

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

ORDER

AND NOW, this ___ day of _____, 2020, upon consideration of the Application of James Lapinski to Intervene and Motion of James Lapinski for Class Action by Policyholders, and the Rehabilitator's response thereto, it is hereby ORDERED that the Application is **GRANTED IN PART AND DENIED**

IN PART. It is further **ORDERED** that:

1. Applicant is permitted to intervene in the proceedings, in accordance with the Court's June 12, 2020 Case Management Order; and
2. The Motion of James Lapinski for Class Action by Policyholders is denied with prejudice.

BY THE COURT:

MARY HANNAH LEAVITT
President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

**ANSWER OF REHABILITATOR TO APPLICATION OF JAMES
LAPINSKI TO INTERVENE AND MOTION FOR
CLASS ACTION BY POLICYHOLDERS**

Jessica K. Altman, Insurance Commissioner of the Commonwealth of Pennsylvania, in her capacity as the Statutory Rehabilitator (“the Rehabilitator”) of Senior Health Insurance Company of Pennsylvania (“SHIP”), hereby opposes, in part, the Application of James Lapinski (“Applicant”) to Intervene in Court’s Proceeding and Formal Comments Objecting to the Proposed Plan of Rehabilitation and Motion for Class Action by Policyholders (the “Application”). The Rehabilitator does not oppose Applicant’s request to intervene in this action for purposes of discovery as may be permitted by this Court and in accordance with this Court’s June 12, 2020 Case Management Order. The Rehabilitator does, however, oppose Applicant’s motion for a class action by policyholders. Pursuing a class action is inappropriate, and Applicant does not satisfy the procedural or substantive requirements of a class action. In response to the specific allegations in the Application, the Rehabilitator responds as follows:

1. Denied. The allegations of Paragraph 1 are conclusions of law to which no answer is required. To the extent a response is required, it is denied that the Rehabilitator committed malpractice. Further responding, it is denied that the notice provided to SHIP policyholders was deficient or unethical. The notice is a document that speaks for itself, and any characterizations inconsistent therewith are denied. Contrary to the allegations in this Paragraph, the Rehabilitator has acted ethically and in accordance with the law at all relevant times. By way of further response, the history of SHIP, including its Conesco roots are discussed in the Proposed Plan of Rehabilitation that is available to the public on the SHIP website.

2. Denied. The allegations of Paragraph 2 are conclusions of law to which no answer is required. To the extent a response is required, this Paragraph refers to documents which are writings that speak for themselves, and any characterizations inconsistent therewith are denied. By way of further response, substantial information about SHIP's finances is provided in the Proposed Plan of Rehabilitation that is available to the public on the SHIP website. SHIP has been in a declining financial condition for many years. Its reported assets, liabilities and surplus is reflected in the following table:

FINANCIAL CONDITION (IN DOLLARS)

YEAR	ASSETS	LIABILITIES	CAPITAL & SURPLUS/ (DEFICIT)
2009	3,251,994,962	3,058,545,856	193,449,106
2010	3,317,023,144	3,139,706,226	177,314,918
2011	3,161,093,979	3,046,696,672	114,397,307
2012	3,080,745,346	2,975,278,318	105,467,028
2013	2,985,938,782	2,887,736,889	98,201,892
2014	2,906,965,242	2,826,959,318	80,005,924
2015	2,879,794,716	2,824,037,145	55,757,570
2016	2,744,535,287	2,716,512,099	28,023,187
2017	2,688,468,510	2,675,819,343	12,649,166
2018	2,186,058,273	2,652,931,248	(466,814,972)
2019	1,907,181,137	2,823,279,366	(915,731,212)

As detailed in the Proposed Plan of Rehabilitation, it is estimated that in the absence of rehabilitation, by the time all of SHIP’s policies terminate about twenty to twenty-five years from now, it will have incurred liability for covered benefits costing between \$500 million and \$1 billion more than the money that will be available to pay for those benefits. The Rehabilitator is continuing to evaluate the

inclusion of supplemental data and information regarding SHIP's finances on SHIP's website.

