

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
AT RICHMOND, OCTOBER 20, 2011

111030200

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION,

v.

CASE NO. INS-2011-00155

SHENANDOAH LIFE INSURANCE  
COMPANY,

Defendant

FINAL ORDER APPROVING PLAN OF CONVERSION, REHABILITATION PLAN, AND  
ACQUISITION OF CONTROL, AND GRANTING RELATED RELIEF

Before the State Corporation Commission ("Commission") is the "Application for: (A) a Final Order Approving Rehabilitation Plan (Including Plan of Conversion) and Acquisition of Control, and Granting Related Relief; and (B) a Final Order Terminating Rehabilitation Proceeding" ("Application"), filed on June 24, 2011, by Jacqueline K. Cunningham, in her capacity as Deputy Receiver ("Deputy Receiver") of Shenandoah Life Insurance Company ("Shenandoah" or "Company").

PROCEDURAL HISTORY

(1) The Circuit Court of the City of Richmond, Virginia ("Court"), found Shenandoah to be in a hazardous financial condition, placed the Company into receivership, and appointed the Commission as receiver of the Company (in such capacity, "Receiver") with all the powers and authority expressed or implied under the provisions of Title 38.2, Chapter 15 of the Code of Virginia and as set forth in the Court's Final Order Appointing Receiver for Rehabilitation or Liquidation, dated February 12, 2009 ("Receivership Order").

**EXHIBIT  
B**

(2) Pursuant to the Receivership Order, the Receiver is authorized to take any and all actions that it deems advisable in connection with the liquidation or rehabilitation of the Company and is further authorized to act as the receivership court of record, to oversee the rehabilitation or liquidation of the Company, and to approve any other authorized steps that it considers advisable in connection with the affairs of the Company pursuant to § 38.2-1508 of the Code of Virginia and Article IX, § 3 of the Constitution of Virginia without need for further order of the Court.

(3) The Receiver, in accordance with authority granted to it by the Court under the Receivership Order, pursuant to the Receiver's Order Appointing Deputy Receiver for Conservation and Rehabilitation, dated February 12, 2009, as amended by the Receiver's Amendment to Order Appointing Deputy Receiver for Conservation and Rehabilitation, dated January 10, 2011 ("Order Appointing Deputy Receiver"), appointed the Deputy Receiver to act on behalf of the Commission in its capacity as Receiver for the period the Commission is the Receiver of the Company.

(4) The Receivership Order, the Order Appointing Deputy Receiver, and applicable Virginia law vest title, both legal and equitable, in the Receiver to all of the Company's property, including its affairs, business, assets, records, and all other property of any kind or nature, and give the Receiver and the Deputy Receiver the sole right to conduct the business of the Company and each of its subsidiaries.

(5) The Application recites that the Deputy Receiver has determined that (i) the proposed conversion ("Conversion") of the Company from a domestic mutual life insurance company to a domestic stock life insurance company pursuant to a plan of conversion ("Plan of Conversion") and rehabilitation would be in the best interests of the Company, its members ("Members"),



policyholders ("Policyholders"), insureds ("Insureds"), subscribers ("Subscribers"), creditors ("Creditors"), and the public, and in connection with the foregoing adopted a plan of rehabilitation ("Rehabilitation Plan") on May 4, 2011; and (ii) the purposes of the rehabilitation proceeding would be accomplished under the Rehabilitation Plan, such that, upon the last to occur of the "Closing," expiration of the "Bar Date," and expiration or termination of any "Extension of Moratorium on Cash Withdrawals" (as those three terms are defined in the Application), the Company could safely and properly resume possession of its property and the conduct of its business in accordance with the Rehabilitation Plan, and the rehabilitation proceeding could be terminated.

