

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

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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.

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

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

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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 a further 30-day extension of time to file a Petition for Writ of Certiorari to the Supreme Court of Pennsylvania because the Supreme Court of Pennsylvania has not yet issued an opinion explaining its judgment but indicated in the judgment that opinions are forthcoming.

The Supreme Court of Pennsylvania entered judgment in this matter on June 20, 2023 (“Judgment”). 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 was September 18, 2023. The Supreme Court of Pennsylvania did not issue any opinion with its June 20, 2023 Judgment but stated “Opinions to follow.” *See* Appendix 1. As no opinion issued, the State Insurance Regulators filed an application to extend the time to file a petition for writ of certiorari with this Court on August 11, 2023 (No. 23A131). The application sought an extension of 60 days. On August 16, 2023, Justice Alito granted the application in part and extended the time to file a petition for writ of certiorari for 30 days, until October 18, 2023. The Clerk notified the Clerk of the Supreme Court of Pennsylvania of the extension by letter dated August 16, 2023.

This Application is being filed more than 10 days before the date the petition for writ of certiorari is now due. *See* Supreme Court Rule 13.5.

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

As of the time of this filing, the Supreme Court of Pennsylvania has not issued an opinion explaining its Judgment of June 20, 2023, following the September 15, 2022 oral argument before that Court and its indication in the Judgment that opinions would be forthcoming. An explanation from the Pennsylvania Supreme Court of the basis for its decision would greatly aid the State Insurance Regulators in determining whether to file a petition for writ of certiorari and, if they are to file a petition, the issue or issues to bring to this Court. Moreover, such an explanation would likely aid this Court's consideration of any such petition. Indeed, this Court's rule concerning even motions for 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.

In these unusual circumstances, the State Insurance Regulators respectfully request that the time to file a petition for certiorari be extended by an additional 30 days pursuant to Supreme Court Rule 13.5. This extension and the prior extension would total the 60 days permitted by that Rule.

### **Background**

This application 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 20<sup>th</sup> 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 time of this application, no opinion has issued.

### **The Issues to be Presented are Significant**

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. In issuing its Judgment affirming the trial court, the Pennsylvania Supreme Court apparently determined these questions adversely to the State Insurance Regulators.

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. All 50 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 harmful implications of the Plan on the integrated national scheme for the State-based regulation of the business of insurance is demonstrated by the fact that the chief insurance regulators of twenty-seven other States filed an amicus brief in support of the three State Insurance Regulators in the Pennsylvania Supreme Court below.

### **Request for Relief**

Because the Supreme Court of Pennsylvania has entered a Judgment without yet providing any explanation but stating “[o]pinions to follow,” the State Insurance Regulators seek an additional 30 days to consider whether to, and potentially to prepare and have printed, a petition in this case. The State Insurance Regulators further respectfully submit that this Court’s consideration of any such a petition would also benefit from having one or more opinions from the Supreme Court of Pennsylvania on these important issues.

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 30 days, to November 17, 2023.

Respectfully submitted,

/s/ Eric A. Smith

J. David Leslie

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September 27, 2023

**APPENDIX TO FURTHER 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

# **APPENDIX 1**



**[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 20<sup>th</sup> 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