

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Penn Treaty Network America
Insurance Company in Rehabilitation

No. 1 PEN 2009

AND

In Re: American Network Insurance
Company in Rehabilitation

No. 1 ANI 2009

**THE HEALTH INSURERS' APPLICATION FOR AN
ORDER TO COMPEL ANSWERS TO INTERROGATORIES
AND THE PRODUCTION OF DOCUMENTS BY THE REHABILITATOR**

The Health Insurers seek an order compelling the Rehabilitator: (i) to fully answer certain of their June 11, 2015 Interrogatories seeking information about the licensing of ANIC and PTNA in states where they have not previously been licensed; and (ii) to produce documents responsive to the Health Insurers' Requests for Production of Documents numbers 9(c)-(d), 9(h)-(i) and 10, which relate to the projected assets of the estate at the effective date of the Second Amended Plan and the basis on which the Rehabilitator has chosen to capitalize Company A at the greater of gross premium reserves or statutory reserves. The relevance of the requested information and documents cannot credibly be disputed and the Rehabilitator has not and cannot advance any basis on which to evade the Health Insurers' inquiry into these critical issues involving the feasibility of the Second Amended Plan.

**I. GUARANTY ASSOCIATION LAWS AND LICENSING STATUTES
BAR FULFILLMENT OF THE PLAN’S LICENSING CONDITIONS
AND THE REHABILITATOR MUST PRODUCE RELATED
INFORMATION**

The Second Amended Plan states, “Implementation of the Amended Plan will require extensive work to restore or obtain licenses and agreements with Guaranty Associations in many states. There can be no assurance that all of these efforts will be successful. *Failure to obtain such licenses or agreements would complicate the implementation of the Amended Plan materially.*” Plan at 63 (emphasis added). The Health Insurers contend that ANIC and PTNA cannot be licensed as contemplated by the Plan nor can they obtain the agreement of the guaranty associations to cover the liabilities of the Companies should they be unlicensed.¹ Despite the unquestionable relevance of the information requested by the Health Insurers, the Rehabilitator has to date failed, and now refuses, to disclose a legal basis for claiming that obtaining licenses is feasible.

Generally, guaranty associations only cover the policies of a “member insurer,” which is an “insurer *licensed* or that holds a certificate of authority to transact in this State any kind of insurance for which coverage is provided under Section 3...” NAIC Life and Health Insurance Model Act, July 2009, at Section 5.L; *see also, e.g.*, 40 P.S. § 991.7102 (defining “Member Insurer”) (emphasis

¹ *See* Health Insurers’ Formal Comments, Response to Intervenors’ Application for an Order Rejecting the Plan or Alternative Relief, and argument to the Court at the July 13-14, 2015 hearing.

added). While a license or certificate of authority does not have to be active at the time the guaranty association liability is triggered, the company must at least have had an active license at some point. PTNA has never had licenses in Kansas, Maine, Massachusetts, New Jersey or West Virginia, and ANIC has never had licenses in Alaska, Iowa, Michigan or Wisconsin. Plan at 62. Thus, PTNA and ANIC must obtain licenses or certificates of authority for the first time in those states and must do so before guaranty association liability is triggered. The guaranty association statutes do not provide for waiver of this requirement.

In their Response to Intervenors' Application for an Order Rejecting the Plan or Alternative Relief, the Health Insurers identified the statutes in the relevant states that authorize the issuance of a license to an insurer (which would in turn create guaranty association coverage). At the hearing on July 13, 2015, the Special Deputy Rehabilitator testified that he was not attempting to comply with these statutes, but was instead seeking a different type of license:

Q: Now, the health insurers in their comments, Mr. Cantilo, have referred to the difficulty of getting a -- quote -- "full" -- end quote -- license in certain states. Is a full license required for the GAs to be triggered?

A: No. We are riding [sic] on a clean slate, once again. I mean, there are so many aspects of this plan that are unplowed ground, and that's one of them, but it is sufficient that each of those departments grant Penn Treaty a special license deeming it a member insurer with respect to the assumed non-self-sustaining policies. It doesn't have to be a license enabling it to write new business. And we wouldn't get that license, Your Honor. We're 3 billion dollars broke. No

Insurance Department's gonna let me go out and do new business when I'm 3 billion in the hole, but it's sufficient if they give us a license that allows us to assume the non-self-sustaining policies from ANIC . . .

7/13/15 Hearing Tr., Cantilo at 169:24-170:24.

The Health Insurers' June 11, 2015 Interrogatories seek to determine the statutes on which the Rehabilitator is now relying in pursuing limited "special" licenses. Since the Rehabilitator has not obtained licenses or commitments to issue licenses, she will need to present substantial evidence that she will be able to do so. That evidence will need to consist of at least a citation to a relevant statute and evidence that the Rehabilitator can comply with the statute.