(6) The Rehabilitation Plan provides for and is contingent upon the Conversion and subsequent sale ("Sale") by the Deputy Receiver, acting in her capacity as such and on behalf of the Company, immediately following the Conversion, of 1,000 newly created shares of common stock, par value \$.01 per share of the Company, representing all of the issued and outstanding shares of capital stock or other equity interests of the Company, and as part of the Conversion in accordance with and subject to the terms and conditions of a confidential stock purchase agreement ("Stock Purchase Agreement") dated as of May 4, 2011, by and among the Deputy Receiver, the Company, and United Prosperity Life Insurance Company ("United Prosperity" or "Purchaser").<sup>1</sup>

(7) The Purchaser filed its Application for Approval of Acquisition of Control seeking the Commission's approval of the Sale and change of control of the Company and included therein the Purchaser's Form A statement (collectively, "Form A"), in accordance with

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<sup>1</sup> Concurrent with the filing of the Application, the Deputy Receiver filed a Motion for Protective Order and Incorporated Memorandum in Support with respect to the Stock Purchase Agreement.

§ 38.2-1323 of the Code of Virginia and other applicable law, requesting that, among other things, the Commission schedule a hearing thereon.<sup>2</sup>

(8) By scheduling order dated June 27, 2011 ("Scheduling Order"), the Commission set a single hearing on the Rehabilitation Plan, the Plan of Conversion, the Form A, and the termination of the rehabilitation proceeding pursuant to § 38.2-1519 (A) of the Code of Virginia, said hearing to be held on October 11, 2011 ("Hearing").

(9) The Scheduling Order also approved the notice and response procedures proposed by the Deputy Receiver.

(10) The Scheduling Order also provided for the manner in which any interested person could file a notice of objection ("Notice of Objection") to the Rehabilitation Plan (including the Plan of Conversion), the Form A, the requested termination of the rehabilitation proceeding upon certain conditions, or the requested related relief.

(11) On August 12, 2011, Global, IQX, Inc., timely filed its Notice of Objection, objecting to the Application only to the extent that it might cut off its rights as a creditor. Subsequently, following communications with representatives of the Deputy Receiver, on September 12, 2011, Global, IQX, Inc., withdrew its objection. No other party timely filed an objection to the Application, the Plan of Conversion, or the Rehabilitation Plan. Therefore, as of the date of the Hearing on the Application, no objections were pending.

(12) The Commission held the Hearing as scheduled.

(13) Counsel made appearances at the Hearing on behalf of the Deputy Receiver and United Prosperity. Insurance Commissioner Jacqueline K. Cunningham, Donald C. Beatty, and

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<sup>2</sup> That Application was initially designated as Case No. INS-2011-00124.



Ed Dinkel testified at the behest of the Deputy Receiver, and José Montemayor testified at the behest of United Prosperity. No other person appeared or testified at the Hearing.

NOW THE COMMISSION, having considered the Application, the evidence, and argument of counsel, makes the following findings:

(1) On July 15, 2011, in accordance with the Scheduling Order, the Deputy Receiver filed a Submission of Affidavits of Notice by Mailing and Publication in Support of Application for: (A) a Final Order Approving Rehabilitation Plan (Including Plan of Conversion) and Acquisition of Control, and Granting Related Relief; and (B) a Final Order Terminating Rehabilitation Proceeding. The Commission now finds that the notice requirements set forth in the Scheduling Order have been satisfied.

(2) With respect to the Plan of Conversion for purposes of § 38.2-1005.1 of the Code of Virginia:

- a. The terms and conditions of the Plan of Conversion are fair and equitable to Policyholders;
- b. The Plan of Conversion is subject to approval by a vote of more than two-thirds of all votes cast on the Plan of Conversion at a meeting of Members called for that purpose at which a quorum is present;
- c. The Plan of Conversion allocates and directs that the entire consideration to be distributed upon consummation of the Conversion and Sale, if any, be distributed to the Policyholders;
- d. The methods set forth in the Plan of Conversion for determining the aggregate amount of consideration, if any, to be distributed to Policyholders upon consummation of the Conversion and Sale, and for

