

CV24-6185151

ANDREW N. MAIS, COMMISSIONER OF THE  
CONNECTICUT INSURANCE DEPARTMENT,

Plaintiff,

v.

PHL VARIABLE INSURANCE COMPANY, ET  
AL.,

Defendants.

SUPERIOR COURT

JUDICIAL DISTRICT  
OF HARTFORD

\_\_\_\_\_, 2024

**PROPOSED ORDER OF REHABILITATION AND APPOINTMENT OF STATE  
INSURANCE COMMISSIONER AS REHABILITATOR OF PHL VARIABLE  
INSURANCE COMPANY, CONCORD RE, INC., AND PALISADO RE, INC.**

On the Petition for Order of Rehabilitation and Appointment of State Insurance Commissioner as Rehabilitator dated May 17, 2024 (the "Petition") of the Honorable Andrew N. Mais, Insurance Commissioner of the State of Connecticut (the "Commissioner"), pursuant to Conn. Gen. Stat. § 38a-914(1), seeking the entry of an order of rehabilitation and related relief concerning PHL Variable Insurance Company ("PHL"), Concord Re, Inc. ("Concord"), and Palisado Re, Inc. ("Palisado," together with PHL and Concord, the "Companies" and each a "Company"), and on the Affidavit of Michael Shanahan in support thereof and submitted therewith, and on the certificate of service filed with the Petition, and the Companies having consented to the Petition, and good and sufficient cause appearing therefor,

**THE COURT FINDS AND ORDERS AS FOLLOWS:**

1. The Companies are each in such condition that further transaction of business would be financially hazardous to its policyholders, creditors and the public within the meaning of Conn. Gen. Stat. § 38a-914(1).

2. The board of directors of PHL and the shareholder of Concord and Palisado have consented to the rehabilitation of such Company within the meaning of Conn. Gen. Stat. § 38a-914(12).

**FILED**

MAY 20 2024

HARTFORD J.D.

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AG/AL  
112.00

3. Notice of the Petition was duly served on the Companies, and no other or further notice was required by law.

4. The Petition is **GRANTED**, and each of the Companies is placed in rehabilitation under the Insurers Rehabilitation and Liquidation Act, Conn. Gen. Stat. §§ 38a-903 to 38a-961 (the "Act") as of <sup>2 pm</sup> ~~10~~ <sup>9:30</sup> ~~AD/PM~~ <sup>NS/A</sup> of this <sup>20th</sup> ~~25th~~ day of <sup>May</sup> ~~June~~, 2024, and shall hereafter operate in accordance with the Act, this Order and further orders of this Court (the "Act and the Orders").

5. Pursuant to Conn. Gen. Stat. § 38a-915(a), the Commissioner and his successors in office are hereby appointed as rehabilitator as defined in Conn. Gen. Stat. § 38a-905(19) (the "Rehabilitator") of the Companies, vested with all powers set forth in the Act and the Orders.

**Powers of the Rehabilitator**

6. Pursuant to Conn. Gen. Stat. § 38a-915(a), the Rehabilitator shall directly, or through third parties duly authorized by him after the date hereof, conduct and continue the Companies' businesses and affairs as he deems to be in the best interests of policyholders, creditors and the Companies' estates subject to the Act and the Orders.

7. The Rehabilitator is hereby vested with all legal and equitable right, title, and interest in and to all of the Companies' property as of the date of this Order and any property acquired by the Companies hereafter (the "Assets"). The Rehabilitator shall take possession and control of the Assets to the extent he considers it to be necessary and in the best interests of policyholders, creditors and the Companies' estates. The Assets shall include the Companies' property wherever located, including tangible and intangible assets, real and personal property, contracts, rights of action, documents, books, records, data, information, accounts, bank accounts, certificates of deposit, securities, funds, furniture, equipment, fixtures, and office supplies. The

Assets shall include any Company's interest in property securing obligations of third parties to such Company, and any Company's interest in property securing its obligations to any third party. The Assets shall also include insurance policies in which the Companies are covered or named, whether purchased by the Companies, one or more of their affiliates or third parties, including policies covering the Companies' liabilities as well as policies covering liability for the errors and omissions of officers, directors and employees.

