

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In re: Penn Treaty Network America Insurance Company and In re: American Network Insurance Company	1 PEN 2009 and 1 ANI 2009
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**RESPONSE OF THE POLICYHOLDERS COMMITTEE
TO THE HEALTH INSURERS' REQUEST FOR RELIEF
CONCERNING THE TIMING OR TERMS OF A LIQUIDATION ORDER**

The Policyholders Committee, by the undersigned counsel, hereby respond to the Health Insurers' request for relief concerning the timing of hearings on liquidation, or the timing or terms of an order of liquidation if the Rehabilitator's petitions pursuant to 40 Pa.C.S. §221.18 are granted. The request for relief is set forth in the Health Insurer's Response to Petitions for Liquidation dated August 26, 2016. The Policyholders Committee is permitted to intervene in any proceedings related to liquidation by the stipulated order of intervention dated June 19, 2015. The Policyholders Committee objects to the Health Insurers' request for relief for the reasons set forth below.

1. The Health Insurers "request that the Court grant the Liquidation Petitions in a way that would not trigger the Guaranty Associations until after there is a resolution of significant and disputed coverage and administration issues under the Guaranty Association statutes." Health Insurers' 8/26/16 Response to Petitions for Liquidation, p. 2.
2. The Health Insurers assert that they are in negotiations with NOLHGA and individual Guaranty Associations and that negotiations will "be completed or reach an impasse on or before October 31, 2016." *Id.* at p. 5. They further declare that, "[i]n the absence of a settlement of the disputed coverage issues, Guaranty Associations will face the prospect

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of immediate litigation from the Health Insurers and other member companies.” *Id.* at p. 5. Thus, the Health Insurers wish to delay triggering Guaranty Association coverage in any given state until there has been a resolution of “disputed coverage and administration issues” with that state’s Guaranty Association, which may depend on the outcomes of an unknown number of lawsuits or administrative proceedings against Guaranty Associations. It is far from clear that triggering Guaranty Association coverage on a piecemeal basis is even feasible.

2. There is a significant cost to policyholders of delaying liquidation. The liquidation date is the date as of which policyholder claims for breach of their policies will be determined, and as of which the portion of estate assets allocable to claims that exceed Guaranty Association limits will be determined. The longer liquidation is delayed, the fewer assets there will be to be allocated. That will not disturb the Health Insurers, who oppose such an allocation. It does, however, represent a loss to policyholders who will make claims in the future.

3. The Health Insurers propose that the Court enter a liquidation order, but delay a finding of insolvency, reasoning that Guaranty Association coverage is not triggered unless and until a liquidation order is followed by a finding of insolvency. *Id.* at p. 7. However, the required finding of insolvency already exists. This Court found as a fact that PTNA and ANIC were insolvent as of May 3, 2012. *Consedine v. Penn Treaty Network America Insurance Co.*, 63 A.3d 368 (Commw.Ct. 2012). Therefore, the relief the Health Insurers seek depends on delaying the entry of a liquidation order or delaying its effective date, with the effect of reducing the assets available for over-the-limit claims.

4. If the Court agrees with the Health Insurers that a new finding of insolvency is required to trigger Guaranty Association coverage and enters a liquidation order without such a finding, a different issue may arise. The entry of a liquidation order starts the 30-day period during which policies may be assumed before they terminate, under 40 Pa.C.S. §221.21 and §221.23(8). (This, at least, is what the Health Insurers have argued.) It is within the realm of possibility that the Guaranty Associations may seek to assume the policies of Penn Treaty and ANIC before they terminate, by some means that satisfies Pennsylvania law. They will not do so, however, unless their coverage obligations have been triggered.

5. The Health Insurers contend that Policyholders cannot be certain of the coverage they will receive from Guaranty Associations, until unspecified disputes related to coverage and administration are resolved between the Health Insurers and an unknown number of Guaranty Associations. It is not clear why certainty is more important to policyholders than the substantive outcomes of the unspecified coverage and administration disputes, given that they are valuable enough for the Health Insurers to be prepared to litigate over them. There is much that the Health Insurers leave unsaid in their request for relief, and it seems likely that what they leave unsaid would be of very great concern to policyholders.

6. The Health Insurers do not describe the coverage and administration issues separating them from the Guaranty Associations, or the dollar impact of those issues on policyholders. The Health Insurers simply state that “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.”

7. The Health Insurers say even less about the administration issues on which they and the Guaranty Associations disagree. They admit that “[i]t is currently contemplated by all parties that the receiver will continue to service claims on behalf of the Guaranty Associations for a considerable period” *Id.* at page 8. If that is the case, it is not clear why Guaranty Association coverage should be delayed due to unspecified “administration issues” between the Health Insurers and the Guaranty Associations. In any event, the Policyholder Committee is satisfied with the existing claims administration system and would regard any changes proposed by the Health Insurers as likely to be of very great concern to policyholders.

