

STATE OF OHIO
DEPARTMENT OF INSURANCE
50 WEST TOWN STREET
3rd FLOOR, SUITE 300
COLUMBUS, OHIO 43215

In re: : JUDITH L. FRENCH
: Superintendent/Director
Senior Health Insurance Company :
of Pennsylvania (SHIP) :
(in rehabilitation) :
:

ORDER TO CEASE AND DESIST AND NOTICE OF HEARING

I. INTRODUCTION

Pursuant to R.C. 3901.221, the Superintendent of the Ohio Department of Insurance (“ODI”) may issue a cease and desist order to any person engaged in an unfair or deceptive act or practice in the business of insurance that has caused, is causing, or is about to cause substantial and material harm.

The Rehabilitator of Senior Health Insurance Company of Pennsylvania (“SHIP”), SHIP, and SHIP’s principals, employees, and agents are a person engaged in an unfair or deceptive act or practice in the business of insurance that is about to cause substantial and material harm. Therefore, consistent with the authority in R.C. 3901.221, and for the reasons explained below, the Superintendent determines a cease and desist order is appropriate.

II. FACTS

On September 9, 1987, ODI issued a certificate of authority for SHIP to conduct the business of insurance in Ohio. SHIP is a stock limited life and health insurance company domiciled in the Commonwealth of Pennsylvania that administers a closed block of long-term care

("LTC") insurance policies. SHIP has issued approximately 1,130 policies in Ohio. At present, the average age of SHIP LTC policyholders in Ohio is approximately 86 years old.

The Pennsylvania Insurance Department ("PID") filed an application to place SHIP into rehabilitation with the Commonwealth Court of Pennsylvania on January 23, 2020. According to the application, as of December 31, 2018, SHIP's reported deficit was approximately a half-billion dollars. SHIP's financial condition has only declined, as a more recent projection estimates a deficit of approximately \$1.2 billion. On January 29, 2020, the Commonwealth Court entered an order granting the application of the PID to place SHIP into rehabilitation. The order appointed the Commissioner of the PID, Jessica Altman, and her successors in office as statutory rehabilitator of SHIP pursuant to the provisions of 40 Pa. Stat. 221.14, et seq.

On August 25, 2021, the Commonwealth Court issued its opinion and order approving a rehabilitation plan. The approved rehabilitation plan, as well as all court filings and orders discussed here, are available on the SHIP rehabilitation website, at <https://www.shipltc.com/court-documents>.

The approved rehabilitation plan provides for a so-called "opt-out" process that violates Ohio law.¹ Approved Rehabilitation Plan ("App. Rehab. P."), p. 108-118. Pursuant to the opt-out process in the approved rehabilitation plan, when a state opts out of the premium rate modification provisions of the plan, the Rehabilitator files a request for approval of rate increases for policies issued in that state. *Id.* at p. 111. If the opt-out state does not approve the rate increases requested

¹ ODI has joined with 26 other departments of insurance as amici curiae in support of the appeal filed in the Supreme Court of Pennsylvania by Appellants 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. The appeal challenges the legality of the approved rehabilitation plan. The documents related to the appeal in the Supreme Court of Pennsylvania, Docket No. 71 MAP 2021, are available on the SHIP rehabilitation website, at <https://www.shipltc.com/court-documents>.

by the Rehabilitator in full, the unlawful plan allows for election packages to be sent to Ohio policyholders offering benefits and rates not approved by ODI.

ODI opted out of the premium rate modification provisions of the approved rehabilitation plan. On December 2, 2021, the Rehabilitator filed a request with ODI for approval of rate increases for Ohio policyholders and set a February 15, 2022 deadline for ODI to respond. On February 15, 2022, ODI concluded its review and informed the Rehabilitator of its decision on the requested rate increases.

ODI's review found that some of the Rehabilitator's requested rate increases would result in unreasonable increases. Indeed, some of the Rehabilitator's requested rate increases were well outside the rate increases ODI had traditionally approved. For example, the Rehabilitator's requested rate increases would result in at least one Ohio policyholder receiving a more than 650% rate increase. In these instances, ODI approved a premium rate less than that requested by the Rehabilitator. In other instances, ODI found that the Rehabilitator's requested premium rate increases were reasonable and fully approved them. Nevertheless, the approved rehabilitation plan treats any state not *fully* approving the Rehabilitator's requested rate increases as an opt-out state. *Id.* at p. 108-111.

Consequently, Ohio is an opt-out state. Pursuant to the approved rehabilitation plan, the Rehabilitator will send election packages to Ohio policyholders requiring them to choose between several options. The election packages will offer Ohio policyholders premium rates and benefits not approved by ODI. As discussed in section III, below, offering Ohio policyholders unapproved premium rates and benefits is unlawful.

The approved rehabilitation plan requires the Rehabilitator to send election packages after the passage of the February 15, 2022 deadline. The expectation is that the Rehabilitator will send election packages to Ohio policyholders in the near future.

