uniform standard. It has prepared uniform standards for long-term care insurance, https://www.insurancecompact.org/documents/standards_ltc_i_3_ratem.pdf, which have been adopted by nearly all members. *See* https://www.insurancecompact.org/documents/ltc_state_participation.pdf. In general, the rate filing standards provide that the IIPRC will review rate filings for individual long-term care insurance policies. Standards at pp. 2-3. A rate schedule increase that does not exceed 15% is subject to the review and approval or disapproval of the Commission. *Id*. at p. 11. A rate increase that exceeds 15% is subject to the review and approval of each Compacting State. *Id*. at pp. 11-12.

standards. *See*, *e.g.*, *Anthem Health Plan of Maine, Inc. v. Superintendent of Ins.*, 40 A.3d 380 (Me. 2012); *Genworth Life Ins. Co. v. Comm'r of Ins.*, 126 N.E.3d 1019, 1023 (Mass. App. 2019).

2. The Pennsylvania statutes do not authorize a rehabilitation plan to displace the regulatory authority of the States over rates.

The Plan seeks to disregard the long-standing state-based system for regulation and approval of insurance rates and instead impose rates set by the Rehabilitator and the Rehabilitation Court. Amended Plan at 29. Such displacement of regulation by other States is beyond the authority of the Rehabilitator or the Court. The Pennsylvania insurer rehabilitation statute does not supersede regulatory authority over an insurer in rehabilitation. It provides for the Rehabilitator to take over control of the insurer, which continues to operate subject to the regulatory laws that apply to insurers – including the laws of each State where the insurer is authorized to transact business.

"A creature of statute, such as the Insurance Commissioner acting as rehabilitator, can only exercise those powers which have been conferred by the Legislature in clear and unmistakable language." *Koken*, 831 A.2d at 1227. The Pennsylvania insurer rehabilitation statutes do not authorize the Rehabilitator to disregard rate regulation in other States where SHIP does business.

First, the statutes regarding the Rehabilitator's authority provide the Rehabilitator with control over assets and the business of the insurer. They do not oust state regulation of the insurer. An order to rehabilitate the business of an insurer "shall appoint the commissioner . . . rehabilitator and shall direct the rehabilitator to take possession of the assets of the insurer . . . and to administer them under the orders of the court." 40 P.S. § 221.15(c). Subject to court approval, a rehabilitator "may take such action as he deems necessary or expedient to correct the condition or conditions which constituted the grounds for the order of the court to rehabilitate the insurer." 40 P.S. § 221.16(b). Nothing in this language provides the rehabilitator with authority beyond the insurer. It does not extend to outsiders, much less state regulators.

This limited scope is confirmed by the sentences that follow, which specify that the rehabilitator "shall have all the powers of the directors, officers and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator. He shall have full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of the insurer." *Id*. (emphasis added). "The purpose of [this section] is to clarify that during the course of rehabilitation, the commissioner, not the board has responsibility for management of the insurer's

business." *Koken*, 831 A.2d at 1227-1228. The statute authorizes the Rehabilitator to manage SHIP. It does not provide authority to disregard State regulation.[11]

Second, the rehabilitation plan statute does not exempt the insurer in rehabilitation from State regulation. A rehabilitator may "prepare a plan for the reorganization, consolidation, conversion, reinsurance, merger or other transformation of the insurer." 40 P.S. § 221.16(d). Contrary to the Rehabilitator's unsupported assertion (Amended Plan at 90), this provision does not somehow allow the Rehabilitator to change SHIP's policies and rates without required regulatory approvals. Nothing in the statutory text allows the Rehabilitator or Court to supplant otherwise applicable regulatory authority over the business of the insurer in rehabilitation.[12]

Third, Article V expressly preserves regulatory authority over the insurer. It specifies that the Article (including the conservation, rehabilitation and liquidation statutes) must not be interpreted to limit the Pennsylvania Commissioner's

[11] The language describing Article V's purpose also demonstrates an intent to authorize displacement of private, not public actors: "The purpose of this article is the protection of the interests of insureds, creditors, and the public generally, with minimum interference with the normal prerogatives of the owners and managers of the insurers . . . ." 40 P.S. § 221.1(c) (emphasis added). *See also* 40 P.S. § 221.6 (requiring cooperation by officers and employees).

[12] The rehabilitation statutes recognize that a rehabilitator must seek relief from courts in other jurisdictions as to litigation outside Pennsylvania. *See* 40 P.S. § 221.5(b) ("The receiver may apply to any court outside of the Commonwealth for the relief described in subsection (a) or suspension of any insurance licenses issued by the commissioner."); 40 P.S. § 221.17(a). This shows a legislative intent to respect out of state authorities.

authority under other law: "This article shall not be interpreted to limit the powers granted the commissioner by other provisions of the law." 40 P.S. § 221.1(a). Where the Article expressly does not limit the Pennsylvania Commissioner's other regulatory authority (such as rate review authority), it cannot be interpreted to somehow limit the authority of other regulators under their own States' laws. That would be an absurd result. *Cf. Koken v. Fidelity Mut. Life Ins. Co.*, 803 A.2d 807, 826-827 (Pa. Cmwlth. 2002) (rehabilitation plan provided that "FLIC obtain all necessary regulatory approvals to do business in the respective states").

In sum, the purpose of rehabilitation is "to rehabilitate the business of an insurer," 40 P.S. § 221.15(b), not – as the Rehabilitator would have it – to displace the regulation of the insurer in ways she deems desirable regardless of the law. Nothing in the statute allows a rehabilitator to avoid state regulation in a rehabilitation plan. An insurer in rehabilitation is subject to rate regulation like any other insurer. *See* National Association of Insurance Commissioners, *Receiver's Handbook for Insurance Company Insolvencies* at 12 (2020) (receiver in conservation or rehabilitation proceeding should consider "Rate increases needed on business and insurer's ability to secure those increases <u>from regulatory authorities</u>.") (emphasis added).

The commonly accepted practice for insurers in rehabilitation that wish to increase rates is to continue to file requests with the insurance regulators in the

affected states. Indeed, even in liquidation, when a guaranty association takes over policies and seeks to increase rates, the association may be required to make rate filings with the regulators. *See*, *e.g.*, 24-A Me. Rev. Stat. §§ 4608(3-A)(B)(4) & (5), 4608(11)(J-1) (requiring approval of guaranty association rates by regulator); 40 P.S. § 991.1706(b)(2)(iv)(A)(I), (B)(I), and (v) (same).[13]

The State Insurance Regulators are not aware of any plan of rehabilitation, either in Pennsylvania or in any other jurisdiction, that has purported to supersede state rate regulation and set rates payable by policyholders in other States without review and approval by the insurance regulators of those States. This is an important issue of first impression. The Plan acknowledges that "there have not been many troubled companies for which the issue of rate increases in rehabilitation has arisen." Amended Plan at 90. This is because insurers in rehabilitation routinely continue to make rate filings, as do guaranty associations in liquidations. Thus, it is an understatement to say, as the Rehabilitator does, that "the matter is without an abundance of clear specific legal precedent." *Id.* The State Insurance Regulators are not aware of any precedent supporting the Rehabilitator's attempt to displace state regulation and set nationwide rates for an

[13] While some guaranty associations may have the ability to set premium rates for policies that they issue without regulatory approval, *e.g.*, Mass. Gen. Laws §§ 146B(8)(C)(3)(b), 146B(8)(C); Wash. Rev. Code § 48.32A.075(2)(b)(v), that represents an express choice by the applicable State legislature to exempt the Association from rate statutes. Such exemptions provide no support for allowing a rehabilitator to set rates. They show that when the legislature intends to allow an entity to set rates without regulatory approval, it will explicitly say so.

insurer in rehabilitation through a rehabilitation plan, most likely because no rehabilitator has so deliberately sought to disregard state law.

3. The Pennsylvania Rehabilitator's proposal to set rates in other States in disregard of those States' statutes violates the United States Constitution.

The Plan's disregard of the statutes of other States governing the rates charged to their residents violates the mandate of the Full Faith and Credit Clause of the United States Constitution. "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. Const., Art. IV, § 1. The purpose of the full faith and credit command "was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others." *Baker v. General Motors Corp.*, 522 U.S. 222, 232 (1998) (quoting *Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 277 (1935)). "A statute is a 'public Act' within the meaning of the Full Faith and Credit Clause." *Franchise Tax Bd. Of Cal. v. Hyatt*, 136 S.Ct. 1277, 1281 (2016).

The Rehabilitator's view that Pennsylvania law authorizes control over rates in other States is erroneous as set forth above, but even if it were correct it would violate the Constitution.[14] Insurance rates are a matter of particularly local concern

[14] That the Rehabilitator's unexplained interpretation of the rehabilitation statute would work an unconstitutional intrusion into the affairs of other States is an additional reason not to adopt that construction. *See Bricklayers of Western Pa. Combined Funds, Inc. v. Scott's Dev. Co.*, 625 Pa.

and regulation. *See* Part II.B.1 above. One State cannot dictate to another State what rates are to be applied to that State's own residents. It has long been established that an insurer domiciled in one State writing insurance in another is subject to the second State's laws concerning that business. *American Fire Ins. Co. v. King Lumber & Mfg. Co.*, 250 U.S. 2, 10 (1919) (Pennsylvania insurer writing insurance in Florida had to do so "in accordance with the laws of Florida"). *See Pink v. A.A.A. Highway Exp., Inc.*, 314 U.S. 201, 209 (1941); *Clark v. Williard*, 294 U.S. 211, 213 (1935).[15] This principle applies to state review and approval of rates. Pennsylvania cannot unilaterally substitute its own laws for the laws governing relations between a corporation doing business in another State and the residents of that State. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 822 (1985) (law of Kansas, the forum State in a nationwide class action, does not govern rights of residents in other States: Kansas "may not abrogate the rights of parties beyond its borders having no relation to anything done or to be done within them.") (quoting *Home Ins. Co. v. Dick*, 281 U.S. 397, 342 (1930)).

