



April 15, 2025

VIA CERTIFIED MAIL

Michael J. Broadbent

Direct Phone 215-665-4732

Direct Fax 215-701-2288

mbroadbent@cozen.com

The Honorable Judge Jackson J. Lofgren
District Court Judge
Burleigh County District Court
514 E Thayer Ave
Bismarck, ND 58501

Re: Senior Health Insurance Company of Pennsylvania

Dear Judge Lofgren:

Plaintiff has requested that this Court schedule a status conference in this matter. For the reasons explained in this letter, my clients, defendants Pennsylvania Insurance Commissioner Michael Humphreys, as Rehabilitator of Senior Health Insurance Company of Pennsylvania ("SHIP") ("Commissioner Humphreys" or the "Rehabilitator"), Patrick Cantilo, SHIP's Special Deputy Rehabilitator ("SDR" or "Mr. Cantilo"), and SHIP respectfully submit that they cannot further participate in the proceedings of this Court.

From the beginning of this matter, it has been apparent that SHIP's liabilities exceeded its assets. In other words, SHIP has not had enough money to fully pay the benefits projected to be owed under insurance policies it has sold over time.

The payment of benefits under SHIP's policies is the mechanism by which its assets are distributed to its policyholders. Those assets are exclusively in the *in rem* jurisdiction of the Pennsylvania Commonwealth Court, a proposition even Plaintiff does not dispute. Therefore, it is exclusively within the province of the Commonwealth Court to determine how those policies are to be adjusted so that SHIP's assets can be distributed fairly among all its policyholders *no matter in what state they were purchased*. No order of this Court can change that. In short, the Commonwealth Court has provided relief that does not discriminate among policyholders, even those in North Dakota.

The SHIP rehabilitation plan was designed to be in the best interest of policyholders. This plan was approved by the Pennsylvania Commonwealth Court after a week-long contested hearing at which insurance regulators from other states objected to the plan on precisely the same bases on which Plaintiff has sought and obtained injunctive relief from this Court. Plaintiff chose not to participate in that proceeding in which the same objections (as raised by other regulators) were overruled after the presentation of evidence and argument. This would have been the time for North Dakota to raise its objections to the plan, however they did not do so. The time has long since passed. The plan's approval was eventually affirmed by the Supreme Court of Pennsylvania, in the opinion provided previously to this Court and discussed by it in its March 10 Order.

The plan addressed three key goals among others: (1) it priced SHIP's long-term care insurance policies to be self-sustaining prospectively, (2) it eliminated the discriminatory rate structures that had different policyholders paying widely different premiums for comparable coverage, and (3) it has reduced the shortfall in SHIP's assets by more than half a billion dollars. *Because SHIP simply did not have enough assets, keeping the current policies at the current premiums was not an option for around two thirds of SHIP's policyholders.* Most policyholders selected options under this Plan that would not have been available to them had SHIP been placed in liquidation.

Plaintiff suggests implicitly that North Dakota policyholders should not have their policies modified, but rather that they must be subsidized by those of all other states. In effect, North Dakota policyholders would retain all benefits without having to pay for them in full, to the detriment of everyone else and thereby creating an unlawful and unfairly preferential situation. The simple fact is that SHIP cannot do what Plaintiff has led this Court to order without unlawfully treating every other policyholder in the country unfairly and ignoring or defying the court orders of its own receivership court in Pennsylvania.

Currently, insurance in the United States is regulated primarily by the states, not the federal government. The effectiveness of this state-based regulatory system depends in large part on cooperation among the states with respect to issues that affect more than one of them. The insolvency of an insurer like SHIP (which sold policies in nearly all the states) is such an issue. The approved rehabilitation plan was designed to treat the policyholders of all states equally and fairly. Defendants lament that the positions of Plaintiff in this proceeding are anathema to the harmony and respect among the states on which the state based regulatory system is based. It is undisputable that it is an objectively better outcome for North Dakota policyholders to have an opportunity to elect a policy modification—like nearly every other SHIP policyholder across the United States—than to have that decision made for them. Yet, Plaintiff knowingly attempts to use his incorrect reading of receivership law to create confusion to the detriment of policyholders.

It is evident that Plaintiff is unwilling to recognize the realities facing SHIP and that through this litigation he seeks a result that is simply not possible. It is also evident that the Rehabilitator and the SDR have exhausted efforts to fully inform Plaintiff and this Court of those realities to arrive at a reasonable solution for North Dakotans. Accordingly, defendants can no longer justify the continued expenditure of scarce SHIP assets in this litigation. The Rehabilitator and SDR will abide by the valid and subsisting orders of the Pennsylvania Commonwealth Court and will discontinue their participation in this proceeding. They take this step without any lack of respect for this Honorable Court but rather in recognition of the hard realities they face.

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Sincerely,

COZEN O'CONNOR

A handwritten signature in blue ink, appearing to read "MJ Broadbent", written in a cursive style.

By: Michael J. Broadbent

MJB

cc: Counsel of record (via email)