[J-54-2022] [MO: Todd, C.J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

IN RE: SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA (IN REHABILITATION)	:	No. 71 MAP 2021
	:	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, THE COMMISSIONER OF INSURANCE OF THE COMMONWEALTH OF MASSACHUSETTS AND THE INSURANCE COMMISSIONER OF THE STATE OF WASHINGTON	:	ARGUED: September 15, 2022

DISSENTING OPINION

DECIDED: June 20, 2023
JUSTICE BROBSON **OPINION FILED: January 29, 2024**

"The rehabilitator may take such action as he deems necessary or expedient to correct the condition or conditions which constituted the grounds for the order of the court to rehabilitate the insurer."[1] According to the majority, this generally worded statutory provision grants the rehabilitator of a Pennsylvania-domiciled insurer the authority to propose, and the Pennsylvania Commonwealth Court the power to approve, a rehabilitation plan that suspends the laws of an ancillary state[2] if, in the discretion of the rehabilitator and the court, those laws pose an impediment to the rehabilitation of a

[1] Section 516(b) of Article V of The Insurance Department Act of 1921 (Department Act), Act of May 17, 1921, P.L. 789, *as amended*, added by the Act of December 14, 1977, P.L. 280, 40 P.S. § 221.16(b). Article V of the Department Act can be found in Pennsylvania's unconsolidated statutes at 40 P.S. §§ 221.1 to .63. For ease of reference, I will cite to the unconsolidated statutes version throughout this opinion when referring to any provision of the Department Act.

[2] Under Article V, an "ancillary state" is a state in which the subject insurer does business, but which is not the insurer's home, or "domiciliary state." 40 P.S. § 221.3 (definitions).

Pennsylvania insolvent insurer. (Maj. Op. at 40 (noting provision gives rehabilitator "sweeping and unqualified power").) Not only that, this provision, according to the majority, further empowers the rehabilitator to create from whole cloth, again with court approval, a substitute rate review and approval regime that, in the rehabilitator's judgment, can better achieve the goals of the rehabilitation than adhering to those established by the ancillary state's legislature. (*Id.* at 43 (referring to other state rate-setting laws as "lengthy and burdensome" and unlikely to "rectify" insurer's present financial condition).) As I do not believe the Pennsylvania General Assembly intended to grant such "sweeping and unqualified" authority to the statutory receiver of a Pennsylvania domestic insurer, I respectfully dissent.

I. BACKGROUND

A. Regulation of the Insurance Industry

To facilitate a better understanding of the instant matter, I begin by setting forth the following pertinent observations relative to the regulation of the insurance industry. Simply stated, the regulation of the business of insurance is left to the individual states. *See* Section 2(a) of the McCarran-Ferguson Act, 15 U.S.C. § 1012(a) ("The business of insurance, and every person engaged therein, shall be subject to the laws of the several [s]tates which relate to the regulation or taxation of such business."). In Pennsylvania, the laws governing the insurance industry can be found in Title 40 of the Pennsylvania Consolidated Statutes and unconsolidated statutes. In connection with these laws, the General Assembly has "assigned the task of overseeing the management of th[e insurance] industry, in this Commonwealth, to the [Pennsylvania] Insurance Department [(Insurance Department)], the agency having expertise in that field." *Foster v. Mut. Fire, Marine & Inland Ins. Co.* (*Mutual Fire II*), 614 A.2d 1086, 1091 (Pa. 1992), *cert. denied*,

506 U.S. 1080 (1993).[3] Furthermore, the Insurance Commissioner of the Commonwealth of Pennsylvania (Commissioner or, in the rehabilitation context, Rehabilitator) "is . . . afforded broad supervisory powers to regulate the insurance business in this Commonwealth." *Id.*[4] Similarly, other state legislatures have enacted statutory schemes that govern the regulation of the insurance business in their respective jurisdictions[5] and have tasked their own administrative bodies and officials with oversight responsibilities.[6]

Pertinently, as part of the Commissioner's broad regulatory power over the business of insurance in Pennsylvania, the Commissioner approves insurance premium

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[3] *See also* 40 P.S. § 41 (establishing Insurance Department, "which is charged with the execution of the laws of this Commonwealth in relation to insurance").

[4] *See also* 40 P.S. § 42 (creating appointed office of Insurance Commissioner).

[5] *See, e.g.,* Me. Rev. Stat. tit. 24-a, §§ 1-7606 ("Maine Insurance Code"); Mass. Gen. Laws ch. 175, §§ 1-230 ("Insurance"); Wash. Rev. Code §§ 48.01.010-.201.060 ("Insurance").

[6] *See, e.g.,* Me. Rev. Stat. tit. 24-a, § 201(1.) (designating Maine Superintendent as head of Maine Bureau of Insurance); Me. Rev. Stat. tit. 24-a, § 211 (providing that Maine Superintendent "shall enforce the provisions of, and execute the duties imposed upon the [Maine S]uperintendent by" Maine Insurance Code; "has the powers and authority expressly vested in the [Maine S]uperintendent by or reasonably implied from" Maine Insurance Code; and "shall have such additional rights, powers[,] and duties as may be provided by other laws"); Mass. Gen. Laws ch. 175, § 3A (providing that Massachusetts Commissioner "shall administer and enforce the provisions" of chapter and certain other provisions); Wash. Rev. Code § 48.01.020 ("All insurance and insurance transactions in this state, or affecting subjects located wholly or in part or to be performed within this state, and all persons having to do therewith are governed by" Washington Insurance Code); Wash. Rev. Code § 48.02.060(1)-(2) (explaining that Washington Commissioner, *inter alia*, "has the authority expressly conferred upon him or her by or reasonably implied from the provisions of" Washington Insurance Code and "must execute his or her duties and must enforce the provisions of" Washington Insurance Code); *see also Bankers Life & Cas. Co. v. Superintendent of Ins.*, 60 A.3d 1272, 1273 (Me. 2013) (providing that Maine Superintendent "has licensing and oversight authority over insurance companies and agents who sell insurance and annuity products to the public"); *Premera v. Kreidler*, 131 P.3d 930, 940 (Wash. Ct. App. 2006) (explaining that "[t]o protect the public in insurance matters, the legislature created the office of [Washington] Commissioner and conferred upon that office the duty of enforcing the provisions of" Washington Insurance Code (internal quotations omitted)).

rates and forms to be used by health insurers *in this state* pursuant to processes prescribed by state statutory and regulatory law. For instance, the Accident and Health Filing Reform Act (Filing Reform Act)[7] generally requires insurers to file proposed rates and forms *to be used in the Commonwealth* for accident and health insurance policies and sets forth a rate review procedure. *See, e.g.*, 40 P.S. §§ 3801.303, .503 (relating to "Required filings"); 40 P.S. §§ 3801.304, .504 (relating to "Review procedure").[8] Again, in line with the state-centric nature of insurance regulation, other states have laws and regulations providing their respective insurance regulators with the authority to approve health insurance premium rates and forms to be used in their respective states and the procedure by which those filings are reviewed and approved.[9]

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[7] Act of December 18, 1996, P.L. 1066, *as amended*, 40 P.S. §§ 3801.101-.5104.

