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STATE OF SOUTH CAROLINA RICHLAND COUNTY	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Raymond G. Farmer, as Director of the South Carolina Department of Insurance, and the South Carolina Department of Insurance, Plaintiffs, vs. Jessica K. Altman, as Rehabilitator of Senior Health Insurance Company of Pennsylvania, Patrick H. Cantilo, as Special Deputy Rehabilitator of Senior Health Insurance Company of Pennsylvania, and Senior Health Insurance Company of Pennsylvania in Rehabilitation, Defendants.	Civil Action No. 2020-CP-40-_____ **SUMMONS**

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint for Declaratory and Injunctive Relief in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscriber at his office at 1201 Main Street, Suite 1000, Post Office Box 100105, Columbia, South Carolina, 29202-3105, within thirty (30) days after the service hereof exclusive of the day of such service, and if you fail to answer, appear, defend or otherwise move within the time aforesaid, the Plaintiffs will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded.

December 10, 2020

s/ Geoffrey R. Bonham
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PRELIMINARY ALLEGATIONS

I. PARTIES

1. Plaintiff Raymond G. Farmer is the Director of the South Carolina Department of Insurance (the "Director").

2. Plaintiff South Carolina Department of Insurance (the "Department") is an agency of the State of South Carolina created and charged by the South Carolina General Assembly to regulate the business of insurance in this State. *See generally* S.C. Code Ann. §§ 38-1-10 *et seq.* ("The Insurance Law").

3. Defendant Jessica K. Altman is the Commissioner of Insurance for the Commonwealth of Pennsylvania and has been appointed Rehabilitator of Senior Health Insurance Company of Pennsylvania (the "Rehabilitator") by order of the Commonwealth Court of Pennsylvania ("Commonwealth Court") dated January 29, 2020 (the "Rehabilitation Order").

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4. Defendant Patrick H. Cantilo was appointed by the Rehabilitator as Special Deputy Rehabilitator (the "SDR") of Senior Health Insurance Company of Pennsylvania. He generally has the power to act on behalf of the Rehabilitator, subject to the control and direction of the Rehabilitator.

5. Defendant Senior Health Insurance Company of Pennsylvania ("SHIP") is a stock limited life and health insurance company that administers a closed block of long-term care ("LTC") insurance policies. It is domiciled in the Commonwealth of Pennsylvania with its principal place of business in Carmel, Indiana.

II. FACTS

6. SHIP commenced business on July 5, 1887 as the Home Beneficial Society and was eventually acquired by CNO Financial Group, Inc., f/k/a Conseco, Inc. ("CNO"), a financial services holding company based in Carmel, Indiana.

7. SHIP's book of business consists almost entirely of defined benefit accident and health insurance policies covering long-term care services issued by insurance companies that had been acquired by, or merged into, CNO between 1997 and 2000 and marketed and sold nearly nationwide since as far back as 1975.

8. SHIP has assumed a number of LTC policies through co-insurance or reinsurance but has not sold new policies since 2003. Only a fraction of SHIP's original LTC business remains in force.

9. The average SHIP LTC policyholder age is 86 and the average claimant is 89 years old. SHIP's policies are approximately thirteen percent (13%) home health care coverage, eighteen percent (18%) facility care coverage (nursing home and/or assisted living facility), and sixty-nine percent (69%) comprehensive coverage.

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10. Seeking ways to reduce the strain of supporting SHIP's persistent underwriting losses, CNO transferred ownership of SHIP in the fall of 2008 to the Senior Healthcare Trust, which was then merged into an independent oversight trust, the Senior Healthcare Oversight Trust ("SHOT"). The trustees of SHOT serve as SHIP's directors and are primarily former insurance regulatory officials.

11. At the time of the 2008 transfer, CNO contributed approximately $164 million to SHIP and an additional $11 million to SHOT.

12. From 2008 through 2017, CNO and its subsidiaries made approximately $915 million in capital contributions to SHIP, including approximately $220 million in capital contributions from January 1, 2006 through June 30, 2007.

13. SHIP has remained in runoff and has continued operations in Carmel, Indiana. Its corporate office has remained in Carmel, Indiana and its administrative office is located in St. Paul, Minnesota.

14. SHIP has continued to decline financially after its transfer to SHOT, experiencing increases in claims totaling over $200 million in the five-year period from 2009 through 2013 and a steady increase in its loss ratio, i.e., the ratio of incurred claims to earned premiums. *See* 2009-2013 SHIP Statutory Financial Statements.

15. By the time SHIP's management acknowledged that claims costs were going to substantially exceed available assets and revenues, too many severely underpriced policies had already been sold and gone into claims status, resulting in a large underpricing gap. SHIP will not have enough money to pay for all the benefits expected to be owed to its remaining policyholders.

16. The causes of SHIP's ongoing financial difficulties include adverse loss development, continued low interest rates, lower than expected policy lapse rates and other factors not uncommon

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in a legacy LTC book of business, as well as volatility in the financial markets and, significantly, the conduct of SHIP's management and others.

17. Fuzion Analytics, Inc. ("Fuzion"), is a Delaware corporation formed in 2012 as a wholly-owned subsidiary of SHOT, ostensibly to provide administrative and management services to SHIP and other long-term care insurance companies. Fuzion is also located in Carmel, Indiana.

18. Beginning in 2012, SHIP entered into several agreements with Fuzion under which, over time, it paid Fuzion millions of dollars.

