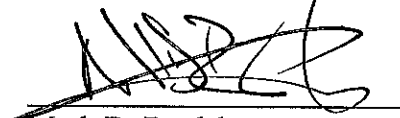




Dated: July 30, 2015

Respectfully submitted,



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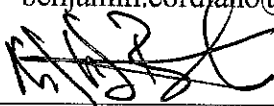
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Dated: July 30, 2015

  
\_\_\_\_\_  
Mark D. Bradshaw

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

- - -  
IN RE: PENN TREATY : DOCKET NO. 1 PEN 2009  
NETWORK AMERICA  
INSURANCE COMPANY :  
In Rehabilitation

:  
IN RE: AMERICAN : DOCKET NO. 1 ANI 2009  
NETWORK INSURANCE :  
COMPANY in  
Rehabilitation :

- - -  
Tuesday, July 14, 2015

- - -  
Commencing at 9:56 a.m.

- - -  
Pennsylvania Judicial Center  
601 Commonwealth Avenue  
Courtroom #3002  
Harrisburg, Pennsylvania

- - -  
BEFORE: HONORABLE MARY HANNAH LEAVITT

- - -  
REPORTED BY: Gina E. Scheetz, RMR, CRR, CLR,  
NJ-CCR

- - -  
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1                   - - -

2                   (Whereupon, there was a  
3                   luncheon recess held at this time.)

4                   - - -

5                   THE CLERK: Court is now in  
6                   session.

7                   THE COURT: All right. We're  
8                   at the point we're going to hear from  
9                   NOLHGA's counsel.

10                  MS. GLAWE: Yes, thank you.

11                  And thank you for allowing us to  
12                  confer over the lunch break about  
13                  this morning's testimony. We  
14                  appreciate that.

15                  I'm Caryn Glawe here on behalf  
16                  of NOLHGA, the National Organization  
17                  of Life and Health Insurance Guaranty  
18                  Associations.

19                  NOLHGA is an association made  
20                  up of Life and Health Insurance  
21                  Guaranty Associations in all 50  
22                  states and D.C. and is a limited  
23                  Intervenor in this proceeding in its  
24                  ~~vocational~~ capacity to advance the  
                  **associational**

1 collective interests of the GAs.

2 NOLHGA exists to help the GA  
3 coordinate their efforts to provide  
4 statutory protection to policyholders  
5 when a life or health insurance  
6 company in <sup>insolvency</sup> solvency like this one  
7 affects policyholders in many states.

8 If the Second Amended Plan is  
9 implemented, NOLHGA expects 50 GAs to  
10 be triggered to guarantee  
11 approximately \$4 billion of  
12 policyholder benefits funded by an  
13 allocation of <sup>estate</sup> ~~the state~~ assets,  
14 future premiums paid by policyholders  
15 and over \$3 billion of assessments  
16 contributed by the GA's member  
17 insurers pursuant to state law.

18 That's \$2 billion of  
19 independent safety net funding to  
20 help bridge the liability <sup>to</sup> asset gap  
21 for this deeply insolvent block of  
22 business.

23 NOLHGA has certain comments to  
24 offer at this time explaining its

1                    <sup>evaluation</sup>  
2                    ~~valuation~~ of the Second  
3                    Amended Plan including certain  
4                    clarifications as to yesterday's  
5                    discussion.

6                    Consistent with the formal  
7                    comments as offered, NOLHGA generally  
8                    supports the Rehabilitator's plan as  
9                    has been filed with this court.

10                    The financial condition of  
11                    Penn Treaty and ANIC is dire. As  
12                    this court found in 2012, both  
13                    companies are insolvent.

14                    The Rehabilitator's analysis  
15                    as of year-end 2013 shows an asset-  
16                    to-liability deficit of \$3.2 billion  
17                    for the two companies combined.

18                    NOLHGA's actuary has advised  
19                    the GAS that the deficit is at least  
20                    as deep as the Rehabilitator  
21                    projects.

22                    The Rehabilitator projects  
23                    that Penn Treaty will run out of  
24                    assets in 2018 and ANIC will run out  
                    of assets a few years later, though

1 it's unlikely ANIC would survive long  
2 on its own once Penn Treaty runs out  
3 of assets, given ANIC's dependence  
4 upon Penn Treaty's administrative  
5 operations and the staff.

