

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

JAMES J. DONELON
IN HIS OFFICIAL CAPACITY
AS COMMISSIONER OF INSURANCE
FOR THE STATE OF LOUISIANA AND
THE LOUISIANA DEPARTMENT OF
INSURANCE

NUMBER:

SECTION/DIVISION:

Plaintiff

VERSUS

JESSICA K. ALTMAN, IN HER CAPACITY
AS STATUTORY REHABILITATOR OF
SENIOR HEALTH INSURANCE COMPANY
OF PENNSYLVANIA
AND
SENIOR HEALTH SENIOR HEALTH
INSURANCE COMPANY OF
PENNSYLVANIA, IN REHABILITATION

Defendant

PETITION FOR PRELIMINARY INJUNCTION, PERMANENT INJUNCTION,
AND DECLARATORY JUDGMENT

This petition is filed by James J. Donelon, in his official capacity as Commissioner of Insurance for the State of Louisiana ("Commissioner") and the Louisiana Department of Insurance ("LDI").

INTRODUCTION

The Commissioner and LDI petition this Honorable Court to issue prohibitory injunctions and orders requiring an out-of-state insurance company doing business in Louisiana to comply with Louisiana law.

The Commissioner and LDI are entitled to orders holding that a plan of rehabilitation approved by a state court in one state (in this case, the Commonwealth of Pennsylvania) for a foreign non-domestic insurance company operating in Louisiana cannot ignore, override, and disregard Louisiana's laws and regulations that require the Commissioner's and LDI's approval of, among other matters, premium rates charged to



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policyholders residing (or who obtained policies while residing) in Louisiana. The Commissioner and LDI seek an injunction and thereafter a declaratory judgment to prevent the Defendants' disregard of and attempt to circumvent Louisiana law.

Senior Health Insurance Company of Pennsylvania ("SHIP") is an insurance company that formerly issued long term care ("LTC") insurance policies in forty-six states and other jurisdictions, including Louisiana. SHIP has had numerous and serious financial challenges for years and was placed in a rehabilitation proceeding in the Commonwealth Court of Pennsylvania on January 29, 2020 pursuant to the provisions of Pennsylvania law. Defendant Jessica K. Altman, Insurance Commissioner of the Commonwealth of Pennsylvania, was appointed as statutory Rehabilitator ("Rehabilitator") for SHIP. SHIP has not issued any new policies since at least July 2003.

In an attempt to reduce SHIP's substantial financial deficit, the Rehabilitator filed a rehabilitation plan that has been approved by the Commonwealth Court. Among other complex provisions, the Plan implements a fixed menu of policy changes for all its policyholders any of which materially alter the premium rates charged to and paid by SHIP policyholders and/or the contractual benefits accorded to the policyholders under their respective existing policies. Notably, the Plan will not restore or rehabilitate SHIP to an operating insurance company; to the contrary, the plan only proposes that SHIP will operate until the run-off of its existing policies.

Ignoring longstanding principles of state regulation of insurance and the laws of the State of Louisiana, the Plan purports to be binding on all policyholders in all states without the approval of any of the departments of insurance in the states and other jurisdictions with SHIP policyholders and without regard to whether the plan violates the laws of the respective states and jurisdictions. For Louisiana policyholders, the Rehabilitator does not intend to comply with Louisiana laws and regulations enacted to protect the contractual rights of policyholders of LTC policies and assure the actuarial soundness of the financial projections of an insurer that has issued policies to Louisiana citizens. Indeed, under the Rehabilitators' Plan, the Pennsylvania Commonwealth Court will approve the rates to be charged to Louisiana policyholders instead of the Commissioner and LDI. This suit is filed

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to enforce Louisiana laws and regulations, protect SHIP's Louisiana policyholders, and require SHIP to comply with its obligations under Louisiana law.

PLAINTIFF PARTIES

1.

The Commissioner is the duly elected Commissioner of Insurance for the Department of Insurance of the State of Louisiana. The Commissioner is domiciled in the State of Louisiana and the principal place of business of the Louisiana Department of Insurance, an agency of the State of Louisiana, is in Baton Rouge, Louisiana.

2.

LDI is an executive agency of the State of Louisiana established by the Louisiana Constitution. La. Const. Art. IV Sec, 1.

DEFENDANT PARTIES

3.

Defendant Jessica K. Altman is the statutory Rehabilitator ("Rehabilitator") for SHIP and resides in the Commonwealth of Pennsylvania.

4.

Defendant SHIP is a life and health insurance company organized pursuant to the laws of the Commonwealth of Pennsylvania and has its principal place of business in the Commonwealth of Pennsylvania.

JURISDICTION

5.

Jurisdiction in this Court over the Rehabilitator and SHIP is proper in accordance with La. Rev. Stat. 22:971.1(B)(1) providing that notwithstanding any other provision of law to the contrary, any entity issuing or providing coverage in Louisiana for health care services (such as an LTC insurance policy), whether the coverage is by direct payment of or reimbursement for expenses incurred for such services, or otherwise, shall be presumed to be subject to the jurisdiction of the Commissioner and thus subject to the jurisdiction of this Court. SHIP is currently under rehabilitation in the Commonwealth Court of Pennsylvania, and, under the provisions of PA ST 40 P.S. § 221.14 *et seq.*, the Rehabilitator stands in the shoes of SHIP's officers and directors in the conduct of SHIP's affairs while

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the rehabilitation is pending, and therefore pursuant to Louisiana law the Rehabilitator is subject and amenable to this Court's jurisdiction.

6.

SHIP does business in Louisiana and is subject to all Louisiana laws and regulations regarding insurance.

7.