[8] *See also* 40 P.S. §§ 991.1101-.1115 ("Long-Term Care"); 31 Pa. Code §§ 89.1-89 App. I ("Approval of Life, Accident and Health Insurance"); *id.* §§ 89a.101-89a App. G ("Long-Term Care Insurance Model Regulation"); *id.* §§ 89b.1-89b.11 ("Approval for Life Insurance, Accident and Health Insurance and Property and Casualty Insurance Filing and Form").

[9] *See*, *e.g.*, Me. Rev. Stat. tit. 24-a, § 2736 (requiring that "[e]very insurer shall file for approval by the [Maine S]uperintendent every rate, rating formula, classification of risks and every modification of any formula or classification that it proposes to use in connection with individual health insurance policies and certain group policies;" outlining certain procedural requirements relative to filings; and setting forth "requirements that rates not be excessive, inadequate or unfairly discriminatory"); Mass. Gen. Laws ch. 175, § 108 (relating to Massachusetts Commissioner's approval of accident and health insurance policies and providing that, *inter alia*, Massachusetts Commissioner may disapprove "form of policy if the benefits provided therein are unreasonable in relation to the premium charged, or if it contains any provision which is unjust, unfair, inequitable, misleading or deceptive, or which encourages misrepresentation as to such policy"); Wash. Rev. Code § 48.18.110 (relating to grounds for disapproval of insurance policy form and providing, *inter alia*, that Washington "commissioner may disapprove any form of disability insurance policy if the benefits provided therein are unreasonable in relation to the premium charged"); Wash. Rev. Code § 48.18.480 (providing that "[n]o insurer shall make or permit any unfair discrimination between insureds or subjects of insurance having substantially like insuring, risk, and exposure factors, and expense elements, in the terms or conditions of any insurance contract, or in the rate or amount of premium charged therefor, or in the benefits payable or in any other rights or privileges accruing (continued…)

The state-centric nature of insurance regulation is not limited to solvent insurers in the normal course. Rather, the regulation of delinquent insurers[10] is similarly left to the states. *See Mutual Fire II*, 614 A.2d at 1101 n.12 (explaining that "the regulation of insurance companies both solvent and insolvent has been conceded to the states"). To elaborate further on this point, I borrow the following instructive discussion from the Delaware Court of Chancery in *In re Scottish Re (U.S.), Inc.*, 273 A.3d 277 (Del. Ch. 2022):

> As a result [of the McCarran-Ferguson Act], the reorganization or liquidation of insurance companies . . . takes place almost entirely in state courts and as a matter of state law.
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> Three generations of model legislation have sought to bring order to this important area. The first-generation statute is the Uniform Insurers Liquidation Act [(UILA)], promulgated in 1939 by the National Conference of Commissioners on Uniform State Laws ([]NCCUSL[]) with the assistance of the American Bar Association, the National Association of Insurance

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thereunder"); Wash. Rev. Code § 48.19.010(2) (providing that "every insurer shall, as to disability insurance, before using file with the [Washington C]ommissioner its manual of classification, manual of rules and rates, and any modifications thereof except as provided under [Wash. Rev. Code § 48.43.733, relating to rates and forms of group health benefit plans,] or rate filing requirements established by a specific statute or federal law"); Wash. Rev. Code §§ 48.83.005-.901 (relating to standards for long-term care insurance coverage); Wash. Rev. Code §§ 48.84.010-.910 ("Long-Term Care Insurance Act"); *see also* 02-031-420 Me. Code R. §§ 1-App. A ("Nursing Home Care Insurance and Long-Term Care Insurance"); 02-031-425 Me. Code R. §§ 1-App. F ("Long-Term Care Insurance"); 211 Mass. Code Regs. §§ 42.01-.11 ("The Form and Contents of Individual Accident and Sickness Insurance"); 211 Mass. Code Regs. §§ 65.01-.102 ("Long-Term Care Insurance"); Wash. Admin. Code §§ 284-54-010 to -900 ("Long-Term Care Insurance Rules"); Wash. Admin. Code §§ 284-60-010 to -100 ("Disability Insurance Loss Ratios"); Wash. Admin. Code §§ 284-83-005 to -425 ("Long-Term Care Insurance Rules"); Wash. Admin. Code §§ 284-84-010 to -110 ("Fixed Premium Universal Life Insurance"); *Genworth Life Ins. Co. v. Comm'r of Ins.*, 126 N.E.3d 1019, 1023 (Mass. App. Ct. 2019) (affirming Massachusetts Commissioner's disapproval of requested long-term care insurance rate increases).

[10] Delinquent is a term that is generally used to refer to an insurer, not necessarily insolvent, that is subject to a formal proceeding under Article V, including, but not limited to, rehabilitation or liquidation. *See* 40 P.S. § 221.3 (definition of "delinquency proceeding").

> Commissioners ([]NAIC[]), the insurance departments of several states, and other qualified experts. . . . NCCUSL withdrew the [UILA] in 1981 due to its obsolescence.
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> . . . .
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> The second-generation statute is the [Insurer's Supervision Rehabilitation and Liquidation Model Act (Model Act)], promulgated in 1968 by the NAIC and based largely on the Wisconsin Insurers Liquidation Act. The Model Act carried over much of the terminology used in the [UILA], but the Model Act also made changes intended to clarify and improve on the [UILA]. . . .
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> The third-generation act is the Insurer Receivership Model Act ([]IRMA[]), promulgated in 2005 by the NAIC as an updated version of the Model Act. . . .
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> There are important distinctions between the three generations of statutes. Most notably[,] . . . the [UILA] . . . envisions a single type of delinquency proceeding [that encompasses] . . . any proceeding commenced against an insurer [thereunder for] the purpose of liquidating, rehabilitating, reorganizing, or [conserving] such insurer. . . .
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> By contrast, the [Model Act] abandoned the unitary delinquency proceeding by creating two sharp distinctions among proceedings. The [Model Act] first distinguishes between conservation proceedings and formal proceedings. The [Model Act] next distinguishes between two types of formal proceedings: rehabilitation proceedings and liquidation proceedings. Like the [Model Act], the IRMA continues to draw these sharp distinctions.