6 According to the  
7 Rehabilitator's actuaries, it would  
8 take an average rate increase of 300  
9 percent for Penn Treaty and 350  
10 percent for ANIC to close the funding  
11 gap.

12 The companies' devastating  
13 financial condition is being  
14 exacerbated by the fact that  
15 policyholder claims and agent  
16 commissions continue to be paid at a  
17 hundred percent and there are no new  
18 sources of income, not in the form of  
19 premium rate increases, capital  
20 infusions from Penn Treaty  
21 shareholders or otherwise.

22 's ————— The company's assets, investment  
23 income on those assets and the  
24 premiums expected to be collected



1 GA's member insurers, their  
2 policyholders and the states where  
3 those insurers do business.

4 As part of its deliberations  
5 and evaluations, NOLHGA considered  
6 the interest of all of those who will  
7 share in the responsibility of  
8 protecting policyholders when the  
9 insolvent insurer is liquidated to  
10 ensure the GA system will function  
11 appropriately and in compliance with  
12 all <sup>governing</sup> ~~limiting~~ state laws so that no  
13 one is unduly burdened.

14 As the Rehabilitator has  
15 explained, however <sup>, and consistent</sup> ~~inconsistent~~ with  
16 legislative design, all effective  
17 policies in receivership,  
18 policyholders, shareholders and the  
19 GA member insurers will share some of  
20 the burden of this deep insolvency.

21 If the Second Amended Plan is  
22 approved and Penn Treaty or Company B  
23 is liquidated, each GA will protect  
24 policyholders pursuant to the terms

1 of its state's statutes. When  
2 triggered by the liquidation of a  
3 member insurer, GAs may, among other  
4 powers, guarantee, assume or reinsure  
5 or cause to be guaranteed, assumed or  
6 reinsured the policies or contracts  
7 of the insolvent insurer or assure  
8 payment of the contractual  
9 obligations of the insolvent insurer.

10 In this case, we expect the  
11 ~~effective~~ <sup>affected</sup> GAs to assure payment of  
12 the contractual obligations of Penn  
13 Treaty by continuing the policies,  
14 collecting all premiums from  
15 policyholders and paying benefits  
16 according to the terms of the  
17 policies subject to statutory  
18 limitations and exclusions until all  
19 GA coverage obligations have been  
20 satisfied many decades into the  
21 future.

22 With few exceptions, this is  
23 how GAs satisfy their statutory  
24 obligations in life and health

1 insurance insolvencies when the  
2 policies cannot be transferred to a  
3 solvent carrier as is the case here.

4 There was some discussion  
5 yesterday about GAs ~~issue~~ <sup>issuing</sup> replacement  
6 coverage or alternative policies.

7 While the GA statutes in most states  
8 provide GAs the option of issuing  
9 replacement or alternative policies,  
10 in most cases, GAs discharge their  
11 statutory obligations to  
12 policyholders without issuing  
13 alternative policies.

14 GAs usually guarantee, assume,  
15 reinsure or continue benefits with  
16 few, if any, changes other than the  
17 imposition of statutory coverage  
18 limits and exclusions.

19 We expect the ~~effective~~ <sup>affected</sup> GAs  
20 will satisfy their statutory  
21 obligations for Penn Treaty's  
22 liquidation by guaranteeing and  
23 continuing benefits without issuing  
24 replacement policies.

1                   During those negotiations,  
2                   NOLHGA focused, as this court  
3                   suggested, on the OldCo book and  
4                   what, if anything, can be done to  
5                   turn that around, and if nothing  
6                   could be done on that, it will take  
7                   that book of business into a company  
8                   and be liquidated.

9                   NOLHGA's actuarial<sup>and</sup> legal  
10                  review of the OldCo book led NOLHGA  
11                  to conclude that nothing could be  
12                  done to turn the OldCo book around,  
13                  so NOLHGA focused on an alternative  
14                  that would take the troubled business  
15                  into a company to be liquidated.