19. In 2014, SHIP conveyed essentially all of its infrastructure to Fuzion in exchange for agreed-upon cash consideration, and Fuzion began providing SHIP all of the services necessary to administer most of SHIP's affairs. Pursuant to a Management Agreement and Asset Purchase Agreement, the employees and infrastructure assets of SHIP were transferred to Fuzion, which became responsible for the administration of its LTC policies and providing additional services pursuant to a Master Services Agreement. Since then, SHIP has had no facilities or employees, relying instead on Fuzion for its operations.

20. SHIP was Fuzion's largest client and its primary source of revenue from 2014 through 2017.

21. On August 20, 2019, SHOT transferred all of its interest in Fuzion to SHIP as a capital contribution, so that Fuzion is now a wholly owned subsidiary of SHIP. In addition to the services provided to SHIP, Fuzion continues to provide services to customers in the long-term care insurance industry.

22. In late 2013, Fuzion introduced SHIP's management to Beechwood Re., Ltd. SHIP had become aware of other insurers' reinsurance arrangements through Fuzion. Following that introduction, representatives of SHIP and Beechwood Re met to discuss the latter's potential role as

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an investment manager for SHIP.

23. Although Beechwood Re would not agree to provide reinsurance for SHIP, it did offer SHIP access to what was described as high-quality, high-yield investments.

24. By and through Fuzion, SHIP entered into three investment management agreements ("IMAs") with certain entities associated with Beechwood Re.

25. In December 2016, Beechwood Re and its affiliates were offered for sale as a result of its relationship with and investments in the now-defunct hedge fund Platinum Partners, which became the subject of investigations by the Securities and Exchange Commission ("SEC") as well as civil and criminal legal proceedings beginning in mid-to-late 2016.

26. In approximately September 2016 SHIP's Chief Executive Officer ("CEO") indicated that SHIP, which had invested in funds and companies related to Platinum Partners through Beechwood Re and/or its affiliates, intended to fully divest itself of all Platinum Partners-related investments by the end of that year. Those investments totaled at least $100 million as of year-end 2016.

27. In its annual financial statement for 2017, however, SHIP disclosed plans to maximize the value of the associated portfolios through an exit strategy that might "take multiple years" to execute fully, explaining that due to the long-term nature of its liabilities and the liquidity in core assets, a "fire-sale" of assets was not necessary or appropriate.

28. According to its annual financial statement for 2017, SHIP had proceeds from the sale of investments of $1.46 billion, compared to $484 million in 2018.

29. SHIP also recorded other-than-temporary impairments ("OTTI") of at least $43 million in 2016 and 2017 related to certain investments. OTTI is typically recognized when the value of a security falls below its book value and it is not expected to recover during the holding

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period. In 2018, SHIP recorded $150.1 million of OTTI, of which $147.5 million were related to alternative investments.

30. In regulatory filings submitted in April 2018, SHIP indicated that it was terminating its reinsurance agreement with Roebling Re Ltd. of Barbados under which it ceded a substantial portion of its major blocks of long-term care business.

31. Although Roebling Re had intended to generate capital through long-dated, high-quality investment strategies and the corresponding issuance of investment-grade bonds, SHIP explained, Roebling Re was not able to participate in the investment strategies as anticipated and thus was not able to meet its obligation under the reinsurance agreement in 2017.

32. As a result of a reserve credit deficiency arising out of from Roebling Re's inability to meet its obligations, SHIP recorded a negative change in its liability for reinsurance in unauthorized and certified companies, which came as an addition to its net loss of $13.9 million for the year.

33. SHIP ended 2017 with $12.6 million in surplus, down from $28 million in 2016, marking a decline of $15.4 million year over year. Its capital base included a $50 million surplus note issued to a Beechwood Re entity in 2015.

34. On July 24, 2018, SHIP filed suit in the United States District Court for the Southern District of New York against Beechwood Re and its affiliates as well as a number of individual defendants. *Senior Health Insurance Company of Pennsylvania v. Beechwood Re Ltd., B Asset Manager, L.P., Beechwood Bermuda International, Ltd., Beechwood Reinvestments, LLC a/k/a Beechwood Re Investors, LLC, Illumin Capital Management, LP, Moshe M. Feuer a/k/a Mark Feuer, Scott A. Taylor, David I. Levy, Dhruv Narain, and John Does 1-10*, 1:18-cv-06658-JSR (S.D.N.Y., July 24, 2018).

35. In that civil action, SHIP claimed it "ha[d] sustained hundreds of millions of dollars

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in economic injury from Beechwood's Ponzi-like scheme." SHIP sought "to recover the losses it has sustained as a result of Beechwood's misconduct, which includes breaches of contract and fiduciary duty, bad faith, gross negligence, fraudulent inducement and misrepresentations, and participation in a fraudulent scheme and racketeering activity that has resulted in multiple criminal indictments."

36. A few months later, however, on December 19, 2018, a court-appointed receiver for certain funds referred to as the Platinum Partners Credit Opportunities Funds also filed suit in the United States District Court for the Southern District of New York, against a group of defendants that included SHIP. *Melanie L. Cyganowski, as Equity Receiver for Platinum Partners Credit Opportunities Master Fund LP, et al. v. Beechwood Re Ltd., et al.*, Case 1:18-cv-12018 (S.D.N.Y., Dec. 19, 2018). In her lawsuit, the receiver alleged that SHIP and others were not victims, but rather "substantially assisted," and "actively participated" in fraud.

