

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Penn Treaty Network America :
Insurance Company in Rehabilitation : 1 PEN 2009
:
:
:
In Re: American Network :
Insurance Company in Rehabilitation : 1 ANI 2009

Re: Intervenors' Application for Relief for an Order Rejecting the
Rehabilitator's Second Amended Plan

BEFORE: HONORABLE MARY HANNAH LEAVITT, Judge

OPINION NOT REPORTED

FILED: May 19, 2015

MEMORANDUM OPINION AND ORDER

Pending before the Court is a Petition for Approval of the Second Amended Plan of Rehabilitation (Plan) for Penn Treaty Network America Insurance Company (PTNA) and American Network Insurance Company (ANIC) (collectively, the Companies) filed by Teresa D. Miller, Insurance Commissioner of the Commonwealth of Pennsylvania, in her capacity as Statutory Rehabilitator of the Companies. On April 1, 2015, Intervenors Eugene J. Woznicki and Penn Treaty American Corporation filed an Application for relief in the form of an order immediately rejecting the Plan without a hearing or, in the alternative, requiring the Rehabilitator to answer certain questions in advance of the hearing currently scheduled for July 2015. The Court heard argument on Intervenors' Application on May 11, 2015, and, for the reasons set forth below, denies Intervenors' Application.

Intervenors contend that a hearing is not necessary to determine that the Plan is facially deficient because (1) it does not comply with the Court's prior orders, particularly the order of May 3, 2012, denying the Rehabilitator's petition to convert the rehabilitation of the Companies to a liquidation; (2) is fraught with unreasonable further delay; and (3) fails to address what happens if crucial contingencies built into the Plan do not occur. Intervenors assert that Section 516(d) of Article V of the Insurance Department Act of 1921¹ permits the Court to deny a proposed rehabilitation without "prescribing" a hearing. Intervenors urge the Court to order the Rehabilitator to pursue an approach similar to that advocated in the 2013 Rehabilitation Plan, *i.e.*, impose immediate benefit reductions followed by appropriate premium rate increases.

The Court disagrees with Intervenors' interpretation of Section 516(d) of Article V to mean that the Court can reject the Plan without holding a hearing. Section 516(d) states, in relevant part, that

[u]pon application of the rehabilitator for approval of the plan,
and after such notice and hearing as the court may prescribe,

¹ Act of May 17, 1921, P.L. 789, added by the Act of December 14, 1977, P.L. 280. Section 516(d) states:

The rehabilitator may prepare a plan for the reorganization, consolidation, conversion, reinsurance, merger or other transformation of the insurer. Upon application of the rehabilitator for approval of the plan, *and after such notice and hearing as the court may prescribe*, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. If it is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the equities of policyholders of the company, provided that all rights of shareholders are first relinquished. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies, for such period and to such an extent as may be necessary.

40 P.S. §221.16(d) (emphasis added).

the court *may* either approve or disapprove the plan proposed, or *may* modify it and approve it as modified.

40 P.S. §221.16(d) (emphasis added). It is a well-established principle of statutory interpretation that “where a statute directs the doing of a thing for the sake of justice the word ‘may’ means the same thing as the word ‘shall’.” *Hotel Casey Co. v. Ross*, 23 A.2d 737, 740 (Pa. 1942) (citing *Board of Supervisors of Rock Island County v. U.S. ex rel. State Bank*, 71 U.S. 435, 446 (1866)). Such is the case here, where the Court is charged with approving a plan of rehabilitation that will affect the contract rights of thousands of policyholders as well as the financial interests of the Companies’ creditors, other insurers and the taxpaying public. The legislature’s use of the word “may,” though permissive in form, is in fact peremptory. Accordingly, the Court denies Intervenors’ request to reject the Rehabilitator’s Plan outright.

As an alternative form of relief, Intervenors ask the Court to order the Rehabilitator to provide written responses to a series of issues and questions recited in Intervenors’ brief. These issues and questions relate to the “crucial contingencies” that Intervenors contend render the Plan facially deficient. As was decided in the Court’s telephonic conference with counsel on May 14, 2015, the parties will be conferring to agree upon a list of issues and in what order they will be considered at the hearing, scheduled to commence July 13, 2015. Because those issues will likely be the same as or similar to those raised by Intervenors in their Application and in their formal comments, the Court will consider them at the hearing. Accordingly, Intervenors’ request for alternative relief is moot.

AND NOW, this 19th day of May, 2015, for the above-stated reasons, Intervenors’ 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, is DENIED.



MARY HANNAH LEAVITT, Judge

Certified from the Record

MAY 19 2015

and Order Exit