16                  That is precisely what the  
17                  Second Amended Plan does. The plan  
18                  rehabilitates the policies that might  
19                  be able to be rehabilitated. Those  
20                  premiums are projected to be  
21                  sufficient to support future  
22                  liabilities. It liquidates those  
23                  policies that cannot be  
24                  rehabilitated, <sup>+</sup> those ~~were~~ <sup>with</sup> premiums

1 that are not projected to be  
2 sufficient to support future  
3 liabilities.

4 The plan uses the two existing  
5 companies to implement the business  
6 division structure instead of  
7 spending the estate assets to create  
8 new vehicles to accomplish the same  
9 purpose.

10 While this good bank/bad bank  
11 structure is somewhat unique and in  
12 some ways complicated, it is a  
13 practical approach to dealing with  
14 two companies that are severely  
15 insolvent <sup>and</sup> ~~in~~ an order to  
16 rehabilitate.

17 The GA system was developed to  
18 avoid policyholders alone bearing the  
19 risk of an insolvent insurer. For  
20 instance, in this case, to avoid  
21 85,000 remaining policyholders  
22 shouldering a more than 3-billion-  
23 dollar liability-to-asset gap.

24 Most policies will experience

1 losses when the Second Amended Plan  
2 is implemented.

3 In the aggregate and depending  
4 on choices policyholders make,  
5 policyholders could lose more than \$1  
6 billion in benefits.

7 Some policyholders will go to  
8 Company B and have benefits capped at  
9 GA limits, plus whatever uncovered  
10 benefits may be paid with the ~~state~~<sup>estate</sup>  
11 assets.

12 Some non-self-sustaining  
13 policyholders will choose to pay  
14 higher premiums or reduce benefits to  
15 go to Company A.

16 While it is regrettable for a  
17 policyholder to experience a loss as  
18 a result of this insurer's  
19 insolvency, both the law and this  
20 plan provide for policyholders of the  
21 insolvent insurer to bear some of the  
22 cost of the insolvency. This is a  
23 continuation of the risk-sharing that  
24 is inherent in insurance.

~~company's~~ <sup>companies'</sup>

1 the ~~company's~~ business. The asset  
2 allocation is the final step to  
3 address the premium inequity The  
4 Court observed while accomplishing  
5 the goal of rehabilitating some  
6 portion of the ~~company's~~ <sup>companies'</sup> business.

7           Historical premiums are the  
8 basis for the asset allocation  
9 methodology which takes into account  
10 how much each policyholder has paid  
11 in the past. This is done within  
12 each issuing company, issuing  
13 insurer, to respect the financial  
14 condition of each and is done before  
15 liquidation and distribution of  
16 assets per the priority statute.

17           If assets were not allocated  
18 as proposed in the plan or in a  
19 similar manner that provided  
20 proportionately more assets to  
21 Company A than Company B, the  
22 business division structure would not  
23 work for these companies.

24           Once assets are allocated

1 between Company A and Company B,  
2 assets in Company B further are  
3 allocated between covered and  
4 uncovered benefits and among the GAs.

5 As Mr. Cantilo summarized  
6 yesterday, the Second Amended Plan  
7 contemplates that the GAs will  
8 allocate assets among themselves  
9 using a <sup>re</sup>~~pre~~-priced premium  
10 methodology.

11 It is different <sup>from</sup>~~for~~ NAPM in  
12 that it is completely forward-looking  
13 and is based on the reserves for  
14 future policy benefits. We will  
15 discuss this methodology in more  
16 detail during the next phase of the  
17 hearing.

18 As Mr. Cantilo also explained,  
19 this -- this methodology as a matter  
20 does not affect the plan itself or  
21 the benefits received by  
22 policyholders. It strictly affects  
23 the allocation of assets to the  
24 affected Guaranty Associations.



1                   Similarly, Mr. Cantilo  
2 mentioned the possibility use of a  
3 captive by the GAs. That, too, has  
4 no effect on the plan or the benefits  
5 received by policyholders. If  
6 employed, it would simply be a means  
7 for the GAs collectively to discharge  
8 their statutory obligations and to  
9 administer the ~~law for~~ <sup>runoff of</sup> the business.  
10 Each GA will remain liable to the  
11 policyholders for which it has  
12 statutory obligations.

13                   One element of this plan is  
14 the use of ~~the state~~ <sup>estate</sup> assets to pay  
15 uncovered benefits. The Court heard  
16 from us and other parties on this  
17 issue in May.

