

DOCKET NO.: X06-UWY-CV-24-6085274-S	:	SUPERIOR COURT
	:	
ANDREW N. MAIS, COMMISSIONER OF THE CONNECTICUT INSURANCE DEPARTMENT,	:	COMPLEX LITIGATION DOCKET
	:	
Plaintiff,	:	JUDICIAL DISTRICT OF WATERBURY
	:	
v.	:	
	:	
PHL VARIABLE INSURANCE COMPANY, ET AL.,	:	
	:	
Defendants.	:	July 21, 2025
	:	

**REHABILITATOR’S MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO MODIFY MORATORIUM ORDER**

The Honorable Andrew N. Mais, Insurance Commissioner of the State of Connecticut (“Commissioner”), in his capacity as rehabilitator (“Rehabilitator”) of PHL Variable Insurance Company (“PHL”), Concord Re, Inc. (“Concord”), and Palisado Re, Inc. (“Palisado,” together with PHL and Concord, the “Companies”), hereby submits this memorandum of law in support of the Rehabilitator’s Motion to Modify Moratorium Order (the “Motion”).

I. INTRODUCTION

On June 25, 2024, in connection with the institution of these rehabilitation proceedings, the Court entered the Moratorium Order limiting the payment of certain benefits and transactions under policies issued by PHL (the “Moratorium”). The Moratorium was put into place to stanch the massive outflow of claim payments, which had exceeded \$100 million per quarter since 2022. This prevented near term claimants from being paid in full while longer term claimants would be paid in part or not at all. It also prevented a “run on the bank” by holders of policies with investment features that permit surrender of the policy for cash. To date, the Moratorium has been successful in preventing the dissipation of the estate. To provide relief from the restrictions

imposed by the Moratorium in the event of financial hardship, the Rehabilitator also established a hardship program, through which policyholders and beneficiaries have received over \$5 million in benefits through approved hardship payments.

The Rehabilitator is presently developing a rehabilitation plan for the Companies that will depend in part on the outcome of an effort to sell all or parts of the Companies' businesses. However, the Rehabilitator has concluded that it is unlikely that the ultimate rehabilitation plan will provide for the full, or nearly full, payment of the benefits under certain policies. Further, while the hardship program remains available to provide relief, the Rehabilitator understands that the Moratorium presents financial strain on certain groups of policyholders generally. In some instances, policyholders have a need to access funds immediately. In other instances, policyholders are concerned about continuing to pay the full amount of premiums on a policy when they are uncertain as to the amount of the death benefits that will ultimately be paid. As a result, the Rehabilitator seeks to modify the Moratorium to offer eligible holders of (i) non-variable universal life ("UL") policies alternatives to the ongoing payment of their full cost of insurance ("COI")¹ or premium charges and (ii) fixed indexed annuities ("FIAs") the opportunity to access a portion of their FIA account value.

For UL policyholders with death benefits that exceed guaranty association limits and thus would not receive full payout in a liquidation (approximately 45% of UL policyholders), the Rehabilitator recognizes that they face uncertainty about the ultimate amount of benefits they will receive. They face a difficult choice between continuing to pay COI or premium payments (often

¹ The UL policies are flexible premium products, meaning the policyholder is not billed a set amount as in a term life insurance product. "Cost of insurance" or "COI" rates or charges refer to an amount that is deducted from the account value of a UL policy by the insurer to cover the death benefits under the policy. The COI charge is generally the minimum amount that must be paid to keep the policy in-force. Policyholders can use the investment features of the UL policy by paying amounts in excess of the COI rate.

in high amounts) for uncertain recovery on death benefit claims and stopping payments and allowing their policies to lapse. To address this difficult position, the Rehabilitator proposes to amend the Moratorium to allow eligible UL policyholders to (i) maintain the current status quo by continuing to pay cost of insurance or premiums at current levels, (ii) reduce the face amount of their death benefits with correspondingly lower cost of insurance or premium obligations; or (iii) convert their policy to a claim for a fixed amount in these rehabilitation proceedings with no ongoing cost of insurance or premium payments.