III. ANALYSIS

Pursuant to R.C. 3901.221 and R.C. 3901.20, the Superintendent of the ODI may issue a cease and desist order to any person engaged in an unfair or deceptive act or practice in the business of insurance that has caused, is causing, or is about to cause substantial and material harm. R.C. 3901.19 defines “person,” for purposes of R.C. 3901.221 and R.C. 3901.20, as “any individual, corporation, association, partnership * * * and any other legal entity.” The “person” need not be licensed or required to be licensed by the Superintendent of the ODI. R.C. 3901.20.

R.C. 3901.19 through R.C. 3901.23 define an unfair or deceptive act or practice in the business of insurance. Among other provisions, R.C. 3901.21(A) defines an unfair or deceptive act or practice in the business of insurance to include: “Making, issuing, circulating, or causing or permitting to be made, issued, or circulated, or preparing with intent to so use, any estimate, illustration, circular, or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby * * *.” R.C. 3901.21(B) further defines an unfair or deceptive act or practice in the business of insurance to include:

Making, publishing, disseminating, circulating, or placing before the public or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station, or in any other way, or preparing with intent to so use, an advertisement, announcement, or statement containing any assertion, representation, or statement,

with respect to the business of insurance or with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive, or misleading.

Because the Rehabilitator, SHIP, and SHIP's principals, employees, and agents are a person engaged in an unfair or deceptive act or practice in the business of insurance that has caused, is causing, or is about to cause substantial and material harm, the Superintendent of the ODI issues this cease and desist order pursuant to R.C. 3901.221 and R.C. 3901.20.

A. The Rehabilitator, SHIP, and SHIP's principals, employees, and agents are all a "person."

The Rehabilitator, SHIP, and SHIP's principals, employees, and agents are all a "person." R.C. 3901.19 defines "person" to include "any individual, corporation, association, partnership * * * and any other legal entity." Altman, or any successors, as the Rehabilitator, is an "individual." Further, the Rehabilitator is also a "legal entity." *See* 40 Pa. Stat. 221.15, 221.16.

SHIP, as a stock limited life and health insurance company administering a closed block of LTC insurance policies, meets the broad definition of "person." SHIP's certificate of authority from the Superintendent of the ODI further demonstrates it is a "person," as defined in R.C. 3901.19.

SHIP's principals, employees, and agents also meet the broad definition of "person" in R.C. 3901.19. The broad definition of "person" in R.C. 3901.19 includes "any individual."

B. The Rehabilitator, SHIP, and SHIP's principals, employees, and agents are engaged in unfair or deceptive acts or practices in the business of insurance.

The Rehabilitator, SHIP, and SHIP's principals, employees, and agents are engaged in unfair or deceptive acts or practices in the business of insurance. R.C. 3901.19 through R.C.

3901.23 define an unfair or deceptive act or practice. The Rehabilitator, SHIP, as well as SHIP's principals, employees, and agents are engaged in at least two unfair or deceptive acts or practices.

First, the Rehabilitator, SHIP, and SHIP's principals, employees, and agents are engaging in an unfair or deceptive act or practice in the business of insurance, as defined in R.C. 3901.21(A), by "preparing with intent to so use, any * * * statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby * * *."

The approved rehabilitation plan treats any state not fully approving the Rehabilitator's requested rates increases as an opt-out state. App. Rehab. P., p. 108-111. Accordingly, Ohio is an opt-out state. The approved rehabilitation plan permits the Rehabilitator to send election packages to Ohio policyholders. *Id.* at p. 111-114. The expectation is that the Rehabilitator will send election packages to Ohio policyholders in the near future. As a result, the Rehabilitator is "preparing with intent to so use" the election packages for Ohio policyholders.

The election packages contain "statement[s] misrepresenting the terms of any policy * * * to be issued or the benefits or advantages promised thereby * * *." Specifically, by offering Ohio policyholders premium rates and benefits not approved by ODI, the Rehabilitator, through the election packages, distorts the terms of the policies to be issued and the benefits promised.

For example, the Rehabilitator, through the election packages, will offer some Ohio policyholders an option—option four—that ODI has not approved. *See* App. Rehab. P., p. 108-111. Option four of the approved rehabilitation plan states that policyholders may choose this option "even though such a rate increase has not been approved by the [o]pt-out [s]tate." *Id.* at p. 114. Under Ohio law, however, ODI has exclusive jurisdiction to approve and disapprove insurance rates. *Lazarus v. Ohio Cas. Group*, 144 Ohio App.3d 716, 720, 761 N.E.2d 649 (8th Dist.2001). Insurers must file premium rates with ODI prior to issuing new or revised LTC

policies. R.C. 3923.46; R.C. 3923.021. ODI may approve or disapprove the rates. R.C. 3923.021. As a result, the Rehabilitator cannot offer option four or any other option not approved by ODI. Any language in the election packages offering any option not approved by ODI “misrepresent[s] the terms of any policy * * * to be issued or the benefits or advantages promised thereby * * *.”