8. The Rehabilitator is authorized to examine the Companies' businesses and affairs and take such actions as he deems necessary or appropriate to reform, revitalize, rehabilitate or run-off the Companies. If the Rehabilitator determines that further efforts to rehabilitate the Companies would substantially increase the risk of loss to creditors, policyholders or the public, or would be futile, he may apply to this Court for an Order of Liquidation pursuant to Conn. Gen. Stat. § 38a-918. The Rehabilitator shall have all the powers of the directors, officers and managers of the Companies, whose authority shall be suspended, except as they are redelegated by the Rehabilitator. The Rehabilitator may retain those of the Companies' current management personnel and other employees as he, in his discretion, determines would facilitate the rehabilitation of the Companies.

9. The Rehabilitator shall have all the powers and duties set forth in Conn. Gen. Stat. § 38a-916, including the authority to appoint one or more special deputies (the "Deputy Rehabilitators") who shall have such the powers and responsibilities as shall be delegated by the Rehabilitator under the Act and the Orders.

10. The Rehabilitator may employ counsel, clerks, employees, accountants, actuaries, consultants, assistants and other personnel (together with the Deputy Rehabilitators, the "Designees") as he deems necessary. The compensation of any Designees and all expenses of

taking possession of the Companies and of preparing for and conducting the proceedings and activities under the Act and this Order shall be fixed by the Rehabilitator and approved by the Court. Such compensation and expenses shall be paid out of the Assets. All Designees shall submit disputes concerning their rights, obligations and compensation in their capacity as Designees to this Court, which shall have exclusive jurisdiction over such disputes. The Designees shall not be deemed to be employees of the State of Connecticut and shall serve at the pleasure of the Rehabilitator.

11. Pursuant to Conn. Gen. Stat. § 38a-909, the Rehabilitator and the Designees (collectively, the "Indemnitees") shall have no personal liability for their acts or omissions in connection with their duties; provided that such acts or omissions are or were undertaken in good faith and without willful misconduct, gross negligence, or criminal intent. All expenses, costs, and attorneys' fees incurred by the Indemnitees in connection with any lawsuit brought against them in their representative capacities shall be subject to the approval of the Rehabilitator, except that in the event that the Rehabilitator is the Indemnitee, this Court's approval shall be required. All expenses, costs, and attorneys' fees of the Indemnitees shall be exclusively paid out of the Assets.

12. The Rehabilitator may, in his discretion, pay expenses incurred in the administration of the Companies' estates ("Administrative Expenses"), including the costs of preserving or recovering the Assets, the costs of commencing these proceedings, taking possession of the Companies and the preparation therefor, the cost of goods and services provided to the Companies' estates, reasonable professional fees (as approved by the Court), compensation to Designees retained by the Rehabilitator, a reasonable allocation of costs and expenses associated with time spent by the personnel of the Connecticut Insurance Department (the "Department") in connection with the Companies' rehabilitation, and obligations of the Companies incurred before

the entry of this Order; provided that the Rehabilitator shall have determined that the payment of such obligations are necessary for preservation of the Assets or otherwise in the best interests of the Companies' estates.

13. In the event that the Assets are not sufficient or appropriately liquid to pay the Administrative Expenses, the Commissioner may advance costs so incurred out of any appropriation for the maintenance of the Department. Any amounts so advanced for Administrative Expenses shall be repaid to the Department out of the first available money of the Companies.

14. The Rehabilitator shall have the authority to pursue all appropriate claims and remedies on behalf of the Companies, including, the powers granted pursuant to Conn. Gen. Stat. §§ 38a-916(f), 38a-928, and 38a-929 to avoid fraudulent transfers, and the powers pursuant to Conn. Gen. Stat. § 38a-916(d) with regard to any criminal or tortious conduct or breach of any contractual or fiduciary obligation detrimental to the Companies by any officer, manager, agent, producer, employee or other person or entity.

15. Pursuant to Conn. Gen. Stat. § 38a-916(e), if the Rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, policy restructuring or other transformation of the Companies is appropriate, the Rehabilitator shall prepare a plan to effect such changes. Upon application of the Rehabilitator for approval of the plan, and after such notice and hearing as the Court may prescribe, the Court may either approve or disapprove the proposed plan or may modify the plan and approve it as modified.

