

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Penn Treaty Network America
Insurance Company in Rehabilitation

DOCKET NO. 1 PEN 2009

In Re: American Network Insurance
Company in Rehabilitation

DOCKET NO. 1 ANI 2009

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COMMONWEALTH COURT
OF PENNSYLVANIA
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**INTERVENOR BROADBILL PARTNERS, LP'S
AMENDED APPLICATION TO COMPEL DISCOVERY**

Intervenor Broadbill Partners, LP ("Broadbill"), by and through its undersigned counsel, respectfully submits this Amended Application to Compel Discovery ("Amended Application") to correct the statement regarding Broadbill's membership in the consolidated tax group in its original application. Broadbill respectfully submits the Amended Application seeking an order compelling the Rehabilitator to produce discovery responsive to (i) Broadbill's June 30, 2015 Notices of Deposition on the Rehabilitator, and (ii) Intervenor's April 23, 2015 Request For Production of Documents and Things, which Broadbill joined.¹ In support of the Amended Application, Broadbill respectfully relies upon the Memorandum of Law in Support of Its Application To Compel Discovery and respectfully joins the Intervenor's October 16, 2015 Application For Relief to Compel Production of Documents and Answers to Interrogatories and Requests to Admit From the Rehabilitator.

The Rehabilitator's objections to the Discovery Requests were due on July 30, 2015. *See* Pa. R. Civ. P. 4009.12. The Rehabilitator served no objections before that date. The Rehabilitator's deadline to produce responsive documents was September 15, 2015. *See* July 30, 2015 Scheduling Order. The Rehabilitator has not yet produced documents responsive to the following Discovery Requests:

¹ True and correct copies are attached hereto as Exhibits A and B, respectively.

- (1) All Documents and Communications Regarding Second Amended Plan's provisions for the transfer of assets and liabilities between PTNA and ANIC, including, without limitation, the rationale, economic impact, and justification for the transfer of assets and liabilities among the separate entities (*See Ex. A, Attachment B, Request No. 5*);
- (2) All Documents and Communications Regarding alternatives to the Second Amended Plan that have been (or could have been) contemplated by the Rehabilitator, including alternatives that would have left the assets of the respective entities where they currently reside, resulted in increases in rates charged for policies, or provided for the ability of a rehabilitated entity to write new policies or otherwise generate additional income (*See Ex. A, Attachment B, Request No. 6*);
- (3) All Documents and Communications Regarding the tax implications of the proposed Second Amended Plan, including, without limitation, all issues concerning the (i) positions asserted by the Rehabilitator with the applicable taxing authorities concerning the Second Amended Plan, (ii) income potentially created by the Second Amended Plan, and (iii) tax arrangements among the parties and impact of the Second Amended Plan on tax attributes of PTAC, PTNA, ANIC, and their affiliates (including consolidated net operating losses, tax basis in assets, and related agreements) (*See Ex. A, Attachment B, Request No. 7*);

- (4) All Documents and Communications Regarding the identity of any third-party property rights the Second Amended Plan may affect or impair (*See Ex. A, Attachment B, Request No. 8*);
- (5) All Documents and Communications Regarding the impact the Second Amended Plan would have on PTAC's property rights and interests (*See Ex. A, Attachment B, Request No. 9*);
- (6) All Documents and Communications Regarding the issues identified as B1–B6 on the PTAC master list of issues (*See Ex. A, Attachment B, Request No. 10*); and
- (7) All Documents and Communications Regarding tax attributes, including NOLs, in connection with the rehabilitation or liquidation of one or more of the Companies (*See Ex. B, Request No. 55*).

As a shareholder in PTAC, which in turn is the head of a consolidated tax group that includes Penn Treaty Network America and American Network Insurance Company, Broadbill is entitled to explore how the Rehabilitator believes the Plan affects PTAC's valuable tax rights, positions the Rehabilitator has asserted with taxing authorities about the Plan, and other critical tax-related questions. Furthermore, even under an abuse of discretion standard, due process concerns will play a role in the Court's decision to approve, deny, or modify the Plan. Accordingly, the positions the Rehabilitator has asserted with taxing concerns are directly relevant to this matter. Nevertheless, during an October 9, 2015 meet-and-confer the Rehabilitator confirmed that it has not searched, and does not intend to search, for the documents Broadbill requested—including those of Scribner, Hall & Thompson, LLP, its designated tax witness. Not only is the Rehabilitator improperly refusing to conduct a reasonable search for, let alone produce, documents on privilege grounds, it has failed to produce a privilege log, thus

forcing Broadbill to challenge these inappropriate privilege assertions without the benefit of a bare-bones description of the withheld documents.

WHEREFORE, Broadbill respectfully requests that the Court grant the instant Amended Application to compel by entering an Order in the form attached.

Dated: Harrisburg, Pennsylvania
October 21, 2015

Respectfully submitted,

DILWORTH PAXSON LLP

By: /s/ Elizabeth J. Goldstein

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VERIFICATION

I, Elizabeth J. Goldstein, attorney for defendant Broadbill Partners, LP hereby verify that the averments of fact set forth in the foregoing are true and correct to the best of my knowledge, information and belief and I make this statement subject to the penalties in 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: October 21, 2015


/s/ Elizabeth J. Goldstein
Elizabeth J. Goldstein, attorney
for Broadbill Partners, LP