

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

The Maine Superintendent of Insurance and the Massachusetts Commissioner of Insurance (“State Regulators”) applied for limited intervention in their Joint Application for Intervention and Request to Grant Leave to Extend the Time to Intervene (“Joint Application”). They submit this answer to address two objections raised in the Answer of the Rehabilitator to the Joint Application (“Rehabilitator’s Answer”).

In her Answer, the Rehabilitator agrees that the State Regulators should be permitted to intervene for the limited purposes of calling or examining witnesses or introducing exhibits at the hearing or participating in any discovery. Rehabilitator's Answer at 1-2 (Preliminary Statement). However, the Rehabilitator opposes the other purposes for limited intervention requested by the State

Regulators – that is, potentially objecting to the Proposed Plan and appealing from orders entered concerning the Proposed Plan. The Rehabilitator does not state grounds for this except to assert that limited intervention is not necessary to object to the Proposed Plan because the Case Management Order contemplates “Informal and Formal Comments in support of or in objection to the Proposed Plan of Rehabilitation being sent or filed by Commenters without intervention.” Rehabilitator’s Answer ¶ 20.

There is no reason to oppose intervention for purposes of objection and appeal except to set up procedural hurdles. The essence of intervention under Pa.R.A.P. 3775 is the opportunity to protect the intervenors’ interest (recognized by the Rehabilitator) by objecting and, if necessary, appealing. *See In re Barnes Foundation*, 582 Pa. 370, 871 A.2d 792, 794 (2005) (recognizing that intervenor may appeal decision on the merits). It appears that the Rehabilitator seeks to avoid possible appeals by limiting objections to those made by Informal or Formal Comments. See Rehabilitator’s Answer ¶ 20. Such a limitation would allow the Rehabilitator to later contend (if the comments are rejected or disregarded¹) that there is no party that can bring an appeal. *See Barnes Foundation*, 871 A.2d at 794 (“[T]he general rule is that only parties may appeal a decision.”); Pa.R.A.P. 501

¹ The Rehabilitator is not required to respond to Formal or Informal Comments or other filings by Commentators. See Case Management Order ¶ 14.

(providing for appeal by aggrieved “party”). The Court should not approve such a procedural mouse trap and should expressly recognize that a limited intervenor may object and appeal.

The Court has previously expressly included a right of appeal in an order approving limited intervention. In the Penn Treaty proceeding, the Court granted certain insurers the status of limited intervenors:

for purposes of ... participation in the proceedings before the Commonwealth Court relating to the Second Amended [Rehabilitation] Plan (or any future modifications thereof), including discovery and appeal from order(s) on the proposed Plan and on petitions for liquidation or liquidation orders pursuant to such proposed Plan.

See *In Re Penn Treaty Network America Ins. Co.*, 2016 WL 5804872 at *2 (Pa. Comm. Sept. 23, 2016) (emphasis added). The Court should grant limited intervention including the purposes of objection and appeal in this case as well.

II. Extending The Period for Other State Regulators to Join the Limited Intervention Does Not Create Any Burden.

The Rehabilitator agrees to part of the Superintendent’s and Commissioner’s application for limited intervention. If it is appropriate for these State Regulators to intervene, it would also be proper for other regulators to intervene. The Rehabilitator’s opposition to the request to extend the time for others to intervene must, therefore, be based on concern over the possible disruption or delay that would be caused by requests to join as limited intervenors until September 15,

2020. However, there would actually be no disruption or delay because the September 15, 2020 deadline set by the Court for intervenors to submit Formal Comments and the September 30, 2020 deadline for summarizing testimony and identifying exhibits (see Case Management Order ¶¶ 8, 9) are unaffected. In today's COVID-19 world, where so many are working remotely and consultations are much more difficult to arrange, a rigid adherence to deadlines, without a showing of harm, is unjustified.

Respectfully submitted,

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Dated: August 26, 2020

PROOF OF SERVICE

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Dated: August 26, 2020