37. On July 31, 2019, SHIP also filed a lawsuit against two valuation companies for "aiding and abetting the massive fraud perpetrated by Beechwood and its Platinum affiliates against SHIP." *Senior Health Insurance Company of Pennsylvania v. Lincoln International LLC, Lincoln Partners Advisors LLC*, 1:19-cv-07137-JSR (S.D.N.Y., July 1, 2019); however, on April 13, 2020, the district court entered a judgment providing that "summary judgment is granted in favor of defendants on the aiding and abetting claims and the Amended Complaint is dismissed in its entirety."

38. All three cases in the district court fall under the umbrella of or are at least related to an ongoing proceeding styled *In re Platinum-Beechwood Litigation*, 1:18-cv-06658-JSR, presided over by the Honorable Jed S. Rakoff, United States District Judge for the Southern District of New York.

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39. As of December 31, 2013, SHIP had a total capital and surplus of $98,201,892 and aggregate reserves for accident and health contracts of over $2 billion ($2,753,777,140).

40. SHIP's risk-based capital, or "RBC," has decreased over the past five (5) years by over a thousand points, as detailed in the below table:

Risk Based Capital RBC Ratio, 2014-2018:

Change pts	2018	2017	2016	2015	2014
1,125.6 pts	-909.0%	141.7%	164.0%	160.7%	216.6%

41. RBC is used to determine the minimum capital insurers are required to hold to avoid regulatory intervention by their state of domicile. Insurance regulators commonly use RBC standards to determine the appropriate amount of regulatory intervention for their domestic insurers.

42. The Pennsylvania insurance statutes, as in other states, prescribe four RBC levels with corresponding degrees of regulatory action, progressively increasing in the amount of regulatory control exercised: company action, regulatory action, authorized control and mandatory control. 40 Pa. Stat. Ann. § 221.1-A *et seq.*

43. Company action level is triggered if the RBC ratio is between 200% and 150%, which means that an insurer is required to submit a written plan to improve its RBC ratio. *See* 40 Pa. Stat. Ann §§ 221.1-A & -6A (West).

44. On information and belief, SHIP never filed an RBC Plan as required by 40 Pa. Stat. Ann § 221.6-A after SHIP's RBC reached company action level in 2015, where it remained through 2017. *See* 40 Pa. Stat. Ann. § 221.6-A (West) ("In the event of a company action level event, the insurer shall prepare and submit to the commissioner an RBC plan.")

45. During this period of several years, SHIP should have been subject to enhanced regulatory oversight by Pennsylvania once its total adjusted capital fell below 200% of its authorized control level risk-based capital, which means that, at the very least, SHIP should have been required

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to submit a written plan to improve its RBC ratio. *Id.*

46. When SHIP's RBC ratio plummeted to -909.0% as of December 31, 2018, it triggered a mandatory control level event, which should have resulted in SHIP's immediate placement into receivership by Pennsylvania. *See* 40 Pa. Stat. Ann. §§ 221.1-A & -9-A (West).

47. As of December 31, 2013, SHIP had a total capital and surplus of $98,201,892 and aggregate reserves for accident and health contracts of over $2 billion ($2,753,777,140). In the ensuing years, its capital and surplus would drop dramatically from year to year, as shown in the below table:

Capital & Surplus in Thousands ($), 2014-2018:

Change $	2018	2017	2016	2015	2014
-546,879	-466,873	12,649	28,023	55,758	80,006

48. Even before 2014, SHIP's capital and surplus decreased significantly from year to year, as reflected in the below table:

Capital & Surplus in Thousands ($), 2009-2013:

2013	2012	2011	2010	2009
98,202	105,467	114,397	177,315	193,449

49. As indicated above, in its audited financial statement for 2018, SHIP reported year-end 2018 capital and surplus of negative $466.9 million.

50. In that same filing, SHIP's independent auditor issued a qualified opinion regarding the company's accounting for certain investments in its statutory financial statements and cautioned that the existence of the surplus deficit raises "substantial doubt" about SHIP's ability to continue as a going concern.

51. SHIP has been insolvent since at least December 31, 2018, when it reported a deficit of at least ($466,872,971.00) as of that date.

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52. An insurer's insolvency is grounds for placing it in receivership under Pennsylvania law. 40 Pa. Stat. Ann. §§ 221.14 & 221.19 (West).

53. In its first quarterly financial statement for 2019, SHIP reported a surplus of negative $481.3 million as of March 31, 2019, incurring a $13.1 million net loss in that quarter alone.

54. In the first half of 2019, SHIP's financial condition worsened substantially, with its deficit increasing at a rate of approximately $15,000,000 per quarter to approximately ($496,240,035) as of June 30, 2019.

55. The Rehabilitator has developed her rehabilitation strategy based on an assumed deficit of ($813,000,000).

56. SHIP's unaudited 2019 annual financial statement shows a negative capital and surplus as of December 31, 2019 of ($916,098,229) and the present deficit is likely much larger.

57. By the time SHIP stopped selling new business in 2003, it had 231,000 policies in force; however, by 2008, this number was down to 152,000.

58. Out of 647,000 SHIP LTC policies written or assumed over the past forty-five (45) years, less than 50,000 remain in force, with less than 30,000 policyholders still paying premium. The rest have either terminated or been converted to non-forfeiture option (NFO) policies, offering very limited benefits but requiring no further premium payments, or are on premium waiver for various reasons.

59. Because over 600,000 of the underpriced policies have already lapsed or otherwise stopped generating premium, the lost revenue on these policies due to underpricing can never be recovered and premium can never be increased on approximately ninety-five percent (95%) of the policies SHIP issued, leaving those who hold the policies in force within that remaining five percent (5%) who are still paying premium, or those on waiver required to pay a premium differential, to

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make up for that lost revenue.