For eligible FIA policyholders, while approximately 95% have account values within guaranty association limits and would therefore receive the full amount of their account value in a liquidation (subject to conditions and adjustments required by the relevant guaranty association's enabling statute), the Rehabilitator recognizes that there is a greater need for short-term access to funds that is currently precluded under the Moratorium except through the hardship process. This need is reflected in the fact that FIA policyholders account for the vast majority of requests under the hardship program. To address this need, the Rehabilitator proposes to allow eligible FIA policyholders greater access to their account value without going through the hardship process. FIA owners who do not have an activated income rider or have not implemented systematic withdrawals will be allowed to (i) maintain the status quo, (ii) activate the income rider on their annuity (if they have such a rider); or (iii) receive a onetime distribution of the "Free Withdrawal Amount" under the contract (typically 10% of the contract's account value) without surrender charge or market value adjustment.

Both proposed modifications continue to promote the goals of the Moratorium, including preventing unsustainable cash outflow from the estate, ensuring that policyholders will not receive worse treatment in rehabilitation than in liquidation, while at the same time addressing certain

unintended consequences of the Moratorium specific to the eligible UL and FIA policyholders. For these reasons and those below, the Rehabilitator respectfully requests that the Court grant the Motion to Modify the Moratorium Order.

II. BACKGROUND

A. The Rehabilitation Order

On May 17, 2024, the Commissioner filed a petition with the Superior Court for the Judicial District of Hartford seeking an order of rehabilitation (i) commencing rehabilitation proceedings for, and appointing the Commissioner as Rehabilitator of, the Companies pursuant to Conn. Gen. Stat § 38a-914; and (ii) directing the Rehabilitator to take immediate possession of the Companies' assets and to administer the assets under the general supervision of the Court. (Dkt. 100.31.)

On May 20, 2024, the Court entered the Order of Rehabilitation and Appointment of State Insurance Commissioner as Rehabilitator of the Companies (the "Rehabilitation Order") (Dkt. 114.00), finding that each of the Companies was in such condition that the further transaction of business would be financially hazardous to its policyholders, creditors, and the public, and that the board of directors of each of the Companies had consented to rehabilitation. The Rehabilitation Order appointed the Commissioner and his successors in office as Rehabilitator and directed him to conduct and continue the Companies' businesses and affairs as he deems to be in the best interests of policyholders, creditors and the Companies' estate subject to the Insurers Rehabilitation and Liquidation Act, Conn. Gen. Stat. §§ 38a-903 to 38a-961 (the "Act"), the Rehabilitation Order, and further orders of the Court.

B. The Moratorium Order

On June 25, 2024, the Court entered the Moratorium Order on a final basis, which imposed a moratorium on certain benefit payments and transactions under the Companies' policies until the confirmation of a rehabilitation plan. The Moratorium was put into place to stanch the massive

outflow of claim payments, which had exceeded \$100 million per quarter since 2022. This prevented near term claimants from being paid in full while longer term claimants would be paid in part or not at all. It also prevented a “run on the bank” by holders of policies with investment features that permit surrender of the policy for cash.

The Moratorium sought to preserve the status quo during the period between the filing of the Petition for Rehabilitation and the development and confirmation of a rehabilitation plan in this case by staying the payout of most loans, surrenders, and claims, but generally providing policyholders the benefits that they would typically receive from guaranty associations if the Companies were placed in liquidation. While the Moratorium Order authorized the Rehabilitator to make limited payments to policyholders, it required policyholders to continue making the minimum periodic premium payments as provided in their policies’ terms. *See* Moratorium Order, ¶¶ 2-3, 5.