Attached as Exhibit 1 is a true and correct copy of SHIP's Certificate of Authority to transact business in Louisiana, issued by LDI. Attached as Exhibit 2 is a true and correct copy of the Consent Agreement between LDI and SHIP (acting through Patrick Cantilo, its Deputy Rehabilitator) dated May 11, 2021. Among other provisions, SHIP's authority to transact business in Louisiana has been indefinitely suspended except with regard to the runoff of its insurance business in the rehabilitation proceeding.

VENUE

8.

Venue is proper in this Court in accordance with La. Code Civ. Proc. 42(7).

FACTUAL ALLEGATIONS

SHIP's Insolvency and Rehabilitation Proceeding

9.

LTC insurance is designed to cover long-term services and support for individuals, including personal and custodial care in a variety of settings such as a person's home, community organization, or other facility. LTC policies reimburse policyholders a daily amount (up to a pre-selected limit) for services to assist them with activities of daily living such as bathing, dressing, or eating. The policyholder can select a menu or range of care options and benefits. The cost of an LTC policy is based on a number of factors, including the insured's age at time of issuance, the maximum amount that a policy will pay per day, the maximum number of days (or years) that a policy will pay, the maximum amount per day times the number of days that determines the lifetime maximum amount that the policy will pay, and any optional benefits that may be selected, such as benefits that increase with inflation and non-forfeiture options.

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10.

SHIP was an operating company that issued LTC policies in forty-six states and additional jurisdictions. As of November 30, 2019, SHIP reported that it had 48,477 policies in force with annual premium payments of about \$62 million. As of September 30, 2021 SHIP reported that it had approximately 35,000 policies in force.

11.

SHIP currently has about 275 policies in force in Louisiana and, upon information and belief, the average age of SHIP's Louisiana policyholders is over 86 years.

12.

Upon information and belief based on the best information currently available, premiums currently paid by SHIP's Louisiana policyholders account for only about one-half of one percent of SHIP's total premium revenue.

13.

According to SHIP's 2018 Annual Statement, SHIP is licensed in every state except Connecticut, New York, Rhode Island, and Vermont, and is also licensed in the District of Columbia and the U.S. Virgin Islands. Prior to the filing of the rehabilitation, SHIP's business consisted exclusively of closed blocks of LTC policies including more than 70 distinct policy forms with many state variations for each form. SHIP's policy forms include home health care, nursing home, and comprehensive plans.

14.

Each of SHIP's policy forms and the premiums charged to its policyholders were submitted by SHIP for approval by the insurance regulator in each state and jurisdiction where they were issued if the laws and regulations of such states and jurisdictions required such approval.

15.

On January 29, 2020, upon the application of the Rehabilitator, the Commonwealth Court of Pennsylvania, in suit number 1 SHP 2020 (the "Rehabilitation Proceeding"), entered an Order of Rehabilitation placing SHIP into rehabilitation in accordance with the

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provisions of Pennsylvania law. The Rehabilitator's application is attached as Exhibit 3, and the Order of Rehabilitation entered by the Commonwealth Court on January 29, 2020 is attached as Exhibit 4.

16.

The Order of Rehabilitation appointed the Rehabilitator and her successors in office as statutory rehabilitator of SHIP pursuant to the provisions of 40 P.S. § 221.14, *et seq.* and required the Rehabilitator to prepare a plan of rehabilitation.

17.

On April 22, 2020 the Rehabilitator filed her Application for Approval of the Plan of Rehabilitation for SHIP and contemporaneously filed a Rehabilitation Plan.

18.

The Rehabilitation Plan ("Plan," attached as Exhibit 5) was approved by a Memorandum Opinion and Order of the Commonwealth Court on August 24, 2021 which Order was amended November 4, 2021 ("Plan Approval Order," attached as Exhibit 6).

19.

The average SHIP policyholder age is 86 and the average claimant is 89 years old. (Plan, p. 83.)

20.

SHIP's current deficit (liabilities in excess of assets, or "funding gap") exceeds \$1.2 billion dollars according to testimony in the Rehabilitation Proceeding.

21.

Neither the Commissioner or LDI, nor SHIP's policyholders are parties to the Rehabilitation Proceeding and policyholders were not represented by class representatives or counsel in that proceeding.

The State-Based Regulatory Structure of the Business of Insurance

22.

In 1945, Congress enacted the McCarran-Ferguson Act, 15 U.S.C. § 1011 and stated the following as a declaration of policy: "Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in

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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.” Section 1012(a) of the McCarran-Ferguson Act provides that “[t]he business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.”

23.

The empowerment of each state with respect to the business of insurance was reinforced by Congress in 1999 with the enactment of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6701 *et seq.* In that Act, Congress stated that the McCarran-Ferguson Act “remains the law of the United States” and that “the insurance activities of any person...shall be functionally regulated by the States.”

24.

“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) (attached as Exhibit 7).

25.

“State legislatures are the public policymakers that establish . . . broad policy for the regulation of insurance by enacting legislation providing the regulatory framework under which insurance regulators operate. They establish laws which grant regulatory authority to regulators and oversee state insurance departments and approve regulatory budgets...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 (review and approval of rates (including benefits) and forms), market conduct, financial regulation and consumer services....State regulators

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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.*

26.

Regulation of the insolvencies of insurance companies is also indirectly delegated to the states (and thus not nationalized) by virtue of the inability of insurance companies to seek bankruptcy relief under the United States Bankruptcy Code. See 11 U.S.C. 109(b) and (d) (providing that a “domestic insurance company” may not be a debtor under Chapter 7 or 11 of the Bankruptcy Code).

27.

Thus, there is no Federal law or regulation that governs the rehabilitation of insurance companies or allows the imposition of the SHIP Plan (at least to the extent that it imposes policy premiums and benefit changes) on Louisiana policyholders absent approval by the Commissioner in accordance the laws and regulations of the State of Louisiana.

Regulatory Authority of the Commissioner and LDI

28.

