

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

22 APR 2015 14

RECEIVED
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

Respectfully submitted,



Mark D. Bradshaw
Attorney ID # 61975
STEVENS & LEE,
A Professional Corporation
17 North Second Street
16th Floor
Harrisburg, PA 17101
(717) 255-7357

Charles T. Richardson
FAEGRE BAKER DANIELS LLP
1050 K Street, NW
Suite 400
Washington, DC 20001
(202) 312-7487

Caryn M. Glawe
FAEGRE BAKER DANIELS LLP
300 North Meridian Street, Suite 2700
Indianapolis, IN 46204
(317) 237-1488

*Attorneys for the National Organization of Life and
Health Insurance Guaranty Associations*

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:

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

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

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

Carl Buccholz
DLA Piper LLP
1650 Market Street
Philadelphia, PA 19103-7300
carl.buccholz@dlpaper.com

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

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

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

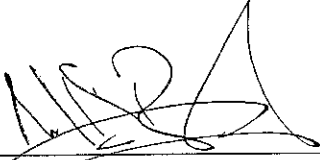
John P. Lavelle, Jr.
Morgan Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
jlavelle@morganlewis.com

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

Harold S. Horwich
Benjamin J. Cordiano
Morgan Lewis & Bockius LLP
One State Street
Hartford, CT 06103-3178
harold.horwich@morganlewis.com
benjamin.cordiano@morganlewis.com

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

Dated: April 22, 2015



Mark D. Bradshaw
Attorney ID # 61975
STEVENS & LEE,
A Professional Corporation
17 North Second Street, 16th Floor
Harrisburg, PA 17101