

America Insurance Company or American Network Insurance Company can be rehabilitated through caps on policyholder benefits.

BY THE COURT:

MARY HANNAH LEAVITT

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT L. PRATTER, ACTING INSURANCE
COMMISSIONER OF THE COMMONWEALTH
OF PENNSYLVANIA,

Plaintiff,

v.

PENN TREATY NETWORK AMERICA
INSURANCE COMPANY,

Defendant.

ROBERT L. PRATTER, ACTING INSURANCE
COMMISSIONER OF THE COMMONWEALTH
OF PENNSYLVANIA,

Plaintiff,

v.

AMERICAN NETWORK
INSURANCE COMPANY,

Defendant.

DOCKET NO. 5 M.D. 2009

DOCKET NO. 4 M.D. 2009

**MOTION IN LIMINE OF THE REHABILITATOR
TO BAR EVIDENCE AND ARGUMENT ON BENEFIT CAPS**

Petitioner Robert L. Pratter, Acting Insurance Commissioner of the Commonwealth of Pennsylvania (the "Rehabilitator"), in his capacity as Rehabilitator of Penn Treaty Network America Insurance Company ("PTNA") and American Network Insurance Company ("ANIC") hereby moves this Court to preclude Intervenors Penn Treaty American Corporation and Eugene Woznicki from arguing or introducing evidence concerning the benefit caps proposed by their expert Karl Volkmar at the hearing on the liquidation petitions in this matter and from arguing or introducing evidence that PTNA or ANIC can be rehabilitated through caps on policyholder

benefits. The reasons and grounds for this motion are set forth in the accompanying Memorandum of Law submitted in support hereof and the exhibits set forth in the accompanying Appendices, which are incorporated by reference as if set forth fully herein.

Respectfully submitted,



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Pennsylvania as Rehabilitator of PENN TREATY
NETWORK AMERICA INSURANCE
COMPANY and AMERICAN NETWORK
INSURANCE COMPANY

Dated: November 12, 2010

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT L. PRATTER, ACTING INSURANCE
COMMISSIONER OF THE COMMONWEALTH
OF PENNSYLVANIA,

Plaintiff,

v.

PENN TREATY NETWORK AMERICA
INSURANCE COMPANY,

Defendant.

ROBERT L. PRATTER, ACTING INSURANCE
COMMISSIONER OF THE COMMONWEALTH
OF PENNSYLVANIA,

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DOCKET NO. 5 M.D. 2009

DOCKET NO. 4 M.D. 2009

**MEMORANDUM OF LAW OF THE REHABILITATOR
IN SUPPORT OF HIS MOTION IN LIMINE
TO BAR EVIDENCE AND ARGUMENT ON BENEFIT CAPS**

INTRODUCTION

Petitioner Robert L. Pratter, Acting Insurance Commissioner of the Commonwealth of Pennsylvania (the "Rehabilitator"), in his capacity as Rehabilitator of Penn Treaty Network America Insurance Company ("PTNA") and American Network Insurance Company ("ANIC"), submits this memorandum of law in support of his motion to preclude argument and evidence by

Intervenors Penn Treaty American Corporation and Eugene Woznicki (collectively “Intervenors”) that PTNA or ANIC can be rehabilitated through caps on policyholder benefits.

FACTUAL BACKGROUND

PTNA and ANIC are long-term care insurers. The policies they issued provide a daily benefit amount and a period of coverage or a total dollar amount of coverage. The daily benefit amounts range from \$60 to \$300 per day and the maximum benefit periods range from one to ten years or unlimited. Those policies which provide a dollar amount of coverage, rather than a daily benefit and time period, provide limits of \$75,000, \$150,000, \$250,000 or no dollar limit. (Ex. 26, Waite Aff. ¶ 2).