The Commissioner is empowered to exercise such function, possess such powers, and perform duties authorized by law. La. Const. Art. IV Sec. 11.

29.

Under the Louisiana Insurance Code, insurance is deemed an industry affected with the public interest and the purpose of the Louisiana laws on insurance is to regulate that industry in all its phases. La. Rev. Stat. 22:2A(1). Regulations have been adopted to supplement provisions of the Louisiana Insurance Code and have the force of law. Louisiana Administrative Code (“LAC”) Title 37.

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30.

The Rehabilitator and SHIP are subject to the Louisiana Insurance Code and the insurance regulations enacted thereunder.

31.

The Commissioner is charged with the duty to administer the provisions of the Louisiana Insurance Code, La. Rev. Stat. 22:2A(1), and make reasonable rules and regulations not inconsistent with law. La. Rev. Stat. 22:2E.

32.

Louisiana has comprehensive statutes and regulations governing LTC policies. La. Rev. Stat. 22:1181–1191, and LAC 37:46.19.1901 *et seq.*

33.

Under Louisiana law, “no person shall be authorized to transact or shall transact a business of insurance in this state without complying with the provisions” of the Louisiana Insurance Code. La. Rev. Stat. 22:12.

34.

Prior to implementing any rate increases, an LTC insurer such as SHIP must comply with all provisions of Louisiana law, including but not limited to Louisiana regulations on premium rate schedule increases set forth in LAC 37:46.19.1937 and 1939, among other provisions (sometimes referred to as “prior approval authority”). Most states have similar laws for their jurisdictions.

35.

Further, “[e]very health insurance issuer shall file with the department [of insurance] every proposed rate to be used in connection with all of its particular products ... All proposed rate filings may be reviewed for compliance with R.S.22:1095 and with other provisions of law governing rates in the individual market and the small group market. A review of rates made pursuant to this Subpart shall not constitute a determination under the Administrative Procedure Act, R.S. 49:950 *et seq.*, nor shall such a review of

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rates be subject to other administrative or judicial relief.” La. Rev. Stat.22:1092(A) and (D). Forms for all insurance policies issued in Louisiana including LTC policies are required to be approved by the Commissioner. LAC 37:46.19.1913.

36.

Prior to filing the Rehabilitation Proceeding, SHIP submitted to the Commissioner and LDI all applications for rate increases, policy forms, and policy modifications for Louisiana policyholders. SHIP complied with the decisions of the Commissioner and LDI on all such applications.

37.

Officials in states with prior approval authority may review a carrier’s rate filing using the state’s standards governing health insurance premium rates. In some cases, the state officials may also consider input from the public on the proposed rate, which can be obtained, among other ways, through public hearings or public comment periods. If a proposed rate does not meet a state’s standards, officials in states with prior approval authority can, among other things, deny the proposed rate or request that the carrier submit a new rate filing that addresses the issues that the state identified during its review. If a proposed rate meets a state’s standards, the officials may approve the rate filing. (U.S. Government Accountability Office, <https://www.gao.gov/assets/gao-11-701.pdf>, emphasis added.)

38.

Since 2009, the Commissioner and LDI have approved about 96% of total premium increases applied for by SHIP for Louisiana policyholders, a higher percentage than all but eight states. (SHIP History of Approval of State Rate Increases [prepared by Rehabilitator], attached as Exhibit 8.) Thus, assertions by the Rehabilitator that, generally, states refused to grant SHIP adequate rate increases when requested are untrue with respect to policies issued in Louisiana.

39.

Further, assertions by the Rehabilitator that SHIP’s policies were historically “underpriced” are solely the fault of SHIP and its failure to request sufficient premiums in each state.

40.

The Plan does not intend to restore or rehabilitate SHIP to an operating insurance company; to the contrary, the plan only proposes that SHIP will operate until the run-off

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of its existing policies. According the National Association of Insurance Commissioners, “[in] rehabilitation, a plan is devised to correct the difficulties that led to the insurer being placed in receivership and return it to the marketplace.” (https://content.naic.org/cipr_topics?topic_receivership.htm.) SHIP will never and has no intention to “return to the marketplace.”

41.

The Commissioner is empowered to issue fines and suspend or revoke the certificate of authority of a health care insurer if the insurer violates the provisions of Louisiana law. La. Rev. Stat.22:1099.

42.

There is no provision of Pennsylvania law that permits a statutory rehabilitator or Pennsylvania court to unilaterally impose modifications to premium rates or contractual policy benefits of policyholders residing in another state.

43.

There is no provision of Louisiana law that permits a statutory rehabilitator or court of another state court to unilaterally impose modifications to premium rates or contractual policy benefits of policyholders residing in Louisiana or who had policies issued to them when residing in Louisiana.

44.

There are no orders that have been issued in the Rehabilitation Proceeding that purport or attempt to restrict the continued application of Louisiana law to SHIP and its remaining business activity in Louisiana as it relates to prior regulatory approval of policy premiums and forms and any such orders by a court of another state would be unenforceable under Louisiana law.

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SHIP's Rehabilitation Plan Disregards Louisiana Law

45.

The SHIP Plan is complex, but central to the Plan is a scheme by which Defendants are attempting to impose premium rates for policyholders nationwide, bypassing individual state prior regulatory approval statutes and unconstitutionally usurping the regulatory authority and duty of the Commissioner and LDI under Louisiana law.

46.

The Plan contains a so-called "opt-out" process under which the Rehabilitator, on behalf of SHIP, submits policy premium rates on a company-wide and nationwide basis to the Commonwealth Court for each policy.

Rate increase and Policy Modifications will be submitted to the Commonwealth Court of Pennsylvania for approval as part of the Plan. The Rehabilitator will not seek separate approval of rate increases or benefit reductions from insurance regulators in states where the policies were issues.