In re Scottish Re (U.S.), Inc., 273 A.3d at 306-08 (footnotes, citations, and internal quotation marks omitted). Pennsylvania has aligned itself with the Model Act, as represented through the General Assembly's enactment of Article V. *See Koken v. Reliance Ins. Co.*, 893 A.2d 70, 84 (Pa. 2006) ("The Model Act was . . . enacted by the Pennsylvania General Assembly in 1977 and incorporated into the larger Insurance . . . Act as Article V."). Likewise, other states have enacted versions of the model receivership

legislation (or portions thereof). *See In re Scottish Re (U.S.), Inc.*, 273 A.3d at 306-308 (discussing particular states' varying legislation).[11]

B. Article V

Relevant here, Article V permits the Commissioner to pursue the rehabilitation or liquidation of a Pennsylvania-domiciled insurer when the statutory grounds for such action exist.[12] Focusing on rehabilitation, as that is the path the Commissioner chose in the instant matter, Article V directs that the Commissioner petition the Commonwealth Court for an order authorizing the Commissioner to rehabilitate the insurer, alleging that the insurer has committed an act or acts constituting grounds for rehabilitation. 40 P.S. § 221.15(a). Following a hearing, or after the insurer gives written consent, the Commonwealth Court issues an order authorizing the Commissioner "to rehabilitate the business" of the insurer. 40 P.S. § 221.15(b)-(c). The rehabilitation order "appoint[s] the commissioner and his successors in office the rehabilitator" and directs the Rehabilitator "to take possession of the assets of the insurer . . . and to administer them under the

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[11] *See also* Me. Rev. Stat. tit. 24-a, § 4363(1.) (providing that identified provisions "comprise and may be cited as the [UILA]"); *In re Liquidation of Am. Mut. Liab. Ins. Co.*, 747 N.E.2d 1215, 1225 n.13 (Mass. 2001) (explaining that Massachusetts has adopted version of UILA); *Am. Star Ins. Co. v. Grice*, 865 P.2d 507, 510 (Wash. 1994) (noting that Washington has adopted UILA).

[12] *Compare* 40 P.S. § 221.15(a) ("The commissioner may apply by petition to the Commonwealth Court, for an order authorizing him to rehabilitate a domestic insurer or an alien insurer domiciled in this Commonwealth, alleging that the insurer has committed one or more acts which may constitute grounds for rehabilitation as set forth in [S]ection 514 of [Article V]."), *with id.* § 221.20(a) ("The commissioner may apply by petition to the Commonwealth Court for an order directing him to liquidate a domestic insurer, domiciled in this Commonwealth, alleging that the insurer has committed one or more acts which may constitute grounds for liquidation as set forth in [S]ections 514 and 519 of [Article V]."); *see also* 40 P.S. § 221.19 (providing that grounds for rehabilitation in Section 514 "shall be grounds for liquidation," regardless of whether "there has been a prior order of rehabilitation of the insurer").

orders of the [Commonwealth C]ourt." 40 P.S. § 221.15(c). Article V confers certain powers and duties upon the Rehabilitator once appointed. More generally,

> [t]he rehabilitator may take such action as he deems necessary or expedient to correct the condition or conditions which constituted the grounds for the order of the court to rehabilitate the insurer. He shall have all the powers of the directors, officers and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator. He shall have full power to direct and manage, to hire and discharge employes subject to any contract rights they may have, and to deal with the property and business of the insurer.

40 P.S. § 221.16(b). The Rehabilitator may also "prepare a plan for the reorganization, consolidation, conversion, reinsurance, merger or other transformation of the insurer" and submit the same to the Commonwealth Court for approval. 40 P.S. § 221.16(d). The Commonwealth Court reviews the rehabilitation plan under a deferential "abuse of discretion" standard. *Mutual Fire II*, 614 A.2d at 1091-93. After notice and a hearing as the Commonwealth Court "may prescribe, the [Commonwealth C]ourt may either approve or disapprove the plan proposed, or may modify it and approve it as modified." 40 P.S. § 221.16(d). If the rehabilitation plan "is approved, the rehabilitator shall carry out the plan." *Id.* An insurance company rehabilitation generally ends in one of two ways: (1) a petition for liquidation by the Rehabilitator, if the Rehabilitator "has reasonable cause to believe that further attempts to rehabilitate . . . would substantially increase the risk of loss to creditors, policy and certificate holders, or the public, or would be futile;" or (2) a petition to terminate the rehabilitation because the rehabilitation was successful—*i.e.*, the grounds for the rehabilitation no longer exist. 40 P.S. § 221.18. In the latter case, the Commonwealth Court "order[s] that the insurer be restored to possession of its property and the control of its business." 40 P.S. § 221.18(b).

II. ANALYSIS

As the majority notes, Regulators[13] present seven issues on appeal. (Maj. Op. at 23-24.) I agree with the majority's analysis and conclusion that Regulators lack standing to raise the first five issues on appeal to this Court. Because my disagreement lies with the majority's analysis of the remaining two issues, that is where my analysis begins. For the reasons below, contrary to the majority, I conclude that Regulators' claims are meritorious insofar as they challenge the portion of the Second Amended Plan of Rehabilitation (Plan) that suspends the rate-approval laws of ancillary states and creates a new rate-approval regime for in-force policies in those ancillary states.

Under the Plan, the Rehabilitator would seek approval of premium rates and policy modifications from the Commonwealth Court—with the aid of approval from the Insurance Department as discussed further below—and not ancillary state regulators.[14] In response to objections relating to this aspect of the Plan, the Plan also contains a so-called "Issue State Rate Approval" (ISRA) Option. The ISRA Option provides a mechanism by which an ancillary state regulator can opt out of the rate-approval section of the Plan. First, state regulators would be given the opportunity to opt out of the rate-approval provisions of the Plan, and, if a state regulator failed to communicate his or her decision to opt out to the Rehabilitator by the "Opt-out Deadline," the state regulator would be deemed to have opted into the Plan. *In re Senior Health Ins. Co. of Pa. in Rehab.* (*In re SHIP I*), 266 A.3d 1141, 1157 (Pa. Cmwlth. 2021). (*See also* O.R., Item No. 175, Ex. A, at 109.)