Because the Rehabilitator recognized that the Moratorium Order’s restrictions could place financial strain on some policyholders, the Rehabilitator established a hardship program (the “Hardship Program”). Under the Hardship Program, the Rehabilitator is authorized to make payments to a policyholder beyond the limits provided for in the Moratorium Order in the event the policyholder demonstrates financial hardship. A policyholder seeking such relief must complete and submit an application, and provide documentation supporting their claim of financial hardship² and such other information as requested by the Rehabilitator. The Hardship Program remains in place and has provided relief to many policyholders. The vast majority of claims under the Hardship Program have been submitted by FIA policyholders in need of short-term liquidity.

² The policyholder must submit, inter alia, a notarized or certified statement of facts describing the basis of the hardship and listing the policyholder’s income, liquid assets, and circumstances supporting their hardship claim. The policyholder also must provide proof supporting the statement of facts (such as bills, doctor’s statements, notices, Social Security payments, paychecks, etc.).

Since entry of the Moratorium Order, the Rehabilitator has focused on stabilizing the Companies' financial condition, completing a financial and actuarial review and launching a process to market and sell (or reinsure) PHL or blocks of PHL's business to qualified buyers. As set forth in the Rehabilitator's Second Accounting and Status Report filed on May 20, 2025 (the "Second Accounting"), to date, the Moratorium Order has been successful in preventing the dissipation of the estate, but the Rehabilitator believes that certain policyholders would benefit from additional relief proposed in the Modification Motion.

C. Guaranty Association Limits

Unlike bank deposits and securities brokerage accounts, insurance is not supported by a federal guaranty system. Instead, life and annuity policies such as those issued by PHL are supported by state guaranty associations in each of the fifty states, the District of Columbia, and Puerto Rico. The coverage provided by the guaranty associations differs from state to state, but the typical limit for death benefits under a life insurance policy is \$300,000 per insured life. *See* J. David Leslie et al., *Insolvency Guaranty Funds*, 5 Law & Prac. of Ins. Coverage Litig. §§ 58:18 and 58:21 (2024) (explaining that all fifty states have adopted, verbatim or in similar form, the National Association of Insurance Commissioners' model act on insurance guaranty associations, which "sets a per-claim limit on recovery of \$300,000" (footnote omitted)). Guaranty association coverage is generally triggered by an order of liquidation with a finding of insolvency.

Under the guaranty association statutes, policyholders are required to continue to pay the full amount of their premium to the guaranty association, even though their benefits may be substantially less than the guaranty association limit. *See, e.g.*, Connecticut Life and Health Insurance Guaranty Association Act, Conn. Gen. Stat. § 38a-865(d) ("Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the [guaranty] association...."). Under Section 38a-921 of the Act, if PHL were

liquidated, policies would terminate thirty days after the liquidation order except to the extent necessary for guaranty association coverage. As a result, unless policyholders have a present claim for benefits, they would not have a claim with respect to their policies that would be entitled to policyholder priority under Section 944(a)(3) of the Act. Thus, in a liquidation, most policyholders would be limited to their guaranty association coverage for death benefits.

D. Rehabilitation Proceedings and Plan

The Rehabilitator is presently developing a rehabilitation plan for the Companies that contemplates a sale of some or all of the Companies' lines of business. As detailed in the Second Accounting, the Rehabilitator, working with his investment banking, financial, actuarial and legal professionals, launched a process to market and sell (or reinsure) PHL or blocks of PHL business to qualified buyers.³ Such transactions will only be undertaken if they are accretive to the estate and not prejudicial to policyholders. If such sales are feasible, a plan will deliver at least as much value, and likely more value, to policyholders than an immediate liquidation. However, the Rehabilitator has concluded that it is unlikely that the ultimate rehabilitation plan will provide for the full, or nearly full, payment of the benefits under certain policies, most notably, UL policies with face amounts above guaranty association limits.