The rate increases will not necessarily be limited by, or adhere to, filed rate cards. Rate cards are issued by insurers and approved by regulators to describe the premium rates applicable under specified circumstances or for specific types of coverage. They are inapplicable to the Plan.

Premium increases and Policy Modifications will not be submitted to individual insurance departments for approval. The Rehabilitation team believes that this is consistent with the established insurance rehabilitation practice in the U.S. under which the domiciliary regulator as domiciliary rehabilitator may, with only rehabilitation court approval and no approval from individual states, implement a rehabilitation plan, including one that might modify or terminate insurance policies issued by the delinquent insurer throughout the country. If its premium rates were subject to approval in each state, the Plan could not meet its goal of eliminating "subsidies" by having policyholders with substantially similar policies generally pay substantially similar premium regardless of the state in which the policyholder resides or in which the policy was issued. Moreover, the delay and expense of "traditional" state-by-state rate or benefit approval would make the Plan unfeasible. Finally, the state-by-state approval process might perpetuate or increase the nation-wide premium rate variations the Plan strives to eliminate. (Plan, p. 34, emphasis added.)

47.

In furtherance of its scheme to evade Louisiana law, the Plan also contains the coercive provision that if an "opt-out" state does not approve and accept the premium rates approved by the Commonwealth Court and demanded by the Rehabilitator, that state's

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policyholders will be punished in the form of a further downgrade to and loss of their contracted-for benefits. (Plan, pp. 108-118.)

48.

The Plan Approval Order describes the opt-out process succinctly:

Alternatively, under an Issue-State Rate Approval Option, a state may opt out of the rate approval section in the Plan. If a state opts out, the Rehabilitator will file an application to increase rates for policies issued in that state to the If Knew Premium level. The regulator for the opt-out state will render a decision on the Rehabilitator's rate increase application; if it is only partially approved, the Rehabilitator will downgrade the benefits under the affected policies accordingly. (Plan Approval Order, p. 58, emphasis added.)

49.

The rate increases to be imposed on Louisiana policyholders under the Plan are extreme and likely to impose considerable hardship on SHIP's Louisiana policyholders, all of whom are elderly and likely on fixed income. Under the Plan, it appears that premium increases for many Louisiana policyholders will exceed 300%. Policyholders may be able to avoid some of the increases, but only if they agree to the Plan's mandate to reduce their contractually-guaranteed benefits for which they have paid premiums for years or decades. (Plan, pp. 9-28.)

50.

The SHIP Plan further states and admits as follows:

Some concern has been expressed by certain state regulators about the notion that premium rate modifications under the Plan will not require approval of the states in which the policies were issued. The concern is understandable given that there have not been many troubled companies for which the issue of rate increases in rehabilitation has arisen. Moreover, insurance rate regulation tends to be an area of intense public and political focus. In some states, Commissioners are constrained by statute in the magnitude of rate increases they can authorize for long-term care insurance policies. [Plan, p. 96]

...

The Rehabilitator believes that the provisions of the Plan can be implemented with approval of the Commonwealth Court and without the need that insurance regulators in every state approve the Plan, including premium rate increases implemented under the Plan. However, regulators in other states may conclude that their approval is required. The Rehabilitator cannot provide any assurance that approval from other regulators will not ultimately be deemed necessary. Neither can the Rehabilitator provide assurances that if such other state approvals are necessary they can be obtained consistent with the timing and substance of the Plan. (Plan, p. 103.)

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51.

The Rehabilitator states the goal of the Plan:

If its premium rates were subject to approval in each state, the Plan could not meet its goal of eliminating “subsidies” by having policyholders with substantially similar policies generally pay substantially similar premium regardless of the state in which the policyholder resides or in which the policy was issued. Moreover, the delay and expense of “traditional” state-by-state rate or benefit approval would make the Plan unfeasible. Finally, the state-by-state approval process might perpetuate or increase the nation-wide premium rate variations the Plan strives to eliminate. (Plan, p. 34.)

The Commonwealth Court referred to this “goal” in the Plan Approval Order:

The different responses of state regulators to SHIP’s requested rate increases have created a discriminatory rate structure, which has been the focus of criticism in the regulatory community. Policyholders whose state of issue has approved rate increases are effectively subsidizing policyholders whose state of issue has not approved rate increases. Similarly situated policyholders are paying vastly different premiums for the same coverage. [The Deputy Rehabilitator] opined that this has created an unfortunate side effect: states inclined to approve actuarially justified rate increase requests become hesitant to do so because of the failure of other states to act in kind. (Plan Approval Order, P. 14.)

52.

Because the Commissioner and LDI have approved about 96% of total premium increases applied for by SHIP for Louisiana policyholders since 2009 this “goal” is inapplicable and irrelevant to Louisiana policyholders.

The SHIP Plan Violates Louisiana Law and State-Based Rate Regulation

53.

The SHIP Plan violates Louisiana law because the Rehabilitator will not first submit to the Commissioner and LDI the proposed rate increases, policy downgrades, and changes to existing policy forms sought to be imposed on Louisiana policyholders and refuses to be bound by any decision made by the Commissioner and LDI with respect thereto.

54.

Although the SHIP Plan purports to give state regulators an “opt-out” “alternative” for premium rate approval for policyholders, such “approval” does not provide Louisiana or any other state complete prior regulatory authority to approve both policy rates and

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benefits. The SHIP Plan is coercive and is being used as a weapon to force the Commissioner to grant rate increases demanded by the Rehabilitator that the Rehabilitator knows or suspects would otherwise be disapproved under the threat that, otherwise, benefits will be materially reduced or eliminated for policyholders.

55.

The Plan imposed a deadline of November 15, 2021 for states to provide written notice to the Rehabilitator of its decision to “opt-out” or “opt-in” to the illegal Plan that affects premium rates paid by and benefits provided to policyholders (SHIP Notice and Election Form attached as Exhibit 9).