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[13] "Regulators" as used herein refers to the ancillary state regulators the Superintendent of Insurance of the State of Maine (Maine Superintendent), the Commissioner of Insurance of the Commonwealth of Massachusetts (Massachusetts Commissioner), and the Insurance Commissioner of the State of Washington (Washington Commissioner).

[14] (*See* Original Record (O.R.), Item No. 175, Ex. A., at 34 ("Rate increases and Policy Modifications will be submitted to Commonwealth Court . . . for approval as part of the Plan. The Rehabilitator will not seek separate approval of rate increases or benefit reductions from insurance regulators in the states in which the policies were issued.").)

As further explained by Patrick Cantilo (Cantilo), the Special Deputy Rehabilitator appointed by the Commissioner, acting as Rehabilitator:

> If a state opts out, the Rehabilitator will file a[rate] application [with the insurance regulator of that state] to increase premium rates for policies issued in that state to the If Knew Premium level. No rate increase will be sought for policies on premium waiver or which are already at or above the If Knew Premium. The Rehabilitator will file the application on a seriatim[, *i.e.*, policy-by-policy] basis to eliminate subsidies and restore a level playing field. The regulator for the opt-out state will then render a decision on the application; if it is only partially approved, the Rehabilitator will downgrade the benefits for the affected policies. . . . [T]his is essential to eliminate the subsidies that exist between policyholders across states by virtue of uneven rate increase approvals over the years. Each opt-out state policyholder will still have four options, which are not exactly the same as those offered in the . . . Plan. They are: (1) pay the approved premium and have benefits reduced to match; (2) accept a downgrade of benefits to match the current premium; (3) accept an issue-state non-forfeiture option; or (4) keep the current benefits and pay the If Knew Premium [in the absence of regulatory approval]. . . . [T]he nonforfeiture option available to opt-out policyholders will not be as generous as the enhanced non-forfeiture option in Option 3 of the . . . Plan. There will also be no "basic policy benefits" option, *i.e.*, Option 2 in the Plan.

In re SHIP I, 266 A.3d at 1157 (footnote omitted). (*See also* O.R., Item No. 175, Ex. A, at 112-14.) Notably, if a state regulator fails to take action on the rate application within 60 days, the application is deemed denied. *In re SHIP I*, 266 A.3d at 1157 n.9.

In furtherance of this new rate-approval process, the Commonwealth Court's order approving the Plan directed the Rehabilitator to submit an actuarial memorandum in support of the If Knew Premium rates to be used in Phase One of the Plan to the Insurance Department for review and approval. The Commonwealth Court further ordered that "[t]he Rehabilitator, in [the] capacity as . . . Commissioner, . . . designate an appropriate deputy insurance commissioner to review the actuarial memorandum submitted to the Insurance Department," following which the Rehabilitator would "submit the approved actuarial memorandum to the [Commonwealth] Court." *Id.* at 1189. In other

words, the Commonwealth Court expanded the rate-setting authority of the Commissioner (as Commissioner, not as Rehabilitator) and the Insurance Department beyond the borders of Pennsylvania. There is no Pennsylvania law that grants the Insurance Department or the Commonwealth Court the power to review and approve rate increases for insurance policies issued outside of the Commonwealth of Pennsylvania.

In resolving Regulators' remaining challenges, it is important to keep in mind that the Commissioner's power and authority emanate from statute. *See Dep't of Env't Res. v. Butler Cnty. Mushroom Farm*, 454 A.2d 1, 4 (Pa. 1982) (explaining that "the power and authority to be exercised by administrative agencies must be conferred by the legislature"). Accordingly, the task at hand requires statutory interpretation, and the Statutory Construction Act of 1972 (Statutory Construction Act), 1 Pa. C.S. §§ 1501-1991, guides the analysis. Pursuant to the Statutory Construction Act,

> the object of all statutory interpretation "is to ascertain and effectuate the intention of the General Assembly." 1 Pa. C.S. § 1921(a). Generally, the plain language of the statute "provides the best indication of legislative intent." *Miller v. Cnty. of Centre*, . . . 173 A.3d 1162, 1168 ([Pa.]2017). If the statutory language is clear and unambiguous in setting forth the intent of the General Assembly, then "we cannot disregard the letter of the statute under the pretext of pursuing its spirit." *Fletcher v. Pa. Prop. & Cas. Ins. Guar. Ass'n*, . . . 985 A.2d 678, 684 ([Pa.]2009) (citing 1 Pa. C.S. § 1921(b)). In this vein, "we should not insert words into [a statute] that are plainly not there." *Frazier v. Workers' Comp. Appeal Bd. (Bayada Nurses, Inc.)*, . . . 52 A.3d 241, 245 ([Pa.]2012). When the statutory language is ambiguous, however, we may ascertain the General Assembly's intent by considering the factors set forth in Section 1921(c) of the Statutory Construction Act, 1 Pa. C.S. § 1921(c), and other rules of statutory construction. *See Pa. Sch. Bds. Ass'n, Inc. v. Pub. Sch. Emps. Ret. Bd.*, . . . 863 A.2d 432, 436 ([Pa.]2004) (observing that "other interpretative rules of statutory construction are to be utilized only where the statute at issue is ambiguous"). Additionally, "[w]ords and phrases shall be construed according to rules of grammar and according to their common and approved usage," though "technical words and phrases and such others as have acquired a peculiar and appropriate meaning or are defined in [the Statutory Construction Act] shall be construed according to such peculiar and

> appropriate meaning or definition." 1 Pa. C.S. § 1903(a). "We also presume that 'the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable,' and that 'the General Assembly intends the entire statute to be effective and certain.'" *Berner v. Montour Twp. Zoning Hearing Bd.*, . . . 217 A.3d 238, 245 ([Pa.]2019) (quoting 1 Pa. C.S. § 1922(1)-(2)).

Goodwin v. Goodwin, 280 A.3d 937, 943-44 (Pa. 2022) (some alterations in original).

