

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Penn Treaty Network America Insurance
Company in Rehabilitation

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No. 1 PEN 2009

In Re: American Network Insurance Company
in Rehabilitation

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No. 1 ANI 2009

**BROADBILL'S MOTION FOR LEAVE TO FILE A BRIEF REPLY IN RESPONSE TO
THE REHABILITATOR'S ANSWER TO BROADBILL PARTNER LP'S
APPLICATION TO INTERVENE IN THE REHABILITATION PROCEEDINGS OF
PENN TREATY NETWORK AMERICAN INSURANCE COMPANY AND
AMERICAN NETWORK INSURANCE COMPANY¹**

Broadbill Partners LP ("Broadbill"), by this Motion, seeks leave to file the attached reply to the Rehabilitator's Answer to Broadbill's Application to Intervene in the above captioned Rehabilitation Proceedings, pursuant to Pennsylvania Rules of Appellate Procedure 123 and 3375, and in support thereof, states as follows:

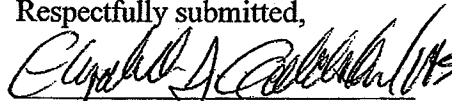
1. Broadbill owns more than 5% of the Stock of Penn Treaty American Corporation ("PTAC"), which is the controlling shareholder of PTNA and ANIC.

¹ Broadbill Partners, LP has filed this Motion for Leave to File a Reply in the rehabilitation proceedings of both Penn Treaty Network American Insurance Company and American Network Insurance Company at the instruction of the Clerk of the Court.

2. Broadbill acquired an interest in over 5% of the equity of PTAC on August 10, 2012.
3. Broadbill filed an Application to Intervene in the Rehabilitation Proceedings of Penn Treaty Network American Insurance Company and American Network Insurance Company on August 17, 2012 ("Application to Intervene").
4. Broadbill attached to its Application to Intervene a Joinder of Intervenor Broadbill Partners, LP in Intervenors Eugene J. Woznicki's and Penn Treaty American Corporation's Brief In Opposition to the Rehabilitator's Post-Trial Motion.
5. The Rehabilitator filed its Answer to Broadbill's Application to Intervene on September 17, 2012.
6. Attached to this motion as Exhibit A is a brief reply which Broadbill seeks leave to file with this Court in response to the Rehabilitator's Answer to the Broadbill's Application to Intervene.
7. The proposed reply seeks to address what Broadbill considers to be misstatements of law and fact in the Rehabilitator's Answer.

Date: September 20, 2012

Respectfully submitted,

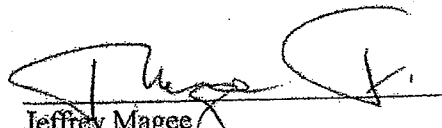

Elizabeth J. Goldstein

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*Attorneys for Intervenor, Broadbill
Partners, LP*

VERIFICATION

I, Jeffrey Magee, Chief Operating Officer of Broadbill Investment Partners, LLC, the Investment Manager of Broadbill Partners, LP, state that I am authorized on behalf of Broadbill Partners, L.P. to submit this verification of the facts stated in the Motion for Leave to File a Brief Reply to which this Verification is attached and that such facts are true and correct to the best of my knowledge, information and belief. I further understand that the statements made herein are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

Dated: September 20, 2012


Jeffrey Magee
Broadbill Investment Partners, LLC

CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2012, I caused a true and correct copy of the foregoing *Motion for Leave to File a Brief Reply to the Rehabilitator's Answer to Broadbill Partner, LP's Application to Intervene in the Rehabilitation Proceedings of Penn Treaty Network American Insurance Company and American Network Insurance Company* of Broadbill Partners, LP, as well as the attached *Reply to the Rehabilitator's Answer to Broadbill Partner, LP's Application to Intervene in the Rehabilitation Proceedings of Penn Treaty Network American Insurance Company and American Network Insurance Company*, to be served by e-mail and U.S. Mail upon the persons listed on the Master Service List.

Dated: September 20, 2012


Elizabeth Goldstein

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Penn Treaty Network America Insurance
Company in Rehabilitation

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: No. 1 PEN 2009
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In Re: American Network Insurance Company
in Rehabilitation

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: No. 1 ANI 2009
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PROPOSED ORDER

Upon consideration of the Motion for Leave to File a Reply and the attached proposed Reply to the Rehabilitator's Answer to Broadbill Partner, LP's Application to Intervene in the Rehabilitation Proceedings of Penn Treaty Network American Insurance Company and American Network Insurance Company, the Court hereby ORDERS that the Motion for Leave to File a Reply is GRANTED. Broadbill Partners, LP may file Exhibit A, attached to the Motion for Leave to File a Reply, in reply to the Rehabilitator's Answer to Broadbill Partner, LP's Application to Intervene in the above captioned proceedings.

IT IS SO ORDERED on this _____ day of _____, 2012.