3. Denied. The allegations of Paragraph 3 are conclusions of law to which no answer is required. To the extent a response is required, the allegations of Paragraph 3 lack any comprehensible and/or cohesive core allegation against the Rehabilitator, other than to seemingly take issue with SHIP paying its legal counsel. The Rehabilitator has retained counsel and appointed a Special Deputy Rehabilitator, in accordance with Paragraph 14 of the Court's January 29, 2020 Order of Rehabilitation and the powers and authority of a rehabilitator as set forth in Section 516 of the Insurance Department Act of 1921, 40 P.S. § 221.16. *See Foster v. Mut. Fire, Marine & Inland Ins. Co.*, 614 A.2d 1086, 1091 (Pa. 1992) (“[T]he Rehabilitator is granted the power to retain those persons necessary to assist in the rehabilitation process.”). The Insurance Department Act does not authorize class treatment or class actions in the Rehabilitation context. That is because under applicable law, the Rehabilitator and Special Deputy Rehabilitator are statutorily charged with protecting the interests of policyholders. *See* 40 P.S. § 221.1; *Pratter v. Penn Treaty Am. Corp.*, 11 A.3d 550, 557 (Pa. Commw. Ct. 2010) (the Rehabilitator is authorized to take action “to insure the protection of policyholders”). Thus, a class action is unauthorized, unnecessary, and would impede a successful Rehabilitation. For this same reason, the appointment of a

policyholders' committee, to the extent the Application can be read to request such relief, would be unnecessary at this time. *See Foster*, 614 A.2d at 1104 (rejecting claim that dissolution of policyholders' committee leaves policyholders unrepresented because "the Rehabilitator is statutorily charged with that duty"). By way of further answer, to the extent Applicant seeks to intervene in accordance with the Court's June 12, 2020 Case Management Order, the Rehabilitator does not oppose the Application to intervene, but does oppose the Application to the extent Applicant seeks to pursue a class action by policyholders. The Rehabilitator reserves the right to respond with more formal briefing regarding issues of any proposed class action, to the extent necessary or helpful for the Court.

4. Denied. The allegations of Paragraph 4 are conclusions of law to which no answer is required. To the extent a response is required, the allegations of Paragraph 4 lack any comprehensible and/or cohesive core allegation against the Rehabilitator, other than to seemingly take issue with SHIP paying its legal counsel. The Rehabilitator has retained counsel and appointed a Special Deputy Rehabilitator, in accordance with Paragraph 14 of the Court's January 29, 2020 Order of Rehabilitation and the powers and authority of a rehabilitator as set forth in Section 516 of the Insurance Department Act of 1921, 40 P.S. § 221.16. *See Foster v. Mut. Fire, Marine & Inland Ins. Co.*, 614 A.2d 1086, 1091 (Pa. 1992) ("[T]he Rehabilitator is granted the power to retain those persons necessary to

assist in the rehabilitation process.”). The Insurance Department Act does not authorize class treatment or class actions in the Rehabilitation context. That is because under applicable law, the Rehabilitator and Special Deputy Rehabilitator are statutorily charged with protecting the interests of policyholders. *See* 40 P.S. § 221.1; *Pratter v. Penn Treaty Am. Corp.*, 11 A.3d 550, 557 (Pa. Commw. Ct. 2010) (the Rehabilitator is authorized to take action “to insure the protection of policyholders”). Thus, a class action is unauthorized, unnecessary, and would impede a successful Rehabilitation. For this same reason, the appointment of a policyholders’ committee, to the extent the Application can be read to request such relief, would be unnecessary at this time. *See Foster*, 614 A.2d at 1104 (rejecting claim that dissolution of policyholders’ committee leaves policyholders unrepresented because “the Rehabilitator is statutorily charged with that duty”).

By way of further answer, to the extent Applicant seeks to intervene in accordance with the Court’s June 12, 2020 Case Management Order, the Rehabilitator does not oppose the Application to intervene, but does oppose the Application to the extent Applicant seeks to pursue a class action by policyholders. The Rehabilitator reserves the right to respond with more formal briefing regarding issues of any proposed class action, to the extent necessary or helpful for the Court.