- determining each eligible Policyholder's share of any such distribution, are fair and equitable;
- e. As of February 12, 2009, on a liquidation basis of accounting, Shenandoah was insolvent as that term is defined in § 38.2-1501 of the Code of Virginia;
  - f. Although Shenandoah properly reported that it was solvent on a statutory basis as of December 31, 2009, and December 31, 2010, it would have been statutorily insolvent as of those dates were it not for certain dispensation from reporting requirements of § 38.2-1400 *et seq.* of the Code of Virginia available only because it was in receivership as of those dates;
  - g. As of the date of the Hearing, and subject to said dispensation, Shenandoah had statutory surplus substantially in excess of \$10,000,000 and is projected to retain at least that surplus on that basis as of the expected Closing Date; and
  - h. Immediately after consummation of the Conversion and Sale, Shenandoah would have the fully paid capital stock and surplus required by applicable law.

(3) With respect to the Rehabilitation Plan for purposes of § 38.2-1518 of the Code of Virginia:

- a. The "Due Diligence and Bid Proposal Procedures," as defined and discussed in the Application, were in the best interests of Policyholders and Creditors;



- b. The Stock Purchase Agreement is in the best interests of Policyholders and Creditors;
- c. The optional "Extension of Moratorium on Cash Withdrawals," as defined and described in the Rehabilitation Plan, is necessary to the success of the Rehabilitation Plan; and
- d. It is in the best interests of the Policyholders and Creditors that Shenandoah be rehabilitated pursuant to the Rehabilitation Plan.

(4) With respect to the Form A for purposes of § 38.2-1326 of the Code of Virginia:

- a. There has been no showing that, after the change of control, Shenandoah would not be able to satisfy the requirements for the issuance of a license to write the classes of insurance for which it was licensed prior to receivership;
- b. There has been no showing that the acquisition of control would lessen competition substantially or tend to create a monopoly in insurance in this Commonwealth;
- c. There has been no showing that the financial condition of the Purchaser might jeopardize the financial stability of Shenandoah, or prejudice the interests of the Policyholders;
- d. There has been no showing that any plans or proposals of the Purchaser to liquidate Shenandoah, sell its assets, or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair or unreasonable to Policyholders and not in the public interest;

- e. There has been no showing that the competence, experience, and integrity of those persons who would control the operation of Shenandoah are such that it would not be in the interest of Policyholders and of the public to permit the acquisition of control; and
- f. There has been no showing that, after the change of control, Shenandoah's surplus to Policyholders would not be reasonable in relation to its outstanding liabilities or adequate to its financial needs.

(5) With respect to the proposed termination of the rehabilitation proceeding pursuant to § 38.2-1519 (A) of the Code of Virginia, following implementation of the Rehabilitation Plan, and upon the last to occur of the Closing, expiration of the Bar Date, and expiration or termination of any Extension of Moratorium on Cash Withdrawals, all as described and proposed in the Application, the purposes of the rehabilitation proceeding will be accomplished, and Shenandoah can safely and properly resume possession of its property and the conduct of its business.

The Commission further finds that the Rehabilitation Plan (including the Plan of Conversion) and the Form A should be approved, that the rehabilitation proceeding should be terminated upon the conditions set forth herein, and that all related relief requested by the Application should be granted.

Accordingly, IT IS ORDERED THAT:

(1) The Due Diligence and Bid Proposal Procedures are hereby RATIFIED and APPROVED.

(2) The Stock Purchase Agreement is hereby RATIFIED and APPROVED.



(3) Because of the findings made herein regarding Shenandoah's financial condition, the formula set forth in § 2.4 of the Stock Purchase Agreement shall be used to determine the payment, if any, to which eligible Policyholders would be entitled upon consummation of the Conversion, and that formula is hereby found to be fair and equitable to Policyholders.

(4) The Rehabilitation Plan is APPROVED.

(5) Under authority of § 38.2-1518 of the Code of Virginia, the optional Extension of Moratorium on Cash Withdrawals is APPROVED.

(6) The Form A is APPROVED.

(7) The Plan of Conversion is APPROVED, subject to the required vote of Members.

(8) The form of Information Statement attached as part of Exhibit A to the Application is APPROVED.

