

**IN RE: SENIOR HEALTH :
INSURANCE COMPANY OF :
PENNSYLVANIA (IN :
REHABILITATION) : No. 71 MAP 2021**

STATE INSURANCE REGULATORS' DESIGNATION OF PARTS OF THE RECORD AND STATEMENT OF ISSUES

Pursuant to Pa. R.A.P. 2154(a), the Appellants/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 (“State Insurance Regulators”) file this designation of parts of the record which they intend to reproduce and statement of issues they intend to present for review.

A. Statement of Issues Intended to be Presented:

1. Whether the Court erred as a matter of law in holding that the Plan of Rehabilitation is not required to be feasible and in approving the Plan that the Rehabilitator acknowledges is not reasonably likely to restore SHIP to solvency.
2. Whether the Court erred as a matter of law in approving the Plan where it does not provide policyholders with a value in rehabilitation at least equal to the value in liquidation as required

by the Due Process Clause, Contracts Clause and *Neblett v. Carpenter*, 305 U.S. 297 (1938).

3. Whether the Court erred as a matter of law in approving the Plan as within the Rehabilitator's discretion based on a "legitimate and significant public purposes" standard rather than the classic test of the best financial interest of policyholders in that the Plan places the entire \$1.224 billion insolvency on the remaining policyholders and avoids triggering guaranty associations that would provide \$887 million in additional support.
4. Whether the Court erred as a matter of law in approving the Plan where it substantially impairs policyholders' contract rights without a legitimate public purpose, since it is unlikely to restore SHIP to solvency, and thereby unreasonably imposes economic harm on policyholders in violation of the Contracts Clause.
5. Whether the Court erred as a matter of law in approving the Plan where it does not treat policyholders in all states equally as required by 40 P.S. § 221.44 and § 221.61 and *Neblett v. Carpenter*, 305 U.S. 297 (1938).
6. Whether the Court erred as a matter of law in approving the Plan where it violates the Full Faith and Credit Clause and exceeds the statutory authority of 40 P.S. § 221.15 and § 221.16 by seeking to set rates in States other than Pennsylvania and supersede the authority of insurance regulators in other States.
7. Whether the Court erred as a matter of law in holding that the "issue state rate approval" provision cures the Plan's improper attempt to supersede the authority of insurance regulators in other states and in granting the Rehabilitator's motion "in the nature of directed verdict" on this issue.

B. Designation of Parts of the Record to be Included in the Reproduced Record:

1. Docket

The docket sheet (with record numbers) dated 11/16/21

2. Pre-Hearing Filings and Orders

1/23/20	Application for Order Placing SHIP in Rehabilitation
1/29/20	Order of Rehabilitation
4/22/20	Application for Approval of Plan of Rehabilitation for SHIP (without attachment)
6/12/20	Case Management Order for Comments and Hearing on the Proposed Plan of Rehabilitation with Form of Notice of Application for Approval of Plan of Rehabilitation
7/31/20	Joint Application for Intervention of the Maine Superintendent of Insurance and the Massachusetts Commissioner of Insurance
8/21/20	Answer of the Rehabilitator to the Joint Application
8/26/21	Answer of the Maine Superintendent and the Massachusetts Commissioner to the Rehabilitator's Answer
9/1/20	Further Answer of the Maine Superintendent and the Massachusetts Commissioner
9/4/20	Rehabilitator's Application for Leave to File Attached Response with proposed response
9/15/20	Joinder of the Washington Insurance Commissioner in the Joint Application
9/15/20	Order (granting intervention to Maine Superintendent and Massachusetts Commissioner)
9/18/20	Order (granting intervention to Washington Commissioner)
2/25/21	Order (following pre-hearing conference)
4/5/21	Rehabilitator's Pre-Hearing Memorandum (with exhibit list; without exhibits)
4/5/21	State Insurance Regulator's Pre-Hearing Memorandum (with exhibit list; without exhibits)
4/19/21	Rehabilitator's Pre-Hearing Rebuttal Memorandum (with exhibit list; without exhibits)
4/19/21	State Insurance Regulators' Rebuttal Pre-Hearing Memorandum
5/3/21	Notice of Filing of Second Amended Plan (without attachment)

3. Hearing Exhibits

RP-7	Comparison of Rehabilitation to Liquidation Summary
RP-12	Financials YTD December 2020
RP-14	Illustrative Policyholder Guidance Pages
RP-16	Oliver Wyman Actuarial Report dated 2021-01-26