26, 90 A.3d 682, 692 (2014) ("[C]ourts give statutes a constitutional interpretation if that is reasonably possible.").

[15] The relations between the States concerning assets and claims in insurer liquidations have since been addressed through the adoption by the States of model acts promulgated by the National Association of Insurance Commissioners. *See* III National Association of Insurance Commissioners, *Model Laws, Regulations, and Guidelines* at ST-555-3 (2020) (Chart of States adopting model acts). Such statutes allocate responsibilities for assets and claims through common statutory provisions for domiciliary and ancillary receiverships. *See*, *e.g.*, 40 P.S. §§ 221.53-221.62. They say nothing about rates, which continue to be governed by other law.

The Rehabilitator cannot use the Full Faith and Credit Clause to "require a State to substitute for its own statute, applicable to persons and events within it, the statute of another State reflecting a conflicting and opposed policy." *Hyatt*, 136 S.Ct. at 1281 (quoting *Carroll v. Lanza*, 349 U.S. 408, 412 (1955)). *See Pacific Employers Ins. Co. v. Industrial Acc. Comm.*, 306 U.S. 493, 503-505 (1939); *Ferrelli v. Com.*, 783 A.2d 891, 894 (Pa. Cmwlth. 2001) (Full Faith and Credit Clause "does not require a state to subordinate public policy within its borders to the laws of another state"). This is particularly the case where the Plan reflects hostility to the regulatory actions of other States. *See* Amended Plan at 29, 82, 90, 96, 99. *Cf. Hyatt*, 136 S.Ct. at 1281. The Plan's attempt to supersede other States' regulation of rates charged their residents is unconstitutional.

4. The Court should accord comity to the laws of the other States and disapprove the Plan's attempt to disregard those laws.

The Plan's displacement of the rate setting authority of the individual States, if adopted, would be a blatant intrusion by Pennsylvania on the sovereignty of its sister States. Even if it were permitted by the Pennsylvania statute, which it is not, or were constitutional, which it is not, the Court should refrain from adopting the Plan out of comity. "'Comity' is the principle that courts of one state or jurisdiction will give effect to laws and judicial decisions of another state out of

deference and mutual respect, rather than out of duty." *Smith v. Firemens Ins. Co. of Newark, New Jersey*, 590 A.2d 24, 27 (Pa. Super. 1991).

The Plan is unprecedented and ignores the long-standing authority of each State to approve or set rates in that State. When an out-of-state insurer does business in Pennsylvania, Pennsylvania residents are protected by having the fairness and reasonableness of the rates they pay determined under Pennsylvania law by the Pennsylvania Commissioner, subject to review by Pennsylvania's courts. The residents of other States are entitled to the same protection when they buy coverage from a Pennsylvania insurer.

Each State has enacted statutes providing for review by its insurance regulator of the premium rates charged its residents. The Plan seeks to displace those statutes and usurp the regulatory authority of the other States. The Court should decline to do so out of respect for the laws of the other States.

5. The "Opt-Out" in the Amended Plan does not cure the Plan's disregard of other States' rate statutes.

The Rehabilitator attempted to address the problems presented by the Plan's provisions superseding the rate review statutes of the other States by adding a new "Issue-State Rate Approval" section to the Amended Plan. But this coercive "opt-out" provision does not cure the Plan's flaw.

The new section provides that the chief regulatory official in a State may "opt-out" of the Plan's rate determination process by "withdraw[ing]" all the

policies issued in the State from the rate determination provisions of the Plan.

Amended Plan at 101. The essentials of the proposed "opt out" are:

- The chief insurance regulator of a State may advise the Rehabilitator that "his or her state elects to 'opt-out' of the rate increase component" of the Plan, in which case the policyholders in the State will not have the Plan choices. Revised Issue-State Rate Approval Section at 1-2.
- The Rehabilitator then files a rate increase application with the State insurance regulator at the If Knew Premium level on a seriatim basis. *Id.* at 3-4.[16]
- The application is deemed denied if not addressed within 60 days. If the regulator "timely" approves the Phase One rate increase in full, the State is treated as having not opted-out. *Id.* at 4.
- If the application is denied or granted in part, then holders of policies issued in the State have specified options. *Id.* at 5-6 (Phase One).[17]
- The options in "opt-out" States will be worse than the Plan options in other States. *Id.* at 9. The section "would reduce or eliminate the requirement that other policyholders subsidize the Opt-out Policies" and would "disadvantage" the opt-out State's policyholders. *Id.*

This "opt-out" does not cure the Plan's flawed concept for at least two reasons. First, there is no statutory basis for an insurance regulator to "opt-out" of a rehabilitation plan on behalf of all policyholders in a State. The Issue-State Rate

[16] The Revised Issue-State Rate Approval Section seeks to coerce State regulators to address rate increases on a "seriatim" basis as presented by the Rehabilitator, and not in the aggregate or group (such as policy form) basis usually required under State law. *See id.* at 4.

[17] This process also applies to Phase Two, except that premium increases are calculated on a Self-sustaining Premium basis and that timely approval of full Phase Two rate increases will not result in the State being treated as if it had not opted-out. *Id.* at 7.

Approval section incorrectly assumes that a state regulator is authorized to act on behalf of all the policyholders in his or her State to "opt-out" of Plan rate provisions. There is no basis for that assumption. The State Insurance Regulators have objected to the Plan because it seeks to displace the individual State rate review statutes that, as chief State insurance regulators, they are charged with enforcing. They are responding to the Plan's attempt to override their legislatively-granted regulatory authority over the rates applicable to residents of their States. They are not asserting this objection as some sort of agent for the policyholders in their States, and they do not have the authority to determine on behalf of policyholders whether or not to opt-out of Plan provisions.

Second, and more fundamentally, the Issue-State Rate Approval section does not provide for "opt-out" State insurance regulators to actually review rates under their statutes. Instead, it attempts to coerce those regulators to approve the rates sought by the Rehabilitator. Under the amendment, if the insurance regulators do anything other than approve the Rehabilitator's requested rates in full within 60 days, then the policyholders in the State will be treated worse than the policyholders in other States. The Plan expressly warns:

> THE EFFECTS OF A STATE "OPTING-OUT" UNDER THIS SECTION MAY INCLUDE A REDUCED NUMBER OF MEANINGFUL OPTIONS FOR AFFECTED POLICYHOLDERS AND SOME OF THOSE POLICYHOLDERS PAYING HIGHER PREMIUMS THAN THEY WOULD UNDER THE PLAN. IN

ADDITION, SOME POLICYHOLDERS WHO DO NOT MAKE AN ELECTION MAY FACE INVOLUNTARY BENEFIT REDUCTIONS.

Revised Issue-State Rate Approval Section at 2. The Plan seeks to present the appearance of deference to State rate review while in fact requiring the States to approve the requested rates, in full, on pain of punishing policyholders in the State.

This nominal deference to state statutes does not cure the statutory and constitutional violations described above. The Pennsylvania rehabilitation statutes do not authorize the Rehabilitator to override the rate statutes of other States; the Plan still seeks to override those rate statutes by compelling a particular result – full approval of the rate increases sought under the Plan. The Full Faith and Credit Clause requires Pennsylvania to give full credit to the rate statutes that apply in other States; the Plan does not respect those statutes but instead seeks to use them to implement the Rehabilitator's view of "proper" rates by compelling "opt-out" State regulators to implement the Plan's rate increases under their own statutes. Comity requires that Pennsylvania consider and acknowledge the statutes of sister States; the Plan, however, seeks to coerce those States into abdicating their rate setting function in favor of the Rehabilitator's views as to what rates "should be."

The Issue-State Rate Approval section continues the Plan's effort to override other States' rate approval laws, just in the guise of an "opt-out" that compels the same result – application of the rates sought by the Rehabilitator in full and notwithstanding their differential impact across States.

Conclusion

For the above reasons, the State Insurance Regulators request that the Court disapprove the Plan.

April 5, 2021

Respectfully submitted,

By: Steve Harvey Law LLC,

Stephen G. Harvey
steve@steveharveylaw.com
1880 John F. Kennedy Blvd.
Suite 1715
Philadelphia, PA 19103
Tel. 215-438-6600

Attorneys for the Maine Superintendent of Insurance, the Massachusetts Commissioner of Insurance, and the Washington Insurance Commissioner

Of Counsel:

J. David Leslie
dleslie@rackemann.com
Eric A. Smith
esmith@rackemann.com
Rackemann, Sawyer & Brewster P.C.
160 Federal Street
Boston, MA 02110-1700
Tel. 617-951-1131
Tel. 617-951-1127
(admitted *pro hac vice*)

Counsel to the Maine Superintendent of Insurance, the Massachusetts Commissioner of Insurance, and the Washington Insurance Commissioner

and Massachusetts Special Assistant Attorneys General and
Washington Special Assistant Attorneys General

Received 4/5/2021 11:11:32 AM Commonwealth Court of Pennsylvania

Filed 4/5/2021 11:11:00 AM Commonwealth Court of Pennsylvania
1 SHP 2020

Exhibit 1

Impacts of Liquidation on Policyholders and Guaranty Associations Contribution

Data extracted from Comparison File with calculations

	Baseline			Liquidation			
	1	2	3 (1-2)	4	5	6	7 (5-6)
	PV of benefits	**PV of premiums**	**PVFB - PVFP**	**PV of benefits GA limit**	**PV of benefits**	**PV of premiums**	**PVFB - PVFP**
Total	2,549,059,475	221,335,076	2,327,724,399	1,956,095,423	2,245,568,821	314,813,980	1,930,754,840

The Rehabilitator has advised that the SHIP "funding gap" is $1,224,000,000 (see 11/20/20 Phase I Results Exhibit) and the Plan calls for the entire burden to fall on policyholders. The figures presented in the Comparison File indicate that, in liquidation, policyholders would bear a burden of only $396,969,558 – a difference of $827,030,441 in comparison with the Plan. These figures are calculated in Table 1.