Faced with evidence that PTNA and ANIC are severely insolvent, Intervenors’ actuary Karl Volkmar in his expert report has proposed rate increase scenarios for supposed rehabilitation of the companies that include cuts to PTNA’s and ANIC’s policyholders’ benefits. (Ex. 2, Volkmar Expert Report Attachment 6 at Attachment page 31). Mr. Volkmar proposes and runs scenarios under which policyholders with unlimited durations would have their coverage capped at either a five-year benefit period or a four-year benefit period. (*Id.*) As is demonstrated below, these proposed benefit caps would violate the standard for permissible rehabilitation plans under Pennsylvania law and therefore cannot be considered at the hearing on the petitions for liquidation of PTNA and ANIC. No witness has proposed any other benefit cap or claimed any other benefit cap could rehabilitate either PTNA or ANIC.

ARGUMENT

Protection of policyholders must be accorded the highest priority in any insurer rehabilitation or liquidation proceedings. Foster v. Mutual Fire, Marine & Inland Insurance Co., 531 Pa. 598, 624-25, 614 A.2d 1086, 1100 (1992); Koken v. Legion Insurance Co., 831 A.2d 1196, 1232, 1242, 1246-47 (Pa. Cmwlth. 2003), aff’d sub nom. Koken v. Villanova Insurance

Co., 583 Pa. 400, 878 A.2d 51 (2005); Grode v. Mutual Fire, Marine & Inland Insurance Co., 132 Pa. Cmwlth. 196, 203 n. 5, 215, 572 A.2d 798, 801 n. 5, 807 (1990), aff'd in relevant part sub nom. Foster v. Mutual Fire, Marine & Inland Insurance Co., 531 Pa. 598, 614 A.2d 1086 (1992). This Court has specifically recognized and held that “the equitable purpose of rehabilitation and liquidation in insurance insolvency statutes is to protect first of all consumers of insurance.” Koken v. Legion Insurance Co., 831 A.2d at 1232, 1247 (quoting Grode v. Mutual Fire) (emphasis in original); see also Grode v. Mutual Fire, 132 Pa. Cmwlth. at 203 n. 5, 572 A.2d at 801 n.5.

The actions which a rehabilitator may take and the validity of any possible rehabilitation plan must be measured by this requirement of protection of the policyholders. This Court has made clear that the Rehabilitator is to “serve the interests of policyholders”. Koken v. Legion Insurance Co., 831 A.2d at 1242. In an insurer rehabilitation or liquidation,

the goal should be to enforce a policyholder’s reasonable expectation of coverage[.] . . . Article V [of the Insurance Department Act] does not require, or even authorize, the abandonment of the policyholders’ reasonable expectations.

Koken v. Legion Insurance Co., 831 A.2d at 1247 (emphasis added).

Moreover, Pennsylvania law requires that any rehabilitation treat all policyholders and other creditors at least as well as they would fare in liquidation. Foster v. Mutual Fire, 531 Pa. at 613, 617, 614 A.2d at 1093-94, 1096; Koken v. Fidelity Mutual Life Insurance Co., 803 A.2d 807, 826 (Pa. Cmwlth. 2002); Grode v. Mutual Fire, 132 Pa. Cmwlth. at 209, 572 A.2d at 804. As the Supreme Court held in Foster v. Mutual Fire, “a rehabilitation plan cannot impose harsher consequences than a liquidation [and] creditors must fare at least as well under a rehabilitation plan as they would under a liquidation.” Foster v. Mutual Fire, 531 Pa. at 613, 614 A.2d at 1093-94.

Volkmar's proposed benefit caps would reduce policyholders' coverage below the coverage they would receive from guaranty associations in liquidation and are therefore barred by these requirements. PTNA's and ANIC's policyholders will have continued coverage in liquidation from their state guaranty associations. This coverage is substantial. Over 90% of PTNA and ANIC policyholders are in states with guaranty association coverage of \$300,000 or higher, and in liquidation, policyholders whose claims exceed their guaranty association limits will be entitled to partial payment from the estate in addition to their full guaranty association coverage.