60. SHIP is licensed in approximately forty-six (46) states, including South Carolina, as well as the District of Columbia and the United States Virgin Islands; however, SHIP's licenses in some of these jurisdictions have been restricted or suspended.

61. At present there are approximately 309 SHIP policyholders residing in South Carolina subject to the proposed rehabilitation plan.

62. Approximately a third of the remaining policies in the United States are in just three states: (1) Texas, with approximately 6,285 policies, or 12 percent (12%) of the total; (2), Florida with approximately 5,649 policies, or eleven percent (11%); and (3) SHIP's state of domicile, Pennsylvania, with approximately 5,135 policies, or ten percent (10%), for a total of thirty-three percent (33%).

63. The states that rank fourth and fifth in total policies, California and Illinois, have approximately 4,228 policies, or eight percent, (8%) and approximately 2,423, or five percent (5%), respectively, meaning that nearly half -- forty-six (46%) -- of all remaining policies are in just five (5) states.

64. The Rehabilitation Order provides that the Rehabilitator shall file a preliminary plan of rehabilitation by April 22, 2020, which shall contain a timeline for the preparation of a final rehabilitation plan with the Commonwealth Court.

65. A preliminary rehabilitation plan was filed on or about April 22, 2020 and a copy provided to the directors and commissioners of insurance in the affected states.

66. The plan is comprised of three phases, and contemplates imposing dramatically large premium rate increases (and/or benefit reductions) on all policies in force nationwide, without first submitting the rate increases and benefit changes to each affected state's regulator for approval and

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without regard for any of those states' laws mandating the filing of proposed insurance rates and forms with individual state insurance regulators for their review and approval.

67. Assuming the initial phase is implemented as proposed, it will feature a new rate that, assuming it had been charged from inception, would have produced the greater of the initial target loss ratio or the minimum loss ratio applicable to the policy form, i.e., the "if knew" premium.

68. SHIP will offer policyholders four (4) basic options which would be imposed nationwide and without individual state filing and insurance regulator approval: (1) keep their current premium and have policy benefits reduced if their current premium is less than the "if knew" premium; (2) have their current policy endorsed to provide benefits substantially similar to a newly-designed "Basic Policy" fashioned by the Rehabilitator; (3) elect a non-forfeiture option ("NFO") policy under which the Maximum Benefit Period ("MBP") will be the lesser of 2.5 years and the policy's current MBP; or (4) keep their current benefits and pay the "if knew" premium.

69. The first phase is not subject to a specific timeline; however, it is expected to take at least six months to implement, with evaluation of its effectiveness likely to take place no sooner than after one year.

70. The Rehabilitator anticipates that although most, if not all, policyholders will be asked to pay higher rates or reduce policy benefits in the first phase, some policyholders may not be subject to further rate increases or modifications in the second phase.

71. In the second phase, following evaluation of the impact of phase one, the Rehabilitator proposes to raise rates on certain policyholders to the rate at which the present value of expected premiums plus assets allocated to the policy (on an accumulated premium basis) equals or exceeds the present value of future benefit and expenses, i.e., the "sustaining premium."

72. Policyholders will be presented with the following four options: (1) keep the premium

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rate resulting from phase one and reduce benefits to eliminate the policy shortfall; (2) have their current policy endorsed to provide benefits substantially similar to a newly designed "Basic Policy" developed by the Rehabilitator; (3) elect a non-forfeiture ("NFO") option; or (4) maintain the current policy benefits but will be required to pay the "self-sustaining" premium.

73. In neither phase will the new rates and benefits offered to policyholders be submitted to the individual affected states for review and approval in accordance with the laws of each such state. At no time does the rehabilitation plan provide for submission of the new rates and benefits to South Carolina for review and approval in accordance with this State's laws.

74. The final rehabilitation plan will likely contemplate that policyholders in any state that opposes unilateral rate increases will receive fewer options in the first and/or second phase.

75. The third phase will be developed in the future and is intended to conclude the run-off of SHIP's s business in force, as modified by the plan. The rehabilitation plan is not designed to create a surplus for SHIP; however, in the "unlikely event" that the plan does produce a surplus, that surplus will be distributed to policyholders, agents and other creditors.

76. Special rules will apply to policyholders on claim or on premium waiver, but they will also be expected to pay more in premium or to reduce their policy benefits; and, the Rehabilitator anticipates that all policyholders will have at least one option that will preserve their benefits at or above applicable guaranty association limits, mostly by adjusting the length of the applicable benefit period.

77. On or about October 21, 2020, the Rehabilitator filed an amended rehabilitation plan with the Commonwealth Court. The amended plan includes a phased in approach similar to the approach described in the original plan. It projects a $1.2 billion funding gap. In addition, the Amended Plan includes (1) a so-called opt-out process for rate determinations; (2) a new policy

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restructuring section; and (3) a liquidation in excess of claims section. The policyholders of states that opt out and do not impose or modify the rates set by the Rehabilitator will have their benefits reduced. If the amended plan is approved, the proposed benefit reductions will not be submitted to the states for review in accordance with state laws. Moreover, the benefit reduction strategy described in the amended plan and will impact policyholder rights when the plan fails and SHIP is eventually placed into liquidation.

78. The Rehabilitator intends to impose rates for use nationwide through approval of the rehabilitation plan by the Commonwealth Court in Pennsylvania, bypassing all other individual state regulator approvals, including in South Carolina, even though LTC insurers are required to comply with all rate and form approval statutes and regulations in each of the states in which they do business.

