

No. _____

**In The
Supreme Court of the United States**

Timothy Schott, in his official capacity as Acting Superintendent of Insurance of the State of Maine, Gary Anderson, in his official capacity as Commissioner of Insurance of the Commonwealth of Massachusetts, and Mike Kreidler, in his official capacity as Insurance Commissioner of the State of Washington,

Petitioners,

v.

Michael Humphreys, Insurance Commissioner of the Commonwealth of Pennsylvania, in his capacity as the Statutory Rehabilitator of Senior Health Insurance Company of Pennsylvania,

Respondent.

On Application to Extend Time to File Petition for Writ of Certiorari
to the Supreme Court of Pennsylvania

**APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF PENNSYLVANIA**

J. David Leslie
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**To the Honorable Samuel A. Alito, Jr., Associate Justice of the United States
Supreme Court:**

Petitioners Timothy Schott, in his official capacity as Acting Superintendent of Insurance of the State of Maine, Gary Anderson, in his official capacity as Commissioner of Insurance of the Commonwealth of Massachusetts, and Mike Kreidler, in his official capacity as Insurance Commissioner of the State of Washington (the “State Insurance Regulators”) request an extension of time to file a Petition for Writ of Certiorari to the Supreme Court of Pennsylvania for 60 days because the Supreme Court of Pennsylvania has yet to issue its opinion explaining its Judgment.

The Supreme Court of Pennsylvania entered judgment in this case on June 20, 2023. A copy of the Judgment is attached as Appendix 1. Under Supreme Court Rule 13.1, the date for the State Insurance Regulators to file their petition for writ of certiorari is September 18, 2023. This Application is being filed more than 10 days before the date the petition for writ of certiorari is due. *See* Supreme Court Rule 13.5.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1257(a).

This case presents constitutional questions of national importance concerning the power of the rehabilitator of an insurer to establish a plan of rehabilitation that does not provide all policyholders with an option with a value at least equal to that obtainable in liquidation, to impair policyholders’ contract rights, and to determine rates applicable in other States contrary to those State’s own rate statutes. (The State Insurance Regulators’ position was supported in the Pennsylvania Supreme Court by an amicus brief submitted by twenty-seven chief insurance regulators.) In issuing its Judgment affirming the trial court, the Pennsylvania Supreme Court apparently determined these questions adversely to the State Insurance Regulators.

The Pennsylvania Supreme Court issued its Judgment more than nine months after hearing oral argument. However, the Supreme Court of Pennsylvania did not issue any opinion with its Judgment. The Judgment states only “Opinions to follow.” As of the date of this Application, no opinion had issued.

In the absence of an opinion explaining the Pennsylvania Supreme Court’s reasoning and rulings, the State Insurance Regulators cannot reasonably frame a petition for writ of certiorari. This Court’s rule concerning extension of time to file a petition for writ of certiorari specifies that an application to extend time shall “include a copy of the opinion.” Supreme Court Rule 13.5. The State Insurance Regulators are unable to include an opinion because the Pennsylvania Supreme Court has not yet issued one.

The 90-day period for filing petitions for writ of certiorari provided by Supreme Court Rule 13.1 contemplates that the petitioning party will have the opinion of the state court of last resort in order to prepare the petition within the allotted time. The Pennsylvania Supreme Court has issued a judgment, stating “[o]pinions to follow”, but not yet issued those opinions. In these unusual circumstances, the State Insurance Regulators request that the time to file a petition for certiorari be extended by 60 days pursuant to Supreme Court Rule 13.5.

Background

This motion arises from an appeal to the Supreme Court of Pennsylvania from an order of the Commonwealth Court of Pennsylvania (“Commonwealth Court”) approving a rehabilitation plan for an insolvent long-term care insurer, Senior Health Insurance Company of Pennsylvania (“SHIP”). SHIP is in rehabilitation proceedings before the Commonwealth Court. That court appointed the Insurance Commissioner of the Commonwealth of Pennsylvania, now Michael Humphreys, as the Statutory Rehabilitator (“Rehabilitator”) of SHIP in January 2020.

The Rehabilitator proposed a plan of rehabilitation for SHIP in April 2020. The Commonwealth Court allowed the State Insurance Regulators to intervene in September 2020. The State Insurance Regulators ultimately opposed approval of the plan of rehabilitation, as amended (“Plan”), on grounds including the federal issues discussed below.

After a five-day hearing, the Commonwealth Court approved the Plan in an order issued August 24, 2021. *In Re Senior Health Ins. Co. of Pennsylvania In Rehabilitation*, 266 A.3d 1141 (Pa. Comm. Ct. 2021). The State Insurance Regulators timely appealed to the Supreme Court of Pennsylvania on September 21, 2021.