56.

The Commissioner and LDI responded to the SHIP “election form” on November 12, 2021 (attached as Exhibit 10). The response states, in part:

Given that rate regulation has long been reserved to the insurance commissioners of each state, the purpose of this letter is to notify you that (a) I will not respond to the Notice, and (b) I do not believe the Rehabilitator has authority to impose rate changes on Louisiana policyholders without my approval. On behalf of the Department and the affected policyholders, I reserve all of my rights in this regard and this letter shall not be considered to be a consent to any provisions of the Plan.

57.

The Rehabilitator’s response (attached as Exhibit 11) to the letter from the Commissioner and LDI states that:

If you do not provide an opt-out notice that complies with the Plan's requirements, SHIP will not file any application for rate increases with your department. Instead, your state will be deemed to have opted into the Plan and the holders of the approximately 225 SHIP long-term care policies issued in Louisiana that are subject to the Plan will be treated as opt-in policyholders and will be given the opportunity to select from among the applicable Plan options. In due course their policies will be modified in accordance with their elections or options applied by default under the Plan.

58.

The response letter from the Rehabilitator is an admission of her intent to contumaciously violate Louisiana law and is proof and evidence of the necessity for immediate injunctive and declaratory relief.

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59.

The laws of Pennsylvania regarding rehabilitation of insurance companies limits the powers of an appointed rehabilitator to “all the powers of the directors, officers, and managers” of the insurance company. 40 Pa. Code §221.16(b).

60.

Louisiana law does not allow the directors, officers, and managers of an insurance company to unilaterally set premium rates and policy benefits without the express approval of the Commissioner and LDI.

61.

The laws of Pennsylvania regarding rehabilitation of insurance companies do not expressly allow the Rehabilitator of an insurance company to set premium rates and policy benefits of policyholders residing outside of the Commonwealth of Pennsylvania.

62.

Three state insurance regulators (Maine, Massachusetts, and Washington, the “State Insurance Regulators” or “SIR”) appeared in the Rehabilitation Proceeding and objected to the Plan. The SIR filed an appeal of the Plan Approval Order with the Pennsylvania Supreme Court and the appeal is pending at this time. As of the date of the filing of this petition, the Plan Approval Order has not been stayed by the Pennsylvania Supreme Court.

63.

Nineteen additional state insurance regulators (including the Commissioner) have filed a request with the Pennsylvania Supreme Court to appear as *amici curiae* in order to express their opposition to the Plan and the Rehabilitator’s disregard of state laws requiring prior regulatory approval of premium rates.

64.

Notwithstanding repeated efforts by multiple state regulators (including Louisiana) to convince the Rehabilitator that the Plan is illegal and in violation of the laws of multiple jurisdictions in which SHIP operates, the Rehabilitator is implementing the Plan in

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violation of such laws (including Louisiana). Her action is further proof and evidence of the necessity for immediate injunctive and declaratory relief.

COUNT 1 - PRELIMINARY INJUNCTION

65.

The allegations of all preceding paragraphs are incorporated in this Count as if set forth herein.

66.

The Commissioner and LDI are entitled to a preliminary prohibitory injunction without bond in accordance with La. Code Civ. Proc. Arts. 3601 and 3602 enjoining the Rehabilitator and SHIP (a) from attempting to enforce against any Louisiana policyholders of SHIP any plan implanted or attempted to be implemented by the that affects the rates paid by or benefits accorded to Louisiana policyholders of SHIP without compliance with all applicable provisions of Louisiana law and regulations, (b) soliciting any Louisiana policyholders of SHIP to select "options" under the Plan without compliance with all applicable provisions of Louisiana law and regulations, and (c) such other and further relief consistent therewith and in the public interest.

67.

A preliminary injunction is intended to preserve the status quo between the parties before trial, as is sought here by the Commissioner and LDI.

68.

Under Louisiana law, to obtain a preliminary injunction the mover must show the likelihood that mover will prevail on the merits and that irreparable injury or damage will result without the injunction.

69.

However, under Louisiana law irreparable injury need not be shown when the act sought to be enjoined is unlawful, as in this matter.

70.

The balance of equities and the public interest favors the issuance of an injunction.

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71.

The Commissioner and LDI will succeed on the merits for the reasons set forth in this petition, applicable law and regulations, and any evidence submitted at one or more hearings in this matter.

72.

No bond or security can be required of the Commissioner or LDI for issuance of the requested preliminary injunction pursuant to La. Rev. Stat. 13:4581.

73.

Although not a precondition to issuance of the injunction, failure to grant the injunction will result in irreparable injury to the Commissioner and SHIP policyholders in Louisiana and is in the public interest. Without an injunction, the Rehabilitator will violate Louisiana law by deciding what premiums must be charged to Louisiana policyholders, and if such rate is not approved by the Commissioner and LDI, forcing policy downgrades on those policyholders. Such violation of law is injury to the sovereign right and Constitutional obligation of the Commissioner and LDI to enforce Louisiana law and provide protection and prevent injury to Louisiana consumers of insurance services.

74.

Premiums paid by SHIP's Louisiana policyholders amount to only about one half of one percent of SHIP's total premium revenues. Therefore, the injunction will not cause any material monetary injury to the Defendants. Further, because the injunction would only forbid temporary imposition of the Plan on SHIP's Louisiana policyholders, the very limited scope of the requested injunction thus eliminates or minimizes any impact on SHIP's Rehabilitation Proceeding.

75.

The injunction will not have any effect on the Plan, other SHIP policyholders, or on the appeal pending in Pennsylvania.

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76.

The injunction will serve the public interest by maintaining Louisiana's interest in enforcing its laws and the Commissioner's and LDI's obligation to protect policyholders

77.

The Commissioner and LDI submit that the preliminary injunction should remain in effect at least until final judgment on the merits of the counts set forth below for a permanent injunction and/or declaratory relief.