MARY HANNAH LEAVITT, Judge

EXHIBIT A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Penn Treaty Network America Insurance Company in Rehabilitation	:	
	:	No. 1 PEN 2009
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In Re: American Network Insurance Company in Rehabilitation	:	No. 1 ANI 2009
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**REPLY IN RESPONSE TO THE REHABILITATOR’S ANSWER TO BROADBILL
PARTNER LP’S APPLICATION TO INTERVENE IN THE REHABILITATION
PROCEEDINGS OF PENN TREATY NETWORK AMERICAN INSURANCE
COMPANY AND AMERICAN NETWORK INSURANCE COMPANY**

Broadbill Partners LP (“Broadbill”), by and through its undersigned counsel, hereby submits this Reply to the Rehabilitator’s Answer to Broadbill’s Application to Intervene in the above captioned rehabilitation proceedings (the “Rehabilitation Proceedings”), filed on August 17, 2012. That Application attached Broadbill’s joinder to *Intervenors’ Brief in Opposition to the Rehabilitator’s Post-Trial Motion* (the “Opposition”), filed by Intervenors Eugene J. Woznicki and Penn Treaty American Corporation (“PTAC”) on June 29, 2012, and urged this Court to deny 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* (the “Post-Trial Motion”). For the reasons set forth below, this Court should grant Broadbill’s Application to Intervene.

ARGUMENT

I. Broadbill Has A Direct And Substantial Interest In The Outcome Of The Proceeding.

The Rehabilitator first argues that Broadbill should not be permitted to intervene because Broadbill does not have “a direct and substantial interest in the administration of the insurer’s business or estate” as required by Pennsylvania Rule of Appellate Procedure 3775(a).² To the contrary, Broadbill, as the owner of more than 5% of the shares of Penn Treaty American Corporation (“PTAC”), the parent company of both Penn Treaty Network American Insurance Company (“PTNA”) and American Network Insurance Company (“ANIC”), does meet the “direct and substantial interest” requirement. Should the assets of either PTNA or ANIC be liquidated—as the Rehabilitator proposes—Broadbill’s interests as a shareholder of PTAC would undoubtedly be directly and substantially affected. Liquidation would erase any equity value in these companies, significantly and permanently impairing Broadbill’s investment. And as Broadbill pointed out in its Application to Intervene, both PTNA and ANIC could be rehabilitated and generate a substantial surplus, which, in turn, would inure to the benefit of PTAC and its shareholders like Broadbill.

The Rehabilitator’s arguments to the contrary appear to be based on a misconception that the so-called “shareholder rule,” which prohibits corporations from “*maintain[ing] an action*” against a party “for an indirect injury done to him or her as a result of injury to the corporation,” applies here to Broadbill’s Application to Intervene.³ But the “shareholder rule” is a test for *standing* to bring suit, not for whether or not an interested party can intervene in an ongoing rehabilitation proceeding. Even if Broadbill could not bring suit to protect its interests

² Rehabilitator’s Mem. of Law at 4-5

³ *Id.* at 4 (quoting *Abraham Lincoln Hotel Corp. v. Metro. Edison*, 4 Pa. D. & C. 4th 85, 88-89 (1990)) (emphasis added).

in PTNA and ANIC, Broadbill is not maintaining an action against any party here; its Application to Intervene does not assert any claims, nor does it suggest that Broadbill intends to do so. Rather, the Application to Intervene merely seeks to add Broadbill to the proceeding for the purpose of opposing the post-trial relief sought by the Rehabilitator and supporting the rehabilitation of PTNA and ANIC. The Rehabilitator does not cite any support for its proposition that an entity cannot intervene in a rehabilitation proceeding for these limited purposes merely because it may not have standing to maintain some hypothetical action that is not at issue.

Notably, even if the definitions of “substantial” and “direct” from the standing context apply, as the Rehabilitator suggests, Broadbill’s interests in PTNA and ANIC meet those conditions. For example, the Rehabilitator states that a substantial interest is “an interest in the outcome of the litigation which surpasses the common interest of all citizens.”⁴ Broadbill undoubtedly has an interest in the outcome of these proceedings that surpasses that of all citizens: Broadbill owns a significant amount of stock in PTNA’s and ANIC’s parent company—enough to trigger the SEC’s reporting obligations for stockholders with substantial interests⁵—and thus would be particularly affected⁶ by liquidation.⁶ Likewise, the Rehabilitator asserts that a direct interest in this type of proceeding requires a “showing that the matter complained of caused harm to the party’s interest.”⁷ As noted, Broadbill’s significant equity holdings in PTAC will clearly be harmed by a decision to liquidate PTNA and ANIC.

⁴ *Id.* at 4 (quoting *Pennsylvania Med. Soc’y v. Dept. of Pub. Welfare*, 39 A.3d 267, 278 (Pa. 2012)).

⁵ See SEC Rule 13D-1(a) promulgated under the Securities Exchange Act of 1934.

⁶ The Rehabilitator further claims that Broadbill cannot have a substantial interest because its interest is “derivative in nature.” *Id.* at 1. This argument also misses the point. Even if Broadbill’s interest stems from its ownership stake in PTAC, the parent company, liquidation of either PTNA or ANIC will still have a substantial impact on Broadbill’s investment.