Further, when addressing questions concerning the powers conferred upon administrative agencies and officials by the General Assembly, such "powers and authority must be either expressly conferred or given by necessary implication." *Butler Cnty. Mushroom Farm*, 454 A.2d at 4; *see also Aetna Cas. & Sur. Co. v. Ins. Dep't*, 638 A.2d 194, 200 (Pa. 1994) (explaining that "[t]he Insurance Department's supervisory authority over the insurance industry is not without limitation"). Significantly,

> [t]his Court has long adhered to the precept that the power and authority exercised by administrative agencies must be conferred by legislative language that is clear and unmistakable. *See United Artists' Theater* [*Cir.*]*, Inc. v. City of Phila.*, . . . 635 A.2d 612, 622 ([Pa.]1993) ("A doubtful power does not exist." (citations omitted)); [*Butler Cnty. Mushroom Farm*, 454 A.2d at 3]. At the same time, we recognize that the General Assembly has prescribed that legislative enactments are generally to be construed in such a manner as to effect their objects and promote justice, *see* 1 Pa.[ ]C.S. § 1928(c), and, in assessing a statute, courts are directed to consider the consequences of a particular interpretation, as well as other factors enumerated in the Statutory Construction Act. *See* [*Butler Cnty. Mushroom Farm*, 454 A.2d at 5-6] (citing 1 Pa.[ ]C.S. § 1921(a)) (observing that "[s]tatutory construction is not an exercise to be undertaken without considerations of practicality, precept and experience[,]" as ignoring such considerations may result in a forced and narrow interpretation that does not comport with legislative intent). Based upon such considerations, the rule requiring express legislative delegation is tempered by the recognition that an administrative agency is invested with the implied authority necessary to the effectuation of its express mandates. *See* [*Butler Cnty. Mushroom Farm*, 454 A.2d at 4]; [*Pa. Human Rels. Comm'n v. St. Joe Mins. Corp.*, 382 A.2d 731, 736 (Pa. 1978)]; *Day v.* [*Pub. Serv.*] *Comm'n (Yellow Cab Co.)*, . . . 167 A. 565, 566 ([Pa.]1933). *See generally* 2 AM.JUR.2D ADMINISTRATIVE LAW § 62 (1994) (explaining that "[t]he reason for implied powers is that, as a practical matter, the legislature cannot foresee

> all the problems incidental to carrying out the duties and responsibilities of the agency").

Commonwealth v. Beam, 788 A.2d 357, 359-60 (Pa. 2002) (some alterations in original).[15]

I now turn to the statutory provisions which the Rehabilitator and the Commonwealth Court, and now the majority, identify as the source for the disputed power. And, to be clear, the dispute is over the power in a statutory rehabilitator of a Pennsylvania domestic insurer to suspend the rate review and approval laws of ancillary states and replace them with a Pennsylvania-centric process controlled by the Insurance Department, the Commissioner (as Rehabilitator and Pennsylvania regulator), and the Commonwealth Court.

I begin with Section 516 of Article V, outlining the "Powers and duties of the rehabilitator." Section 516 provides, in full, as follows:

> (a) The commissioner as rehabilitator may appoint a special deputy who shall have all the powers of the rehabilitator granted under this section. The commissioner shall make such arrangements for compensation as are necessary to obtain a special deputy of proven ability. The special deputy shall serve at the pleasure of the commissioner.
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> (b) *The rehabilitator may take such action as he deems necessary or expedient to correct the condition or conditions which constituted the grounds for the order of the* [*Commonwealth C*]*ourt to rehabilitate the insurer.* He shall have all the powers of the directors, officers and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator. He shall have full power to direct and manage, to hire and discharge employes subject to any contract rights they may have, and to deal with the property and business of the insurer.
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> (c) If it appears to the rehabilitator that there has been criminal or tortious conduct, or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agent, broker, employe,

[15] To the extent that the parties' arguments also touch upon the power of the Commonwealth Court, I add that "[a]ll Pennsylvania courts derive power or authority, and the attendant jurisdiction over the subject matter, from the Constitution and laws of the Commonwealth." *In re Bruno*, 101 A.3d 635, 659 (Pa. 2014).

> or other person, he may pursue all appropriate legal remedies on behalf of the insurer.
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> (d) *The rehabilitator may prepare a plan for the reorganization, consolidation, conversion, reinsurance, merger or other transformation of the insurer.* Upon application of the rehabilitator for approval of the plan, and after such notice and hearing as the [Commonwealth C]ourt may prescribe, the [Commonwealth C]ourt may either approve or disapprove the plan proposed, or may modify it and approve it as modified. If it is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the equities of policyholders of the company, provided that all rights of shareholders are first relinquished. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies, for such period and to such an extent as may be necessary.
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> (e) The rehabilitator shall have the power to avoid fraudulent transfers under [S]ections 528 and 529.

40 P.S. § 221.16 (emphasis added). In my judgment, these provisions do not "clearly and unmistakably" authorize the Rehabilitator to take the disputed actions herein relative to the Plan's rate-setting mechanism and ISRA Option. Nor do I find such power to be necessarily implied by these provisions. In this regard, the Commonwealth Court relied upon Section 516(b) and (d) of Article V in particular to support its conclusion that the Plan's rate-approval mechanism and ISRA Option constituted a permissible exercise of power on behalf of the Commissioner as Rehabilitator. The court's reliance on these provisions as the source for the Rehabilitator's disputed power is dubious for several reasons. *See Green v. Milk Control Comm'n*, 16 A.2d 9, 9 (Pa. 1940) ("The power and authority to be exercised by administrative [agencies] must be conferred by legislative language clear and unmistakable. A doubtful power does not exist."), *cert. denied*, 312 U.S. 708 (1941); *United Artists' Theater Cir., Inc.*, 635 A.2d at 622 ("A doubtful power does not exist." (citation omitted)).