III. PROPOSED MODIFICATIONS TO MORATORIUM ORDER

Pursuant to Conn. Gen. Stat. §§ 38a-916, 38a-923, and the Rehabilitation Order, the Rehabilitator holds broad powers to modify the Companies' policies, conduct the Companies' business and affairs, dispose of the Companies' assets, consider and allow claims, and take such

³ The sale process is behind where the Rehabilitator expected it to be (largely due to difficulties in preparing the materials needed for a sale process due to the complexity of the Companies). The Rehabilitator anticipates that he will be in a position to present the key terms of a rehabilitation plan, if one is feasible, in the fourth quarter of 2025.

other actions as may be in the best interests of policyholders, creditors, and the Companies' estates, in each case, subject to the approval of the Court. *See* Rehabilitation Order at ¶¶ 6-7.

At the onset of these rehabilitation proceedings, the Rehabilitator requested, and the Court allowed, entry of the Moratorium Order upon the Rehabilitator's showing that the Moratorium was fair and equitable and in the best interests of the policyholders and creditors. *See* Rehabilitator's Motion for a Moratorium on Certain Benefit Payments and Transactions (Dkt. 101.00). The Rehabilitator maintains that the Moratorium Order in this case is fair and equitable, and in the best interests of policyholders and creditors. It provides policyholders with payments that are consistent with the minimum threshold that most policyholders would receive in a liquidation. It pays due recognition to the differences in the basic features of policies (in particular, those policies enjoying the benefit of dedicated assets in PHL's separate account) and provides for exceptions based on proof of hardship.

However, the Rehabilitator has identified two discrete groups of policyholders for whom the Moratorium Order should be modified to better ensure their interests are being treated fairly and equitably with other policy holders: UL policyholders with policy amounts above guaranty association limits and FIA holders who have not accessed their contract's account value through activation of an income rider or implementation of systematic withdrawals.

Both proposed modifications, discussed below, continue to promote the goals of the Moratorium, including the protection of the estate from dissipation, the fair and equitable treatment of policyholders and the prevention of undue hardship. The Moratorium was first initiated in part to avoid a "chaotic rush on assets of [the] insurer just at the time that the Rehabilitator is trying to grapple with understanding the complete financial picture of the company." *Komjathy v. Lewin P&H Supply Co.*, 2003 WL 22413660, at *2 (Conn. Super. Ct. Oct. 10, 2003) (*citing Aly v. E.S.*

Sutton Realty, 360 N.J. Super. 214, 222–23 (2003)). In the absence of the Moratorium Order, there was a risk of dissipation of the Companies’ assets through ongoing claim payments and a prospective “run on the bank” from policy surrenders. See Rehabilitator’s Memorandum of Law in Support of Motion for Moratorium on Certain Benefit Payments and Transactions (Dkt. 102.00) at 3-6. This would be directly contrary to the policy of the receivership laws, which promote equality of distribution among similarly situated policyholders regardless of when their rights and claims become due and payable. *Komjathy*, 2003 WL 22413660, at *2 (citing *Davister Corp. v. United Republic Life Ins. Co.*, 152 F.3d 1277, 1280 (10th Cir. 1998)).

The proposed modifications continue to preserve the status quo until the finalization of a rehabilitation plan, ensuring that policyholders receive better, or not worse, treatment in rehabilitation than they would in liquidation. At the same time, the proposed modifications address consequences unintended at the onset of the Moratorium that are discussed below. By allowing the proposed modifications, the benefits of the Moratorium that accrue to all policyholders remain, while certain negatively impacted UL and FIA policyholders are allowed alternatives that improve their position.

A. Universal Life Insurance Policies (ULs)

PHL’s general account issued non-variable Universal Life Insurance (UL) policies until 2019. UL policies are a form of permanent life insurance that allow policyholders greater flexibility to adjust their premium payment and death benefits. UL premium payments consist of two components: (i) the “cost of insurance” which is the minimum amount that must be paid to keep the policy active; and (ii) amounts in excess of the cost of insurance that form a savings component referred to as the “cash value.” PHL UL policyholders typically purchased the UL policies with substantial death benefit features and used the policies for estate planning purposes. Other policyholders purchased the UL policies with the intent of ultimately selling the policies

into the secondary market, which has resulted in many policies with high face amounts being owned by investors. Currently, there are approximately 8,000 UL policyholders.