Another method of estimating the support provided by guaranty associations in liquidation (which policyholders would forgo under the Plan) is to use the above figures and the 49% estate dividend projected by the Rehabilitator (11/20/10 Phase I Results Exhibit). This calculation is set forth in Table 2.

Table 2

Guaranty Association Claims in Liquidation		
PV of benefits GA limit (column 4)	$	1,956,095,423
PV of premiums (column 6)	-	314,813,980
Subtotal	$	1,641,281,443
49% Liquidation Dividend on GA Claims	-	804,227,907
Net Guaranty Association Support	$	837,053,536

Table 1

Liquidation Impact on Policyholders		
Benefit Loss Borne by Policyholders		
PV of "Baseline" Benefits (column 1)	$	2,549,059,475
PV of Liquidation Benefits (column 5)	-	2,245,568,821
Subtotal	$	303,490,655
Premium Increase Borne by Policyholders		
PV of Liquidation Premiums (column 6)	$	314,813,980
PV of "Baseline" Premiums (column 2)	-	221,335,076
Subtotal	$	93,478,904
Total	$	396,969,559
Policyholder Burdens Rehabilitation vs. Liquidation		
"Funding Gap" Borne in Rehabilitation	$	1,224,000,000
Burden Borne in Liquidation	-	396,969,559
Difference (Borne by GAs)	$	827,030,441

Exhibit 2

Policyholder Comparison for Each Phase I Option vs. Liquidation (Table 1)

	Option 1	Option 2	Option 2a	Option 3	Option 4
Policyholders Better Off in Rehabilitation (by count)	12,650	1,993	2,021	5,598	27,621
Policyholders Better Off in Liquidation (by count)	20,611	31,268	31,240	27,663	5,640
Total	33,261	33,261	33,261	33,261	33,261
Policyholders Better Off in Rehabilitation (%)	38.03%	5.99%	6.08%	16.83%	83.04%
Policyholders Better Off in Liquidation (%)	61.97%	94.01%	93.92%	83.17%	16.96%
	100%	100%	100%	100%	100%

Rehabilitator's Analysis of Phase I Options on "Funding Gap" (Table 2)

(figures in millions)

SHIP "funding gap"	$ 1,224	$ 1,224	$ 1,224	$ 1,224	$ 1,224
"Funding gap" addressed in Phase I (Methodology 1)	- 887	- 1,050	- 1,026	- 959	- 227
"Funding gap" remaining for Phase II (Methodology 1)	$ 337	$ 174	$ 198	$ 265	$ 997
SHIP "funding gap"	$ 1,224	$ 1,224	$ 1,224	$ 1,224	$ 1,224
"Funding gap" addressed in Phase I (Methodology 2)	- 1,133	- 1,331	- 1,296	- 1,336	- 227
"Funding gap" remaining for Phase II (Methodology 2)	$ 91	n/a	n/a	n/a	$ 997

Exhibit 3

Effect of Phase I Scenarios on "Funding Gap" (1/26/21 Actuarial Report Exhibit 2.5)

Scenario	1	2	3	4	5	6	7	8	9	10	"Best Interest"
"Funding Gap"	$ 1,224	$ 1,224	$ 1,224	$ 1,224	$ 1,224	$ 1,224	$ 1,224	$ 1,224	$ 1,224	$ 1,224	$ 1,224
"Funding Gap" Reduction	- 525	- 761	- 823	- 868	- 929	- 939	- 939	- 1,000	- 1,016	- 1,038	- 185
"Funding Gap" Remaining	699	463	401	356	295	285	285	224	208	186	1,039

(all figures in millions)

"Best Interest" figures are derived in Exhibit 4.

Exhibit 4

"Best Interest" Scenario Calculation

The State Insurance Regulators requested a calculation of the effects on the SHIP "funding gap" in Phase I of the Plan using the Rehabilitator's figures from the Comparison File database and the assumption that all policyholders will select the Phase I option providing the greatest value to themselves. The results of that calculation are as follows:

Phase I Option	Option 1	Option 2	Option 2a	Option 3	Option 4	Total
Policyholders' "Best Interest" option (count)*	5,239.5	222	243	5,229	22,327.5	33,261
Policyholders' "Best Interest" option (%)	15.75%	0.67%	0.73%	15.72%	67.13%	100%
Policyholders for which option is preferable to liquidation (count)	4,927.5	210.5	229.5	5,217	17,723.5	28,308
Policyholders for which option is preferable to liquidation (%)	94.0%	94.8%	94.4%	99.8%	79.4%	n/a
Net policyholder benefits	$ 214,717,583	$6,581,202	$ 8,984,780	$88,956,250	$ 1,823,736,372	$ 2,142,976,188

Net policyholder benefits (Comparison File baseline)	-	2,327,724,399
"Funding gap" impact	$	(184,748,212)
SHIP "funding gap"	+	1,224,000,000
"Funding gap" remaining for Phase II	$	1,039,251,788

* Policyholders with two options of equal value were assigned 0.5 to each option.

Exhibit 5

Rehabilitation vs. Liquidation – Calculations Reflecting "Best Interest" Scenario and Hypothetical Phase II Premium Increases

	Hypothetical Phase II Premium Increases			
Rehabilitation vs. Liquidation ("Best Interest" Option 4 selectors)	50%	100%	150%	200%
Option 4 selectors better off in rehabilitation after Phase II premium increase (by count)	7,566.5	5,118.5	3,880.0	3,546.5
Option 4 selectors better off in rehabilitation after Phase II premium increase (by %)	33.89%	22.92%	17.38%	15.88%
Rehabilitation vs. Liquidation (All policyholders)				
Options 1-3 selectors better off in rehabilitation after Phase I*	10,584.5	10,584.5	10,584.5	10,584.5
Total policyholders better off in rehabilitation after Phase II Option 4 premium increase (count)	18,151.0	15,703.0	14,464.5	14,131.0
Total policyholders better off in rehabilitation after Phase II Option 4 premium increase (%)	54.57%	47.21%	43.49%	42.49%
Effect on "Funding Gap"				
Sum of policyholder Carpenter Values	$1,642,349,073	$1,460,961,775	$1,279,574,476	$1,098,187,177
Phase II "funding gap" reduction	$181,387,299	$362,774,597	$544,161,896	$725,549,194
"Funding gap" remaining	$857,864,490	$676,477,191	$495,089,892	$313,702,594
"Funding gap" resolved	29.9%	44.7%	59.6%	74.4%

* This row reflects the number of policyholders deemed likely in a "Best Interest" scenario to select one of options 1, 2, 2a, and 3 in Phase I. See Exhibit 4. This exhibit assumes no Phase II impact on policyholders selecting option 1 in Phase I.

Exhibit 6

Rehabilitator's Calculation of Plan Benefits (Option 2) vs. Rehabilitator's Calculation of Guaranty Association Benefits

	Baseline	Liquidation							Option 2		
	1	2	3 (1-2)	4	5 (3x4)	6	7	8 (6-7)	9	10	11 (9-10)
Example Number	**PV of benefits**	**PV of benefits GA limit**	**Baseline excess**	**Liq. Div**	**Excess Liq Div**	**PV of benefits**	**PV of premiums**	**PVFB - PVFP**	**PV of benefits**	**PV of premiums**	**PVFB - PVFP**
1	54,674	45,136	9,539	0.49	4,657	49,792	17,428	32,364	25,366	10,026	15,341
2	66,540	58,529	8,011	0.49	3,911	62,440	5,632	56,807	26,022	6,304	19,718
3	66,455	56,933	9,521	0.49	4,648	61,581	14,071	47,511	27,071	9,003	18,067
4	48,402	47,004	1,397	0.49	682	47,687	11,715	35,972	13,391	3,914	9,477
5	165,245	97,534	67,711	0.49	33,055	130,589	56,673	73,916	53,110	10,093	43,017
6	93,819	69,406	24,413	0.49	11,918	81,324	18,122	63,202	54,933	17,543	37,390
7	106,963	81,686	25,276	0.49	12,339	94,026	--	94,026	64,710	--	64,710

The example policies provide benefits in excess of the guaranty association limit (i.e. the numbers in column 3 are positive).

If the policyholders were to select Option 2 under the Plan, the present value of benefits would be less than the present value of the guaranty association limits (i.e. column 9 is less than column 2).

Received 4/5/2021 11:11:32 AM Commonwealth Court of Pennsylvania

Filed 4/5/2021 11:11:00 AM Commonwealth Court of Pennsylvania
1 SHP 2020

PROOF OF SERVICE

I, Stephen G. Harvey, hereby certify that on April 5, 2021, I served the foregoing document on all parties appearing on the Master Service List.