Preliminarily, Section 516 of Article V pertains to the powers and duties of the Commissioner once appointed as Rehabilitator of a delinquent insurer. On this point,

there is a distinction recognized in the law "between an insurance commissioner functioning as a regulatory authority and an insurance commissioner operating in a private role, such as a liquidator or rehabilitator." *Navarro v. Allied World Surplus Lines Ins. Co.*, 544 F. Supp. 3d 229, 238 (D. Conn. 2021); *see also PrimeHealth Corp. v. Ins. Comm'r of Maryland*, 758 A.2d 539, 546 (Md. Ct. Spec. App.) ("When the Commissioner acts as a rehabilitator in a receivership proceeding[,] . . . he wears, in effect, two hats."), *cert. denied*, 762 A.2d 969 (Md. 2000). As Commissioner, "he remains responsible for exercising the usual powers and performing the usual duties of the" Insurance Department. *PrimeHealth Corp.*, 758 A.2d at 546 (explaining that Maryland Insurance Commissioner "remains responsible for exercising the usual powers and performing the usual duties of the Maryland Insurance Administration" when acting as rehabilitator in receivership). Once appointed as the Rehabilitator, however, he also "step[s] into the shoes of the insurer's officers and directors in the conduct of that insurer's affairs," taking possession of the insurer's assets and "deal[ing] with the property and business of the insurer." *Ario v. Ingram Micro, Inc.*, 965 A.2d 1194, 1197 n.2 (Pa. 2009) (quoting *Vickodil v. Ins. Dep't*, 559 A.2d 1010, 1012-13 (Pa. Cmwlth. 1989)); *PrimeHealth Corp.*, 758 A.2d at 546 (explaining that upon appointment as rehabilitator, Maryland Insurance Commissioner "must also take possession of the property of the insurer[,] . . . conduct the business of the insurer under the general supervision of the court," and "steps into the shoes of the insurer" (citations and internal quotation marks omitted)).

In view of the above distinction and the state-based nature of insurance regulation generally, I read Section 516 of Article V as speaking to the powers and duties of the Rehabilitator as circumscribed by the nature of each of the roles he fills in rehabilitation proceedings: as Rehabilitator—*i.e.*, a private role in which he acts as new management of the delinquent insurer—or, under the most expansive interpretation of Section 516, as

Commissioner—*i.e.*, a regulatory authority performing his usual duties in supervising the insurance industry in Pennsylvania. Section 516(a) provides the Commissioner, as Rehabilitator, the ability to appoint a special deputy to aid in his efforts to rehabilitate a delinquent insurer. Section 516(b) allows the Rehabilitator to "take such action as he deems necessary or expedient to correct the condition or conditions which constituted the grounds for the order of the [Commonwealth C]ourt to rehabilitate the insurer" and provides the Rehabilitator with the power of a delinquent insurer's management. 40 P.S. § 221.16(b). Section 516(c) gives the Rehabilitator the power to pursue legal remedies on behalf of the delinquent insurer relative to improper conduct against the insurer engaged in "by any officer, manager, agent, broker, employe, or other person." *Id.* § 221.16(c). Section 516(d) allows the Rehabilitator to prepare a rehabilitation plan and directs that the Rehabilitator carry out the plan once it is approved. Section 516(e) provides the Rehabilitator the power to avoid fraudulent transfers.

While these powers are admittedly broad, I see nothing in Section 516 of Article V expressly or implicitly granting the Rehabilitator the power and authority to act beyond the scope of his private role as Rehabilitator or his traditional regulatory role as Commissioner—*i.e.*, the ability to empower the Insurance Department and Commonwealth Court to act in tandem as "Super Regulators," providing premium rate approvals outside of the ordinary statutory rate-approval mechanisms in place for the existing policies of Senior Health Insurance Company of Pennsylvania (SHIP). To conclude that the Rehabilitator may confer such power on the Insurance Department and the Commonwealth Court—particularly when they lack such power otherwise—would require us to read Section 516(b) and (d) out of context and stretches the powers of the Rehabilitator well beyond that which is supported by the statutory text.

More critically, I see nothing in these provisions that authorizes the Rehabilitator to operate the affairs of SHIP in violation of positive law, which must include the laws in ancillary states that SHIP remains subject to so long as it remains a going concern (*i.e.*, so long as it is not in liquidation). The Rehabilitator's authority cannot, as the majority maintains, be so "sweeping and unqualified" that it includes the authority to act contrary to law, let alone the authority to suspend another state's insurance laws. (*See* Maj. Op. at 40.) Acts that the Rehabilitator "deems necessary or expedient to correct the condition or conditions which constituted the grounds for the order of the court to rehabilitate the insurer" must be confined to those that are lawful. *See* 40 P.S. § 221.16(b). Indeed, it is not difficult to imagine a panoply of ancillary state laws that impose financial burdens on Pennsylvania domestic insurers who choose to write business in multiple jurisdictions. Yet, if the Commonwealth Court's view of the law prevails, all of those laws are subject to suspension through a plan of rehabilitation if the Rehabilitator believes doing so is "necessary and expedient" to rehabilitate an insurer.

It seems obvious to me that this is not what the General Assembly intended. The Rehabilitator "must comply with positive law" in performing his duties and cannot expand his own authority beyond that which is provided by law. *See In re Scottish Re (U.S.), Inc.*, 273 A.3d at 295-96 (explaining that "commissioner's decision must comply with positive law" and that, "[b]y determining whether the decision complies with positive law, the court does not second guess the commissioner's judgment [but] instead determines whether the commissioner's decision falls within the domain where he can exercise discretion"); *see also Mutual Fire II*, 614 A.2d at 1104 (affirming Commonwealth Court's elimination of immunity provision contained in rehabilitation plan on "basis that it was unjustified and supererogatory since no such provision in the [p]lan 'may confer upon the [r]ehabilitator, her deputies or agents immunity greater than that given by Pennsylvania law as codified

in'" statutes regarding sovereign immunity). To read Section 516(b) of Article V as providing the Rehabilitator with the discretion to eschew compliance with otherwise applicable law on the basis that it is "necessary or expedient" would be unreasonable, particularly in light of Section 501(a) of Article V,[16] discussed below, and in the absence of a clear directive from the General Assembly that such action is permitted in the rehabilitation context.[17]

Insofar as the Commonwealth Court concluded, and the Rehabilitator submits, that the Rehabilitator has the power to modify policyholder contracts to charge higher premium rates and that such power necessarily implies the ability to alter the traditional regulatory schemes in place for approval of those rates under Section 516(b) and (d) of Article V, again, I respectfully disagree. Notwithstanding any authority the Rehabilitator possesses to modify contracts as between SHIP and its policyholders under those statutory provisions (or the terms of SHIP's existing policies and principles of contract law), there is no statutory support for the proposition that such authority necessarily includes the discrete power to create new regulatory approval processes as between SHIP and ancillary state regulators when the contract modification entails an increase in insurance premium rates under those contracts. Again, such a conclusion does not align with the nature of either of the two roles played by the Commissioner here or the state-centric system of insurance regulation.