Under the Moratorium Order, death benefit payments from PHL's general account are limited to \$300,000 for UL policies.⁴ Moratorium Order, ¶ 2. Approximately 55% of UL policies issued from PHL's general account have death benefits at or below \$300,000, which is the limit of coverage provided by most state guaranty associations. In the event that rehabilitation efforts are unsuccessful and the UL block becomes part of a liquidation of PHL, it is expected that death benefits under UL policies with death benefits of \$300,000 or less would be covered in full by state guaranty associations (subject to the ongoing payment of premium and conditions imposed by state guaranty association statutes).⁵ Holders of such policies are not eligible to elect the options contemplated by the Motion.

The remainder of the 8,000 UL policyholders have high face amount policies (in excess of guaranty association limits). There is uncertainty for holders of these high face amount UL policies over whether the COI charges or premiums they are paying will result in sufficiently high levels of recovery on death benefits to warrant continuing the payments. Such policyholders may be placed in a position where it would be more economic to abandon their policies. The Rehabilitator's goal in modifying the Moratorium as related to UL policyholders is to provide options to this situation.

The Rehabilitator proposes to offer holders of UL policies with face amounts in excess of guaranty association limits the following three options:

⁴ Policyholders with more than one policy are subject to these aggregate caps for all their policies, meaning that the \$300,000 cap is applied per insured life as opposed to per policy.

⁵ As noted above, some state guaranty associations have statutory limits greater than \$300,000, in which case such additional coverage would be available.

- Status Quo: The first option would be for the policyholder to maintain the status quo. Neither death benefits nor COI charges or premiums would be adjusted. If the policy were to mature prior to either a liquidation or entry of a rehabilitation plan, the policy beneficiaries would receive death benefits subject to the Moratorium Order's \$300,000 cap and a claim against the receivership estate for the excess amount.
- Reduced Face Amount and Premium. The second option would permit the policyholder to reduce the face amount of death benefits under the policy and receive a commensurate reduction to the cost of insurance or premium payments as provided in the policy. A reduction in benefits and cost of insurance could be to any level permitted by the terms of the policy, but if the policy were reduced to a level within guaranty association limits, it would be nearly certain to be paid in full in the event of a subsequent death claim whether PHL is successfully rehabilitated or liquidated.
- Fixed Claim. The third option would permit a policyholder to fix a claim in the rehabilitation proceeding and stop the payment of ongoing COI charges or premium. The basis for such a claim would be the policy's cash surrender value ("CSV") as of the date of election plus an enhancement equal to the amount the policyholder has paid in cost of insurance during a portion of the rehabilitation proceeding period, resulting in an adjusted surrender value ("ASV"). The election of this option allows the policyholder to fix a claim for the ASV with no ongoing obligation for cost of insurance charges or premium payments. The claim would be allowed as a policyholder priority claim in a rehabilitation or liquidation of PHL.

and paid at such time as a rehabilitation plan is confirmed or a liquidation order is granted. In connection with the proposed modification, the policyholder would receive information regarding the anticipated range of distribution for the ASV claim.

The Rehabilitator believes that these options address the concerns of the UL holders to the extent it is feasible to do so at this phase of the case. Option 2 provides policyholders the option to reduce their cash outlay, and if policies are limited in amount to guaranty association limits, Option 2 would eliminate uncertainty as to payment level. Option 3 gives policyholders the ability to eliminate cost of insurance or premium payments altogether and fix a claim in the case. By allowing policyholders to enhance their cash surrender value by an amount equal to the cost of insurance or premiums paid during a portion of the rehabilitation proceeding period, the rehabilitator is allowing them to approximate a return to where they were at the start of these proceeding. While it is true that the ASV may not ultimately be paid in full, the policyholder has had coverage during the period of the rehabilitation.