⁷ *Id.* at 4 (quoting *Pennsylvania Med. Soc’y v. Dept. of Pub. Welfare*, 39 A.3d 267, 278 (Pa. 2012)).

Accordingly, contrary to the Rehabilitator's suggestion, Broadbill does have a direct and substantial interest in the outcome of these proceedings, as its investment in PTAC, and thus in PTNA and ANIC, will be directly impacted by any decision to liquidate or rehabilitate the companies. Nothing the Rehabilitator has stated in its Answer suggests otherwise.

II. Broadbill's Interests Are Different From Those Of Penn Treaty American Corporation.

Next, the Rehabilitator argues that it is not necessary for Broadbill to intervene because its interests are, according to the Rehabilitator, adequately represented by PTAC. The Rehabilitator, however, mistakenly assumes that Broadbill's and PTAC's interests are perfectly aligned simply because Broadbill is a shareholder of PTAC and, as such, it has no interests in this proceeding independent of PTAC.⁸ But, Broadbill is simply a minority shareholder of PTAC. It does not have a representative on PTAC's board, nor does it exercise any control, directly or indirectly, over PTAC or, through PTAC, PTNA and ANIC. Moreover, given that PTAC is both a publicly held company and a registered and approved holding company under the Pennsylvania Insurance Code, Broadbill is just one among many stakeholders and constituents to which PTAC owes duties and obligations and whose interests PTAC must consider in the Rehabilitation Proceedings. Accordingly, there may come a point during the Rehabilitation Proceedings at which Broadbill would like to pursue a position that is either different from that of PTAC or that PTAC has decided not to pursue. Even though PTAC and Broadbill's interests have been aligned up to this point, Broadbill must have the ability to protect its own economic investment in the way it best sees fit. The Rehabilitator himself acknowledges that in these circumstances, intervention is permissible.⁹

⁸ *Id.* at 5-6.

⁹ *Id.* at 6-7 (noting that Pennsylvania cases have allowed intervention where "the interests of intervenors have diverged from those of the party to an action" and citing cases).

III. Broadbill's Application To Intervene Was Timely And Will Not Cause Undue Delay Or Prejudice.

Finally, the Rehabilitator asserts that Broadbill did not timely file its Application to Intervene. In fact, Broadbill filed its Application to Intervene within sixty-days of first acquiring an interest in PTAC (and thus an interest in PTNA and ANIC) and within seven days of acquiring an interest greater than 5% in PTAC. Rather than unduly delaying its filing, Broadbill immediately prepared its Application to Intervene upon acquiring a substantial interest in the companies at issue in the proceeding.

Notably, the Rehabilitator suggests that intervention is not warranted where the “party proposing its intervention has had ample notice and opportunity to protect its interests earlier.”¹⁰ But, Broadbill did not have such an interest to protect—and the Rehabilitator does not argue otherwise—prior to its acquisition of a substantial interest in the companies on August 10, 2012. Ironically, had Broadbill filed prior to that point, its Application may have been denied for lack of a substantial interest. Under the Rehabilitator’s strained interpretation of Appellate Rule 3775, there was no time at all during the pendency of the proceeding, and after Broadbill first bought shares of PTAC, that Broadbill could have successfully filed its petition because Broadbill either would not have had a substantial interest or would have been untimely. This perverse outcome is not intended by the Rule, and is not supported by the facts.

Moreover, Broadbill’s Application to Intervene will not delay this proceeding or prejudice the parties in any way. As noted, Broadbill is not asserting any new claims. To the extent the Rehabilitator suggests that intervention is not permitted by the Pennsylvania Rules of Civil Procedure “after a matter has been finally resolved,”¹¹ the Rehabilitator is, once again, off the mark. The Rehabilitation Proceedings at issue are far from “finally resolved.” At trial, the

¹⁰ *Id.* at 8 (quoting *In re T.T.*, 842 A.2d 962, 964-65 (Pa. Super. Ct. 2004)).

¹¹ Rehabilitator Mem. of Law at 8 (quoting *In re T.T.*, 842 A.2d at 964-64).

Court rejected the Rehabilitator's plan to liquidate the companies and instead instructed the Rehabilitator to come up with a plan for rehabilitation. This decision in no way dismissed the case or settled all of the claims such that it would be considered "finally resolved." And courts routinely grant intervention at later stages of the litigation.¹² Broadbill's Application at this stage is certainly timely in light of its recent acquisition of a substantial interest, is in no way prejudicial, and does not contravene the Pennsylvania Rules of Civil Procedure.

CONCLUSION

For the foregoing reasons, Broadbill respectfully requests that this Court grant its Application to Intervene in the above captioned matters.

Date: September 20, 2012

Respectfully submitted,

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*Attorneys for Intervenor, Broadbill
Partners, L.P.*

¹² See, e.g., *Carrozza v. Greenbaum*, 916 A.2d 553, 558 (Pa. 2007) (noting that insurance companies' petitions to intervene were granted at the post-trial stage); *In re Arnold*, 984 A.2d 1, 5 (Pa. Commw. 2009) (noting that party timely intervened in an appeal).