5. Denied. This Paragraph references a writing that speaks for itself, and any characterization inconsistent therewith is denied. It is denied that the letter

cannot be understood. To the extent Applicant seeks to intervene in accordance with the Court's June 12, 2020 Case Management Order, the Rehabilitator does not oppose the Application to intervene, but does oppose the Application to the extent Applicant seeks to pursue a class action by policyholders. The Rehabilitator reserves the right to respond with more formal briefing regarding issues of any proposed class action, to the extent necessary or helpful for the Court.

6. Denied. The allegations of Paragraph 6 lack any comprehensible and/or cohesive core allegation against the Rehabilitator and are denied. It is not clear to what the Applicant objects in this Paragraph. To the extent a response is required, it is denied that Applicant's objections are meritorious. To the extent the allegations of Paragraph 6 seek to paraphrase or characterize the contents of a written document, the document speaks for itself. By way of further answer, the Proposed Plan of Rehabilitation provides for Policyholder Elections, including a Non-forfeiture Option through which the policyholder electing this option will receive a Reduced Paid-up (RPU) policy providing limited benefits but for which no future premiums will be charged. This Non-forfeiture Option includes more generous benefits than the typical industry non-forfeiture option or reduced paid-up policy because it will offer as much as a 30 month benefit period unless the current policy has a shorter benefit period. Moreover, policyholders who select this option will never have to pay additional premiums and this policy will never

lapse. Additional information regarding Policyholder Elections is available in the Proposed Plan of Rehabilitation. To the extent Applicant seeks to intervene in accordance with the Court's June 12, 2020 Case Management Order, the Rehabilitator does not oppose the Application, but does oppose the Application to the extent Applicant seeks to pursue a class action by policyholders. The Rehabilitator reserves the right to respond with more formal briefing regarding issues of any proposed class action, to the extent necessary or helpful for the Court.

7. Denied. The allegations of Paragraph 7 lack any comprehensible and/or cohesive core allegation against the Rehabilitator and are denied. The allegations that reference the number of Americans who have died from COVID-19 affecting SHIP's finances are speculative and no response is required. By way of further answer, SHIP and others within the long-term care insurance industry are monitoring the impact of COVID-19 on loss experience, but it is too early to determine what, if any, impact there may be. Further responding, to the extent Applicant seeks to intervene in accordance with the Court's June 12, 2020 Case Management Order, the Rehabilitator does not oppose the Application, but does oppose the Application to the extent Applicant seeks to pursue a class action by policyholders. The Rehabilitator reserves the right to respond with more formal briefing regarding issues of any proposed class action, to the extent necessary or helpful for the Court.

WHEREFORE, the Statutory Rehabilitator of Senior Health Insurance Company of Pennsylvania does not dispute that Applicant, James Lapinski, a SHIP policyholder, should be permitted to intervene in accordance with this Court's June 12, 2020 Case Management Order, but respectfully submits that Applicant's objections and motion for a class action by the policyholders should be rejected.

Respectfully submitted,

/s/ Dexter R. Hamilton

James R. Potts
Attorney I.D. No. 73704
Dexter R. Hamilton
Attorney I.D. No. 50225
Michael Broadbent
Attorney I.D. No. 309798
COZEN O'CONNOR
1650 Market Street, Suite 2800
Philadelphia, PA 19103

and

Leslie Miller Greenspan
Attorney I.D. No. 91639
Dorothy Dugue
Attorney No. 327557
TUCKER LAW GROUP
Ten Penn Center
1801 Market Street, Suite 2500
Philadelphia, PA 19103

Counsel for Jessica K. Altman, Insurance
Commissioner of the Commonwealth of
Pennsylvania, as Statutory Rehabilitator of
SENIOR HEALTH INSURANCE
COMPANY OF PENNSYLVANIA

Date: August 21, 2020

CERTIFICATE OF SERVICE

I, Michael J. Broadbent, hereby certify that on August 21, 2020 I served the foregoing Response on all parties listed on the Master Service List by electronic mail and that an electronic copy of the foregoing document will be posted on SHIP's website at <https://www.shipltc.com/court-documents>. I served the foregoing Answer on Applicant by the following means:

By U.S. First-Class Mail:

James F. Lapinski
P.O. Box 291395
Port Orange, FL 32129

Pro Se Intervenor

/s/ Michael J. Broadbent