79. Similarly, the Rehabilitator also proposes to unilaterally reduce benefits nationwide without individual state regulator approval, again through the Commonwealth Court.

80. The Rehabilitator justifies the unilateral imposition of rates and benefit changes nationally in part because she believes obtaining state approval "would insert a lengthy delay in the time-line that would be costly, if not fatal, to the [rehabilitation p]lan," but offers no reasonable explanation for previous inaction or delay in the face of SHIP's long history of financial difficulties.

81. The Rehabilitator maintains that policyholders whose policies are in states that have approved more rate increases in the past will face lower premium increases (or benefit reductions) in the plan than those whose state has not done so; and, at the end of the premium adjustment, policyholders in one state will pay the same amount as in another.

82. Over the past decade, SHIP has submitted proposed rate increases to the South Carolina Department of Insurance in 2011, 2012, 2013, 2017, and 2018, all of which were approved

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except for 2018, which the Department disapproved in 2019 after it was clear that SHIP was hopelessly insolvent.

83. These prior rate increase approvals notwithstanding, some South Carolina policyholders may face rate increases of well over four hundred percent (400%) in Phase I and additional increases in Phase II.

84. The Rehabilitator acknowledges that the rehabilitation plan places additional burdens on policyholders and is intended to both increase revenue and reduce benefits.

85. The anticipated rate increases, which in some cases will far exceed four hundred fifty percent (450%), alone or in combination with benefit reductions, can reasonably be expected to force unnecessary policy lapses. The revenue from these increases will not fill the $1.2 billion deficit projected by the Rehabilitator.

GROUNDS FOR DECLARATORY AND INJUNCTIVE RELIEF

86. Pursuant to S.C. Code Ann. § 38-1-20(25) (2015), "'Insurance'" means a contract where one undertakes to indemnify another or pay a specified amount upon determinable contingencies. The term 'insurance' includes annuities."

87. Pursuant to S.C. Code Ann. § 38-1-20(25) (2015), "'Policy' means a contract of insurance."

88. Pursuant to S.C. Code Ann. § 38-25-110 (2015), transacting the business of insurance in South Carolina includes (1) making of or proposing to make, as an insurer, an insurance contract; (2) taking or receiving any application for insurance; (3) receiving or collecting premium or other consideration for any insurance; (4) issuing or delivering contracts of insurance to residents of this State or to persons authorized to do business in this State; and (5) "the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or . . . a

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fixing of rates . . . , or in any other manner representing or assisting . . . in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this State."

89. By, *inter alia*, disseminating information as to coverage or rates, forwarding of applications, or delivering of policies or contracts, fixing proposed rates and in other ways transacting insurance with respect to subjects of insurance resident, located, or to be performed in this South Carolina, SHIP is conducting the business of insurance in this State.

90. With the passage of the McCarran–Ferguson Act, 15 U.S.C. §§ 1011-1015, in 1945, "Congress . . . declare[d] that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States."

91. The National Association of Insurance Commissioners (NAIC), is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators of the fifty (50) states, the District of Columbia, and five (5) U.S. territories. The members of the NAIC, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the United States.

92. "The primary state insurance regulatory functions remain as they have been since the enactment of [the] McCarran-Ferguson [Act]. This allows . . . states to perform solvency oversight of the U.S. insurance industry and to regulate insurer behavior in the marketplace." *State Insurance Regulation*, National Association of Insurance Commissioners (NAIC), Center for Insurance Policy and Research (CIPR) (2011), https://www.naic.org/documents/topics_white_paper_hist_ins_reg.pdf.

93. "State legislatures are the public policymakers that establish . . . broad policy for the regulation of insurance by enacting legislation providing the regulatory framework under which

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insurance regulators operate. They establish laws which grant regulatory authority to regulators and oversee state insurance departments and approve regulatory budgets." *Id.*

94. "State insurance regulatory systems are accessible and accountable to the public and sensitive to local social and economic conditions. State regulation has proven that it effectively protects consumers and ensures that promises made by insurers are kept. Insurance regulation is structured around several key functions, including insurer licensing, producer licensing, product regulation, market conduct, financial regulation and consumer services." *Id.*

95. "State regulators protect consumers by ensuring that insurance policy provisions comply with state law, are reasonable and fair, and do not contain major gaps in coverage that might be misunderstood by consumers and leave them unprotected. The nature of the regulatory reviews of rates, rating rules and policy forms varies somewhat among the states depending on their laws and regulations." *Id.*

96. In 1969, the NAIC adopted Wisconsin's Rehabilitation and Liquidation Act -- Wis. Stat. Ann. Ch. 645 (1967) -- as the NAIC model law (the "Wisconsin Model"). *See* Proc. of the Nat'l Assn of Ins. Comm'rs, 1969 vol. 1 at 168, 241 and 271. The Wisconsin statute and comments were adopted in full by the NAIC in 1968, thereby providing great insight into the rationale for provisions of the Model. *Id. See also* Brief of Amicus Curiae National Association of Insurance Commissioners in Support of Appellant at 6, *In Re: Penn Treaty Network America Insurance Company in Rehabilitation*, Docket No. 94 MAP (Pa. 2012)

97. The Pennsylvania Receivership Laws (40 Pa. Stat. Ann §§ 221.1 *et seq.*) were based on the Wisconsin Model. *See Koken v. Reliance Ins. Co.,* 893 A.2d 70, 84 (Pa. 2006). Indeed, the Wisconsin model was the "blueprint for the Pennsylvania statute." *Id. See also* Brief of Amicus Curiae NAIC at 6.

