

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

**HEALTH INSURERS' RESPONSE TO INTERVENORS'
APPLICATION FOR AN ORDER REJECTING THE PLAN OR
ALTERNATIVE RELIEF**

22 APR 2015 15 16

RECEIVED & FILED
OFFICE OF THE CLERK
COMMONWEALTH COURT OF PENNSYLVANIA
HARRISBURG, PA

TABLE OF CONTENTS

	Page
INTRODUCTION	1
ARGUMENT	2
I. GUARANTY ASSOCIATION LAWS AND LICENSING STATUTES BAR THE FULFILLMENT OF THE CONDITIONS FOR THE PLAN TO BECOME EFFECTIVE	2
II. THE REHABILITATOR SHOULD BE REQUIRED TO SHOW THAT THE LICENSES OR AGREEMENTS HAVE BEEN OBTAINED BEFORE THE CONFIRMATION HEARING COMMENCES	5
CONCLUSION	6

INTRODUCTION

Aetna Life Insurance Company, Anthem, Inc., Cigna Corporation, HM Life Insurance Company, Horizon Healthcare Services, Inc. d/b/a Horizon Blue Cross Blue Shield of New Jersey, QCC Insurance Company, United Concordia Life and Health Insurance Company, United Concordia Insurance Company and UnitedHealthcare Insurance Company (collectively, the “Health Insurers”) through their undersigned counsel hereby submit this response to the Intervenor’s Application for Relief for an Order Rejecting the Rehabilitator’s Plan or, in the Alternative, Requiring the Rehabilitator to Provide Certain Explanations in Advance of the Hearing (the “Application”).

The Application seeks rejection of the Second Amended Plan of Rehabilitation (the “Plan”) for Penn Treaty Network America Insurance Company (“PTNA”) and American Network Insurance Company (“ANIC” and, together with PTNA, the “Companies”), or, alternatively, disclosure with respect to uncertainties described in the Plan. Application at 2. As set forth in their Formal Comments, the Health Insurers share the Intervenor’s concerns about the uncertainties identified by the Intervenor, and particularly about the uncertainties surrounding the acquisition of regulatory licenses for the Companies or securing the agreement of guaranty associations to cover the liabilities of unlicensed companies. As set forth below, the state guaranty association laws and licensing

statutes appear on their face to bar the Rehabilitator from obtaining these licenses or agreements, and it therefore appears unlikely that conditions of the Plan will be fulfilled. To address this fundamental problem, and avoid depletion of limited estate assets in a futile proceeding, the Rehabilitator should be required to file with the Court commitments regarding licensure by the necessary regulators or guaranty associations (subject only to confirmation of the Plan and purely ministerial conditions) on or before thirty days prior to the commencement of the confirmation hearing on the Plan.

ARGUMENT

I. **GUARANTY ASSOCIATION LAWS AND LICENSING STATUTES BAR THE FULFILLMENT OF THE CONDITIONS FOR THE PLAN TO BECOME EFFECTIVE**

In their Memorandum in Support of the Application, the Intervenors cite provisions of the Plan that state in bold and italicized font:

Implementation of the Amended Plan will require extensive work to restore or obtain insurance 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.

Memorandum at 8 (citing Plan at 63) (emphasis in original). The Health Insurers cited the same provision in their Formal Comments. Formal Comments of the Health Insurers, filed February 13, 2015, at 47. Both the Intervenors and the Health Insurers have expressed concern that the Plan is infeasible because the

Rehabilitator cannot obtain the licenses needed from regulators or the agreements needed from guaranty associations in order to implement the Plan.

This concern is well founded. Guaranty associations generally 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”); Alaska Stat. § 21.79.900(10) (same); Me. Rev. Stat. tit. 24-a, § 4605-A(12) (same); and N.J. Stat. § 17B:32A-4 (same). While a license or certificate of authority does not have to be active at the time the guaranty association liability is triggered, the company does have to have had an active license at some point. As described in the Plan, 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 will need to obtain licenses or certificates of authority for the first time in those states prior to the trigger of guaranty association liability. The guaranty association statutes do not appear to provide for waiver of this requirement.

The statutes in most states appear to require, at a minimum, that the company seeking a license or certificate of authority be in good standing in its state of domicile and have at least the statutory minimum capital and surplus required by

the state issuing the license or certificate of authority. *See* Alaska Stat. §§ 21.09.110(a)(6) and 21.09.070; Iowa Code §§ 515.75, 515.8; Kan. Stat. §§ 40-209, 40-1103, 40-1104; Me. Rev. Stat. tit. 24-a, §§ 406, 413, 410; Mass. Gen. Laws ch. 175, § 151; Mich. Comp. Laws §§ 500.403, 500.404, 500.410, 500.424; N.J. Stat. §§ 17B:23-1 and 17B:18-68; W. Va. Code §§ 33-3-2 and 33-3-5b; Wis. Stat. §§ 618.11 and 623.11.¹ Certain statutes contain more rigorous provisions. One requires a satisfactory examination report. Kan. Stat. § 40-209. Another would appear to expressly prevent the licensing of a foreign insurer that is in rehabilitation proceedings. *See* Alaska Stat. 21.09.040 (providing that a foreign insurer that is controlled in whole or substantial part by a government agency may not be authorized to transact insurance).

