

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE: Senior Health Insurance :  
Company of Pennsylvania :  
In Rehabilitation : No. 1 SHP 2020

BEFORE: HONORABLE MARY HANNAH LEAVITT, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE LEAVITT

FILED: September 13, 2021

Before the Court is a Joint Application for Approval of Settlement Agreement filed by Insurance Commissioner Jessica K. Altman, in her capacity as the Statutory Rehabilitator (Rehabilitator) of Senior Health Insurance Company of Pennsylvania (SHIP), and Intervenors ACSIA Long Term Care, Inc., Global Commission Funding LLC, LifeCare Health Insurance Plans, Inc., Senior Commission Funding LLC, Senior Health Care Insurance Services, Ltd., LLP, and United Insurance Group Agency, Inc. (collectively, Intervening Agents and Brokers). Also before the Court is Intervenor James Lapinski's<sup>1</sup> motion to strike the Joint Application.

By way of background, on January 29, 2020, this Court granted the Rehabilitator's application for an order placing SHIP in rehabilitation under Article V of The Insurance Department Act of 1921, Act of May 17, 1921, P.L. 789, *added* by the Act of December 14, 1977, P.L. 280, *as amended*, 40 P.S. §§221.1-221.63. The Rehabilitator's initial rehabilitation plan proposed to suspend the payment of

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<sup>1</sup> James Lapinski is a SHIP policyholder and former long-term care insurance broker who sold SHIP policies.

agent commissions “until policyholders have been made whole, that is, all their contractual claims have been paid in full and adequate provision made for reasonably anticipated future claims.” Application for Approval (April 22, 2020), Exhibit A at 83. The initial plan also suspended the accrual of commissions as of the plan’s effective date, if approved. The Intervening Agents and Brokers intervened to contest these aspects of the plan; to date, no other persons have sought leave to intervene to protect an interest in agent commissions.

On May 3, 2021, the Rehabilitator filed a Second Amended Plan of Rehabilitation as the operative plan for which she sought the Court’s approval. The Court conducted a hearing from May 17 to May 21, 2021. The Intervening Agents and Brokers offered evidence and presented argument on their objections to Section VI.N of the Second Amended Plan, which will suspend the payment and accrual of agent commissions until SHIP emerges from rehabilitation. No other party objected to Section VI.N of the Second Amended Plan. Following the hearing, the Rehabilitator and the Intervening Agents and Brokers negotiated the Settlement Agreement that is the subject of the instant Joint Application.

Under the terms of the Settlement Agreement, the Rehabilitator agrees to pay the Intervening Agents and Brokers \$350,000, which payment will be made within seven business days of the date on which the Court approves the Settlement Agreement (Effective Date). If SHIP remains in rehabilitation on the third anniversary of the Effective Date, then the SHIP estate (or any successor) shall resume accruing and remitting to the Intervening Agents and Brokers 50% of the commissions to which they would otherwise be entitled (Ongoing Commissions). Payment of Ongoing Commissions will continue as long as SHIP remains in rehabilitation, but no later than the seventh anniversary of the Effective Date. In

return, the Intervening Agents and Brokers agree to withdraw their objections to the Second Amended Plan.

If the Settlement Agreement is approved, the Rehabilitator will, prior to implementing the Second Amended Plan, file an amended plan with the following recitation added to Section VI.N: “Certain Agents & Brokers formally objected to this Section VI.N, but per settlement with the Rehabilitator, withdrew their objections as moot.” Joint Application at 8, ¶33. Approval of the Settlement Agreement limits the applicability of Section VI.N of the Plan to only the Intervening Agents and Brokers. It will not change the impact of Section VI.N on any other party or non-party claiming an interest in commissions.<sup>2</sup>

On August 24, 2021, this Court approved the Second Amended Plan, with the exception of Section VI.N, on which the Court deferred a decision for 30 days to allow for a hearing on the Joint Application. The Court conducted a hearing on September 8, 2021. Counsel for the Rehabilitator, counsel for the Intervening Agents and Brokers, and Mr. Lapinski, *pro se*, all presented their positions.