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98. The NAIC's model laws for receiverships have evolved over time into a comprehensive statutory scheme to govern the rehabilitation or liquidation of an insolvent insurer, and uniformity in the interpretation of the various state receivership laws and consistency in the application of these laws are important NAIC concerns. Brief of Amicus Curiae NAIC at 6-7.

99. "'Following a relatively uncommon though not entirely unprecedented procedure, the Wisconsin legislature enacted S. 303 of 1967 as chapter 89, Laws of 1967, including in the bill and in the session laws not only the statutory language but also the comments of the Insurance Laws Revision Committee.' *See* Wisconsin Model, Introductory Comment to Wis. Stat. Ann. Ch. 645 (1967)." Brief of Amicus Curiae NAIC at 6 n.5.

100. The comments describe the Wisconsin Model as "mak[ing] a more realistic and careful designation of the status of the rehabilitator than does the Uniform Insurers Liquidation Act [U.L.A.]. That Act contemplates different categories of receivers but does not adequately distinguish among them. For example, it transfers title to all receivers indiscriminately. However, *in a rehabilitation proceeding, the rehabilitator is, in effect, simply the new management of the company* and title remains and should remain in the company. From s. 645.33(2) *he gets all the powers of management*. If the Uniform Act were followed at this point, the first sentence of sub. (1) would be followed by the sentences that now appear as the 2nd and 3rd sentences in s. 645.42(1), applying to liquidators. *But this chapter distinguishes between the 2 main classes of receivers in accordance with their disparate functions*." Rehabilitation orders, Wis. Stat. Ann. § 645.32, *Comments* (italics supplied.)

101. The Wisconsin Model recognizes that "[w]hat is needed for rehabilitation of an insurance company is *new management* with the capacity to see what is wrong and the power to correct it. . . *Conceptually [the rehabilitator] should be treated as new management with especially*

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broad powers, including . . . formal legal reorganizational devices that have heretofore been the focus of rehabilitation but that should normally be subordinated in the future to the larger *management task.* Ch. 645, Refs & Annos, Wis. Stat. Ann., Refs & Annos. (italics supplied.); *See also* Wis. Stat. Ann. Ch. 645, Subch. II, Refs & Annos.

102. The South Carolina General Assembly also adopted the "Wisconsin Model," with Act No. 384 of 1982. *See generally* Insurers Rehabilitation and Liquidation Act, S.C. Code Ann. §§ 38-27-10 *et seq.*

103. Although "liquidation" contemplates the end of corporate existence, "rehabilitation" involves the continuance of corporate life and activities and is an effort to restore and reinstate the corporation to its former condition of successful operation and solvency. *Smalls v. Weed*, 293 S.C. 364, 360 S.E.2d 531 (Ct. App. 1987).

104. The Insurers Rehabilitation and Liquidation Act "provides for one procedure in actions involving a rehabilitator, and for a different procedure against a liquidator." *Id.*

105. Another state's rehabilitation proceedings do not grant that state jurisdiction over "the whole field." *See id.*

106. Although the Pennsylvania Commonwealth Court exercises in rem jurisdiction in the rehabilitation proceedings, the res over which that jurisdiction is exercised is the corporation itself, the fictitious entity, not all of the corporation's property for all purposes and certainly not the rights of all persons wherever situated.

107. The Commonwealth Court may not, simply by reason of the in rem nature of the Pennsylvania rehabilitation proceedings, adjudicate the rights of South Carolina policyholders and claimants who are neither parties in the Pennsylvania proceedings nor subject to the jurisdiction of the Commonwealth Court.

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108. South Carolina need not grant full faith and credit to a judgment rendered in another state unless that state had jurisdiction to render the judgment: "Before a court is bound by the judgment rendered in another State, it may inquire into the jurisdictional basis of the foreign court's decree" and "[i]f that court did not have jurisdiction over the subject matter or the relevant parties, full faith and credit need not be given." *Underwriters Nat'l Assurance Co. v. N.C. Life & Accident & Health Ins. Guar. Ass'n.*, 455 U.S. 691, 705 (1982).

109. The Commonwealth Court has no jurisdiction to grant the Rehabilitator any power or authority except in accordance with the Pennsylvania iteration of the Wisconsin Model, 40 Pa. Stat. Ann. §§ 221.1 *et seq.*

110. The constitutional command of full faith and credit does not compel South Carolina to defer to a Pennsylvania court's exercise of jurisdiction where the issue was neither fully and fairly litigated nor involved the same parties as the Pennsylvania litigation.

111. Regardless, the "full faith and credit clause does not require one state to substitute for its own statute, applicable to persons and events within it, the conflicting statute of another state." *Pacific Employers Ins. Co. v. Indus. Accident Comm'n*, 306 U.S. 493, 502 (1939).

112. Although the purpose of the full faith and credit clause is "to preserve rights acquired or confirmed under the public acts and judicial proceedings of one state by requiring recognition of their validity in other states, the very nature of the federal union of states, to which are reserved some of the attributes of sovereignty, precludes resort to the full faith and credit clause as the means for compelling a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate." *Pacific Employers*, 306 U.S. at 501; *see also Alaska Packers Ass'n v. Indus. Accident Comm'n.*, 294 U.S. 532, 547 (1935).