Under the Plan, neither of the Companies will be authorized to transact insurance business in Pennsylvania upon confirmation of the Plan or thereafter. PTNA will be placed in liquidation after a finding of insolvency. Plan at 1, 28, 65. ANIC will remain in rehabilitation and will not have sufficient statutory surplus to operate independently and write new insurance business. Plan at 1, 28. This would prevent the Rehabilitator from meeting the necessary tests set out by the statutes in order to obtain licenses or certificates of authority. By the

¹ We note that one state has a provision allowing the regulator, after notice and a hearing, to issue a limited certificate of authority to an insurer not meeting the legal requirements of the licensing statutes. Wis. Stat. § 618.12(2). However, the remaining eight states do not appear to have similar provisions.

Rehabilitator's own admission, "[f]ailure to obtain such licenses or agreements would complicate the implementation of the Amended Plan materially." Plan at 63. Noticeably absent from the Plan is an explanation of how this material complication would be managed. In the absence of such an explanation it seems reasonable to infer that implementation of the Plan would likely fail.

II. THE REHABILITATOR SHOULD BE REQUIRED TO SHOW THAT THE LICENSES OR AGREEMENTS HAVE BEEN OBTAINED BEFORE THE CONFIRMATION HEARING COMMENCES

Since the licensing statutes and guaranty association statutes appear to bar the Rehabilitator from obtaining the licenses or agreements needed to implement the Plan, confirmation of the Plan should not be undertaken until commitments for the licenses or agreements are in hand. The confirmation hearings will be expensive for the parties and the estate. This falls particularly hard on the Health Insurers since they are paying their own way and the depletion of the estate by other professionals will directly increase their ultimate assessment liability.

The Health Insurers therefore propose that the Rehabilitator be required to show that the necessary parties have committed to issue licenses or enter into appropriate agreements no later than thirty days prior to the commencement of hearings on confirmation of the Plan. Obviously, the commitments to issue licenses or provide guaranty association benefits would need to be conditioned on the confirmation of the Plan, and there may be other conditions as well, but such conditions should only be of a ministerial nature. In the absence of such a

requirement, the parties will incur material expense only to have a confirmed Plan fall into an indefinite period of limbo, likely followed by failure.

The Rehabilitator filed the Plan over six months ago on October 8, 2014. The Plan was over a year in the making. If the licenses or agreements are obtainable, commitments for them should have been obtained by now, but certainly should be obtainable over the next two months.

CONCLUSION

The Health Insurers share the concern of the Intervenors over the feasibility of the Plan. This concern is particularly acute with respect to the Rehabilitator's ability to obtain agreements with guaranty associations or licenses from insurance departments for the Companies in states where they have never had them. The statutes governing such agreements or licenses appear to bar the Companies from obtaining them now. Accordingly, the Health Insurers request that at least thirty days prior to the commencement of hearings on the confirmation of the Plan, the Rehabilitator file with the Court commitments from insurance departments for the necessary licenses or commitments from guaranty associations for the necessary agreements, subject only to confirmation of the Plan and purely ministerial conditions.

Respectfully submitted,

Dated: April 22, 2015

MORGAN, LEWIS & BOCKIUS LLP

By: 

Harold S. Horwich
Benjamin J. Cordiano
MORGAN, LEWIS & BOCKIUS LLP
One State Street
Hartford, Connecticut 06103-3178
Telephone: 860.240.2700
Facsimile: 860.240.2800

John P. Lavelle, Jr.
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
Telephone : 215.963.5000

*Attorneys for Aetna Life Insurance
Company, Anthem, Inc., Cigna
Corporation, HM Life Insurance Company,
Horizon Healthcare Services, Inc. d/b/a
Horizon Blue Cross Blue Shield of New
Jersey, QCC Insurance Company, United
Concordia Life and Health Insurance
Company, United Concordia Insurance
Company and UnitedHealthcare Insurance
Company*

CERTIFICATE OF SERVICE

I certify that on April 22, 2015, I caused a true and correct copy of the foregoing document to be served on the following persons by email at the email addresses indicated below:

Patrick H. Cantilo
Special Deputy Rehabilitator
Cantilo & Bennett, LLP
11401 Century Oaks Terrace, Suite 300
Austin, TX 78758
phcantilo@cb-firm.com

Carl M. Buchholz
Jayne A. Risk
DLA Piper LLP
One Liberty Place
1650 Market Street
Philadelphia, PA 19103-7300
carl.buchholz@dlapiper.com
jayne.risk@dlapiper.com

Stephen W. Schwab
DLA Piper LLP
203 North LaSalle Street
Suite 1900
Chicago, IL 60601-1293
stephen.schwab@dlapiper.com

Douglas Y. Christian
Benjamin M. Schmidt
Ballard Spahr LLP
1735 Market Street
51st Floor
Philadelphia, PA 19103
christiand@ballardspahr.com
schmidt@ballardspahr.com

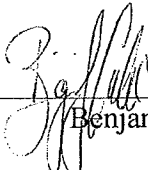
Charles T. Richardson
Caryn M. Glawe
Faegre Baker Daniels
1050 K Street NW, Suite 400
Washington, DC 20001-4448
crichardson@faegrebd.com
caryn.glawe@faegrebd.com

Paul M. Hummer
Saul Ewing LLP
Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA 19102-2186
phummer@saul.com

James R. Potts
Cozen O'Connor
1900 Market Street
Philadelphia, PA 19103
jpotts@cozen.com

Andrew Parlen
O'Melveny & Myers, LLP
1625 Eye Street, NE
Washington, DC 20006
aparlen@omm.com

Thomas A. Leonard, Esq.
Richard Limburg, Esq.
Obermayer, Rebmann, Maxwell & Hippel LLP
One Penn Center – 19th Floor
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103
thomas.leonard@obermayer.com
richard.limburg@obermayer.com



Benjamin J. Cordiano