/s/ Stephen G. Harvey
Stephen G. Harvey (PA No. 58233)
STEVE HARVEY LAW LLC
1880 John F. Kennedy Blvd.
Suite 1715
Philadelphia, PA 19013
(215) 438-6600
steve@steveharveylaw.com

Dated: April 5, 2021

Received 4/5/2021 11:22:49 AM Commonwealth Court of Pennsylvania

Filed 4/5/2021 11:22:00 AM Commonwealth Court of Pennsylvania
1 SHP 2020

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

STATE INSURANCE REGULATORS' EXHIBIT LIST AND EXHIBITS

In accordance with the Court's Order of February 25, 2021, the Intervenors Superintendent of Insurance of the State of Maine, Commissioner of Insurance of the Commonwealth of Massachusetts, and Insurance Commissioner of the State of Washington (collectively, "State Insurance Regulators") submit this list of exhibits for the hearing. As required, copies of the exhibits are attached.

The State Insurance Regulators anticipate that they may offer the following exhibits into evidence at the hearing unless they have previously been introduced by the Rehabilitator. The State Insurance Regulators assume that the Rehabilitator will introduce as exhibits the Amended Plan of Rehabilitation dated October 21, 2020 and the Revised Issue-State Rate Approval Section posted March 4, 2021. If not, the State Insurance Regulators may introduce those as exhibits as well.

1. Oliver Wyman 11/20/20 Phase I Rehabilitation Plan results as of 6/30/2020 Exhibit with "Summary of Rehabilitation Plan Results (Phase I)"

2. Oliver Wyman 1/26/21 Actuarial Report Supporting the Rehabilitation Plan, cover, pages 11 and 77

3. Oliver Wyman 3/2/21 Phase I Rehabilitation Plan Funding Gap Exhibits (as of 6/30/2020) with "Phase I Funding Gap Reduction by Plan Option" and "Phase I Funding Gap Reduction by Election Rate Scenario"

4. SHIP 12/31/20 Income Statement and Balance Sheet

5. Exhibits to Testimony of Frank G. Edwards, Jr.

   Exhibit 1 Impacts of Liquidation on Policyholders and Guaranty Associations

   Exhibit 2 Policyholder Comparison for each Phase I Option vs. Liquidation

   Exhibit 3 Effect of Phase I Scenarios on "Funding Gap"

   Exhibit 4 "Best Interest" Scenario Calculation

   Exhibit 5 Rehabilitation vs. Liquidation – Calculations Reflecting "Best Interest" Scenario and Phase II Premium Increases

   Exhibit 6 Rehabilitator's Calculation of Plan Benefits (Option 2) vs. Rehabilitator's Calculation of Guaranty Association Benefits

6. 3/12/21 Letter from Eric A. Smith to Michael J. Broadbent re Call with Actuarial Advisors

7. 3/30/21 Letter from Michael J. Broadbent to J. David Leslie and Eric A. Smith responding to 3/12/21 letter

April 5, 2021

Respectfully submitted,

By: Steve Harvey Law LLC,

Stephen G. Harvey
steve@steveharveylaw.com
1880 John F. Kennedy Blvd.
Suite 1715
Philadelphia, PA 19103
Tel. 215-438-6600

Attorneys for the Maine Superintendent of Insurance, the Massachusetts Commissioner of Insurance, and the Washington Insurance Commissioner

Of Counsel:

J. David Leslie
dleslie@rackemann.com
Eric A. Smith
esmith@rackemann.com
Rackemann, Sawyer & Brewster P.C.
160 Federal Street
Boston, MA 02110-1700
Tel. 617-951-1131
Tel. 617-951-1127
(admitted *pro hac vice*)

Counsel to the Maine Superintendent of Insurance, the Massachusetts Commissioner of Insurance, and the Washington Insurance Commissioner and Massachusetts Special Assistant Attorneys General and Washington Special Assistant Attorneys General

OLIVER WYMAN

SENIOR HEALTH INSURANCE CO. OF PA

Phase I Rehabilitation Plan results as of 6/30/2020

November 20, 2020

Exhibit 1

CONFIDENTIALITY

Our clients' industries are extremely competitive, and the maintenance of confidentiality with respect to our clients' plans and data is critical. Oliver Wyman rigorously applies internal confidentiality practices to protect the confidentiality of all client information.

Similarly, our industry is very competitive. We view our approaches and insights as proprietary and therefore look to our clients to protect our interests in our proposals, presentations, methodologies, and analytical techniques. Under no circumstances should this material be shared with any third party without the prior written consent of Oliver Wyman.

SUMMARY OF REHABILITATION PLAN RESULTS (PHASE I)

Illustrative probability weighted scenarios as of 6/30/2020[1]

Scenario	Gross premium reserve ($M)	Deficit ($M)	Uncovered liability[2] ($M)	Liquidation dividend[3]	Expected unfunded benefits[4] ($M)	Option effectiveness	Election rate by policyholder status and Rehabilitation Plan Option						
							Active policyholders					Disabled policyholders	
							Option 1	Option 2	Option 2a	Option 3	Option 4	Option 1	Option 4
Current	2,684	1,224	606	49%	304	N/A	<---------- N/A ---------->					<---------- N/A ---------->	
Scenario 1 (conservative)	2,159	699	414	61%	155	**43%**	7%	4%	4%	4%	81%	0%	100%
Scenario 2	1,923	463	270	68%	81	**62%**	10%	10%	10%	10%	60%	0%	100%
Scenario 3	1,862	401	239	70%	67	**67%**	10%	10%	10%	10%	60%	25%	75%
Scenario 4	1,817	356	229	72%	59	**71%**	10%	30%	10%	10%	40%	0%	100%
Scenario 5	1,755	295	198	75%	47	**76%**	10%	30%	10%	10%	40%	25%	75%
Scenario 6	1,746	285	214	75%	49	**77%**	10%	50%	10%	10%	20%	0%	100%
Scenario 7	1,746	285	205	75%	48	**77%**	15%	30%	20%	5%	30%	25%	75%
Scenario 8	1,684	224	183	78%	38	**82%**	10%	50%	10%	10%	20%	25%	75%
Scenario 9	1,668	208	174	79%	35	**83%**	15%	35%	25%	10%	15%	30%	70%
Scenario 10	1,647	186	171	80%	32	**85%**	5%	30%	40%	5%	20%	35%	65%

Lower ↓ Option effectiveness ↓ Higher

100% election rate[5] results ($ millions)

	Current	Option 1	Option 2	Option 2a	Option 3	Option 4
Active life reserve	1,888	1,028	865	889	956	1,688
Impact	N/A	(860)	(1,023)	(999)	(932)	(200)
Option effectiveness	*N/A*	*73%*	*86%*	*84%*	*78%*	*19%*

Option	Description
Option 1	Benefit downgrade; current premium
Option 2	Basic Policy; If Knew premium
Option 2a	Enhanced Basic Policy; If Knew premium
Option 3	Enhanced RPU
Option 4	Current benefits; Phase 1 premium

1. For the purpose of this illustration, we modeled the elections to take place on 6/30/2020
2. Uncovered liability does not consider a potential liquidation dividend
3. Liquidation dividend is defined as the percentage of uncovered benefits that would be paid to policyholders in the event of a liquidation
4. Expected unfunded benefits reflect the liquidation dividend (i.e., these are benefits that are not expected to be paid in the event of a liquidation)
5. For 100% election rate results, we assume 100% of disabled lives elect Option 4 (current benefits; Phase I differential premium)

QUALIFICATIONS, ASSUMPTIONS, AND LIMITING CONDITIONS

This report is for the exclusive use of the Oliver Wyman client named herein. This report is not intended for general circulation or publication, nor is it to be reproduced, quoted, or distributed for any purpose without the prior written permission of Oliver Wyman. There are no third-party beneficiaries with respect to this report, and Oliver Wyman does not accept any liability to any third party.

Information furnished by others, upon which all or portions of this report are based, is believed to be reliable but has not been independently verified, unless otherwise expressly indicated. Public information and industry and statistical data are from sources we deem to be reliable; however, we make no representation as to the accuracy or completeness of such information. The findings contained in this report may contain predictions based on current data and historical trends. Any such predictions are subject to inherent risks and uncertainties. Oliver Wyman accepts no responsibility for actual results or future events.

The opinions expressed in this report are valid only for the purpose stated herein and as of the date of this report. No obligation is assumed to revise this report to reflect changes, events, or conditions, which occur subsequent to the date hereof.

All decisions in connection with the implementation or use of advice or recommendations contained in this report are the sole responsibility of the client. This report does not represent investment advice nor does it provide an opinion regarding the fairness of any transaction to any and all parties. In addition, this report does not represent legal, medical, accounting, safety, or other specialized advice. For any such advice, Oliver Wyman recommends seeking and obtaining advice from a qualified professional.


OLIVER WYMAN

OLIVER WYMAN

ACTUARIAL REPORT SUPPORTING THE REHABILITATION PLAN OF SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA

Pennsylvania Insurance Department

January 26, 2021

Exhibit 2

Exhibit 2.5 summarizes several key metrics in a range of Option election scenarios, of which we introduce two at this point in the report. First, the funding gap represents the resulting gross premium reserve minus assets available to fund the Plan. Second, the liquidation dividend is the percentage of uncovered liability that would be available to the policyholders with uncovered benefits in the event of a liquidation and if assets are allocated proportionately to covered and uncovered reserves.

