Articles + Publications | June 25, 2024

Locke Lord QuickStudy: PHL Variable Insurance Company in ?Rehabilitation At A Glance

Locke Lord LLP

WRITTEN BY

Paige D. Waters | Stephanie O'Neill Macro

On Friday, May 17, 2024, Connecticut Insurance Commissioner Mais filed a Petition for Rehabilitation and Appointment of the Commissioner as Rehabilitator of PHL Variable Insurance Company ("PHL"), a Connecticut domestic stock life insurance company, and its two wholly-owned Connecticut reinsurance company subsidiaries, Concord Re, Inc. ("Concord") and Palisado Re, Inc. ("Palisado"). On Monday, May 20, 2024, the Rehabilitation Order was entered upon the Insurers' consent ("Rehabilitation Order"), and an Interim Moratorium Order ("Moratorium Order") also was entered. PHL issued life insurance and annuity products and related supplemental contracts to policyholders nationwide. Concord and Palisado are captive Insurers whose only business is the reinsurance of PHL's liabilities. The Connecticut Insurance Commissioner filed the Petition after determining that the Insurers were in a hazardous financial condition and that other alternatives have been thoroughly explored.

The Connecticut Insurance Commissioner acting in his capacity as statutory insurance receiver is the rehabilitator ("Rehabilitator"). The Rehabilitator is appointed by the receivership court (court of equity) in the Rehabilitation Order in accordance with the Connecticut insurance receivership laws. On June 25, 2024, the Receivership Court approved the appointment of FTI Consulting as Deputy Rehabilitator and Financial Adviser to the Rehabilitator, as well as, the appointment of Morgan Lewis as Counsel to the Rehabilitator. Additionally, a slightly revised Moratorium Order was entered on June 25, 2024.

If the Rehabilitation Order has been entered with a finding of insolvency, then the guaranty associations would have been triggered. PHL is currently in a hazardous condition; however, there has not been a finding of insolvency so the guaranty associations have not been triggered. (Rehabilitation Order ¶ 1.)

The Rehabilitator is vested by operation of law with title to the Insurers, their legal and equitable right, title and interest in all of the Insurers' property, including earned premiums & commissions, reinsurance receivables, as of the date of the Order and any property acquired thereafter. (Rehabilitation Order ¶ 7.) The Rehabilitator has all of the powers of the directors, officers and managers, which are suspended, but Rehabilitator may redelegate certain powers as appropriate. (Rehabilitation Order ¶ 8.)

Within 12 months, the Rehabilitator will prepare a Rehabilitation Plan subject to the Receivership Court's approval after notice and hearing.

Statutory State Insurance Rehabilitations

©2026 Troutman Pepper Locke

Insurers are not subject to the Federal Bankruptcy Code, but instead are subject to state insurance receivership proceedings in all jurisdictions[1]. Because insurance is affected with a public interest, the states are enforcing their police powers in a state insurance receivership. PHL is subject to the Connecticut Insurers Rehabilitation and Liquidation Act because it is a domestic insurer in Connecticut. CT Ins. Code § 38a-903 *et seq.* Unlike Federal bankruptcy, in which there are two classes of claimants – secured and unsecured, in state insurance receivership proceedings, policyholders are prioritized over all other unsecured creditors except for the expenses of administering the receivership. CT Ins. Code § 38a-944. The claims of each class must be paid in full before the next class can receive payments. "Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. . . . No claim by a shareholder, policyholder or other creditor shall be permitted to circumvent the priority classes through the use of equitable remedies." CT Ins. Code § 38a-944. The Rehabilitation Plan will set forth the process for how claims will be paid and the related processes for distribution from the Estate.

PHL Rehabilitation Order

- Requires Turn Over of the Insurers' Assets in the possession or control of any person or entity within 30 days. (Rehabilitation Order ¶ 16 & 17.)
- Separate Account assets are to be used only for Separate Account Policyholders unless and until all such claims have been paid in full or full payment has been provided for as determined by the Receivership Court. (Rehabilitation Order ¶ 18.)
- Automatic Stay (Anti-Suit Injunction) requires all persons having notice of the Proceedings or the Order from doing anything with the Assets. (Rehabilitation Order ¶ 19.)
- Stays all litigation in which each Insurer is a party unless otherwise determined by the Rehabilitator. (Rehabilitation Order ¶ 20.)
- Requires the cooperation with the Rehabilitator. (Rehabilitation Order ¶ 21.)
- Stays all contract rights unless other determined by the Rehabilitator or the Receivership Court. Order is not an anticipatory breach of any contract. (Rehabilitation Order ¶ 22.)
- Prohibits everyone from doing anything with Assets unless approved by the Rehabilitator or the Court. Requires everyone to maintain and protect the Insurers' Assets. (Rehabilitation Order ¶ 24 – 28.)
- Amounts recoverable from any reinsurer shall not be reduced or diminished and reinsurers are enjoined from doing anything under any reinsurance policy or contract or letter of credit. Rehabilitator may terminate or reject any ceded or assumed reinsurance agreement or contract that is not in the best interests of the Estate. (Rehabilitation Order ¶ 28.)
- All claims against the Insurers are subject to the Receivership Court's approval in accordance with procedures established and approved by the Receivership Court. (Rehabilitation Order ¶ 30.)

PHL Moratorium Order

- Moratorium Order limits payments under ?some life insurance policies and annuity contracts while a Rehabilitation Plan is ?being developed. ?
- Rehabilitator will not pay benefits or investment obligations under life insurance policies and annuity contracts, except to the extent provided in the Moratorium Order. (Moratorium Order ¶ 3.)
- Rehabilitator is authorized to make Hardship Payments to owners of life insurance policies and annuity contracts on a case-by-case basis. (Moratorium Order ¶ 4.)
- All policyholders must make minimum periodic premium payments under the terms of their life insurance policies. Flexible premium life insurance policyholders may opt to make premium payments above the required minimums to keep the policies in place. (Moratorium Order ¶ 6.)

©2026 Troutman Pepper Locke

Next Steps

- Rehabilitator will marshal the Estate Assets and develop a Rehabilitation Plan within 12 months
- Policyholders and creditors should continue to monitor the Receivership ?Court proceedings
- Material transactions will ?require Receivership Court ?approval ?
- Advisory Committee
  - Rehabilitator has the power to appoint an Advisory Committee of policyholders, claimants and other creditors if necessary, subject to the Receivership Court's approval (CT Ins. Code Section 38a-916(a))
  - Rehabilitator has the sole power to appoint an Advisory Committee that serves at the Rehabilitator's pleasure without compensation and without reimbursement of expenses
- Sale of books of business or ?assets of the Insurers is possible
- Failure of the Rehabilitation Plan or other ?related adverse developments ?might result in conversion to ?Liquidation

—

[1] Insurers are excluded from being debtors in a Federal bankruptcy proceeding under 11 U.S. Code § 109.

RELATED INDUSTRIES + PRACTICES

- Bad Faith
- Insurance + Reinsurance
- Insurance Commercial Litigation
- Insurance Transactional + Regulatory
- Reinsurance