Second, the Rehabilitator, SHIP, as well as SHIP’s principals, employees, and agents are engaging in an unfair or deceptive act or practice in the business of insurance, as defined in R.C. 3901.21(B), by “[m]aking, * * * or causing, directly or indirectly, to be made, * * * in a * * * notice, * * * letter, * * * or in any other way, or preparing with intent to so use, [a] * * * statement containing any assertion, representation, or statement, with respect to the business of insurance * * *, which is untrue, deceptive, or misleading.”

The Rehabilitator is “preparing with intent to so use” the election packages for Ohio policyholders. The Rehabilitator, through the election packages, will be disregarding Ohio law by offering Ohio policyholders premium rates and benefits not approved by ODI. *See* R.C. 3923.46; R.C. 3923.021. As such, the election packages’ offering of unlawful premium rates and benefits, not approved by ODI, constitute a “statement containing any assertion, representation, or statement, with respect to the business of insurance * * *, which is untrue, deceptive, or misleading.”

C. The unfair or deceptive acts or practices of the Rehabilitator, SHIP, and SHIP’s principals, employees, and agents are about to cause substantial and material harm.

As described in section III, B, above, the Rehabilitator, SHIP, and SHIP’s principals, employees, and agents are engaged in unfair or deceptive acts or practices in the business of insurance. The unfair or deceptive acts or practices stem from the Rehabilitator’s upcoming issuance of election packages to Ohio policyholders. The expectation is that the Rehabilitator will

send election packages to Ohio policyholders in the near future. As a result, these unfair or deceptive acts or practices are “about to cause” substantial and material harm.

Further, the Rehabilitator’s election packages, once issued, will cause “substantial and material harm.” First and foremost, the election packages will cause “substantial and material harm” to Ohio’s policyholders. The Rehabilitator cannot lawfully offer unapproved rates and benefits, and confusion will result should Ohio policyholders choose one of these unlawful options. SHIP policyholders in Ohio, with an average age of about 86 years old, have the right to know that ODI has reviewed and approved the premium rates and benefits prior to the policyholders accepting them. If the Rehabilitator issues the election packages and offers premium rates and benefits not approved by ODI, “substantial and material harm” will occur.

Second, the Rehabilitator’s election packages will cause “substantial and material harm” to ODI. ODI has an interest in protecting its exclusive jurisdiction. If the Rehabilitator issues the election packages and offers unapproved premium rates and benefits, “substantial and material harm” will occur.

Therefore, the Rehabilitator, SHIP, as well as SHIP’s principals, employees, and agents are a “person,” as defined in R.C. 3901.19. The Rehabilitator, SHIP, and SHIP’s principals, employees, and agents are engaged in an unfair or deceptive act or practice in the business of insurance that is about to cause substantial and material harm. The Superintendent of the ODI may issue a cease and desist order pursuant to R.C. 3901.221.

IV. CONCLUSION

Pursuant to R.C. 3901.221, the Superintendent of the Ohio Department of Insurance orders the Rehabilitator, SHIP, and SHIP’s principals, employees, and agents to cease and desist the dissemination, implementation, or enforcement in this State of the election

packages to the extent the election packages disregard Ohio law by offering Ohio policyholders premium rates and benefits not approved by ODI.

Pursuant to this order, the Rehabilitator, SHIP, and SHIP's principals, employees, and agents shall send notices to policyholders in Ohio only if the Superintendent has reviewed and approved such notices.

A hearing to determine the continuation or revocation of this cease and desist order shall be held at 1:00 p.m. on March 3, 2022 at the Ohio Department of Insurance, 50 W. Town St., Suite 300, Columbus, Ohio, 43215. At the hearing, the parties may appear in person, by their attorney, or by such other representative as is permitted to practice before the Department, or the parties may present their position, arguments, or contentions in writing and, at the hearing, the parties may present evidence and examine witnesses appearing for and against them.

This Order is effective immediately, signed this 17th day of February, 2022.



JUDITH L. FRENCH

Director/Superintendent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Order to Cease and Desist and Notice of Hearing has been sent on this 17 day of February, 2022, by priority mail express with certified service, return receipt requested, to the following:

Commissioner Jessica Altman (as Rehabilitator)
Pennsylvania Insurance Department
901 North 7th St.
Harrisburg, PA 17102

Michael Broadbent
Cozen & O'Connor
1650 Market St., Suite 2800
Philadelphia, PA 19103


Patrick Cantilo (as Special Deputy Rehabilitator)
11401 Century Oaks Terrace, Suite 300
Austin, TX 78758

Senior Health Insurance Company of Pennsylvania (in rehabilitation)
550 Congressional Blvd., Suite 200
Carmel, IN 46032

Senior Health Insurance Company of Pennsylvania (in rehabilitation)
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50 W. Broad St.
Columbus, OH 43215

And sent via email to:

Michael Broadbent, mbroadbent@cozen.com
Patrick Cantilo, phcantilo@cb-firm.com
Tracy Nave, Office of the Ohio Attorney General, Tracy.Nave@OhioAGO.gov
Amanda Baird, Ohio Department of Insurance, Amanda.Baird@insurance.ohio.gov



Kelly Peters
Hearing Administrator