Scenario	Gross premium reserve	Funding gap	Uncovered reserve	Liquidation dividend	Option Effectiveness
Current reserve	$2,684	$1,224	$606	49%	N/A
Scenario 1	$2,159	$699	$414	61%	43%
Scenario 2	$1,923	$463	$270	68%	62%
Scenario 3	$1,862	$401	$239	70%	67%
Scenario 4	$1,817	$356	$229	72%	71%
Scenario 5	$1,755	$295	$198	75%	76%
Scenario 6	$1,746	$285	$214	75%	77%
Scenario 7	$1,746	$285	$205	75%	77%
Scenario 8	$1,684	$224	$183	78%	82%
Scenario 9	$1,668	$208	$174	79%	83%
Scenario 10	$1,647	$186	$171	80%	85%

Exhibit 2.5: Phase One probability-weighted scenario results ($ millions)

Exhibit 2.6 provides the aggregate Option election rates underlying each scenario by policyholder status and Option. We further describe the methodology and modeling approach we used to apply the underlying elections in Section 5.3.4.

	Active lives					Disabled lives	
Scenario	Option 1	Option 2	Option 2a	Option 3	Option 4	Option 1	Option 4
Scenario 1	7%	4%	4%	4%	81%	0%	100%
Scenario 2	10%	10%	10%	10%	60%	0%	100%
Scenario 3	10%	10%	10%	10%	60%	25%	75%
Scenario 4	10%	30%	10%	10%	40%	0%	100%
Scenario 5	10%	30%	10%	10%	40%	25%	75%
Scenario 6	10%	50%	10%	10%	20%	0%	100%
Scenario 7	15%	30%	20%	5%	30%	25%	75%
Scenario 8	10%	50%	10%	10%	20%	25%	75%
Scenario 9	15%	35%	25%	10%	15%	30%	70%
Scenario 10	5%	30%	40%	5%	20%	35%	65%

Exhibit 2.6: Illustrative election rate scenarios by policyholder status and Plan Option

APPENDIX E. GUARANTY ASSOCIATION LIMITS

Resident state	Guaranty Association limit	Resident state	Guaranty Association limit
Alaska	$300,000	North Carolina	$300,000
Alabama	$300,000	North Dakota	$300,000
Arkansas	$300,000	Nebraska	$300,000
Arizona	$300,000	New Hampshire	$300,000
California	$615,525	New Jersey	No Limit
Colorado	$300,000	New Mexico	$300,000
Connecticut	$500,000	Nevada	$300,000
District of Columbia	$300,000	New York	$500,000
Delaware	$300,000	Ohio	$300,000
Florida	$300,000	Oklahoma	$300,000
Georgia	$300,000	Oregon	$300,000
Hawaii	$300,000	Pennsylvania	$300,000
Iowa	$300,000	Puerto Rico	$100,000
Idaho	$300,000	Rhode Island	$300,000
Illinois	$300,000	South Carolina	$300,000
Indiana	$300,000	South Dakota	$300,000
Kansas	$300,000	Tennessee	$300,000
Kentucky	$300,000	Texas	$300,000
Louisiana	$500,000	Utah	$500,000
Massachusetts	$300,000	Virginia	$300,000
Maryland	$300,000	Vermont	$300,000
Maine	$300,000	Washington	$500,000
Michigan	$300,000	Wisconsin	$300,000
Minnesota	$500,000	West Virginia	$300,000
Missouri	$300,000	Wyoming	$300,000
Mississippi	$300,000	Other	$0
Montana	$300,000		

Exhibit E.1: Guaranty Association limits by resident state as of June 30, 2020

OLIVER WYMAN

Pennsylvania Insurance Department

SENIOR HEALTH INSURANCE CO. OF PA

Phase I Rehabilitation Plan Funding Gap Exhibits (as of 6/30/2020)

March 2, 2021

Exhibit 3

CONFIDENTIALITY

Our clients' industries are extremely competitive, and the maintenance of confidentiality with respect to our clients' plans and data is critical. Oliver Wyman rigorously applies internal confidentiality practices to protect the confidentiality of all client information.

Similarly, our industry is very competitive. We view our approaches and insights as proprietary and therefore look to our clients to protect our interests in our proposals, presentations, methodologies, and analytical techniques. Under no circumstances should this material be shared with any third party without the prior written consent of Oliver Wyman.

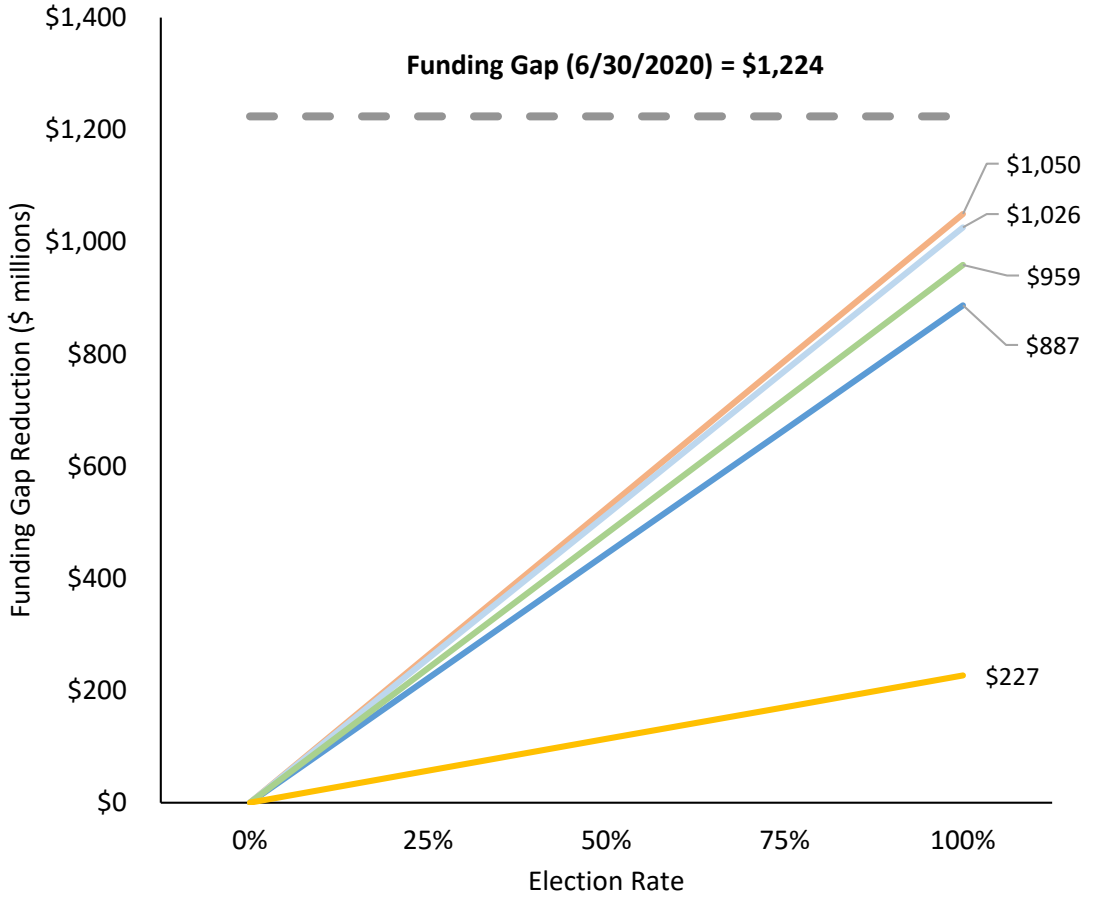
PHASE I FUNDING GAP REDUCTION BY PLAN OPTION

The following exhibits illustrate the amount of Funding Gap eliminated under each Plan Option as a function of the associated election rate

Funding Gap = expected benefits + expected expenses – expected premium (incl. differential premium) – current asset value

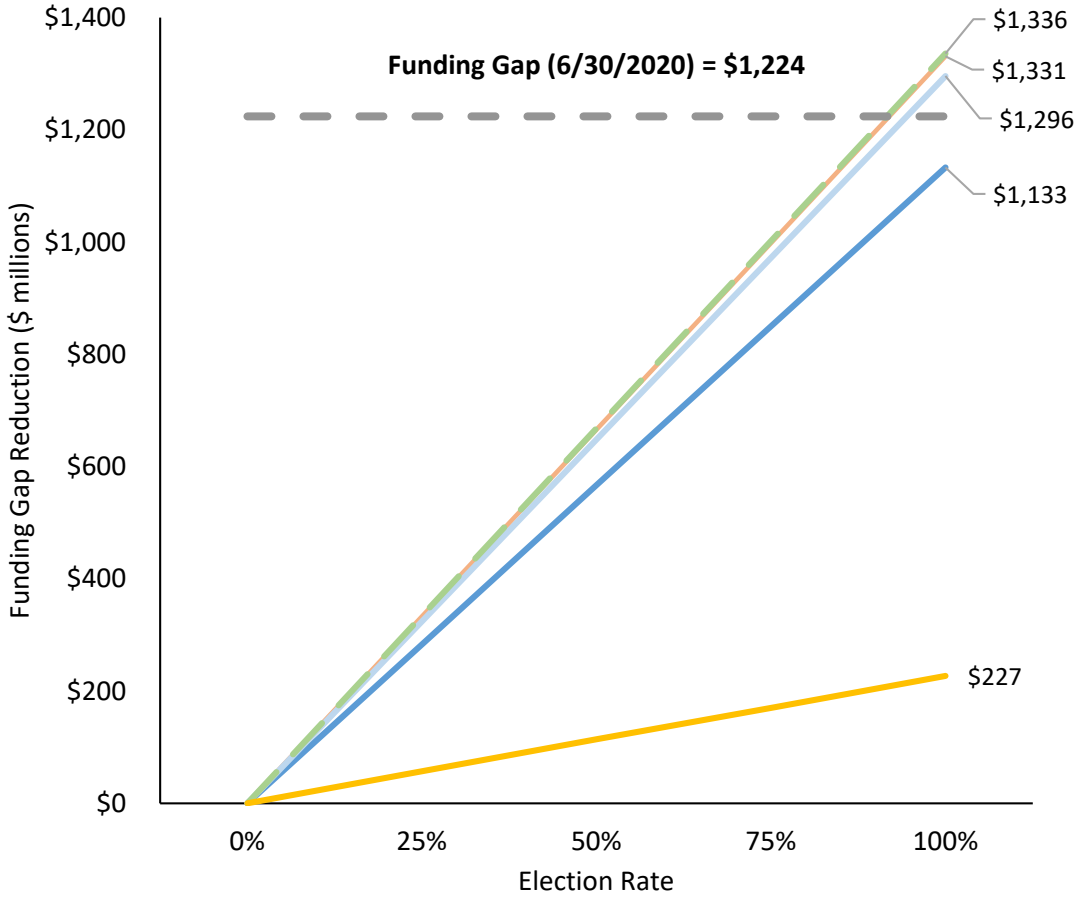
Methodology 1

- Active policyholders select the Options noted in the legend of the exhibit below
- Disabled policyholders select Option 4 (**conservative assumption**)