78.

The proposed form of preliminary injunction is attached to this petition following the signature page.

COUNT 2 - PERMANENT INJUNCTION

79.

The allegations of all preceding paragraphs are incorporated in this Count as if set forth herein.

80.

For the same reasons that a preliminary prohibitory injunction should be granted, the Commissioner and LDI are entitled to a permanent injunction of the same scope as set forth in Court 1 enjoining the Rehabilitator from attempting to enforce against any Louisiana policyholders of SHIP any plan adopted at the request of the Rehabilitator in the Commonwealth Court of Pennsylvania that affects the rates paid by or benefits accorded to Louisiana policyholders of SHIP without compliance with all applicable provisions of Louisiana law and regulations.

81.

No bond or security can be required of the Commissioner or LDI for issuance of the requested permanent injunction pursuant to La. Rev. Stat. 13:4581.

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COUNT 3 – DECLARATORY JUDGMENT

82.

The allegations of all preceding paragraphs are incorporated in this Count as if set forth herein.

83.

Louisiana's laws and regulations governing LTC policies are set forth at La. R.S. 22:1181–1191, and the LAC.

84.

Under Louisiana's laws and regulations governing LTC policies, the Commissioner and LDI have the authority and duty to review requests for policy premium increases and changes to policy forms for compliance with applicable Louisiana law and regulations, and the authority and duty to conduct an actuarial review of all proposed policy rates.

85.

There is no law or regulation under Federal or Pennsylvania law that permits the Rehabilitator to bypass the aforementioned Louisiana statutory requirements for approval of rate increases and changes in policy terms and conditions.

86.

The Commissioner and insurance regulators in other states expressed to the Rehabilitator their opposition to the SHIP Plan to the extent it bypasses the laws and regulations of states with SHIP policyholders. The Rehabilitator ignored the objections of the state regulators and proceeded to obtain from the Commonwealth Court a plan that violates Louisiana law.

87.

Louisiana law provides that court within their respective jurisdictions may declare rights, status, and other legal relations whether or not further relief is or could be claimed. La. Code Civ. Proc. 1871.

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88.

The Commissioner and LDI are entitled to a declaratory judgment that the SHIP Plan violates Louisiana laws and regulations and is without effect insofar as it seeks to impose rate and/or policy modifications to policies held by Louisiana SHIP policyholders without compliance with all applicable provisions of Louisiana law and regulations, and such other and further relief consistent therewith and in the public interest.

89.

A declaratory judgment will clarify and settle the legal dispute at issue, namely, whether the rehabilitator of a financially troubled insurer in one state may unilaterally impose insurance rate and benefit modifications on another state without complying with the non-domiciliary state's applicable laws and regulations.

90.

Further, a declaratory judgment will terminate and afford the Commissioner and the Rehabilitator relief from the uncertainty, insecurity, and controversy arising out SHIP's rehabilitation proceeding and the effect of its illegal Plan on Louisiana policyholders.

WHEREFORE, James J. Donelon, in his official capacity as Commissioner of Insurance for the State of Louisiana and the Louisiana Department of Insurance request entry of orders and judgments as sought herein against Defendant Jessica K. Altman, Insurance Commissioner of the Commonwealth of Pennsylvania, in her capacity as statutory Rehabilitator of Senior Health Insurance Company of Pennsylvania, and Senior Health Insurance Company of Pennsylvania In Rehabilitation, as follows:

1. On Count 1, for a preliminary prohibitory injunction enjoining the Rehabilitator and SHIP from (a) attempting to enforce against any Louisiana policyholders of SHIP any plan implemented or attempted to be implanted by the that affects the rates paid by or benefits accorded to Louisiana policyholders of SHIP without compliance with all applicable provisions of Louisiana law and regulations, (b) soliciting any Louisiana policyholders of SHIP to select "options" under the Plan without compliance with all

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applicable provisions of Louisiana law and regulations, and (c) such other and further relief consistent therewith and in the public interest; and

2. On Count 2, for a permanent prohibitory injunction of the same scope as the preliminary injunction; and
3. On Count 3, that it be declared and ordered by this Court that no provision of the SHIP Plan can affect the premium rates paid by or benefits accorded to Louisiana policyholders of SHIP without compliance with all applicable provisions of Louisiana law and regulations, and all other relief provided by law consistent with the foregoing prayers.

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Respectfully Submitted:

JEFF LANDRY
Attorney General
/s/ Elizabeth Baker Murrill
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murrille@ag.louisiana.gov
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Telephone: (225) 456-7544

-and-

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Madeline.King@butlersnow.com
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Baton Rouge, Louisiana 70802
Telephone: (225) 325-8700
Facsimile: (225) 325-8800

**Attorneys for James J. Donelon, in his
official capacity as Commissioner of
Insurance for the State of Louisiana, and
The Louisiana Department of Insurance**

PLEASE PROVIDE A CERTIFIED COPY OF THE SUMMONS AND PETITION TO
PLAINTIFF'S COUNSEL (David S. Rubin, 445 North Boulevard, Suite 300, Baton Rouge,
LA., tel: 225-325-8700) TO BE SERVED VIA-LONG ARM SERVICE PURSUANT TO LA
REV. STAT. 13:3201 and 13:3204 ON:

**JESSICA K. ALTMAN, IN HER CAPACITY AS STATUTORY
REHABILITATOR OF SENIOR HEALTH INSURANCE COMPANY OF
PENNSYLVANIA**

-and-

**SENIOR HEALTH ~~SENIOR HEALTH~~ INSURANCE COMPANY OF
PENNSYLVANIA, IN REHABILITATION, Through Jessica K. Altman, its
Statutory Rehabilitator**



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PROPOSED FORM OF PRELIMINARY INJUNCTION

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NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