18                   NOLHGA appreciates The Court  
19 taking this issue under advisement ~~in~~ <sup>and</sup>  
20 considering it as a part of the whole  
21 plan. It is contrary to insurance  
22 and the receivership ~~resident~~ <sup>precedent</sup> in  
23 Pennsylvania and across the country  
24 to find that just because a policy

1 terminates, it terminates without  
2 value.

3 NOLHGA is concerned about the  
4 possible extension of ~~The Warrant Act~~ <sup>the Warrantech</sup>  
5 decision to insurers other than the  
6 limited type of property and casualty  
7 insurance that was the subject of  
8 that case.

9 An extension of ~~The Warrants~~ <sup>the Warrantech</sup>  
10 ~~Act~~ decision could have the effect of  
11 curing insolvencies completely on the  
12 backs of policyholders and leaving  
13 assets for other creditors and the  
14 shareholder, as Mr. Cantilo testified  
15 yesterday. That result should be  
16 avoided.

17 Recently, there has been quite  
18 a bit of focus on the nine states  
19 where only one of Penn Treaty or ANIC  
20 was licensed, and the Rehabilitator's  
21 plan to seek restricted licenses in  
22 those states so the currently  
23 unlicensed company can accept  
24 policies that would move under the

1 Second Amended Plan.

2 NOLHGA agrees with Mr.  
3 Cantilo's description of the work  
4 that has been done in those nine  
5 states to date to address this issue.  
6 This is an issue that has been front  
7 and center for NOLHGA and the  
8 affected GAs since the business  
9 division plan was proposed.

10 NOLHGA and its member GAs are  
11 committed to making sure  
12 policyholders don't fall through the  
13 cracks and lose GA coverage that they  
14 would otherwise have as a result of  
15 the implementation of the Second  
16 Amended Plan.

17 We will continue to work with  
18 the Rehabilitator, <sup>affected</sup>~~effective~~ GAs and  
19 regulators to ensure GA coverage can  
20 be provided.

21 If the Second Amended Plan is  
22 implemented, the 50 affected GAs will  
23 be prepared to provide protection to  
24 Penn Treaty and ANIC policyholders.

1                   . NOLHGA has been coordinating  
2                   the GA's participation for six years  
3                   and will continue to do so until a  
4                   plan is implemented and beyond.

5                   Ultimately, each GA will  
6                   determine when it is triggered  
7                   whether to participate in any  
8                   agreements that require participation  
9                   and how to cover policyholders.

10                  As the Second Amended Plan  
11                  states, quote, "Each Guaranty  
12                  Association makes its own coverage  
13                  determinations in accordance with  
14                  applicable law. Neither the  
15                  Rehabilitator, nor PTNA, is  
16                  responsible for the coverage  
17                  decisions of the Guaranty  
18                  Associations," end quote.

19                  The GAs are following their  
20                  routine process here and letting  
21                  NOLHGA coordinate <sup>the</sup> ~~with~~ GAs'  
22                  involvement now and waiting to make a  
23                  specific coverage decision until a  
24                  plan has been approved.

1           When there is an approved  
2           plan, the GAs will be able to make  
3           more specific decisions about  
4           coverage.

5           NOLHGA appreciates The Court  
6           giving to the parties this  
7           opportunity to comment more fully on  
8           the Second Amended Plan and to ~~delay~~<sup>lay</sup>  
9           the foundation for testimony evidence <sup>and</sup>  
10          to come in the second phase of this  
11          hearing.

12          No one has challenged the fact  
13          that Penn Treaty and ANIC are deeply  
14          insolvent and something needs to be  
15          done to address the insolvency and  
16          protect policyholders, creditors and  
17          the public.

18          The companies' assets are  
19          rapidly depleting and no White Knight  
20          has been eager to help fill in the  
21          hole.

22          The GAs intend to fulfill  
23          their statutory obligations to  
24          policyholders if and when called upon

1 transferred it to a reinsurer, not an  
2 assumption deal? Yes.

3 THE COURT: No. I mean a life  
4 insurance policy, a health insurance  
5 policy where the Guaranty Association  
6 steps into the shoes of an insolvent  
7 insurer and continues the coverage by  
8 collecting premium and paying claim  
9 for some unknown period of time.