113. "Every legislature, however broad may be its enactments, is supposed to confine them

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to cases or persons within the reach of its sovereignty. . . . It cannot be presumed, that the . . . legislature mean[s] to exceed its legitimate authority." *Farnum v. Blackstone Canal Corp.*, 8 F. Cas. 1059, 1065 (C.C.D.R.I. 1830).

114. "It is a familiar elementary principle that the laws of a state have no extraterritorial effect. And it is not necessary for a state statute to contain words expressly confining its operation within the state. That it is so confined is generally understood." *Grover Irrigation & Land Co. v. Lovella Ditch, Reservoir & Irrigation Co.*, 21 Wyo. 204, 131 P. 43 (1913).

115. The South Carolina General Assembly has properly delegated regulatory authority under the the McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015, to the Department prescribing and approving detailed and extensive statutes and regulations governing LTC policies and rates, including provisions for the approval of policies and rates by the Department. S.C. Code Ann. §§ 38-72-10 *et seq.*; S.C. Code Regs. § 69-44.

116. The public policy of this State is that because the authority to determine what insurance premium rates are just and reasonable is vested in the Department, courts should not adjudicate what a reasonable rate might be in a collateral proceeding. *Cf. Temporary Services, Inc. v. American Intern. Group, Inc.*, 388 S.C. 348, 351, 697 S.E.2d 527, 529 (2010); § 2:34. Rates—Judicial review, 1 Couch on Ins. § 2:34 ("Ratemaking is generally not a judicial function. Indeed, many jurisdictions have adopted the filed rate doctrine which expressly prohibits courts from imposing rates different than those approved by the state insurance department.")

117. Protecting the authority of the Department to regulate insurance rates from an action in the court of another jurisdiction furthers the important policy objectives of (1) preserving the agency's authority to determine the reasonableness of rates; (2) recognizing that agencies have expertise with regard to the industry they regulate, whereas courts do not; (3) allowing an action in

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court would undermine the regulatory scheme because the statute allows for enforcement by the appropriate state officers; and (4) recognizing such an action would result in disparate treatment of long term care policyholders in this State between (a) those who enjoy the full protection of Department review under the standards of South Carolina law governing insurance rates, namely, that the rate is reasonable and not excessive, inadequate, or unfairly discriminatory, and (b) those whose rates are determined in a court of a foreign jurisdiction in a scheme to run off remaining policies by forcing premium increases, reduced benefits and/or policy lapses.

118. "Due to its complexity as well as to the determination of the legislature, rate-making is left to the discretion of the insurance commissioner who is a specialist in the field and upon whose expertise [the courts] must rely." *Ins. Serv. Office v. Whaland*, 378 A.2d 743, 746 (N.H. 1977) (citing *Travelers Indem. Co. v. Williams*, 190 So.2d 27, 29 (Fla. Dist. Ct. App. 1966) and *Maryland Fire Underwriters Rating Bureau v. Ins. Comm'r*, 260 Md. 258, 272 A.2d 24 (1971)). *See also Mass. Auto Rating Accident Prevention Bureau v. Comm'r of Ins.*, 453 N.E.2d 381, 385, 395 (Mass. 1983) (finding courts give "due weight to the Commissioner's experience, technical competence, and specialized knowledge as well as the discretionary authority vested in the Commissioner by the Legislature" and that the "essentially legislative process of rate making" must not be "usurped" in the guise of independent review).

119. An insurer's use of nationwide data in support of its filing as opposed to information giving proper regard to local conditions in the state in which the increase is sought is legally sufficient grounds to deny a proposed rate increase. *See, e.g., Whaland*, 378 A.2d at 746-747.

120. The rehabilitation plan is contrary to law and therefore unenforceable.

121. By seeking to impose unilateral and nationwide premium increases and changes in benefits outlined in the terms of policies without filing them for review and approval by the

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Plaintiffs Director and Department, in contravention of South Carolina law, the rehabilitation plan exceeds Defendants' lawful authority in that:

a. Defendants Rehabilitator and SDR have only those powers conferred upon them by 40 Pa. Stat. Ann. §§ 221.1 *et seq.*, which are limited and equivalent to those of new management, and they and insurance companies in rehabilitation, including SHIP, must therefore obey the insurance laws of each the states in which they conduct the business of insurance.

b. Defendants have no power, with or without the assistance of the Commonwealth Court, to breach insurance contracts with South Carolina policyholders or to unilaterally change the express and implied terms of or the agreed-upon consideration for such contracts.

c. Defendants have no power, without or without the assistance of the Commonwealth Court, to compel the Director or the Department to ignore or disobey the written directives of the South Carolina General Assembly regarding the regulation of the business of insurance in violation of the constitution and laws of South Carolina or to otherwise impose or allow to be imposed unapproved rates or benefit changes on South Carolina citizens.

d. Neither 40 Pa. Stat. Ann. §§ 221.1 *et seq.*, orders and proceedings under those laws, reciprocity, nor full faith and credit supersede or nullify the constitution and laws of South Carolina, nor do they command that South Carolina implement or accede to measures in conflict with its laws.

e. Neither 40 Pa. Stat. Ann. §§ 221.1 *et seq.*, orders and proceedings under those laws, reciprocity, nor full faith and credit permit Defendants to avoid, impair, jeopardize, violate, extinguish or otherwise prejudice policyholders' rights under contract or South Carolina law.

122. The amended rehabilitation plan that Defendants filed or about October 21, 2020 included "a new mechanism to address concerns expressed by certain [state] regulators about premium rates being set under the Plan and not by them." Notice of Filing of Amended

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Rehabilitation Plan.