#### **Turnover of Assets**

16. The Rehabilitator shall have the right to instruct and direct any trustee, bailee, or any agent in possession or control of Assets acting for or on behalf of any of the Companies to

take action or refrain from taking action as the Rehabilitator shall determine.

17. All persons or legal entities of any type ("Entities") who have Assets in their possession, custody or control shall immediately:

- a) provide the Rehabilitator with an accounting of such Assets within thirty (30) calendar days of the entry of this Order, regardless of whether such Entities dispute the Rehabilitator's entitlement to such Assets;
- b) tender possession, custody, and control of such Assets to the Rehabilitator within thirty (30) calendar days of the entry of this Order, regardless of whether such Entities dispute the Rehabilitator's entitlement to such Assets; and
- c) take all necessary steps to safeguard, preserve, and retain the Assets.

### **The Separate Account**

18. PHL established a separate account pursuant to Conn. Gen. Stat. § 38a-433 (the "Separate Account") that has issued policies and annuities and holds designated Assets (the "Separate Account Assets") that are held exclusively for the benefit of such policies. (Life insurance policies and annuities are herein referred to as "policies" except where the context otherwise requires.) The Separate Account Assets are Assets of the PHL estate, and are entitled to the protection of the Act and the Orders. The Separate Account Assets may be used solely for the benefit of policyholders ("Separate Account Policyholders") whose policies were issued by the Separate Account and for the payment of the expenses of administering the Separate Account. The Rehabilitator is not a trustee with respect to the Separate Account Assets. The Separate Account Assets shall not be used for the benefit of other holders of policies issued by PHL unless and until all obligations to Separate Account Policyholders and administrative expenses incurred by the estate with respect to the Separate Account shall have been paid in full or full payment thereof shall have been provided for as determined by the Court.

### **Automatic Stay**

19. Pursuant to Conn. Gen. Stat. § 38a-907, all Entities including, but not limited to,

administrators, officers, managers, directors, trustees, owners, employees, attorneys, agents, creditors, policyholders, reinsurers and cedents of the Companies, having notice of this proceeding or of this Order, other than the Rehabilitator or persons acting on behalf of the Companies with the consent of the Rehabilitator, are hereby enjoined, restrained and prohibited from:

- a) the transaction of any business of, or on behalf of, the Companies unless so authorized by the Rehabilitator;
- b) transferring, selling, concealing, terminating, canceling, destroying, disposing or assigning any Assets;
- c) interfering, in any manner, with the Rehabilitator in his possession and control of or title to the Assets or in the discharge of his duties as Rehabilitator;
- d) wasting Assets;
- e) the dissipation and transfer of bank accounts and negotiable instruments;
- f) the institution or further prosecution of any actions at law or in equity or in other proceedings against the Companies, the Rehabilitator, or the Designees in connection with their duties pursuant to the Act and the Orders, or exercising any right adverse to the right of the Companies to or in the Assets;
- g) the obtaining of preferences, judgments, attachments, garnishments or other like liens or encumbrances against the Companies or the Assets;
- h) the levying of execution or foreclosing upon or making any levy against the Companies or the Assets;
- i) the making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the Assets;
- j) the withholding from the Rehabilitator or his Designees of books, accounts, documents, or other records relating to the Companies' businesses and affairs; or
- k) any other threatened or contemplated action that might lessen the value of the Assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of the Companies' rehabilitation.

Notwithstanding anything to the contrary in this paragraph 19, this Order shall not enjoin, restrain or otherwise prohibit PHL's producers from communicating with PHL policyholders in connection with their policies, or the Nassau Companies from providing administrative, investment and other services pursuant to the Services Agreements (as such term is defined in the Petition) provided that such services are pursuant to direction provided by the Rehabilitator as provided in paragraphs 24 and 29 of this Order.