(9) The Deputy Receiver's proposal to provide written notice of the Special Meeting by first class United States mail to all Members at their last known address disclosed in Shenandoah's books and records, in a form reasonably calculated to provide interested persons with notice of the Special Meeting and the procedures for voting on the Plan of Conversion, including enclosing a copy of the finalized Information Statement, is APPROVED, and the Deputy Receiver shall not be required to mail a notice if she reasonably believes that a Member's last known address is no longer valid.

(10) The Deputy Receiver's proposal to publish notice of the Special Meeting on the Company's website and for one day each week for two consecutive weeks in The Roanoke Times, Richmond Times-Dispatch, The Wall Street Journal, and USA Today is APPROVED, provided that the publication notice shall be of a form reasonably calculated to provide sufficient

notice of the Special Meeting and voting procedures to any Member who does not receive direct notice of the Special Meeting by first class United States mail.

(11) The rights of Members, Insureds, Policyholders, Subscribers, and Creditors shall be fixed as of the date of this Order.

(12) The Company will remain fully obligated under all of its insurance policies and other contracts in that, subject to any Extension of Moratorium on Cash Withdrawals, the benefits, values, and rights described in the Company's insurance policies and other contracts will not be reduced or altered, and the premiums required to be paid as specified in the insurance policies and other contracts will not be increased above their contractual maximum rates.

(13) The Shenandoah Life Insurance Company Employees Retirement Plan ("Pension Plan") shall remain in effect and be continued in accordance with its terms, and United Prosperity shall satisfy the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083 and be liable for the payment of Pension Benefit Guaranty Corporation premiums in accordance with 29 U.S.C. §§ 1306 and 1307 subject to any and all applicable rights and defenses of United Prosperity, and administer the Pension Plan in accordance with the provisions of ERISA and the Internal Revenue Code. In the event that the Pension Plan terminates after consummation of the Conversion and Sale, United Prosperity and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

(14) The Deputy Receiver, in her reasonable discretion, is hereby authorized to establish by directive a Bar Date for Members, Insureds, Policyholders, Subscribers, and Creditors to file proofs of claims against Shenandoah, such filing period to end on the Bar Date and to be no less than ninety (90) days, nor more than three hundred sixty-five (365) days, following the date of the Deputy Receiver's issuance of the directive. All "Claims" (including contingent claims and



unliquidated claims) against Shenandoah shall be required to be filed before the Bar Date except that the following claims shall not be subject to the Bar Date:

- a. Claims of Members, Insureds, Policyholders, Subscribers, or Creditors for benefits contemplated by the Rehabilitation Plan;
- b. Claims currently pending before the Deputy Receiver or the Commission in accordance with the Receivership Appeal Procedure;
- c. Proper administrative expense claims (*i.e.*, claims for payment of services rendered, or goods supplied, to Shenandoah at the request of the Deputy Receiver after February 12, 2009); and
- d. Claims first arising after the date of this Order.

(15) Disputes concerning any claims against Shenandoah subject to the Bar Date shall be resolved in accordance with the Receivership Appeal Procedure previously adopted pursuant to the Deputy Receiver's Second Directive. Appeals to the Commission or from an order of the Commission resulting from such Procedure shall constitute independent cases that may proceed after any order terminating rehabilitation proceeding entered by the Commission pursuant to § 38.2-1519 (A) of the Code of Virginia. Any resulting order entered after an order terminating rehabilitation proceeding shall be directed to the Company in lieu of the Deputy Receiver.

(16) All claims subject to the Bar Date but filed after the Bar Date shall be precluded from sharing in the assets of Shenandoah through United Prosperity or otherwise, and all claims subject to the Bar Date shall be filed in accordance with the proof of claim forms to be promulgated by the Deputy Receiver.

(17) All claims and liabilities filed against Shenandoah before the Bar Date shall be adjudicated and meritorious claims paid, to the extent of available assets, according to the Rehabilitation Plan and the priority scheme outlined therein.

