

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Penn Treaty Network America
Insurance Company in Rehabilitation

No. 1 PEN 2009

In Re: American Network Insurance
Company in Rehabilitation

No. 1 ANI 2009

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COMMONWEALTH COURT OF PENNSYLVANIA

**RESPONSE OF THE NATIONAL ORGANIZATION OF LIFE AND HEALTH
INSURANCE GUARANTY ASSOCIATIONS TO HEALTH INSURERS' APPLICATION
FOR RELIEF TO MODIFY THE PLAN TO ELIMINATE
THE PAYMENT OF AGENT COMMISSIONS ON COMPANY A POLICIES**

The National Organization of Life and Health Insurance Guaranty Associations ("NOLHGA") respectfully submits this response to the Health Insurers' Application for Relief To Modify the Plan To Eliminate the Payment of Agent Commissions on Company A Policies ("Health Insurers' Application To Eliminate Agent Commissions").

NOLHGA sympathizes with the concerns expressed in the Health Insurers' Application To Eliminate Agent Commissions. As a policy matter, given the deep insolvency of Penn Treaty Network America Insurance Company ("PTNA") and American Network Insurance Company ("ANIC") and the reductions in benefits that will be sustained by some policyholders (notwithstanding the safety net provided by the guaranty association system), the agents present an inequitable claim for commissions in this rehabilitation. It is not clear that the agents have a property interest in commissions (as a percentage of collected premiums) under either their contracts or Pennsylvania law as they have previously claimed. NOLHGA therefore does not oppose the Health Insurers' request to eliminate the payment of agent commissions in the Second Amended Plan.

NOLHGA also acknowledges and alternatively could support the Policyholders Committee's suggestion that Company A¹ commissions be deferred until Company A has been acquired or recapitalized. *See* 2-13-15 Formal Comments of the Policyholders Committee on the Second Amended Plan of Rehabilitation, at 4-5 ("To the extent that commissions on policies in Company A remain a debt of Company A, payment thereof should be postponed until the assumption of Company A's block of policies by a solvent, operating insurer, or the recapitalization and re-licensing of Company A."). NOLHGA considers the Policyholders Committee's suggestion as consistent with the rationale of the Health Insurers' Application To Eliminate Commissions. If the rehabilitation of Company A is successful, commissions could be paid. If however the rehabilitation of Company A is not successful, such deferral in payment would ensure that commissions are not paid to agents (general creditors) at the expense of policyholders (priority creditors).

As the Health Insurers note, however, the question of agent commissions in this matter has already been the subject of debate and unresolved litigation. Whether commissions should be paid by the surviving company in a "good bank/bad bank" structure of the type contemplated by the Second Amended Plan certainly has not been considered by any court in the Commonwealth. In its Formal Comments, NOLHGA did not object to the payment of commissions on Company A policies as proposed under the Second Amended Plan. NOLHGA viewed this concession to the agents as part of a comprehensive plan designed to avoid concerns raised in response to the prior rehabilitation plan proposed by the Rehabilitator in 2013. The estimated present value of future commissions on Company A policies is approximately \$20 million in the context of this \$4 billion receivership. In this specific context, NOLHGA elected

¹ Capitalized terms used but not defined herein shall have the meanings as defined in the Second Amended Plan of Rehabilitation, as filed with this Court on October 8, 2014.

not to object to the payment of commissions to agents on Company A policies even though Pennsylvania law may not require the proposed payments.

In sum, NOLHGA supports any of the following scenarios: (1) the elimination of agent commissions in their entirety (for Company A and Company B policies); (2) the deferral of the payment of agent commissions on Company A policies until acquisition or re-capitalization (as proposed by the Policyholders Committee); or (3) the payment of agent commissions on Company A policies in the context of the implementation of the Second Amended Plan as a whole.²

Dated: April 22, 2015

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² NOLHGA would not support a scenario in which commissions were paid on Company B policies.

CERTIFICATE OF SERVICE

I certify that on this day I served the foregoing by email at the email addresses indicated below:

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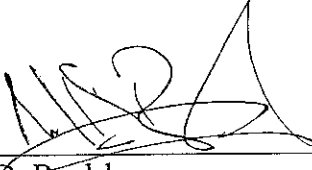
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