In considering the Joint Application, the Court applies the same principles that it applied in its review of the Second Amended Plan. Section 516(b) of Article V authorizes the Rehabilitator to “take such action as [she] deems necessary or expedient to correct the condition or conditions which constituted the grounds for the order of the court to rehabilitate the insurer. ... [She] shall have full power ... to deal with the property and business of the insurer.” 40 P.S. §221.16(b). The legislatively stated purpose of Article V is “the protection of the interests of

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<sup>2</sup> In the event SHIP is placed in liquidation, the Rehabilitator agrees to treat a claim submitted by the Intervening Agents and Brokers for any unpaid Ongoing Commissions that accrued prior to the liquidation order as a claim under Section 544(a) of Article V, 40 P.S. §221.44(a), subject to Court approval.

insureds, creditors, and the public generally....” and the “equitable apportionment of any unavoidable loss” through, *inter alia*, “improved methods for rehabilitating insurers....” *Grode v. Mutual Fire, Marine and Inland Insurance Co.*, 572 A.2d 798, 803 (Pa. Cmwlth. 1990) (*Mutual Fire I*) (single-judge opinion) (quoting Section 501 of Article V, 40 P.S. §221.1).

The Court concludes that the Settlement Agreement is in the best interests of SHIP’s policyholders and other creditors and will effectuate the goals of the Second Amended Plan. It will suspend the payment of most agent commissions while avoiding expensive and time-consuming litigation to resolve the legal claims of the Intervening Agents and Brokers. The consideration provided by each of the settling parties is fair and reasonable. Because the Intervening Agents and Brokers presented the only objections to Section VI.N of the Second Amended Plan, there are effectively no outstanding objections to Section VI.N.

In his motion to strike the Joint Application, Intervenor James Lapinski argues that the Joint Application was untimely because it was filed after the deadline for post-hearing submissions set by the Court in its May 24, 2021, scheduling order. Mr. Lapinski further asserts that, if the Court does not strike the entire Joint Application, it should strike Paragraphs II.A, B and F; III.C; and IV.A, C and D of the Settlement Agreement. He contends that the settling parties have violated his right to due process by depriving him of notice of filings related to the settlement. Finally, Mr. Lapinski asserts that he is owed \$292,000 in broker commissions, a claim that he has not asserted to date because of his belief that commissions were not paid to agents and brokers in the liquidation of long-term care insurer Penn Treaty Network America Insurance Company.

Mr. Lapinski's arguments lack merit. To begin, the Court entered the May 24, 2021, scheduling order at the conclusion of the hearing on the Second Amended Plan to set deadlines for post-hearing memoranda. That order is inapplicable to the Joint Application. Mr. Lapinski has not identified any legal or factual defect in the above-referenced paragraphs of the Settlement Agreement, or any basis for striking those provisions. He offers no legal support for his conclusory arguments that the settling parties "have violated due process, open and complete disclosures, etc. required by law, constitutions." Motion to Strike at 2. Mr. Lapinski's claimed violation of his right to due process is belied by the fact that he filed the instant motion to strike and participated in the hearing on September 8, 2021. As for his claimed lack of notice of relevant filings, every document filed by the settling parties has been publicly available on the SHIP Court Documents webpage<sup>3</sup> and upon request from the Court's Prothonotary's Office. Finally, any claim that Mr. Lapinski may have against the SHIP estate for commissions is irrelevant to the Joint Application.

For all of the foregoing reasons, the Court grants the Joint Application and enters the attached order.

s/Mary Hannah Leavitt  
MARY HANNAH LEAVITT, President Judge Emerita

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<sup>3</sup> See <https://www.shipltc.com/court-documents> (last visited September 10, 2021).



3. Prior to implementing the approved Second Amended Plan, the Rehabilitator shall file with the Court an amended rehabilitation plan which includes the modification identified in Paragraph 2.

4. Intervenor James Lapinski's Motion to Strike the Joint Application is DENIED.

s/Mary Hannah Leavitt  
MARY HANNAH LEAVITT, President Judge Emerita