(18) The Deputy Receiver's proposal to provide written notice of the Bar Date (and any extension thereof) and proof of claim instructions, by first class United States mail to all known Members, Insureds, Policyholders, Subscribers, and Creditors at their last known address disclosed in Shenandoah's books and records, in a form reasonably calculated to provide interested persons with notice of the proposed Bar Date (and any extension thereof) and the consequences of failing to timely file claims against Shenandoah, is approved, and the Deputy Receiver shall not be required to mail a notice if she reasonably believes that the last known address is no longer valid.

(19) The Deputy Receiver's proposal to publish notice of the Bar Date (and any extension thereof) and proof of claim instructions for one day each week for two consecutive weeks in The Roanoke Times, Richmond Times-Dispatch, The Wall Street Journal, and USA Today is APPROVED. The publication notice shall be of a form reasonably calculated to provide sufficient notice to any Policyholder or Creditor who does not receive direct notice by first class United States mail of the Bar Date (and any extension thereof) and proof of claim instructions. The notice admitted into evidence as Exhibit 16 at the Hearing is hereby deemed sufficient in that respect.

(20) Under authority of § 38.2-1400 of the Code of Virginia, Shenandoah is granted an exemption from § 38.2-1405 of the Code of Virginia, such that for the first financial statement filed after termination of the rehabilitation proceeding, Shenandoah shall be permitted to use, as the base for purposes of § 38.2-1405, its surplus after the capital infusion that will be made if the



Plan of Conversion is approved by vote of the Members and the Conversion and Sale are consummated, rather than its surplus as reported in its most recently filed pre-capital infusion annual or quarterly financial statement.

(21) The Deputy Receiver and United Prosperity are hereby authorized to take such steps as are necessary to implement the transaction described in the Stock Purchase Agreement, the Rehabilitation Plan, and the Plan of Conversion provided the same are not inconsistent with other provisions of this Order.

(22) If United Prosperity elects not to invoke an Extension of Moratorium on Cash Withdrawals, the Deputy Receiver shall file notice with the Commission for purposes of this Order's findings with respect to § 38.2-1519 (A) of the Code of Virginia, advising that the Rehabilitation Plan will have been fully and successfully completed as of the Closing, whereupon the Commission will enter a final order terminating the rehabilitation proceeding on condition that the Closing be effective within twenty-four (24) hours of the entry of said final order.

(23) If United Prosperity elects to invoke an Extension of Moratorium on Cash Withdrawals, and whether or not United Prosperity invokes the option for early termination of such Extension of Moratorium on Cash Withdrawals, United Prosperity shall give the Deputy Receiver and Policyholders not less than thirty (30) days' notice of the termination of the Extension of Moratorium on Cash Withdrawals ("Notice of Termination of Extension of Moratorium on Cash Withdrawals"). Within five (5) days of receiving the Notice of Termination of Extension of Moratorium on Cash Withdrawals, the Deputy Receiver shall file notice with the Commission for purposes of this Order's findings with respect to § 38.2-1519 (A) of the Code of Virginia, advising that the Rehabilitation Plan will have been fully and successfully completed as

of the scheduled expiration or termination of the Extension of Moratorium on Cash Withdrawals, whereupon the Commission will enter an order terminating the rehabilitation proceeding as of the scheduled expiration of the Extension of Moratorium on Cash Withdrawals.

(24) If and when it becomes reasonably apparent to the Deputy Receiver and United Prosperity that the Closing and transactions as described in the Application cannot or will not be consummated (*e.g.*, in the event of an incurable and non-waived failure of a condition precedent), the Deputy Receiver and United Prosperity shall as soon as practicable jointly file notice with the Commission of that circumstance and seek appropriate relief.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to Jacqueline K. Cunningham, Commissioner of Insurance, in care of the Bureau of Insurance, State Corporation Commission, 1300 East Main Street, Tyler Building, Richmond, Virginia 23219; Patrick Cantilo, Counsel for the Deputy Receiver, Cantilo and Bennett, L.L.P., 11401 Century Oaks Terrace, Suite 300, Austin, Texas 78758; and to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.