20. The commencement or continuation of any legal action to which any of the

Companies is a party in any jurisdiction is automatically stayed pursuant to Conn. Gen. Stat. § 38a-907(a)(1)(F), and every party to such contemplated or pending legal action is ordered and enjoined to desist commencement or prosecution thereof. The Rehabilitator shall not be required to petition courts in Connecticut or other states in order to obtain the benefit of the automatic stay. Notwithstanding the stay described in this paragraph 20, the Rehabilitator, in his sole discretion, may commence or continue any legal action to which any of the Companies is a party.

21. All officers, managers, directors, trustees, owners, employees or agents of the Companies, or any other Entities with authority over or in charge of any segment of the Companies' affairs, including, but not limited to, banks, savings and loan associations, financial or lending institutions, brokers, stock or mutual associations, investment managers or administrators shall, in accordance with Conn. Gen. Stat. § 38a-908, fully cooperate with, and shall not obstruct or interfere with, the Rehabilitator in the performance of his duties. The definition of "to cooperate" shall include, but not be limited to, a duty to do the following:

- a) reply promptly to any inquiry from the Rehabilitator, including a written reply when requested;
- b) provide the Rehabilitator with immediate, full and complete possession, control, access to, and use of all books, accounts, documents, and other records, information, or property of or pertaining to the Companies in his, her or its possession, custody, or control;
- c) provide the Rehabilitator with full and complete access to and control of all Assets, documents, data, computer systems, security systems, buildings, leaseholds, and property of or pertaining to the Companies; and
- d) disclose orally or in writing, in the transmission requested by the Rehabilitator, the exact whereabouts of such items and information referenced in paragraphs (b) and (c) above, if not in possession, custody or control of the officers, directors, trustees, employees or agents of the Companies, or any other person, firm, association, partnership, corporation or other Entity in charge of any aspect of such Companies' affairs.

### **Contracts**

22. Pursuant to Conn. Gen. Stat. § 38a-915(c), the entry of this Order shall not constitute an anticipatory breach of any Company's contracts, nor shall it be grounds for



termination, revocation or cancellation of any Company's contracts. All Entities that have contracts with the Companies as of the date of this Order are stayed and enjoined from terminating such contracts, and shall continue to perform their obligations under such contracts unless and until otherwise ordered by the Court or directed by the Rehabilitator.

23. The Rehabilitator may, in his discretion, terminate any contracts in accordance with the applicable provisions of such contracts or may reject any contract upon order of the Court.

#### **Financial Institutions and Custodians**

24. Any bank, savings and loan association, depository institution, securities broker, securities dealer, financial institution or other Entity that has on deposit or in its possession, custody or control any funds, deposits, securities or any other Assets of the Companies (a "Financial Institution"), shall immediately (a) cease following directions previously issued by the Companies with respect to such Assets unless expressly authorized by the Rehabilitator, (b) seek instructions with respect to the disposition of the Assets from the Rehabilitator or his duly authorized representatives, (c) maintain and protect the Assets in accordance with commercially reasonable standards until instructions have been received and (d) transfer title, custody and control of the Assets in accordance with the instructions of the Rehabilitator. The Rehabilitator is authorized to maintain any existing account of the Companies at a Financial Institution provided that the title of the account shall be changed to recognize that the Assets are under the custody and control of the Rehabilitator for the benefit of the Companies' receivership estates.

25. No Financial Institution shall exercise any form of set-off, recoupment, lien, or any other form of self-help remedy against any Asset, including any refusal or failure to pay any obligation owed to any Company, without the permission of the Rehabilitator or authorization from the Court.

26. The Rehabilitator may, in his discretion, authorize Financial Institutions to honor checks issued on or before the date of the Petition even if such checks are not presented until after such date.

### **Agents and Brokers**

27. All insurance agents, brokers or other Entities that sold insurance policies and/or collected premiums on behalf of the Companies ("Agents") shall account for all earned premiums and commissions, and shall account for and pay all premiums received and commissions unearned due to policies canceled in the normal course of business, directly to the Rehabilitator within 30 days of this Order. No Agent shall use premium monies owed to the Companies for refund of unearned premiums or for any purpose other than payment to the Rehabilitator. The authority of Agents to issue or modify policies or annuities is suspended pending further direction of the Rehabilitator. The payment of commissions or other compensation to Agents shall continue for a period of six (6) months from the entry of this Order, at which time the Rehabilitator shall evaluate whether the continued payment of commissions or other compensation to Agents is in the best interest of the Companies and their policyholders. At that time, if the Rehabilitator determines that the continued payment of commissions or other compensation to Agents is not in the best interest of the Companies and their policyholders, he is authorized to immediately suspend such payment without further order of the Court.