**JAMES J. DONELON
IN HIS OFFICIAL CAPACITY
AS COMMISSIONER OF INSURANCE
FOR THE STATE OF LOUISIANA AND
THE LOUISIANA DEPARTMENT OF
INSURANCE**

**NUMBER:
SECTION/DIVISION:**

Plaintiff

VERSUS

**JESSICA K. ALTMAN, IN HER CAPACITY
AS STATUTORY REHABILITATOR
OF SENIOR HEALTH INSURANCE
COMPANY OF PENNSYLVANIA
AND
SENIOR HEALTH SENIOR HEALTH
INSURANCE COMPANY OF
PENNSYLVANIA, IN REHABILITATION**

Defendant

**PRELIMINARY INJUNCTION
[PROPOSED]**

This matter came on for hearing on _____, 2021 on the petition of James J. Donelon, in his official capacity as Commissioner of Insurance for the State of Louisiana ("Commissioner") and the Louisiana Department of Insurance ("LDI"), seeking issuance of a preliminary injunction against Defendants Jessica K. Altman, in her capacity as Statutory Rehabilitator of Senior Health Insurance Company of Pennsylvania, and Senior Health Insurance Company of Pennsylvania, In Rehabilitation. Present in Court: David S. Rubin, counsel for Plaintiffs; and _____, counsel for Defendants.

CONSIDERING the allegations of the petition, the evidence adduced, the arguments of counsel, for good cause shown and reasons orally assigned,

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IT IS HEREBY ORDERED that a preliminary injunction is hereby issued against Defendants Jessica K. Altman, in her capacity as Statutory Rehabilitator of Senior Health Insurance Company of Pennsylvania, and Senior Health Insurance Company of Pennsylvania (collectively "Defendants"), and the Defendants are enjoined (a) from attempting to enforce against any Louisiana policyholders of Senior Health Insurance Company of Pennsylvania, In Rehabilitation any plan of rehabilitation implemented or attempted to be implemented by the Rehabilitator that affects the rates paid by or benefits accorded to Louisiana policyholders of Senior Health Insurance Company of Pennsylvania, In Rehabilitation without compliance with all applicable provisions of Louisiana law and regulations, and (b) soliciting any Louisiana policyholders of Senior Health Insurance Company of Pennsylvania to select "options" under any such plan without compliance with all applicable provisions of Louisiana law and regulations.

IT IS FURTHER ORDERED that no bond is required for issuance of this injunction in accordance with La. Code Civ. Proc. Arts. 3601 and 3602.

IT IS FURTHER ORDERED that this preliminary injunction shall remain in effect pending further orders of this Court.

SO ORDERED at Baton Rouge, Louisiana, this ____ day of _____, 2021, at ____ o'clock __.m. (prevailing Central Time).

JUDGE, 19th JUDICIAL DISTRICT COURT

NOTICE TO BE GIVEN BY CLERK OF COURT TO ALL COUNSEL OF RECORD

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**NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA**

**JAMES J. DONELON
IN HIS OFFICIAL CAPACITY
AS COMMISSIONER OF INSURANCE
FOR THE STATE OF LOUISIANA AND
THE LOUISIANA DEPARTMENT OF
INSURANCE**

NUMBER:

SECTION/DIVISION:

Plaintiff

VERSUS

**JESSICA K. ALTMAN, IN HER CAPACITY
AS STATUTORY REHABILITATOR
OF SENIOR HEALTH INSURANCE
COMPANY OF PENNSYLVANIA
AND
SENIOR HEALTH SENIOR HEALTH
INSURANCE COMPANY OF
PENNSYLVANIA, IN REHABILITATION**

Defendant

**ORDER FOR HEARING ON PLAINTIFFS' REQUEST FOR ISSUANCE OF A
PRELIMINARY INJUNCTION**

CONSIDERING the petition of James J. Donelon, in his official capacity as Commissioner of Insurance for the State of Louisiana ("Commissioner") and the Louisiana Department of Insurance ("LDI") seeking a preliminary injunction against Defendants Jessica K. Altman, in her capacity as Statutory Rehabilitator of Senior Health Insurance Company of Pennsylvania, and Senior Health Insurance Company of Pennsylvania, In Rehabilitation, and the provisions of La. Code Civ. P. Arts. 3601 and 3602,

IT IS HEREBY ORDERED that a hearing will be held on the request of the Commissioner and LDI for issuance of a preliminary injunction against the Defendants as prayed for. The hearing will be held before the undersigned Judge of the Nineteenth Judicial District Court on December _____, 2021, at __ o'clock __.m. at the Nineteenth Judicial District Courthouse in Baton Rouge, LA.

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IT IS FURTHER ORDERED THAT counsel for Plaintiffs shall provide notice to Defendants of this hearing and file a certificate of service thereof.

SO ORDERED at Baton Rouge, Louisiana, this ____ day of December, 2021.

JUDGE, 19th JUDICIAL DISTRICT COURT

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NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

JAMES J. DONELON
IN HIS OFFICIAL CAPACITY
AS COMMISSIONER OF INSURANCE
FOR THE STATE OF LOUISIANA AND
THE LOUISIANA DEPARTMENT OF
INSURANCE

NUMBER:
SECTION/DIVISION:

Plaintiff

VERSUS

JESSICA K. ALTMAN, IN HER CAPACITY
AS STATUTORY REHABILITATOR
OF SENIOR HEALTH INSURANCE
COMPANY OF PENNSYLVANIA
AND
SENIOR HEALTH SENIOR HEALTH
INSURANCE COMPANY OF
PENNSYLVANIA, IN REHABILITATION

Defendant

REQUEST FOR NOTICE

TO: Clerk of Court:

Pursuant to Articles 1571, *et seq.*, of the Louisiana Code of Civil Procedure, we hereby request that you give to us, as counsel of record for Plaintiffs in the above numbered and entitled suit, written notice, by mail, at least ten (10) days in advance of any date fixed for any trial and/or hearing of this case, whether on exceptions, rules, and/or the merits thereof, and/or otherwise, of any such assignment and/or fixing of the said case. Further, as provided by Articles 1913, *et seq.*, of said Code, please also send to us immediately notice of any order and/or judgment made and/or signed and/or entered and/or rendered in this case and/or entry of any such order and/or judgment.