The Pennsylvania Supreme Court heard oral argument on September 15, 2022. Nine months later, the Pennsylvania Supreme Court issued a Per Curiam Order stating, in its entirety:

AND NOW, this 20th day of June, 2023, the Order of the Commonwealth Court is **AFFIRMED**.

Opinions to follow.

The Late Chief Justice Baer did not participate in the decision of this matter.

The Pennsylvania Supreme Court entered the Order as a Judgment on its docket that same day, June 20, 2023. *See* Appendix 1.

As of the date of this motion, the Pennsylvania Supreme Court has not issued any opinion or opinions to explain its judgment affirming the order of the Commonwealth Court.

The Issues to be Presented are Significant

Before the Pennsylvania Supreme Court, the State Insurance Regulators contended, among other things, that the Plan should be disapproved because:

The Plan fails to satisfy the constitutional standard established in *Neblett v. Carpenter*, 305 U.S. 297 (1938), that a rehabilitation plan must place policyholders in at least as good a

position as a liquidation. The Plan does not offer all policyholders an option that would provide them with at least the value available in a liquidation. Considering all phases of the Plan, it may offer less than half of the policyholders a present value equal to or in excess of liquidation value.

The Plan violates the Contracts Clause of the United States Constitution, U.S. Const., art. I, § 10, cl. 1. The Plan substantially impairs policyholders' contracts by requiring policyholders to make choices that substantially reduce benefits or increase premiums. It does so without a legitimate and significant public purpose. The impairments are not being made to return SHIP to solvency, which the Rehabilitator conceded is not expected, but instead to (1) impose the entire loss on the remaining policyholders and avoid triggering the Insurance Industry-funded guaranty association system established to protect policyholders, and (2) reallocate the burden of SHIP's insolvency among policyholders based on the Rehabilitator's view of the adequacy of historical premium rates as among the States.

The Plan violates the Full Faith and Credit Clause of the United States Constitution, U.S. Const., art. IV, § 1. The States, including Maine, Massachusetts, and Washington, have enacted statutes providing for the State's chief insurance regulator to review and approve rates to be charged on policies issued in the State. The Plan fails to accord full faith and credit to these statutes because it implements rates determined by the Rehabilitator and approved by the Pennsylvania Commonwealth Court in the other States without "issue-state" approval.

The implications of the Plan on the integrated national scheme for the State-based regulation of the business of insurance is demonstrated by the amicus brief in support of the three State Insurance Regulators filed by the chief insurance regulators of twenty-seven other States.

Request for Relief

Because the Supreme Court of Pennsylvania has entered a Judgment without providing any explanation (but stating “[o]pinions to follow”), the State Insurance Regulators cannot reasonably frame a petition for writ of certiorari. While the Judgment states “Opinions to follow”, as of this date no opinions have been forthcoming. Supreme Court Rules 13.1 and 13.5 contemplate that petitioners will have an opinion of the State court of last resort to consider in determining whether to seek certiorari, and if so, to prepare a petition for writ of certiorari in the 90 days allowed. The State Insurance Regulators seek to have time to consider an opinion before preparing any petition in this case.

For these reasons, the Acting Superintendent of Insurance of the State of Maine, the Commissioner of Insurance of the Commonwealth of Massachusetts, and the Insurance Commissioner of the State of Washington request that the time for them to file a petition for writ of certiorari be extended by 60 days.

Respectfully submitted,

/s/ Eric A. Smith

J. David Leslie

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August 11, 2023

APPENDIX TO APPLICATION TO EXTEND TIME

Appendix 1

Order and Judgment of the Supreme Court of Pennsylvania, Middle District, in *In Re: Senior Health Insurance Company of Pennsylvania (in Rehabilitation)*, Appeal of: *The Superintendent of Insurance of the State of Maine, the Commissioner of Insurance of the Commonwealth of Massachusetts and the Insurance Commissioner of the State of Washington*, No. 71 MAP 2021 (June 20, 2023) 1a

[J-54-2022]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

IN RE: SENIOR HEALTH INSURANCE	:	No. 71 MAP 2021
COMPANY OF PENNSYLVANIA (IN	:	
REHABILITATION)	:	Appeal from the Order of the
	:	Commonwealth Court at No. 1 SHP
	:	2020 dated August 24, 2021
APPEAL OF: THE SUPERINTENDENT OF	:	
INSURANCE OF THE STATE OF MAINE,	:	ARGUED: September 15, 2022
THE COMMISSIONER OF INSURANCE	:	
OF THE COMMONWEALTH OF	:	
MASSACHUSETTS AND THE	:	
INSURANCE COMMISSIONER OF THE	:	
STATE OF WASHINGTON	:	

ORDER

PER CURIAM

DECIDED: June 20, 2023

AND NOW, this 20th day of June, 2023, the Order of the Commonwealth Court is
AFFIRMED.

Opinions to follow.

The Late Chief Justice Baer did not participate in the decision of this matter.

Judgment Entered 06/20/2023


CHIEF CLERK