

GRANTED. The time period for the Rehabilitator to file a plan of rehabilitation in compliance with the Court's May 3, 2012 Order shall commence on the date of the Court's disposition of the Post-Trial Motion of Michael F. Consedine, Insurance Commissioner of the Commonwealth of Pennsylvania, in His Official Capacity as Rehabilitator of Penn Treaty Network America Insurance Company and American Network Insurance Company.

Mary Hannah Leavitt, Judge

and American Network Insurance Company (the “Rehabilitator”), by his counsel, Blank Rome LLP, respectfully submits this Motion for Clarification of the Court’s May 3, 2012 Order or, in the Alternative, to Stay, with respect to the Court’s May 3, 2012 Order denying the Rehabilitator’s Amended Petitions for Liquidation of Penn Treaty Network America Insurance Company (In Rehabilitation) (“PTNA”) and American Network Insurance Company (In Rehabilitation) (“ANIC”) (collectively, the “Companies”). In support of this Motion, the Rehabilitator avers as follows:¹

RELEVANT PROCEDURAL HISTORY

1. On January 5, 2009, the Commissioner filed Petitions for Rehabilitation with this Court requesting that this Court place the Companies into rehabilitation. This Court entered Orders on January 6, 2009, placing the Companies into rehabilitation under Article V of the Insurance Department Act of May 17, 1921, P.L. 789, as amended, 40 P.S. §§ 221.1-221.63 (the “Act”).

2. On October 2, 2009, the Rehabilitator filed Petitions seeking Orders of Liquidation for the Companies after determining that further attempts to rehabilitate the Companies would substantially increase the risk of loss to policyholders and would be futile.

3. Amended Petitions for Liquidation (the “Amended Petitions”) were filed on October 23, 2009.

4. On November 2, 2009, Eugene J. Woznicki and Penn Treaty American Corporation (the “Intervenors”) filed Petitions to Intervene with respect to the Amended Petitions.

¹ This Motion is supported by the Declaration of Preston M. Buckman, submitted herewith.

5. On November 9, 2009, the Rehabilitator filed Answers to the Intervenor's Petition to Intervene.

6. On November 16, 2009, the Court granted the Intervenor's Petitions to Intervene.

7. On July 10, 2010, the Intervenor's filed a response to the Amended Petitions.

8. On August 13, 2010, the Court consolidated the liquidation proceedings involving the Companies.

9. The hearing on the Amended Petitions commenced on January 13, 2011, and continued intermittently until April 12, 2011, at which time the hearing was recessed until a later date.

10. On September 19, 2011, the hearing recommenced, and continued intermittently until concluding on November 2, 2011, after twenty-nine days of hearings over a period of approximately nine months.

11. On February 21 and 22, 2012, the Court heard closing arguments.

12. On May 3, 2012, the Court issued a lengthy Memorandum Opinion and Order, denying the Amended Petitions and establishing a deadline for preparation of a rehabilitation plan (the "May 3, 2012 Order").

13. Relevantly, the May 3, 2012 Order: (i) denied the Amended Petitions; (ii) ordered "the Rehabilitator [to] develop a plan of rehabilitation of the Companies, in consultation with Intervenor's, and [] submit a plan no later than ninety (90) days following the date of this Order"; and (iii) required that "the plan of rehabilitation must address and eliminate the inadequate and unfairly discriminatory premium rates for the OldCo business." (May 3, 2012 Order at 2.)

14. On May 14, 2012, the Rehabilitator timely filed his “Post-Trial Motion of Michael F. Consedine, Insurance Commissioner of the Commonwealth of Pennsylvania, in His Official Capacity as Rehabilitator of Penn Treaty Network America Insurance Company and American Network Insurance Company” (the “Post-Trial Motion”).

15. On May 23, 2012, the Court ordered that the Intervenors file any response to the Post-Trial Motion by June 28, 2012.

16. The Rehabilitator reasonably expects the Court will not resolve the Post-Trial Motion until some time near or after the ninetieth day from the date of the May 3, 2012 Order (or August 1, 2012). The Rehabilitator’s time to appeal will begin to run only after the Post-Trial Motion is resolved.

