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1 PEN 2009

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Penn Treaty Network America Insurance Company in Rehabilitation	No. 1 PEN 2009
AND	
In Re: American Network Insurance Company in Rehabilitation	No. 1 ANI 2009

HEALTH INSURERS' RESPONSE TO PETITIONS FOR LIQUIDATION

INTRODUCTION

Aetna Life Insurance Company, Anthem, Inc., Cigna Corporation, HM Life Insurance Company, Horizon Healthcare Services, Inc. d/b/a Horizon Blue Cross Blue Shield of New Jersey, QCC Insurance Company, United Concordia Life and Health Insurance Company, United Concordia Insurance Company and UnitedHealthcare Insurance Company (the "Health Insurers") hereby respond to the Verified Petition To Convert Rehabilitation to Liquidation filed for each of Penn Treaty Network America Insurance Company ("PTNA") and American Network Insurance Company ("ANIC") with the Commonwealth Court of Pennsylvania on July 27, 2016 (the "Liquidation Petitions"). By the Liquidation Petitions, Teresa Miller (in her capacity as statutory rehabilitator (the "Rehabilitator") seeks conversion of these rehabilitation proceedings for PTNA and ANIC to liquidation proceedings. PTNA and ANIC are hereafter collectively referred to as "Penn Treaty".

I. SUMMARY OF RESPONSE

The Liquidation Petitions seek conversion of these rehabilitation cases to liquidation cases. The Health Insurers do not oppose the entry of liquidation orders, but request that the Court grant the Liquidation Petitions in a way that would not trigger the Guaranty Associations until after there is resolution of significant and disputed coverage and administration issues under the Guaranty

Association statutes. The Guaranty Associations are triggered by the entry of a liquidation order with a finding of insolvency, so there are several ways in which the relief sought by the Health Insurers could be reconciled with granting the Liquidation Petitions. They include entering a liquidation order without a finding of insolvency and delaying the hearing on the Liquidation Petitions. The Court has broad latitude in the timing and formulation of orders granting petitions. The relief requested by the Health Insurers is in the best interest of policyholders and the Guaranty Associations because it will enable an orderly resolution of coverage issues that will directly impact policyholders. The National Organization of Life and Health Insurance Guaranty Associations ("NOLHGA") will not object to a liquidation effective date of January 1, 2017.

II. ARGUMENT

A. Standard of Review.

The Pennsylvania Supreme has indicated that a rehabilitator is entitled to deference in exercising her judgment in converting a case to liquidation. *In re Penn Treaty Network Am. Ins. Co.*, 119 A.3d 313, 322 (Pa. 2015). However, this Court has authority to apply equitable principles when appropriate. *See Ario v. Reliance Ins. Co.*, 980 A.2d 588, 597 (2009) (applying equitable principles in determining the priority level of a subrogation claim asserted against an insolvent insurer). Pursuant to its equitable powers, the Court has wide latitude in the timing

and substance of orders granting relief. S*ee Irons v. Christy*, No. 1844 WDA 2012, 2013 WL 11264139, at *3 (Pa. Super. Ct. June 24, 2013) ("Furthermore, it is well-settled that 'a decree which accords with the equities of the cause may be shaped and rendered; the court may grant any appropriate relief that conforms to the case made by the pleadings although it is not exactly the relief which has been asked for by the special prayer.'") (quoting *Lower Frederick Twp. v. Clemmer*, 543 A.2d 502, 512 (Pa. 1988)); s*ee also Piercing Pagoda, Inc. v. Hoffner*, 351 A.2d 207, 213 (1976) ("Where equity assumes jurisdiction for one or more purposes, it will retain jurisdiction for all purposes to give complete relief and to do complete justice between the parties. This may include an award of equitable relief not covered by the original prayer.").

B. Deferral of the Guaranty Association Trigger is in the Best Interest of Policyholders.

The Guaranty Associations are triggered upon the entry of a liquidation order with a finding of insolvency. *See, e.g.*, 40 P.S. § 991.1706(c) (triggering coverage for an "insolvent insurer") and 40 P.S. § 991.1702 (defining "insolvent insurer"). Once the Guaranty Associations are triggered, they will have to finalize their determinations as to coverage under the Guaranty Association statutes. The unresolved and disputed coverage issues could significantly alter Guaranty Association coverage if applied to PTNA and ANIC policyholders.

Since February, when the last deposition was taken in connection with the Second Amended Plan of Rehabilitation, the Health Insurers have been negotiating with NOLHGA as well as individual Guaranty Associations in an effort to resolve coverage and administration issues that will have a significant effect on an orderly liquidation process. The parties have made progress in these negotiations over the last sixty days, and the Health Insurers believe that negotiations will be completed or reach impasse on or before October 31, 2016.

In the absence of a settlement of the disputed coverage issues, Guaranty Associations will face the prospect of immediate litigation from the Health Insurers and other member companies. Litigation over these coverage issues will leave policyholders in an uncertain position. First, it is likely that at the time Guaranty Associations' obligations are triggered and they take over the payment of benefits under the PTNA and ANIC policies, policyholders will be offered choices between continuing their policy and taking a modification of benefits. Without certainty as to the ongoing coverage of the policy, making knowledgeable choices may be impossible for policyholders. Second, in a state where broad coverage is provided by the Guaranty Association, policyholders would face a subsequent loss of benefits in the event that a court determined coverage issues adversely. This may make it difficult for policyholders to develop financial plans based on a level of available long term care coverage. More importantly, it may impact a policyholder

on claim that has adopted a plan of care based on a particular level of coverage. In short, failure to resolve the coverage and administration issues prior to triggering the guaranty associations' obligations would leave the policyholders in limbo. This would be an unfortunate result in a case that has been pending for nearly seven years -- particularly when such a result is so unnecessary.