Methodology 2

- Active policyholders select the Options noted in the legend of the exhibit below
- Disabled policyholders select the Options noted in the legend of the exhibit below (**optimistic assumption**)

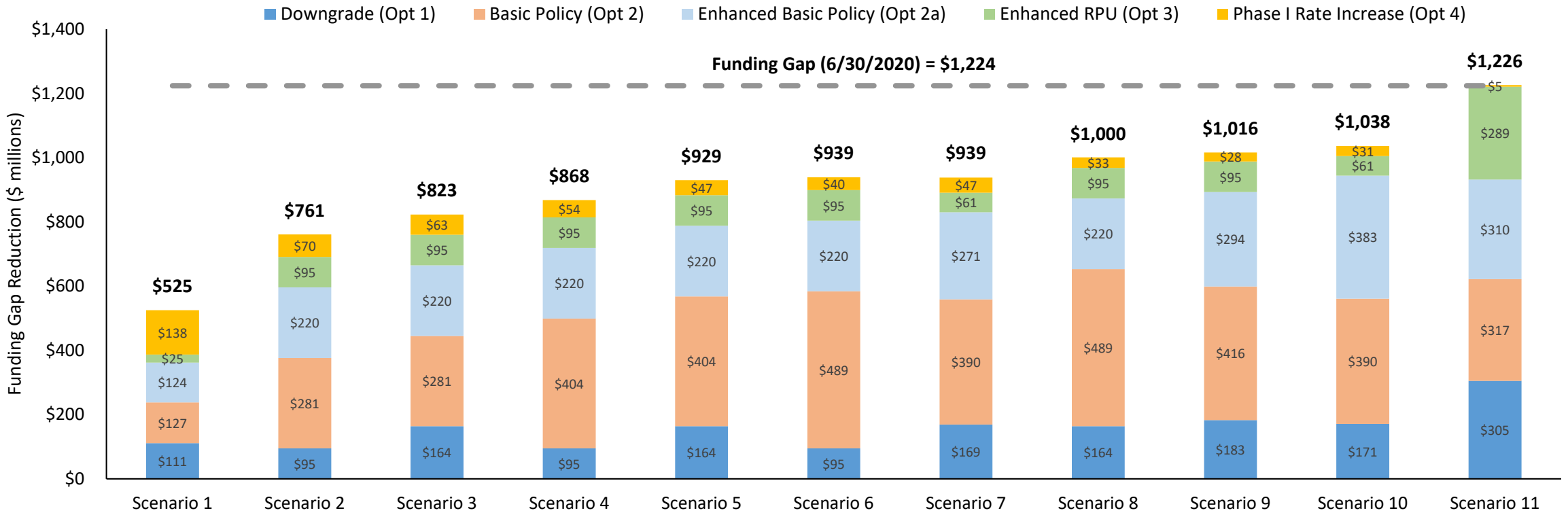


Downgrade (Opt 1) Basic Policy (Opt 2) Enhanced Basic Policy (Opt 2a) Enhanced RPU (Opt 3) Phase I Rate Increase (Opt 4)

PHASE I FUNDING GAP REDUCTION BY ELECTION RATE SCENARIO

The following exhibit illustrates the amount of Funding Gap eliminated under a range of Plan probability-weighted election rate scenarios

Funding Gap = expected benefits + expected expenses – expected premium (incl. differential premium) – current asset value



Assumed Election Rate by Policyholder Status and Plan Option

		Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5	Scenario 6	Scenario 7	Scenario 8	Scenario 9	Scenario 10	Scenario 11
Active policyholders	Opt 1	7%	10%	10%	10%	10%	10%	15%	10%	15%	5%	5%
	Opt 2	4%	10%	10%	30%	30%	50%	30%	50%	35%	30%	31%
	Opt 2a	4%	10%	10%	10%	10%	10%	20%	10%	25%	40%	31%
	Opt 3	4%	10%	10%	10%	10%	10%	5%	10%	10%	5%	31%
	Opt 4	81%	60%	60%	40%	40%	20%	30%	20%	15%	20%	2%
Disabled policyholders	Opt 1	0%	0%	25%	0%	25%	0%	25%	25%	30%	35%	96%
	Opt 4	100%	100%	75%	100%	75%	100%	75%	75%	70%	65%	4%

QUALIFICATIONS, ASSUMPTIONS, AND LIMITING CONDITIONS

This report is for the exclusive use of the Oliver Wyman client named herein. This report is not intended for general circulation or publication, nor is it to be reproduced, quoted, or distributed for any purpose without the prior written permission of Oliver Wyman. There are no third-party beneficiaries with respect to this report, and Oliver Wyman does not accept any liability to any third party.

Information furnished by others, upon which all or portions of this report are based, is believed to be reliable but has not been independently verified, unless otherwise expressly indicated. Public information and industry and statistical data are from sources we deem to be reliable; however, we make no representation as to the accuracy or completeness of such information. The findings contained in this report may contain predictions based on current data and historical trends. Any such predictions are subject to inherent risks and uncertainties. Oliver Wyman accepts no responsibility for actual results or future events.

The opinions expressed in this report are valid only for the purpose stated herein and as of the date of this report. No obligation is assumed to revise this report to reflect changes, events, or conditions, which occur subsequent to the date hereof.

All decisions in connection with the implementation or use of advice or recommendations contained in this report are the sole responsibility of the client. This report does not represent investment advice nor does it provide an opinion regarding the fairness of any transaction to any and all parties. In addition, this report does not represent legal, medical, accounting, safety, or other specialized advice. For any such advice, Oliver Wyman recommends seeking and obtaining advice from a qualified professional.


OLIVER WYMAN

Senior Health Insurance Company in Rehabilitation
Income Statement
($ in thousands)

	Year Ended 12/31/2020	Year Ended 12/31/2019
Premiums	$ 66,982	$ 80,672
Investment Income	70,421	77,412
Investment Expense	(1,053)	(10,695)
Gain/Loss Transferred to IMR	(16,210)	(3,679)
Transamerica Service Fees	144	-
Total Income	120,284	143,710
Benefits Paid	333,201	369,626
Change in Claim Reserves	(143,406)	(26,160)
Change in ALR	(128,983)	(74,651)
Change in PDR Reserves	170,775	262,914
Loss from Transamerica Recpature	168,507	-
Total Benefits	400,094	531,729
Commissions	4,622	5,654
General Insurance Expenses	31,306	29,396
Insurance Taxes, Licenses and Fees	1,132	3,890
Total Benefits and Expenses	437,154	570,669
Federal and State Income Taxes	(505)	205
Net Loss before Realized Gains/ Losses	(316,365)	(427,164)
Realized Gains/Losses	10,518	(34,870)
Net Loss	$ (305,847)	$ (462,034)
Cash from Operations	$ (208,461)	$ (251,711)

Exhibit 4

Senior Health Insurance Company in Rehabilitation
Balance Sheet
($ in thousands)

	Year Ended 12/31/2020	Year Ended 12/31/2019
Assets		
Bonds	$ 1,201,083	$ 1,721,888
Preferred stock	77,608	86,271
Common stock	4,735	3,578
Mortgage loans	11,717	12,682
Cash and short term investments	46,100	46,682
Other invested assets	9,862	15,701
Receivable for securities	-	136
Total invested assets	1,351,105	1,886,938
Investment income due and accrued	9,362	12,082
Uncollected premiums	961	928
Federal income tax recoverable	1,380	2,364
Guaranty funds receivable	1,135	1,209
Reimbursement from insurance carrier	421	3,588
Transamerica receivable	5,408	-
Other	136	72
Total Assets	$ 1,369,908	$ 1,907,181
Liabilities and Capital and Surplus		
Liabilities		
Active life reserves	$ 1,047,771	$ 1,234,831
Premium deficiency reserves	762,600	636,537
Claim reserves	732,814	932,811
Premiums paid in advance	972	1,462
Interest maintenance reserve	18,457	4,746
Transamerica liability	21,073	-
Accounts payable and other liabilites	8,728	12,892
Total Liabilities	$ 2,592,415	$ 2,823,279
Capital and Surplus		
Common stock	$ 2,500	$ 2,500
Preferred capital stock	5,000	5,000
Surplus notes	50,000	50,000
Unassigned surplus	(1,280,007)	(973,598)
Total Capital and Surplus	$ (1,222,507)	$ (916,098)
Total Liabilities and Capital and Surplus	$ 1,369,908	$ 1,907,181

Exhibit 1

Impacts of Liquidation on Policyholders and Guaranty Associations Contribution

Data extracted from Comparison File with calculations

	Baseline			Liquidation			
	1	2	3 (1-2)	4	5	6	7 (5-6)
	PV of benefits	**PV of premiums**	**PVFB - PVFP**	**PV of benefits GA limit**	**PV of benefits**	**PV of premiums**	**PVFB - PVFP**
Total	2,549,059,475	221,335,076	2,327,724,399	1,956,095,423	2,245,568,821	314,813,980	1,930,754,840

The Rehabilitator has advised that the SHIP "funding gap" is $1,224,000,000 (see 11/20/20 Phase I Results Exhibit) and the Plan calls for the entire burden to fall on policyholders. The figures presented in the Comparison File indicate that, in liquidation, policyholders would bear a burden of only $396,969,558 – a difference of $827,030,441 in comparison with the Plan. These figures are calculated in Table 1.