Interrogatories Nos. 1 and 2 ask the Rehabilitator if she "contends that PTNA will meet all statutory and regulatory requirements to be issued a license" in the necessary states and to "identify and describe the facts, circumstances, legal authority, Documents and Communications that support the Rehabilitator's conclusion with respect to each of the states." On October 1, 2015, the Rehabilitator filed answers to the Health Insurers' June 11, 2015 Interrogatories that referred to the "Licensing Issues" section of the Supplemental Disclosure Statement to the Second Amended Plan (the "Supplement"). The Supplement has no information responsive to these Interrogatories. *See* Supplement at 2-5.

Rule 4003.1(c) of the Pennsylvania Rules of Civil Procedure permits a party to inquire as to another party's legal contentions. The Rehabilitator has not advanced any basis on which to evade the Health Insurers' inquiry into this critical issue involving the feasibility of the Plan.

II. THE REHABILITATOR MUST PRODUCE DOCUMENTS RELATED TO THE PROJECTED ASSETS OF THE ESTATE UPON THE EFFECTIVE DATE OF THE PLAN AND THE PLAN'S BASIS FOR CAPITALIZING COMPANY A

The Health Insurers also seek an order compelling production of documents responsive to Health Insurers' Requests for Production of Documents Directed to the Rehabilitator numbers 9(c)-(d), 9(h)-(i), and 10 (collectively, the "Outstanding Requests"). These requests relate to the projected assets of the estate at the effective date of the Plan and the basis on which the Rehabilitator has chosen to capitalize Company A at the greater of gross premium reserves or statutory reserves.

In her responses to the Health Insurers' Requests for Production of Documents, the Rehabilitator produced approximately 60,000 pages of documents without identifying which, if any, of the Requests the documents are relevant to despite repeated requests by the Health Insurers to do so. She has also refused to identify which search terms were used to gather documents in response to specific Interrogatories and Requests for Production of Documents and has refused to provide citations to Sharefile materials responsive to the Outstanding Requests.

It was not until September 4, 2015 that the Rehabilitator provided a list of search terms used to gather the documents and none of the search terms would have identified documents responsive to the Outstanding Requests. *See* “Search Terms Used to Identify Materials for Review,” copy attached Exhibit A. The Health Insurers attempted to match search terms on that list to the Outstanding Requests and were unable to identify terms that would reasonably lead to identification of responsive documents. It therefore appears that the Rehabilitator failed to collect and produce records responsive to the Outstanding Requests.

The Outstanding Requests seek information related to material issues in the case. Specifically, Requests 9(c) and 9(d) seek information regarding the Companies’ statutory reserves. These reserves are used to determine the assets to be allocated to Company A under the Second Amended Plan, among other things. *See* Second Amended Plan § IV.G. The Health Insurers have objected to the proposed asset allocation methodology in part due to the use of statutory reserves rather than gross premium reserves. *See* Formal Comments of the Health Insurers dated February 13, 2015 at 26-30. The Rehabilitator will have to produce substantial evidence to support the Second Amended Plan’s proposed asset allocation provisions and the Health Insurers have the right to related information, which is critical for the Health Insurers’ preparation for Phase II of the hearings.

The Court should compel the Rehabilitator to provide the information sought by the Health Insurers regarding the Companies' statutory reserves.

Requests 9(h)-(i) and Request 10 seek information regarding the projected assets of PTNA and ANIC as of year-end 2015 and the valuation of assets to be allocated to Company B. The level of assets available to the Companies is a fundamental issue that will drive the outcome of several features of the Second Amended Plan, including the number of Self-Sustaining policies and the size of Company A. The value of assets projected to be allocated to Company B is critical to the determination of whether the Second Amended Plan complies with applicable law, including whether it treats similarly situated creditors in the same fashion and whether it passes the best interest of creditors test. The Health Insurers raised these issues in their Formal Comments on the Second Amended Plan. *See* Formal Comments of the Health Insurers dated February 13, 2015 at 16-22. The Rehabilitator should be compelled to collect and provide the information sought by the Health Insurers regarding the Companies' assets.

WHEREFORE, the Health Insurers respectfully request that their Application for an Order to Compel Answers to Certain Interrogatories and the Production of Documents be granted and that an Order be entered in the proposed form attached hereto.

Dated: October 16, 2015

Respectfully submitted,

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[PROPOSED] ORDER

AND NOW, this ____ day of October, 2015, upon consideration of the Health Insurers' Application for an Order to Compel Answers to Interrogatories and the Production of Documents by the Rehabilitator, the Court hereby ORDERS as follows:

1. Said Application is GRANTED;
2. The Rehabilitator shall, within ten (10) days of this Order, fully answer Interrogatories Nos. 1-11 of the Health Insurers' June 11, 2015 Interrogatories by providing the legal and/or factual bases for the assumptions set forth in those Interrogatories; and
3. The Rehabilitator shall, within ten (10) days of this Order, produce documents responsive to the Health Insurers' Requests for Production of Documents Directed to the Rehabilitator numbers 9(c)-(d), 9(h)-(i), and 10.

MARY HANNAH LEAVITT, Judge

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2015, I caused a true and correct copy of the foregoing Application for an Order to Compel Answers to Interrogatories and the Production of Documents by the Rehabilitator to be served via e-mail upon the following counsel:

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/s/ John P. Lavelle, Jr.
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