123. In the amended plan, the Rehabilitator relates an alternative under which "the insurance department of [a state] will make the rate increase determinations . . . and the benefits under the Plan will be adjusted to correspond to the premium rates approved by [that] state."

124. Under this mechanism, "if the chief insurance regulator . . . of an issue-state formally advises the Rehabilitator that his or her state elects to "opt-out" of the rate increase component of the Proposed Rehabilitation Plan, the Plan would not apply in the same way to the policies issued in that state." The Rehabilitator would then file with the opt-out state a request for approval of the full rate increase contemplated under the plan, and the "opt-out state's decision as to the requested rate increases would govern the choices available to the holders of opt-out policies."

125. "If the opt-out state timely approves the requested rate increases in full, it will be treated as if it had not opted out of the Plan and its policyholders will be included in the Plan just as those issued in non-opt-out states"; however, if "the opt-out state does not timely approve the full rate increase sought by the Rehabilitator, the policies issued in that state will be deemed opt-out policies subject to" modifications of benefits to be determined by the Rehabilitator.

126. This amendment does not does not correct the fundamental defects of the original plan in that (1) the Rehabilitator still attempts to exercise power she does not possess, in effect attempting to delegate that *illusory* power to any state that agrees with her rates, and discriminating against policyholders in any state that does not do her bidding and (2) it erroneously presumes that the Rehabilitator has the power to unilaterally alter policy benefits without the approval of state regulators.

127. The orders of the Commonwealth Court supervising the rehabilitation proceedings are not binding on persons over which it does not have jurisdiction and who are not parties to the

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Pennsylvania insurance company receivership proceedings, including South Carolina policyholders.

128. The orders of the Commonwealth Court supervising the rehabilitation proceedings are not entitled to full faith and credit in South Carolina.

129. Neither 40 Pa. Stat. Ann. §§ 221.1, orders and proceedings under those laws, reciprocity, nor full faith and credit impair in any manner the power of the South Carolina General Assembly to regulate the business of insurance in South Carolina, including its authority regarding the setting of insurance rates and approval of policy forms.

130. By treating differently policyholders in states where rate approval is required by statute and by treating policyholders differently based on a state's rate approval history, as well as creating a class of LTC policyholders in South Carolina who are deprived of the protection of this State's rate and form approval laws afforded holders of LTC polices issued by other insurers, the rehabilitation plan violates SHIP policyholders' constitutional rights to equal protection under the law.

131. By unreasonably and unnecessarily delaying receivership proceedings and incurring the unnecessary expenses of a legally invalid and unenforceable rehabilitation plan, the Defendants have wasted and continue to waste the limited assets of the insurer, further prejudicing the rights of policyholders and others in South Carolina.

FOR A FIRST CAUSE OF ACTION

(Declaratory Judgment—Against All Defendants)

132. Plaintiffs reallege and incorporate by reference as if set forth in full at this point, each and every allegation contained in paragraphs 1 through 131 of this Complaint.

133. Plaintiffs seek a declaration that the rehabilitation plan is invalid and unenforceable to the extent it seeks to bypass, impede, supersede, diminish or interfere in any manner with the State

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of South Carolina's regulatory authority over changes to the terms of policies and review and approval of insurance rates and forms or to impose unauthorized changes to policies and rates in violation of the rights of South Carolina policyholders.

FOR A SECOND CAUSE OF ACTION

(Permanent Injunctive Relief—Against All Defendants)

134. Plaintiffs reallege and incorporate by reference as if set forth in full at this point, each and every allegation contained in paragraphs 1 through 133 of this Complaint.

135. Plaintiffs seek an order permanently enjoining the enforcement or implementation of any order of the Commonwealth Court or any plan or directive of the Defendants that purports to bypass, impede, supersede, diminish or interfere in any manner with the State of South Carolina's regulatory authority over changes to the terms of policies and review and approval of insurance rates in this State, and further enjoining Defendants from communicating in any form or manner with South Carolina policyholders regarding proposed changes to policy terms or rates without prior written approval by the State of South Carolina.

136. Plaintiffs also respectfully request that said order provide that violation of the injunction may subject the Defendants not only to appropriate action of the Court but to assessment by the Department of administrative fines against SHIP and suspension or revocation of SHIP's license as provided by the Insurance Law, S.C. Code Ann. § 38-1-10 *et seq.*

WHEREFORE, Plaintiffs respectfully pray the Court for an order declaring that the rehabilitation plan is invalid and unenforceable in this State and enjoining Defendants from implementing or enforcing the rehabilitation plan, otherwise interfering with the rights of SHIP policyholders in South Carolina or similarly violating the insurance laws of this State pertaining to long term care insurance.

Respectfully submitted,

December 10, 2020

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STATE OF SOUTH CAROLINA
RICHLAND COUNTY

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Raymond G. Farmer, as Director of the South Carolina Department of Insurance, and the South Carolina Department of Insurance. Petitioner, vs. Jessica K. Altman, as Rehabilitator of Senior Health Insurance Company of Pennsylvania, Patrick H. Cantilo, as Special Deputy Rehabilitator of Senior Health Insurance Company of Pennsylvania, and Senior Health Insurance Company of Pennsylvania In Rehabilitation. Respondents.	CERTIFICATE OF SERVICE Civil Action No. 2020-CP-40-05802

The undersigned hereby certifies that he has served on Respondents in this action a copy of the attached Summons and Complaint by mailing a copy of the same by Federal Express to the following addresses:

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December 11, 2020
Columbia, SC