Another method of estimating the support provided by guaranty associations in liquidation (which policyholders would forgo under the Plan) is to use the above figures and the 49% estate dividend projected by the Rehabilitator (11/20/10 Phase I Results Exhibit). This calculation is set forth in Table 2.

Table 2

Guaranty Association Claims in Liquidation		
PV of benefits GA limit (column 4)	$	1,956,095,423
PV of premiums (column 6)	-	314,813,980
Subtotal	$	1,641,281,443
49% Liquidation Dividend on GA Claims	-	804,227,907
Net Guaranty Association Support	$	837,053,536

Table 1

Liquidation Impact on Policyholders		
Benefit Loss Borne by Policyholders		
PV of "Baseline" Benefits (column 1)	$	2,549,059,475
PV of Liquidation Benefits (column 5)	-	2,245,568,821
Subtotal	$	303,490,655
Premium Increase Borne by Policyholders		
PV of Liquidation Premiums (column 6)	$	314,813,980
PV of "Baseline" Premiums (column 2)	-	221,335,076
Subtotal	$	93,478,904
Total	$	396,969,559
Policyholder Burdens Rehabilitation vs. Liquidation		
"Funding Gap" Borne in Rehabilitation	$	1,224,000,000
Burden Borne in Liquidation	-	396,969,559
Difference (Borne by GAs)	$	827,030,441

Exhibit 2

Policyholder Comparison for Each Phase I Option vs. Liquidation (Table 1)

	Option 1	Option 2	Option 2a	Option 3	Option 4
Policyholders Better Off in Rehabilitation (by count)	12,650	1,993	2,021	5,598	27,621
Policyholders Better Off in Liquidation (by count)	20,611	31,268	31,240	27,663	5,640
Total	33,261	33,261	33,261	33,261	33,261
Policyholders Better Off in Rehabilitation (%)	38.03%	5.99%	6.08%	16.83%	83.04%
Policyholders Better Off in Liquidation (%)	61.97%	94.01%	93.92%	83.17%	16.96%
	100%	100%	100%	100%	100%

Rehabilitator's Analysis of Phase I Options on "Funding Gap" (Table 2)

(figures in millions)

SHIP "funding gap"	$ 1,224	$ 1,224	$ 1,224	$ 1,224	$ 1,224
"Funding gap" addressed in Phase I (Methodology 1)	- 887	- 1,050	- 1,026	- 959	- 227
"Funding gap" remaining for Phase II (Methodology 1)	$ 337	$ 174	$ 198	$ 265	$ 997
SHIP "funding gap"	$ 1,224	$ 1,224	$ 1,224	$ 1,224	$ 1,224
"Funding gap" addressed in Phase I (Methodology 2)	- 1,133	- 1,331	- 1,296	- 1,336	- 227
"Funding gap" remaining for Phase II (Methodology 2)	$ 91	n/a	n/a	n/a	$ 997

Exhibit 3

Effect of Phase I Scenarios on "Funding Gap" (1/26/21 Actuarial Report Exhibit 2.5)

Scenario	1	2	3	4	5	6	7	8	9	10	"Best Interest"
"Funding Gap"	$ 1,224	$ 1,224	$ 1,224	$ 1,224	$ 1,224	$ 1,224	$ 1,224	$ 1,224	$ 1,224	$ 1,224	$ 1,224
"Funding Gap" Reduction	- 525	- 761	- 823	- 868	- 929	- 939	- 939	- 1,000	- 1,016	- 1,038	- 185
"Funding Gap" Remaining	699	463	401	356	295	285	285	224	208	186	1,039

(all figures in millions)

"Best Interest" figures are derived in Exhibit 4.

Exhibit 4

"Best Interest" Scenario Calculation

The State Insurance Regulators requested a calculation of the effects on the SHIP "funding gap" in Phase I of the Plan using the Rehabilitator's figures from the Comparison File database and the assumption that all policyholders will select the Phase I option providing the greatest value to themselves. The results of that calculation are as follows:

Phase I Option	Option 1	Option 2	Option 2a	Option 3	Option 4	Total
Policyholders' "Best Interest" option (count)*	5,239.5	222	243	5,229	22,327.5	33,261
Policyholders' "Best Interest" option (%)	15.75%	0.67%	0.73%	15.72%	67.13%	100%
Policyholders for which option is preferable to liquidation (count)	4,927.5	210.5	229.5	5,217	17,723.5	28,308
Policyholders for which option is preferable to liquidation (%)	94.0%	94.8%	94.4%	99.8%	79.4%	n/a
Net policyholder benefits	$ 214,717,583	$6,581,202	$ 8,984,780	$88,956,250	$ 1,823,736,372	$ 2,142,976,188

Net policyholder benefits (Comparison File baseline)	-	2,327,724,399
"Funding gap" impact	$	(184,748,212)
SHIP "funding gap"	+	1,224,000,000
"Funding gap" remaining for Phase II	$	1,039,251,788

* Policyholders with two options of equal value were assigned 0.5 to each option.

Exhibit 5

Rehabilitation vs. Liquidation – Calculations Reflecting "Best Interest" Scenario and Hypothetical Phase II Premium Increases

	Hypothetical Phase II Premium Increases			
Rehabilitation vs. Liquidation ("Best Interest" Option 4 selectors)	50%	100%	150%	200%
Option 4 selectors better off in rehabilitation after Phase II premium increase (by count)	7,566.5	5,118.5	3,880.0	3,546.5
Option 4 selectors better off in rehabilitation after Phase II premium increase (by %)	33.89%	22.92%	17.38%	15.88%
Rehabilitation vs. Liquidation (All policyholders)				
Options 1-3 selectors better off in rehabilitation after Phase I*	10,584.5	10,584.5	10,584.5	10,584.5
Total policyholders better off in rehabilitation after Phase II Option 4 premium increase (count)	18,151.0	15,703.0	14,464.5	14,131.0
Total policyholders better off in rehabilitation after Phase II Option 4 premium increase (%)	54.57%	47.21%	43.49%	42.49%
Effect on "Funding Gap"				
Sum of policyholder Carpenter Values	$1,642,349,073	$1,460,961,775	$1,279,574,476	$1,098,187,177
Phase II "funding gap" reduction	$181,387,299	$362,774,597	$544,161,896	$725,549,194
"Funding gap" remaining	$857,864,490	$676,477,191	$495,089,892	$313,702,594
"Funding gap" resolved	29.9%	44.7%	59.6%	74.4%

* This row reflects the number of policyholders deemed likely in a "Best Interest" scenario to select one of options 1, 2, 2a, and 3 in Phase I. See Exhibit 4. This exhibit assumes no Phase II impact on policyholders selecting option 1 in Phase I.

Exhibit 6

Rehabilitator's Calculation of Plan Benefits (Option 2) vs. Rehabilitator's Calculation of Guaranty Association Benefits

	Baseline	Liquidation							Option 2		
	1	2	3 (1-2)	4	5 (3x4)	6	7	8 (6-7)	9	10	11 (9-10)
Example Number	**PV of benefits**	**PV of benefits GA limit**	**Baseline excess**	**Liq. Div**	**Excess Liq Div**	**PV of benefits**	**PV of premiums**	**PVFB - PVFP**	**PV of benefits**	**PV of premiums**	**PVFB - PVFP**
1	54,674	45,136	9,539	0.49	4,657	49,792	17,428	32,364	25,366	10,026	15,341
2	66,540	58,529	8,011	0.49	3,911	62,440	5,632	56,807	26,022	6,304	19,718
3	66,455	56,933	9,521	0.49	4,648	61,581	14,071	47,511	27,071	9,003	18,067
4	48,402	47,004	1,397	0.49	682	47,687	11,715	35,972	13,391	3,914	9,477
5	165,245	97,534	67,711	0.49	33,055	130,589	56,673	73,916	53,110	10,093	43,017
6	93,819	69,406	24,413	0.49	11,918	81,324	18,122	63,202	54,933	17,543	37,390
7	106,963	81,686	25,276	0.49	12,339	94,026	--	94,026	64,710	--	64,710

The example policies provide benefits in excess of the guaranty association limit (i.e. the numbers in column 3 are positive).

If the policyholders were to select Option 2 under the Plan, the present value of benefits would be less than the present value of the guaranty association limits (i.e. column 9 is less than column 2).

RACKEMANN
SAWYER & BREWSTER
COUNSELLORS AT LAW

Established 1880

Eric A. Smith
(617) 951-1127
esmith@rackemann.com

March 12, 2021

By Email

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

Re: Rehabilitation of SHIP – Call with Actuarial Advisors

Dear Michael:

Thank you for hosting the call with Oliver Wyman on March 5, 2021. At both the beginning and end of the call you invited anyone who felt a question had not been addressed or who had additional questions to raise them with you. I accordingly write regarding three issues.