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[16] 40 P.S. § 221.1(a).

[17] It is worth observing that, notwithstanding the broadly worded first sentence of Section 516(b) of Article V in particular, the provision's second sentence itself places a limit on the Rehabilitator's powers, demonstrating that such powers are not unlimited. *See* 40 P.S. § 221.16(b) (providing that Rehabilitator "shall have full power to direct and manage, to hire and discharge employes *subject to any contract rights they may have*, and to deal with the property and business of the insurer" (emphasis added)).

In further support of my conclusion, Article V's very first provision provides that nothing in Article V is to "be interpreted to limit the powers granted the commissioner by other provisions of the law." 40 P.S. § 221.1(a). As noted above, in the normal course, issue-state regulatory officials approve premium rates for long-term care insurance policies pursuant to the law of the issuing, or ancillary state. While I acknowledge that a delinquent insurer in receivership is not operating in the normal course, the fact remains that, under the Plan, both SHIP and its policies issued in Pennsylvania and beyond prior to SHIP's rehabilitation "are still in force and will remain in force until SHIP emerges from rehabilitation." *In re SHIP I*, 266 A.3d at 1172. An interpretation of Article V that authorizes the Rehabilitator to confer upon the Commissioner and Commonwealth Court the rate-approval power at issue herein would constitute a "limit" on the power state insurance regulatory officials have relative to those preexisting policies provided under other provisions of the law.

In light of this rationale, I agree with Regulators that, where Article V "expressly does not limit the . . . Commissioner's other regulatory authority (such as rate review authority)," it would be "absurd" to interpret Article V to "limit the authority of *other* regulators under *their own* [s]tates' laws." (Regulators' Brief at 52 (emphasis in original).) Indeed, it is not unprecedented in Pennsylvania for a plan of rehabilitation to require or entail the necessary regulatory approvals as a part of the rehabilitation process. *See Koken v. Fid. Mut. Life Ins. Co.*, 803 A.2d 807, 810, 827 (Pa. Cmwlth. 2002) (observing that rehabilitation plan for Fidelity Mutual Life Insurance Company "provide[d] that [new life insurance company assuming policy obligations of Fidelity Mutual Life Insurance Company] obtain all necessary regulatory approvals to do business in the respective states"); *Consedine v. Penn Treaty Network Am. Ins. Co.*, 63 A.3d 368, 449 n.55 (Pa. Cmwlth. 2012) ("Although the question has not been decided by th[e

Commonwealth] Court, or any court as far as can be determined, the [r]ehabilitator presumes that rate increases made a part of a rehabilitation plan will require state insurance department approval."), *aff'd but criticized sub. nom. In re Penn Treaty Network Am. Ins. Co.*, 119 A.3d 313 (Pa. 2015) (per curiam). In contrast, it does appear to be unprecedented—in Pennsylvania and beyond—for a statutory rehabilitator in the insurance receivership context to suspend ancillary state regulatory approval processes pursuant to a court-approved rehabilitation plan. Regulators claim as much, and no authority has been presented to this Court confirming that such action constitutes a permissible exercise of power on behalf of a statutory rehabilitator under any statutory insurance receivership scheme.

Further, I do not agree with the suggestion that the Rehabilitator possesses the disputed power herein pursuant to the statutes relating to the Commonwealth Court's jurisdiction in insurance receivership proceedings.[18] The statutory directives relating to the Commonwealth Court's jurisdiction over the assets of an impaired insurer do not confer any power upon the Rehabilitator, nor do they permit the Commonwealth Court to

[18] The Rehabilitator specifically cites to Section 515(a) and (c) of Article V, Section 516(d) of Article V, and Section 761(a)(3) and (b) of the Judicial Code, 42 Pa. C.S. § 761(a)(3) and (b). Section 515(a) and (c) of Article V provides that the Commissioner may apply to the Commonwealth Court for an order authorizing him to rehabilitate an impaired insurer and that the rehabilitation order "shall direct the rehabilitator forthwith to take possession of the assets of the insurer . . . and to administer them under the orders of the [Commonwealth C]ourt." 40 P.S. § 221.15(a), (c). Relevant to the Rehabilitator's argument in this regard, Section 516(d) of Article V provides that the Commonwealth Court "may either approve or disapprove the plan proposed, or may modify it and approve it as modified." *Id.* § 221.16(d). Section 761(a)(3) of the Judicial Code provides that "[t]he Commonwealth Court shall have original jurisdiction of all civil actions or proceedings[] . . . . [a]rising under Article V." 42 Pa. C.S. § 761(a)(3). Section 761(b) of the Judicial Code provides that "[t]he jurisdiction of the Commonwealth Court under subsection (a) shall be exclusive except as provided in [S]ection 721 (relating to original jurisdiction) and except with respect to actions or proceedings by the Commonwealth government, including any officer therefor, acting in his official capacity, where the jurisdiction of the court shall be concurrent with the several courts of common pleas." *Id.* § 761(b).

confer new power upon the Commissioner (whether wearing his Rehabilitator hat or otherwise) via approval of a rehabilitation plan beyond what the General Assembly provided him by statute. As noted in *Kueckelhan v. Federal Old Line Insurance Company (Mutual)*, 444 P.2d 667 (Wash. 1968), a case upon which we relied in *Mutual Fire II*:

> The court's sole and proper function in rehabilitation proceedings is to direct—that is, to supervise and review—the actions of the Insurance Commissioner while he is operating the seized insurance company. The courts cannot dictate or outline the general policy or course of conduct of the Insurance Commissioner or his department . . . because this outline is dependent on the terms of the applicable statutory provisions and not upon judicial discretion. Our statutory provisions, therefore, properly place the responsibility on both the Insurance Commissioner and the courts, the Commissioner being required to follow the statutory mandates and to use reasonable discretion in the rehabilitation of a seized company, with abuses of discretion to be checked by the judiciary. . . .
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> . . . [In rehabilitation, the Commissioner] is acting like a receiver or trustee and as an officer of the state[,] . . . . not acting as an agent of the courts. He holds his position as rehabilitator by force of legislative enactment, confirmed by court appointment. Consequently, the court's power of discretion, vis-à-vis the Insurance Commissioner, is curtailed by the Commissioner's statutory powers and the statutes governing the management of insurance companies and rehabilitation proceedings.