C. The Benefits of Deferring Guaranty Association Trigger Far Outweigh the Detriments.

As discussed above, deferring the trigger of the Guaranty Associations' obligations to enable a settlement of the disputed and unresolved coverage and administration issues will promote certainty for the policyholders, the Guaranty Associations and the Health Insurers. Success in settling these issues cannot be assured, but the cost of the deferral is more than offset by the benefit.

It has been argued by the Rehabilitator that continuing the rehabilitation has several ongoing costs. First, Penn Treaty's agents continue to get paid commission each month. Second, premium taxes are incurred each month. Third, the estate continues to incur administrative expense. Fourth, claims continue to be paid in full without setting aside funds to be used for payment of claims in excess of Guaranty Association limits ("Over-the-limit Claims"). These costs can be minimized by the Court granting appropriate relief. At least two alternatives are readily apparent.

1. Enter the liquidation order now, expressly reserving the finding of insolvency until the parties reach a resolution of the disputed coverage and administration issues or impasse. The grounds for conversion of the rehabilitation to liquidation alleged by the Rehabilitator in the Liquidation petitions are increased risk of loss and futility of the rehabilitation. Neither requires a finding of insolvency. Payments to policyholders would continue as they have, but a trigger of the Guaranty Associations would not occur until later.

2. Allow until the end of October for the parties to resolve the disputed coverage and administration issues, and set scheduling accordingly. If the parties cannot resolve those issues, the Court could move forward with a hearing on the Liquidation Petition. If the parties do resolve the issues, the Court can give consideration to what further protection might be appropriate while the settlement is being implemented. Under either of these scenarios, the imposition on the receivership estate would be minimal.

Commissions:

If the Court enters an order of liquidation now, but expressly defers the finding of insolvency, the Guaranty Associations' obligations would not be triggered, but commission payments would cease. If the Court defers the liquidation order pending settlement negotiations, only one or two months of commission would be paid. This is a modest sum in comparison to the amounts

that have been paid in the case and the amounts at stake in the coverage negotiations.

Premium taxes:

Although premium taxes would continue to be paid under either solution, the amount of premium taxes (approximately $1.0 million per month), is a small amount compared to the financial significance of the coverage negotiations.

Administrative expense:

The additional time it will take to resolve the coverage and administration issues should not prolong the administration of the estate. The chores that need to be undertaken by the Rehabilitator over the coming months can be undertaken whether a liquidation order is entered now or will be entered a few months from now. The principal undertaking of the receiver will be the preparation of the hand-off of claims administration to the Guaranty Associations once their obligations are triggered. It is currently contemplated by all parties that the receiver will continue to service claims on behalf of the Guaranty Associations for a considerable period (up to a year according to the Liquidation Petitions) after the liquidation order to allow the necessary transition to Guaranty Association administration. Once the parties know that a liquidation order is going to be entered, they can commence those preparations without delay.

Moreover, the extent of the transition in claims management will depend in large part on whether the receiver will need to consider Over-the-limit Claims. (As the Court may remember, there was substantial litigation over the question of whether the operation of 40 P.S. §§ 221.20 and 221.21, as interpreted by the Pennsylvania Supreme Court in *Warrantech Consumer Products Services v. Reliance Ins. Co.*, 96 A.3d 346 (Pa. 2014), bars such claims.) Administrative transition cannot be completed until this issue is resolved because it will determine whether the estate will have any ongoing claims administration obligations. The period of any delay in triggering the Guaranty Associations' obligations can be used to resolve this issue as well, either through settlement discussions with the Rehabilitator, which are ongoing, or through litigation if those discussions are unsuccessful. But in any event, once it is known that a liquidation order will be entered, there is no reason for the parties to delay in dealing with the transition. The delay of a few months is unlikely to cause any material increase in administrative expense. It will only shorten the transition period after the liquidation order is entered.

Over-the-limit Claims:

At best, any cost to policyholders with respect to Over-the-limit Claims is speculative, and at worst, the cost of delay is minimal compared to the importance of resolving the disputed coverage and administration issues. First, the burden of

continuing to pay claims falls largely on the Health Insurers, whose Guaranty Association assessments will rise as a result of the delay. Second, during the interim period, the Rehabilitator will continue to collect and have access to premiums and investment income that would otherwise go to the Guaranty Associations and would not be available for division with the policyholders if the Guaranty Associations were triggered immediately.

III. CONCLUSION

The Health Insurers do not oppose the entry of a liquidation order in the Penn Treaty cases, but they do seek deferral of the triggering of the Guaranty Associations' obligations in order to settle significant and disputed coverage and administration issues. Resolution of these issues will benefit policyholders, the Guaranty Associations and the Health Insurers by creating a high level of certainty in the coverage and administration of policyholder benefits. The cost of the deferral sought by the Health Insurers is outweighed by the benefits of resolution and, in any event, is negligible in the context of this case. But even if the Court

were to conclude otherwise, there are means by which the Court could fashion relief to restore any cost to a party that is injured.

Dated: August 26, 2016

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CERTIFICATE OF SERVICE

I certify that on August 26, 2016, I caused a true and correct copy of the foregoing document to be served on the following persons by email at the email addresses indicated below:

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