17. Thus, the Rehabilitator is faced with the dilemma of complying with the deadline in the May 3, 2012 Order, and possibly mooting his right to appeal, or risking contempt for failure to comply.

RELIEF SOUGHT

I. The Court Should Clarify That Any Plan Is Required To Be Filed Only Within Ninety Days Of The Court’s Disposition Of The Post-Trial Motion.

18. Clarification of the Court’s May 3, 2012 Order is required because that Order does not take into account the Post-Trial Motion. The situation is further confused because the Intervenors have taken the position that the Post-Trial Motion does not affect the Rehabilitator’s time within which to comply. Accordingly, clarification is needed.

19. Typically, an Order of the Court is not considered “final” until all post-trial briefing has been resolved. *See, e.g.*, Pa. R.C.P. 227.4 (allowing for entry of judgment if no timely post-trial motion is filed, or if such a motion has been filed but the court has not entered an order disposing of any such motion within one hundred twenty days after the filing of the first

motion); Pa. R.A.P. 341 (defining what constitutes “final orders”); *In re Contest of Election of Nov. 4, 2003*, 858 A.2d 143 (Pa. Commwlth. 2004) (“a trial court’s order at the conclusion of a trial . . . simply cannot become final for purposes of filing an appeal until the court decides any timely post-trial motions”).

20. Moreover, only after judgment has been entered is it timely to file a notice of appeal. *See Hartigan v. Clark*, 165 A.2d 647 (Pa. 1960); *Croyle v. Dellape*, 832 A.2d 466, 470 (Pa. Super 2003).

21. Accordingly, barring special relief or invocation of the Supreme Court’s King’s Bench powers, the Rehabilitator will not be able to appeal the May 3, 2012 Order until the Court has entered an order disposing of the Post-Trial Motion, or 120 days after the Post-Trial Motion was filed, whichever occurs first.

22. As a result, reading the requirements of the May 3, 2012 Order to run from May 3, 2012 would require the Rehabilitator to develop and file a plan of rehabilitation while the Court is reconsidering the propriety of that Order. Furthermore, requiring the Rehabilitator to act before an appeal is likely available to be taken could conceivably moot the Rehabilitator’s right to appeal.

23. Accordingly, the Rehabilitator may be required to prematurely invoke the Supreme Court’s appellate jurisdiction to preserve the ability to appeal.

24. In addition, complying with the May 3, 2012 Order, and specifically developing and filing a plan of rehabilitation within ninety days of May 3, 2012, would constitute a significant burden on the Rehabilitator.

25. The development of a plan of rehabilitation, in the best of circumstances, is a complicated and lengthy endeavor. Although the Rehabilitator has already taken certain

necessary preliminary steps toward fulfilling the requirements inherent in the May 3, 2012 Order, it would be impossible to develop and file such a plan with only ninety days' notice.

26. First and foremost, it should be noted that the rehabilitation of long-term-care insurers like the Companies is a novel enterprise. To the Rehabilitator's knowledge, this type of rehabilitation has never been attempted before, in Pennsylvania or elsewhere. There is no easy-to-apply template for the rehabilitation of a long-term-care insurer.

27. This particular rehabilitation also poses unique burdens. For example, based on the Court's findings in the May 3, 2012 Order, the Rehabilitator is exploring the retention of a new actuary. This process requires time for completion.

28. Although the Intervenors have asserted that the Rehabilitator should simply adopt the work already performed by its actuaries, or at least retain them to provide services going forward, even if that were done the Rehabilitator would only be comfortable proceeding if a new actuary was retained to validate, update, and support the Intervenors' experts' conclusions in any rate filings submitted pursuant to an approved rehabilitation plan.

29. Second, at the Intervenors' urging the Rehabilitator may appoint a new special deputy for purposes of the Companies' rehabilitations or liquidations. The selection of a new special deputy will require time. Moreover, the new special deputy will need time to become fully engaged in this matter in order to oversee the preparation of the plan.