RP-19	Phase I Rehabilitation Plan Funding Gap Exhibits dated 2021-03-02
RP-20	Phase I Rehabilitation Plan Funding Gap Exhibits dated 2021-04-02
RP-21	Phase I Rehabilitation Plan Results as of 6/30/2020
RP-22	Policy Information as of December 31, 2020
RP-32	SHIP Data Site Table of Contents
RP-43	Policies with equal/greater [PV benefits] – [PV premium] under the Rehabilitation Plan (Phase I) relative to Liquidation
RP-44	Policies with equal/greater [PV benefits]/[premium] under the Rehabilitation Plan (Phase I) relative to Liquidation
RP-45	Policies with equal/greater [MPV]/[premium] under the Rehabilitation Plan (Phase I) relative to Liquidation
RP-46	Policies with equal/greater [MPV] – [PV premium] under the Rehabilitation Plan (Phase I) relative to Liquidation
RP-47	Policies with equal/greater MPV under the Rehabilitation Plan (Phase I) relative to Liquidation
RP-55	Second Amended Plan of Rehabilitation
RP-56	Only Slides 13, 105, 106-110
SIR-1	Oliver Wyman 11/20/20 Phase I Rehabilitation Plan results Exhibit with “Summary of Rehabilitation Plan Results (Phase I)”
SIR-2	Oliver Wyman 1/26/21 Actuarial Report Supporting the Rehabilitation Plan, cover, pages 11 and 77
SIR-3	Oliver Wyman 3/2/21 Phase I Rehabilitation Plan Funding Gap Exhibits
SIR-4	SHIP 12/31/20 Income Statement and Balance Sheet
SIR-5-1	Impacts of Liquidation on Policyholders and Guaranty Associations
SIR-5-2	Policyholder Comparison for Each Phase I Option vs. Liquidation
SIR-5-3	Effect of Phase I Scenarios on “Funding Gap”
SIR-5-4	“Best Interest” Scenario Calculation
SIR-5-5	Rehabilitation vs. Liquidation – Calculations Reflecting “Best Interest” Scenario and Phase II Premium Increases
SIR-5-6	Rehabilitator’s Calculation of Plan Benefits (Option 2) vs. Rehabilitator’s Calculation of Guaranty Association Benefits
SIR-6	3/12/21 Letter from Eric A. Smith to Michael J. Broadbent re Call with Actuarial Advisors

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

4. Transcripts

2/24/21 Pre-Hearing Conference (pages 1-46)
5/17/21 Hearing Day 1 (pages 1-201)
5/18/21 Hearing Day 2 (pages 202-416)
5/19/21 Hearing Day 3 (pages 417-646)
5/20/21 Hearing Day 4 (pages 647-886)
5/21/21 Hearing Day 5 (pages 887-974 and pages 976-1003)
9/30/21 Order (sustaining objections to errors in transcripts) and
listing of corrections

5. Post-Hearing Filings and Orders

6/1/21 State Insurance Regulators' Application for Reconsideration
6/14/21 Rehabilitator's Post-Hearing Submission
6/14/21 State Insurance Regulators' Post-Hearing Submission
(memorandum and proposed findings and conclusions of law)
6/14/21 Rehabilitator's Opposition to State Insurance Regulators'
Application for Reconsideration
6/28/21 Rehabilitator's Brief in Response to Post-Hearing Submissions
6/28/21 State Insurance Regulators' Rebuttal Post-Hearing
Memorandum
8/24/21 Order (granting the Rehabilitator's Application for Approval of
the Plan of Rehabilitation for SHIP)
8/25/21 Order (denying the Intervenor State Insurance Regulator's
Application to Reconsider)
8/26/21 Rehabilitator's Letter to Commissioners (Exhibit B to State
Insurance Regulators' Application to Stay (10/1/21))
9/30/21 Approved Plan of Rehabilitation (attachment to Praeceptum to
Substitute (9/30/21))
9/30/21 Special Deputy Rehabilitator's Letter to Commissioners
(Exhibit 1 to Application for Expedited Ruling (11/2/21))
11/4/21 Memorandum Opinion and Order denying the State Insurance
Regulator's Application for Stay
N.B. The Court's Opinion (8/24/21 as amended 11/4/21) will not be
included in the Reproduced Record as it will accompany the
State Insurance Regulators' brief.

November 24, 2021

Respectfully submitted,

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/s/ Stephen G. Harvey

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PUBLIC ACCESS POLICY CERTIFICATE OF COMPLIANCE

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

Respectfully submitted,



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IN THE SUPREME COURT OF PENNSYLVANIA

In Re: Senior Health Insurance Company of : 71 MAP 2021
Pennsylvania (In Rehabilitation) :
:

Appeal of: The Superintendent of Insurance of the
State of Maine, The Commissioner of Insurance of
the Commonwealth of Massachusetts and the
Insurance Commissioner of the State of Washington

PROOF OF SERVICE

I hereby certify that this 24th day of November, 2021, I have served the attached document(s) to the persons on the
date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service

Served: Acting Chief Counsel Amy Daubert
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1341 Strawberry Square
Harrisburg, PA 17120
Phone: 717--78-7-2567
Representing: Appellee Jessica K. Altman, Insurance Commissioner of the Commonwealth of PA
Appellee Senior Health Insurance Company of Pennsylvania

Served: Dexter Ryan Hamilton
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Phone: 215-665-2166
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IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

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One Logan Square, Suite 2000
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Appellee Senior Health Insurance Company of Pennsylvania

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IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

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IN THE SUPREME COURT OF PENNSYLVANIA

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IN THE SUPREME COURT OF PENNSYLVANIA

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Appellee Senior Health Insurance Company of Pennsylvania

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Courtesy Copy

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Representing: Amicus Curiae State Insurance Regulators

IN THE SUPREME COURT OF PENNSYLVANIA

/s/ Stephen G. Harvey

(Signature of Person Serving)

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