B. Fixed Indexed Annuities (FIAs)

There are approximately 24,000 PHL FIAs outstanding. FIAs are insurance contracts designed to guarantee income (often in retirement) either for life or a set number of years. Typically, FIA policyholders pay a lumpsum premium that forms the basis of the contract's account value. The account value grows at a crediting rate set based on a market index such as the S&P 500. After a certain number of years, policyholders can withdraw funds from the contract without surrender or other charges. They can also begin receiving income when the policyholder activates a guaranteed minimum withdrawal benefit rider, known more commonly as an "income rider," if the policyholder purchased the rider as part of the policy. FIA holders can also access

their account value by setting up a “systematic withdrawal” of a specified amount at established intervals, although this amount is not guaranteed as with an income rider.

Approximately 95% of the FIAs issued from PHL’s separate account have account values below \$250,000 (which is the typical coverage limit of state guaranty associations). Under the Moratorium Order, however, FIA holders are currently not permitted to systematically or otherwise withdraw any of their account value or to activate their income rider. (Policyholders who were already receiving systematic withdrawals or had activated their income rider at the effective date of the Moratorium Order have been allowed to receive benefits on an ongoing basis under the Moratorium Order).

Since the Moratorium Order was issued, FIA holders have presented the vast majority of the hardship claims, reflecting the need of FIA policyholders to have greater access to their account value without requiring them to file a formal application under the Hardship Program, which requires the submission of substantial supporting documentation.

In light of the foregoing, and after careful consideration, the Rehabilitator has determined that it would be fair and equitable to modify the Moratorium Order to offer eligible FIA policyholders the ability to access portions of their FIA account values. These options will only be available to FIA policyholders who are not already receiving systematic withdrawals or who had not already activated their income rider as of the effective date of the Moratorium Order. The three options the Rehabilitator seeks to make available to such FIA policyholders are:

- Status Quo. The first option would be for an FIA holder to maintain the status quo and not seek access to any of their FIA value at this time.
- 10% Withdrawal. The second option would allow an FIA holder to take a one-time withdrawal up to the “Free Withdrawal Amount” provided for in the contract.

Typically, this is 10% of the contract's account value. This amount may be withdrawn without surrender charge or market value adjustment. The amount of any distribution would be reduced by the amount of any prior hardship payments received by the FIA holder.

- **Income Rider**. The third option would be to permit an FIA holder to activate the contract's income rider (to the extent the policy has one). These payments would also be limited by the \$250,000 cap in the Moratorium Order. Note that once the contract's income rider is activated, it cannot thereafter be deactivated.

C. Policyholder Elections

If the Modification Order is granted, the Rehabilitator will deliver to each impacted UL and FIA holder an individualized election package (the "Election Package") that will include the following:

- A detailed description of the options available the policyholder.
- An illustration of each option as applicable for that policyholder or instructions to the policyholder on how to receive such an illustration. The illustration will show, in a manner determined by the Rehabilitator in his discretion, the economic results of each option.
- Information about the likely range of recovery and timing of recovery on claims against the receivership estate based on the Rehabilitator's best estimates.
- The forms required for the policyholder to make an election or a link to a dedicated landing page of the PHL Rehabilitation Website containing such forms. Policyholders would have 45 days to elect an option.

IV. CONCLUSION

For the reasons stated above, the Rehabilitator respectfully requests that the Court grant the Motion to Modify the Moratorium Order and other relief as is just and proper.

Dated: July 21, 2025

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CERTIFICATION OF SERVICE

I hereby certify that on this 21st day of July 2025, a copy of the foregoing was filed electronically and served upon all counsel of record via operation of the Court's CM/ECF System or by mail upon anyone unable to accept electronic filing. Parties may access this filing through the Court's CM/ECF System.

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