### **Reinsurance and Reinsurers**

28. The Rehabilitator is hereby vested with the right, title, and interest in and to all funds recoverable under treaties and agreements of reinsurance entered into by the Companies as the ceding insurer or as the assuming insurer. The amounts recoverable by the Rehabilitator from any reinsurer shall not be reduced or diminished as a result of this rehabilitation proceeding or by

reason of any partial payment or distribution by the Companies on a reinsured policy, contract, or claim. Each such reinsurer is hereby enjoined and restrained from terminating, canceling, failing to extend or renew, or reducing or changing coverage under any reinsurance policy, reinsurance contract or letter of credit. The Rehabilitator may terminate or reject any ceded or assumed reinsurance agreement or contract that is contrary to the best interests of the Companies' rehabilitation, or rescind such agreement or contract if permitted by other applicable law.

#### **Administrators, Managers and Other Agents**

29. Any administrator, manager, agent or other Entity that has been authorized to act for or on behalf of the Companies in the investment of its assets, the management of claims, the underwriting or administration of policies or any other aspect of the Companies' business (the "Business") shall immediately (a) cease following directions previously issued by the Companies with respect to the Business, (b) seek instructions with respect to the further administration of the Business from the Rehabilitator or his duly authorized representatives, (c) maintain and protect the Business in accordance with commercially reasonable standards until instructions have been received and (d) undertake the administration of the Business solely in accordance with the instructions of the Rehabilitator.

#### **Creditor Claims**

30. All creditor claims against the Companies are within the exclusive jurisdiction of this Court and will be determined, resolved, paid, and/or discharged, in whole or in part, according to the terms and conditions approved by the Court. Proofs of claim by any policyholder, creditor or other Entity shall not be required to be filed at this time, and will not be required until the Court shall have established procedures for filing and considering claims against the Companies and their estates.

**Miscellaneous**

31. Pursuant to Conn. Gen. Stat. § 38a-915(b), if the Companies remain in rehabilitation, the Rehabilitator shall submit an accounting to the Court of the Companies' financial condition and progress toward rehabilitation on or before November 20, 2024, and thereafter at six-month intervals. Each accounting shall also include a report concerning the Rehabilitator's opinion as to the likelihood that a plan of rehabilitation will be prepared by the Rehabilitator and the timetable for doing so.

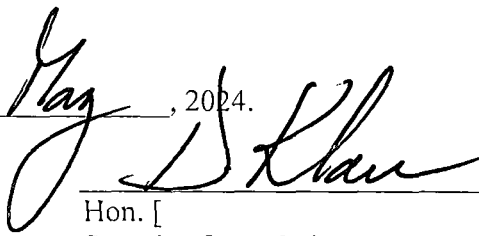
32. This Court shall retain jurisdiction over this matter for all purposes necessary to effectuate and enforce the Act and the Orders. The Rehabilitator may at any time make further application for any such further relief, including, without limitation, any restraining order, preliminary or permanent injunctions, and other orders as he deems necessary.

33. Pursuant to Conn. Gen. Stat. § 38a-915(a), the filing or recording of this Order or a certified copy hereof with the Clerk of the Superior Court for the Judicial District of Hartford shall impart the same notice as a deed, bill of sale or other evidence of title duly filed or recorded with the recorder of deeds would have imparted.

34. The title of this case shall hereafter be "In the matter of PHL Variable Insurance Company, Inc., et al." but the case number shall remain the same.

35. The determination by the Court that the Companies are in hazardous financial condition shall not be a finding of insolvency within the meaning of any life and health insurance guaranty association statute.

APPROVED AND SO ORDERED this 20<sup>th</sup> day of May, 2024.

  
Hon. [ ]  
Superior Court Judge

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