10 MS. GLAWE: Yes, absolutely.  
11 There are a couple of long-term care  
12 insolvencies or liquidations,  
13 actually, where the GAs are  
14 continuing coverage. They were  
15 blocks that were not, you know,  
16 desirable to sell to assuming <sup>carriers</sup> ~~care~~ so  
17 that the GAs are simply running off  
18 the business.

19 There was a large liquidation  
20 of an annuity ~~rider~~ <sup>writer</sup>, Executive Life  
21 of New York, a couple of years ago,  
22 and the GAs are running off those  
23 liabilities, so it's exactly as you  
24 said, the GAs have stepped into the

1 shoes of the insurer.

2 THE COURT: And they're -- and  
3 they're -- and they're limiting the  
4 coverage assumption to cap in that  
5 state?

6 MS. GLAWE: Yes, yes.

7 THE COURT: What long-term  
8 care insurance company was it?

9 MS. GLAWE: Well, there are a  
10 couple that still have policies being  
11 run off. Life Insurance Company --  
12 Life and Health Insurance Company of  
13 <sup>a</sup> ~~America~~ Pennsylvania ~~is a~~ domiciled  
14 <sup>that</sup> company ~~and~~ was liquidated in the  
15 early 2000s.

16 THE COURT: How many policies  
17 were involved? What was the size of  
18 the insolvency, if you know?

19 MS. GLAWE: I don't know. It  
20 was significantly smaller than Penn  
21 Treaty, certainly. This is the  
22 largest long-term care insolvency  
23 we've seen.

24 The other more recent example

1 is National States Insurance Company.  
2 It was a Missouri domestic that was  
3 liquidated within the last couple of  
4 years, also a smaller block, but  
5 it -- a similar block of long-term  
6 care policies that had similar issues  
7 and it was a block that was not  
8 desired, you know, by an assuming  
9 carrier, so the GAS --

10 THE COURT: And it required  
11 more than one state's Guaranty  
12 Association?

13 MS. GLAWE: Yes, both of ~~us~~<sup>those.</sup>  
14 ~~though.~~

15 THE COURT: How many?

16 MS. GLAWE: I don't have that  
17 offhand either. We can provide that.  
18 I don't believe either one was  
19 licensed as broadly as Penn Treaty  
20 and ANIC, but they both are --

21 THE COURT: More than ten GAS.

22 MS. GLAWE: Yes, I believe so.  
23 Yes. And they're -- both of those  
24 are liquidations being coordinated by



1 satisfied by assets of Penn Treaty,  
2 #1.

3 #2, the continuing premium,  
4 that will be paid by the  
5 policyholders.

6 MS. GLAWE: Yes.

7 THE COURT: And the third is  
8 assessment on the member companies.

9 MS. GLAWE: Yes, and that 4-  
10 billion-dollar estimate, that's, you  
11 know, the actuarial projection of the  
12 GA's liability assuming the  
13 imposition of the coverage limit.

14 It's -- that's -- that is the  
15 actuarial projection of the  
16 covered -- the GA covered liability  
17 assuming the ~~position~~<sup>imposition</sup> of the GA  
18 coverage limit.

19 THE COURT: Okay. You said  
20 that the likelihood of the clawback  
21 is very small. Is that -- is that  
22 based on an actuarial analysis?

23 I mean, there are certain --  
24 we have 85,000 policyholders, 7,000

1 MS. GLAWE: I don't know that  
2 we've done anything specifically  
3 looking at that, and you can't  
4 predict exactly which policyholders  
5 will go on claim, so I'm not sure  
6 what --

7 THE COURT: But --

8 MS. GLAWE: -- what study  
9 would help, but my understanding of  
10 the clawback statute is that the  
11 Receivership Act is that -- you know,  
12 there are clawbacks under certain  
13 circumstances.

14 If <sup>a</sup> ~~the~~ secured creditor is  
15 discovered later, that takes higher  
16 priority and they need assets back,  
17 or if it was determined that the  
18 allocation among the creditors of the  
19 same class was unfair -- and I'm  
20 not -- we haven't seen the clawback  
21 used in a life and health case on a  
22 policyholder level like this -- that  
23 the -- the allocation here is based  
24 on the -- in this case, it's based on