For large numbers of PTNA and ANIC policyholders the guaranty association coverage in liquidation exceeds the limits imposed by the Volkmar caps. Approximately one-third of ANIC's policyholders reside in New Jersey. Because New Jersey has no limit on guaranty association coverage, N.J. Stat. Ann. §17B:32A-3, those ANIC policyholders will receive all of their full benefits in liquidation. Capping ANIC benefits at five years or four years would place those policyholders in a worse situation than liquidation and therefore cannot be permitted under Pennsylvania law.

The Volkmar five-year and four-year benefit cap scenario would also cut PTNA policyholder benefits below what the policyholders would receive in liquidation. Approximately 16% of PTNA's obligations are to policyholders who reside in California, which has a guaranty association limit of \$463,000. Thousands of PTNA California policyholders have an unlimited benefit period and a \$200 per day or lower daily benefit. (Waite Aff. ¶ 3). Volkmar's five-year cap limits policyholders with \$200 per day benefits to coverage of \$365,000, almost \$100,000 below the guaranty association coverage they will receive in liquidation. In those states with \$300,000 guaranty association coverage, where a majority of PTNA policyholders reside, Volkmar's five-year benefit cap would reduce coverage for policyholders with a \$100 or lower

daily benefit to \$182,000 or less. This is over \$100,000 below the guaranty association coverage they will receive in liquidation. In just four of the \$300,000 guaranty association states, Florida, Pennsylvania, Texas and Virginia, there are thousands of such PTNA policyholders. (Waite Aff. ¶ 4).

Volkmar's proposed four-year cap would, of course, cut even more policyholders below the guaranty association coverage they will receive in liquidation. In California, even policyholders with a \$300 per day daily benefit would receive less than the guaranty association coverage they have in liquidation (\$438,000, significantly less than their guaranty association coverage or \$463,000). Policyholders in \$300,000 guaranty association states with daily benefits of \$200 or less would receive less under the Volkmar four-year cap than in liquidation (a \$200 per day benefit for four years totals \$292,000 in coverage, below the guaranty association limit).

Thus, Intervenors' expert Karl Volkmar's proposed benefit caps would reduce PTNA and ANIC policyholders' coverage below what they will receive in liquidation. Accordingly, the Volkmar benefit caps, the only benefit caps which have been proposed by Intervenors, violate the requirement that any rehabilitation treat policyholders at least as well as they would fare in liquidation and cannot be considered in determining whether PTNA or ANIC are capable of being rehabilitated. Because no claim has been put forth by Intervenors that any other benefit caps could rehabilitate either PTNA or ANIC, all argument and evidence that PTNA or ANIC can be rehabilitated through caps on policyholder benefits should be excluded from the hearing on the liquidation petitions in this matter.

CONCLUSION

For the reasons set forth above, the Rehabilitator respectfully requests that his Motion in Limine be granted and that Intervenors be precluded from arguing or introducing evidence concerning Volkmar's proposed benefit caps at the hearing on the liquidation petitions in this

matter and be precluded from arguing or introducing evidence that PTNA or ANIC can be rehabilitated through caps on policyholder benefits.

Respectfully submitted,



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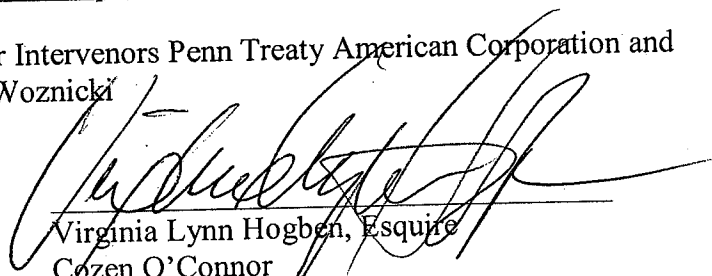
CERTIFICATE OF SERVICE

I, Virginia Lynn Hogben, hereby certify that on November 12, 2010, I served the foregoing Motion in Limine on the following party by the following means:

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