30. In this case, the interplay between the Post-Trial Motion and the May 3, 2012 Order, along with other particular difficulties involved in preparing and submitting a plan of rehabilitation of the Companies, requires additional time for completion.

31. Accordingly, the Rehabilitator asks the Court to clarify that the ninety-day period in which the May 3, 2012 Order requires the Rehabilitator to develop and file a plan was

intended to run from the date this Court rules on Rehabilitator's Post-Trial Motion, not from the date of the May 3, 2012 Order.

II. In The Alternative, The Court Should Stay The Requirements of the May 3, 2012 Order Until 90 Days Following The Court's Determination Of The Post-Trial Motion.

32. In the alternative, this Court should stay the Rehabilitator's obligations under the May 3, 2012 Order until a date 90 days following the Court's disposition of the Post-Trial Motion.

33. This Court has the inherent power to stay judgment of a matter. *See In re Estate of Petro*, 694 A.2d 627, 631 (Pa. Super. 1997), *citing inter alia U.S. v. Breyer*, 41 F.3d 884 (3d Cir. 1994) (the power to stay is incidental to the inherent power of every court to promote fair and efficient adjudication of cases before it).

34. As described in Paragraphs 26 through 30, *infra*, the May 3, 2012 Order would place significant burdens on the Rehabilitator associated with the preparation and filing of a plan.

35. Simply put, more time is required for the Rehabilitator to reasonably fulfill those requirements, as the Court may in any event not have fully contemplated.

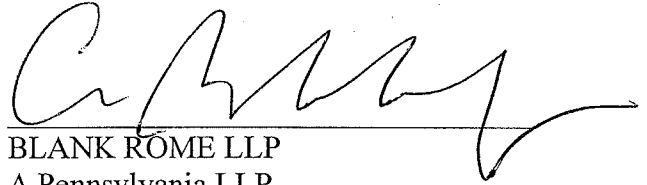
36. Accordingly, the requirements of the May 3, 2012, Order should be stayed until a date 90 days following the Court's determination of the Post-Trial Motion.

37. Nevertheless, in deference to the Court and without prejudice to its positions, the Rehabilitator has already taken certain preliminary steps toward complying with those requirements and will continue to do so. As the Court is aware, these steps include meeting with the Intervenors' counsel to discuss a resolution of all issues.

WHEREFORE, the Rehabilitator respectfully requests that the Court enter an Order either (i) clarifying that the Rehabilitator's obligations under the May 3, 2012 Order do not begin

to run until the Court has entered an Order disposing of the Post-Trial Motion, or (ii) staying the Rehabilitator's obligation to comply with the May 3, 2012 Order until a date 90 days following the Court's disposition of the Post-Trial Motion. A Proposed Order reflecting the primary relief sought is submitted herewith.

Respectfully Submitted,



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Treaty Network America Insurance
Company and American Network Insurance
Company

DATED: June 8, 2012

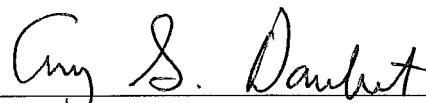
CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the following parties of record in this proceeding and in the following manner:

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Dated: June 8, 2012

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MICHAEL F. CONSEDINE, INSURANCE
COMMISSIONER OF THE
COMMONWEALTH
OF PENNSYLVANIA

Plaintiff,

v.

PENN TREATY NETWORK AMERICA
INSURANCE COMPANY,

Defendant.

v.

MICHAEL F. CONSEDINE, 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

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OF PENNSYLVANIA
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DECLARATION OF PRESTON M. BUCKMAN

I, Preston M. Buckman, Esquire, hereby state that the facts set forth below are true and correct to the best of my knowledge, information and belief. Further, I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

1. I am an attorney admitted to practice law in the Commonwealth of Pennsylvania. I am Department Counsel for Insurance in the Governor's Office of General Counsel. My business address is 901 N. 7th Street, Harrisburg, PA 17102. I am of legal age and competent to testify as to the matters set forth herein.