Patricia Kuchar

East Baton Rouge Parish
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Respectfully Submitted:

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Attorney General
/s/ Elizabeth Baker Murrill
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**Attorneys for James J. Donelon, in his official
capacity as Commissioner of Insurance for the
State of Louisiana, and The Louisiana
Department of Insurance**



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**NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA**

**JAMES J. DONELON
IN HIS OFFICIAL CAPACITY
AS COMMISSIONER OF INSURANCE
FOR THE STATE OF LOUISIANA AND
THE LOUISIANA DEPARTMENT OF
INSURANCE**

NUMBER: 713794

SECTION: 22

Plaintiff

VERSUS

**JESSICA K. ALTMAN, IN HER CAPACITY AS STATUTORY
REHABILITATOR OF SENIOR HEALTH INSURANCE COMPANY OF
PENNSYLVANIA, AND
SENIOR HEALTH SENIOR HEALTH ISURANCE COMPANY OF
PENNSYLVANIA, IN REHABILITATION**

Defendant

PROOF OF SERVICE

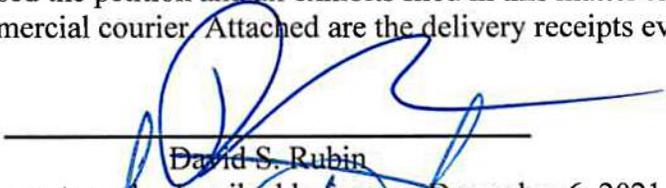
**STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE**

BEFORE ME, the undersigned Notary Public personally came and appeared

DAVID S. RUBIN

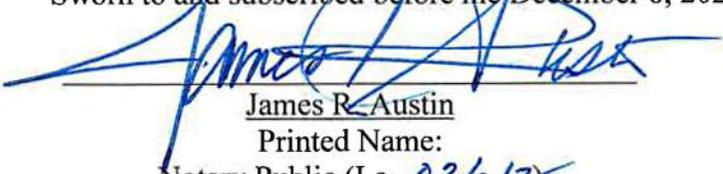
who after being duly sworn by me did attest as follows:

I am counsel for Plaintiffs in this matter and file this affidavit in accordance with La. R.S. 13:3205. I caused the petition and all exhibits filed in this matter to be served on the Defendants via commercial courier. Attached are the delivery receipts evidencing service.



David S. Rubin

Sworn to and subscribed before me December 6, 2021



James R. Austin

Printed Name:

Notary Public (La. 02612)
Commission for Life

CERTIFICATE OF SERVICE

I hereby certify that on the date of the filing of this pleading I caused a true and correct copy to be served electronic mail upon the following:

Covert J. Geary
Jones Walker LLP
201 St. Charles Avenue, 49th Floor
New Orleans, LA 70170-5100
cgeary@joneswalker.com

/s/ David S. Rubin

From: trackingupdates@fedex.com <trackingupdates@fedex.com>

Sent: Monday, December 6, 2021 9:44 AM

To: Linda Palmer <[REDACTED]>

Subject: FedEx Shipment 775384476482: Your package has been delivered



Hi. Your package was
delivered Mon, 12/06/2021 at
10:26am.



Delivered to 1341 STRAWBERRY SQ, HARRISBURG, PA 17120

Received by M.PARZANESE

OBTAIN PROOF OF DELIVERY

TRACKING NUMBER [775384476482](#)

FROM	Butler Snow LLP City Plaza II 400 Convention St. Suite 200 Baton Rouge, LA, US, 70802
TO	Pennsylvania Insurance Department Jessica K. Altman, Commissioner 1341 Strawberry Square HARRISBURG, PA, US, 17120
REFERENCE	212551
SHIPPER REFERENCE	212551
SHIP DATE	Fri 12/03/2021 12:26 PM
DELIVERED TO	Shipping/Receiving
PACKAGING TYPE	FedEx Box
ORIGIN	Baton Rouge, LA, US, 70802
DESTINATION	HARRISBURG, PA, US, 17120
SPECIAL HANDLING	Deliver Weekday
NUMBER OF PIECES	1
TOTAL SHIPMENT WEIGHT	5.00 LB
SERVICE TYPE	FedEx Standard Overnight

From: trackingupdates@fedex.com

Sent: Monday, December 6, 2021 9:44 AM

To: ~~Eric Palmer <Eric.Palmer@panet5.com>~~

Subject: FedEx Shipment 775384401430: Your package has been delivered



Hi. Your package was
delivered Mon, 12/06/2021 at
10:26am.



Delivered to 1341 STRAWBERRY SQ, HARRISBURG, PA 17120

Received by M.PARZANESE

OBTAIN PROOF OF DELIVERY

TRACKING NUMBER [775384401430](#)

FROM Butler Snow LLP
City Plaza II
400 Convention St. Suite 200
Baton Rouge, LA, US, 70802

TO Pennsylvania Insurance Department
Jessica K. Altman, Commissioner
1341 Strawberry Square
HARRISBURG, PA, US, 17120

REFERENCE 212551

SHIPPER REFERENCE 212551

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ORIGIN Baton Rouge, LA, US, 70802

DESTINATION HARRISBURG, PA, US, 17120

SPECIAL HANDLING Deliver Weekday

NUMBER OF PIECES 1

TOTAL SHIPMENT WEIGHT 5.00 LB

SERVICE TYPE FedEx Standard Overnight