Kueckelhan, 444 P.2d at 674; *see also In re Rehab. of Centaur Ins. Co.*, 606 N.E.2d 291, 295 (Ill. App. Ct. 1992) ("Since a rehabilitator derives his or her authority from the statute and cannot act against or beyond the statute, a court order does not confer on a rehabilitator any additional authority."), *aff'd*, 632 N.E.2d 1015 (Ill. 1994). Accordingly, I reject the Rehabilitator's position in this regard.

Finally, I address Article V's provisions relating to its purpose. Section 501(c) of Article V fully provides:

> The purpose of this article is the protection of the interests of insureds, creditors, and the public generally, with minimum interference with the normal prerogatives of the owners and managers of insurers, through (i) early detection of any potentially dangerous condition in an insurer, and prompt application of appropriate corrective measures; (ii) improved methods for rehabilitating insurers, involving the cooperation and management expertise of the insurance industry; (iii) enhanced efficiency and economy of liquidation, through clarification and specification of the law, to minimize legal uncertainty and litigation; (iv) equitable apportionment of any unavoidable loss; (v) lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation

> process, and by extending the scope of personal jurisdiction over debtors of the insurer outside this Commonwealth; and (vi) regulation of the insurance business by the impact of the law relating to delinquency procedures and substantive rules on the entire insurance business.

40 P.S. § 221.1(c). Even engaging in a liberal construction of the above provision as required by Section 501(b) of Article V,[19] I again discern nothing explicit or implicit therein that would authorize the Plan's rate-setting mechanism and ISRA Option. Indeed, I do not quarrel with the points made by the Rehabilitator and the Commonwealth Court—insofar as they are stated in the general sense—relative to the intent of Article V (and other insurance receivership statutes) to centralize the receivership process and address the many difficulties attendant thereto in cases involving multistate insurers, among other goals. In this vein, the provisions above evidence an intent—in view of the state-centric nature of insurance regulation—to facilitate "cooperation" between states in cases involving a delinquent insurer with assets in multiple states. Nor do I question that the Plan's rate-approval mechanism and ISRA Option are well-intentioned mechanisms designed with the purposes of Article V in mind. Notwithstanding, these purposes simply do not empower the Rehabilitator, as a part of a court-approved rehabilitation plan, to suspend ancillary state insurance laws as to a Pennsylvania domestic insurer in rehabilitation and provide the Insurance Department and Commonwealth Court authority to set insurance rates in other jurisdictions that they otherwise do not possess.[20] *See In*

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[19] Section 501(b) of Article V provides: "This article shall be liberally construed to effect the purpose stated in subsection (c)." 40 P.S. § 221.1(b).

[20] In reaching this conclusion, I do not discount the determinations of the Rehabilitator and Commonwealth Court that SHIP's dire financial circumstances are directly, albeit not solely, attributable to the refusal of issue-state insurance regulators to approve SHIP's past premium rate increase requests and that Regulators' states "are illustrative of the problem." *In re SHIP I*, 266 A.3d at 1169 (explaining that, of rate increases sought by SHIP since 2009, Massachusetts approved 90%, Maine approved 11%, and Washington approved 63%). While state insurance regulators have the authority to approve or disapprove rate increases, it is not lost on me—nor should it be lost on state insurance regulators—that while disapproving such increases may benefit policyholders in the short (continued…)

re Am. Network Ins. Co., 284 A.3d 153, 162 (Pa. 2022) (affirming Commonwealth Court's decision that there was "simply no statutory authority for [the] well-intentioned proposal" of statutory liquidator to divert "funds to a captive insurer to provide benefits to policy[]holders above the limit applicable to the statutory guaranty association limits" (internal quotation marks omitted)).

III. CONCLUSION

The ability to suspend ancillary state insurance laws for a Pennsylvania-based insurer is a great power that the Commissioner, as Rehabilitator, seeks to wield through the Plan's rate-approval mechanism and ISRA Option. It is axiomatic, however, that the Commissioner cannot exert this power unless, at a minimum, the General Assembly has conferred it upon the Commissioner expressly or by necessary implication. Upon review of the provisions of Article V and other law upon which the Commissioner and Commonwealth Court relied as the source for this asserted power, I discern no basis upon which to conclude that the General Assembly intended to provide the Commissioner with such authority, expressly or implicitly.

Accordingly, left to my own devices, I would hold that the Commonwealth Court abused its discretion by exceeding its statutory authority in approving the Plan, as the Plan's rate-setting mechanism and ISRA Option unlawfully suspend ancillary state insurance laws and confer power upon the Commissioner, both as Rehabilitator and as Pennsylvania insurance regulator, that exceeds the power provided to him by statute.[21]

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term, the disapproval of actuarially justified rate increases that are not excessive, inadequate, unreasonable, or unfairly discriminatory can pose a long-term threat to the solvency of any insurer. Policyholders ultimately benefit from receiving coverage from a healthy insurer operating in the normal course.

[21] To be clear, in light of my analysis above and conclusion that the Rehabilitator lacks the authority to exercise the disputed power herein relative to the Plan's rate-approval mechanism and ISRA Option, I likewise would conclude that the Commonwealth Court abused its discretion to the extent that it granted the Rehabilitator's motion in the nature (continued…)

See Commonwealth v. Taylor, 230 A.3d 1050, 1072 (Pa. 2020) ("It is a paradigmatic abuse of discretion for a court to base its judgment upon an erroneous view of the law." (citing *Mielcuszny v. Rosol*, 176 A. 236, 237 (Pa. 1934) ("An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied . . . discretion is abused."))); *see also In re Penn Treaty*, 119 A.3d at 323 ("[D]eference does not require the courts to accede to a misuse of the [rehabilitation] process.").

For the above reasons, I respectfully dissent with respect to parts II D and E and III of the majority opinion.[22]

Justice Mundy joins this dissenting opinion.

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of a directed verdict on the ISRA Option. Furthermore, because I conclude that Regulators' claims are meritorious insofar as they challenge the Rehabilitator's authority to create and implement the Plan's rate-setting mechanism and ISRA Option on statutory grounds, I would not reach the issue of whether these aspects of the Plan violate the Full Faith and Credit Clause of the United States Constitution, U.S. Const. art. IV, § 1. *See In re Fiori*, 673 A.2d 905, 909 (Pa. 1996) (observing "the sound tenet of jurisprudence that courts should avoid constitutional issues when the issue at hand may be decided upon other grounds").

[22] Nevertheless, I join parts I and II A through C of the majority opinion.