2. This declaration is made in support of the *Motion Of Michael F. Consedine, Insurance Commissioner Of The Commonwealth Of Pennsylvania, In His Official Capacity As Rehabilitator Of Penn Treaty Network America Insurance Company And American Network Insurance Company, For Clarification Of The Court's May 3, 2012 Order Or, In The Alternative, To Stay* (the "Motion").

3. On January 5, 2009, the Commissioner filed Petitions for Rehabilitation requesting that this Court place the Companies¹ into rehabilitation.

4. After the Court's January 6, 2009 Order placing the Companies into rehabilitation, on October 2, 2009, the Rehabilitator filed Petitions seeking Orders of Liquidation for the Companies after determining that further attempts to rehabilitate the Companies would substantially increase the risk of loss to policyholders and would be futile. Amended Petitions for Liquidation (the "Amended Petitions") were filed on October 23, 2009.

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6. On July 10, 2010, the Intervenors filed a response to the Amended Petitions.

7. On August 13, 2010, the Court consolidated the rehabilitation proceedings involving the Companies.

¹ All capitalized terms not defined herein shall have the same meaning as set forth in the Motion.

8. The Court held hearings on the Amended Petitions over thirty days beginning in January 2011 and concluding in November 2011.

9. After closing arguments were heard on February 21 and 22, 2012, the Court issued its Memorandum Opinion and Order, denying the Amended Petitions and ordering the Rehabilitator to file a rehabilitation plan “no later than ninety (90) days following the date of this Order (the “May 3, 2012 Order”).

10. On May 14, 2012, the Rehabilitator timely filed a post-trial motion (the “Post-Trial Motion”). Pursuant to the Court’s May 23, 2012 Order, the Intervenors must file any response to the Post-Trial Motion by June 28, 2012.

11. The May 3, 2012 Order is silent on the impact of the filing of the Post-Trial Motion on the deadline for filing a rehabilitation plan. Despite legal authority stating that court orders are not final until after a decision on the post-trial motions (or 120 days after filing of such motions), the Intervenors have taken the position that the effective date of the Order is May 3, 2012.

12. The development of a plan of rehabilitation can be a complicated and lengthy endeavor. The challenges associated with developing a plan of rehabilitation are accentuated in this case because the rehabilitation of a long term insurer, to my knowledge, has not been attempted prior to this case, and therefore there is an absence of meaningful or helpful precedent to draw upon.

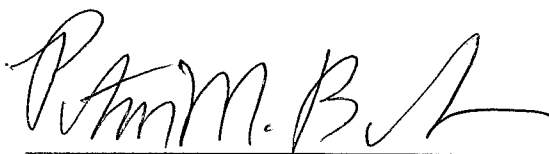
13. Furthermore, the fact that there are two companies at issue in this proceeding presents certain complicating factors with respect to the formation of a rehabilitation plan that would not be present if this proceeding involved only one company.

14. Moreover, as explained in the Motion, there are actuarial related issues and an effort to retain a special deputy that will take some time to address and conclude.

15. Finally, as is the case with most significant undertakings such as the development and submission of a rehabilitation plan for the Companies, particularly when there is an absence of meaningful or helpful precedent, it is quite likely that issues will arise that no one could have foreseen or anticipated that will require time to resolve before the rehabilitation plan can be finalized and submitted.

16. For all of the above reasons, it would be very difficult for the Rehabilitator to develop and submit a rehabilitation plan for the Companies within 90 days of May 3, 2012.

17. I hereby certify that the forgoing statements by me are true and accurate based on the information known to me.



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DATED: June 8, 2012

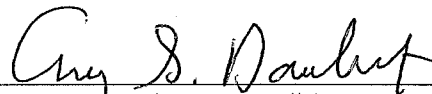
CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the following parties of record in this proceeding and in the following manner:

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Dated: June 8, 2012