1. During the call, the Oliver Wyman actuary (Dustin Plotkin) who discussed the November 20, 2020 Oliver Wyman Summary of Rehabilitation Plan Results (Phase I) helpfully confirmed our understanding of that chart. However, he did not address one question (#1(f)) presented in my February 26, 2021 letter:

> Is it correct that the value of benefits paid to policyholders, considering both amounts paid by guaranty associations on covered liability and by liquidation dividends from SHIP's assets on uncovered liability, is greater in the current scenario that in any of scenarios 1-10? For example, in the current scenario, the guaranty associations would pay covered liability of $2,078 (the gross premium reserve of $2,684 – uncovered liability of $606) and the liquidation $297 (liquidation dividend of 49% x uncovered liability of $606) for a total of $2,375. In scenario 10, the guaranty associations would pay $1,476 (GPR of $1,647 – uncovered liability of $171) and the liquidation $137 (liquidation dividend of 80% x uncovered liability of 171) for a total of $1,613.

This question is important to understanding the comparative effects of rehabilitation and liquidation. We believe that we have correctly described the impacts resulting from the scenarios on the exhibits, and we understand from the absence of comment on the call that Oliver Wyman does not disagree. However, the point is an important one, so we ask that the Rehabilitator either confirm our understanding or explain why it is incorrect.

2. Mr. Plotkin also discussed the file 2020-11-12 SHIP Comparison of Rehabilitation to Liquidation and the March 2, 2021 Oliver Wyman Phase I Funding Gap Reduction exhibits. His comments served to highlight the importance of Phase Two.

It appears that Phase One will not eliminate the Funding Gap. The Summary of Rehabilitation Plan Results (Phase I) provides ten illustrative probability weighted scenarios and their option effectiveness. The Funding Gap is not eliminated in any scenario. Mr. Plotkin's discussion of the bar graph concerning the 10 scenarios in the Phase I Funding Gap Reduction Exhibit confirmed this. (Mr. Plotkin noted that this exhibit added a Scenario 11 under which the Funding Gap would be eliminated, but stated that he made "no comment on whether [the scenario] will happen.")

Since Phase One will not eliminate the Funding Gap, the Plan necessarily depends on Phase Two to achieve its goal. To fill the Funding Gap, Phase Two relies on significant additional premium rate increases or benefit reductions based on Self-sustaining Premium on those who elected Option 1 or Option 4 to fill the Funding Gap. Amended Plan at 11, 14, 54.

In these circumstances, the comparison of rehabilitation against liquidation properly must include the impacts of Phase Two. However, the comparison of rehabilitation and liquidation results in the 2020-11-12 SHIP – Comparison of Rehabilitation to Liquidation file is limited to Phase One. So far as we are aware, none of the materials posted to the box site compare liquidation with total (Phase One and Phase Two) rehabilitation impacts.

If any of the materials posted to the box site addresses a comparison of liquidation results against the total Phase One and Phase Two results, please point us to it. If there is no such comparison posted, please provide a file making such a comparison.

3. Mr. Plotkin also discussed the file 2020-11-12 SHIP Comparison of Rehabilitation to Liquidation in connection with "Carpenter Values." He noted that the file showed that 85% of policyholders have at least one rehabilitation option under the Plan with a Carpenter Value greater or equal to that of liquidation, and that 15% do not.

We have reviewed the file to calculate the relative impact on policyholders (by total amount and number of policyholders) for the Plan's five options to see which rehabilitation options provide policyholders with Carpenter Values greater or equal to liquidation resulting in the 85%. A spreadsheet showing that analysis is attached.[1] The analysis shows that the 85% is

[1] The 2020-11-12 SHIP Comparison of Rehabilitation to Liquidation Excel file provides seriatim data by the Phase One five options (options 1, 2, 2a, 3 and 4) indicating the present value of future benefits (PVFB) and the present value of future premiums (PVFP) for each of the five options. The difference between the PVFB and PVFP has been referred to as "Carpenter Value." For each option, the file performs a comparison of the Carpenter Values to determine if the liquidation or rehabilitation value is greater for each policyholder. We summarized the total count and amount for each option as shown in the attached spreadsheet.

principally due to Option 4, and that all the other options are worse than liquidation for a large majority of the policyholders.

Option 4 appears to provide a better result than liquidation for 83% of policyholders (although it has the least impact in reducing the Funding Gap). However, the Carpenter Values ascribed to Option 4 (and the other options) in the file are Phase One values and do not consider Phase Two. As noted above, Phase One is not viable, and the Self-supporting Premium applicable in Phase Two will adversely impact the comparative Option 4 benefit versus liquidation. This is particularly the case where only Option 1 and Option 4 policyholders can be subject to Phase Two Self-supporting Premium adjustments. Phase Two will necessarily involve much higher additional premium, or correspondingly large benefit cuts, for Option 4 policyholders. These impacts need to be considered, but the Rehabilitator has not provided any Phase Two vs. liquidation comparative analysis.

It appears to us that the assertion that 85% of policyholders have at least one rehabilitation plan option as good or better than liquidation is completely reliant on the assumption that Phase One Option 4 can actually happen without triggering Phase Two, when it cannot. We believe we have correctly interpreted the file and the implications of Phase Two for Option 4 policyholders and the comparative analysis, but we request that the Rehabilitator confirm this. We would greatly appreciate your views.

Thank you for offering to address our questions. We look forward to hearing from you.

Very truly yours,

/s/ *Eric A. Smith*

Eric A. Smith

	Option 1	Option 2	Option 2a	Option 3	Option 4	Base Line	Liquidation
PV Ben	1,481,892,979	1,270,908,516	1,310,829,452	1,045,953,431	2,556,965,431	2,549,059,475	2,245,568,821
PV Prem	236,249,732	220,283,953	226,781,466	-	439,063,234	221,335,076	314,813,980
Net	1,245,643,247	1,050,624,563	1,084,047,986	1,045,953,431	2,117,902,197	2,327,724,399	1,930,754,840

This represent the number of policy holders which have a greater PVFB - PVFP by Rehab/Liquidation

	Count	Count	Count	Count	Count	Count
Rehab	12,650	1,993	2,021	5,598	27,621	49,883
Liquidation	20,611	31,268	31,240	27,663	5,640	116,422
Total	33,261	33,261	33,261	33,261	33,261	166,305
Rehab	38.03%	5.99%	6.08%	16.83%	83.04%	29.99%
Liquidation	61.97%	94.01%	93.92%	83.17%	16.96%	70.01%

This represents the amount of PVVB - PVFP for policy holders which have a greater PVFB - PVFP by Rehab/Liquidation

	PVFB - PVFP	PVFB - PVFP	PVFB - PVFP	PVFB - PVFP	PVFB - PVFP	PVFB - PVFP
Rehab	401,139,872	33,022,279	35,462,676	101,044,496	1,821,116,682	2,391,786,006
Liquidation	844,503,375	1,017,602,284	1,048,585,310	944,908,935	296,785,515	4,152,385,419
Total	1,245,643,247	1,050,624,563	1,084,047,986	1,045,953,431	2,117,902,197	6,544,171,425
Rehab	32.20%	3.14%	3.27%	9.66%	85.99%	36.55%
Liquidation	67.80%	96.86%	96.73%	90.34%	14.01%	63.45%

March 30, 2021

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

VIA E-MAIL (DLESLIE@RACKEMANN.COM; ESMITH@RACKEMANN.COM)

J. David Leslie
Rackemann Sawyer & Brewster
160 Federal Street
Boston MA 02110

Eric A. Smith
Rackemann Sawyer & Brewster
160 Federal Street
Boston, MA 02110

Re: Rehabilitation of SHIP

Dear David and Eric:

I reviewed the questions in your letter dated March 12, 2021, with our actuarial team and with the Special Deputy Rehabilitator Patrick Cantilo, among others. I write now to offer the following responses:

Response to Question 1:

For the most part, the figures used in your calculations reflect accurately the figures in our reports. We note that the liquidation dividend will come from SHIP's estate, not the guaranty associations. The inferences to be drawn from these calculations are complicated, however, and may involve several arbitrary assumptions and measures of speculation. We will therefore not comment on your conclusions at this time.

Response to Question 2:

At present, we do not have sufficiently reliable data to project policyholder "take-rates" for the various options, and thus cannot say whether the result of Phase One policyholder elections will be to eliminate the Funding Gap or how much Funding Gap will remain after Phase One. We have not made a projection as you describe that incorporates Phase One and Phase Two.

Response to Question 3:

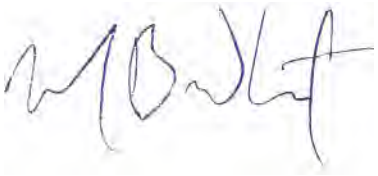
We believe this question is solely argument more appropriately deferred until the hearing.

Exhibit 7

Please note that we may update the question and answer materials on the website as needed to reflect these questions.

Sincerely,

COZEN O'CONNOR



By: Michael J. Broadbent

MJB

Received 4/5/2021 11:22:49 AM Commonwealth Court of Pennsylvania

Filed 4/5/2021 11:22:00 AM Commonwealth Court of Pennsylvania
1 SHP 2020

PROOF OF SERVICE

I, Stephen G. Harvey, hereby certify that on April 5, 2021, I served the foregoing document on all parties appearing on the Master Service List.

/s/ Stephen G. Harvey
Stephen G. Harvey (PA No. 58233)
STEVE HARVEY LAW LLC
1880 John F. Kennedy Blvd.
Suite 1715
Philadelphia, PA 19013
(215) 438-6600
steve@steveharveylaw.com

Dated: April 5, 2021