8. The only administration issue which the Health Insurers specify is the administration of over-the-limit claims, which would be handled by the liquidator rather than the Guaranty Associations. The Health Insurers argue that “[a]dministrative transition cannot be completed until this issue is resolved” *Id.* at page 9. This issue can be addressed in due course without delaying hearings on the liquidation petitions, as it will be some time before policyholders exhaust their guaranty association coverages and begin to present over-the-limit claims.

9. With respect to the choices that Guaranty Associations plan to offer to policyholders, it would seem that if the Health Insurers succeed in narrowing coverages over the opposition of Guaranty Associations through litigation, then new choices can and should be provided to policyholders. Policyholders will not be in limbo, but will make decisions based on the facts and the options known to them at the time.

10. The Health Insurers' alternative proposal is to wait until October 31, 2016 before scheduling hearings on the Rehabilitator's liquidation petitions. *Id.* at page 7. They suggest that the Court could proceed with hearings on the liquidation petitions after October 31, if the Health Insurers and the Guaranty Associations are at an impasse. Assuming that a general liquidation order would be entered with a finding of insolvency at the conclusion of such hearings, this alternative proposal differs from the relief requested at page 2 of the Health Insurers' Response.

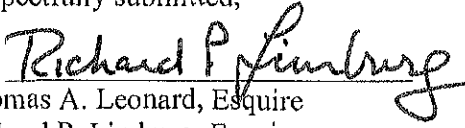
11. In any event, the alternative proposal is superfluous, in light of the fact that the Health Insurers have opposed the Rehabilitator's petition to settle with PTAC. It makes little sense to begin hearings on the liquidation petitions until the PTAC settlement petition has been approved or disapproved, because much concerning the liquidation hearings will depend on whether or not PTAC will be a party to them. If the settlement is approved, the hearings on the liquidation petitions will likely be short. Even so, under the circumstances, a liquidation order is not very likely to be entered before October 31, 2016.

12. Absent evidence to the contrary, the Committee believes that delaying liquidation and Guaranty Association coverage beyond the decision on the proposed settlement with PTAC is contrary to the interests of policyholders. This Court cannot put the Guaranty Associations' house in order or decide their internal disputes for them. All this Court can do is trigger their coverage obligations. The sooner that happens, the better for policyholders.

CONCLUSION

For all the foregoing reasons, the Policyholders Committee respectfully requests that the Court deny the Health Insurer's request for relief concerning the timing and or terms of an order for the liquidation of PTNA and ANIC.

Respectfully submitted,

By: 
Thomas A. Leonard, Esquire
Richard P. Limburg, Esquire
Obermayer Rebmann Maxwell & Hippel LLP
1617 John F. Kennedy Blvd., 19th Fl.
Philadelphia, PA 19103-1895
(215) 665-3000
Counsel for the Policyholders Committee

Dated: September 9, 2016

CERTIFICATE OF SERVICE

I certify that on September 9, 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:

Patrick H. Cantilo
Special Deputy Rehabilitator
Cantilo & Bennett, LLP
11401 Century Oaks Terrace, Suite
300
Austin, TX 78758
phcantilo@cb-firm.com

John P. Lavelle
Harold Horwich
Morgan Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
john.lavelle@morganlewis.com
harold.horwich@morganlewis.com

Stephen W. Schwab
Jayne A. Risk
Carl H. Poedtke III
Nathan Heller
Adam D. Brown
Justin Kerner
DLA Piper LLP (US)
One Liberty Place
1650 Market Street, Suite 4900
Philadelphia, PA 19103-7300
stephen.schwab@dlapiper.com
jayne.risk@dlapiper.com
carl.poedtke@dlapiper.com
nathan.heller@dlapiper.com
adam.brown@dlapiper.com
justin.kerner@dlapiper.com

James R. Potts
Cozen O'Connor
1650 Market Street, Suite 2800
Philadelphia, PA 19103
jpotts@cozen.com

Paul M. Hummer
James S. Gkonos
Saul Ewing LLP
Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA 19102-2186
phummer@saul.com
jgkonos@saul.com

Douglas Y. Christian
Ballard Spahr LLP
1735 Market Street
51st Floor
Philadelphia, PA 19103
christiand@ballardspahr.com

James D. Rodgers
John D. Consevage
Dilworth Paxson LLP
1500 Market Street, 3500E
Philadelphia, PA 19102
jrodgers@dilworth.com
jconsevage@dilworth.com

Andrew Parlen
Gary Svirsky
O'Melveny & Myers, LLP
Times Square Tower
7 Times Square
New York, NY 10036
aparlen@omm.com
gsvirsky@omm.com

Charles T. Richardson
Caryn M. Glawe
Faegre Baker Daniels
1050 K Street NW, Suite 400
Washington, DC 20001-4448
charlie.richardson@faegrebd.com
caryn.glawe@faegrebd.com


Richard P. Limburg

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PROPOSED ORDER

AND NOW, this _____ day of September, 2016, upon consideration of the Health Insurers' request for relief concerning the timing of hearings on liquidation, or the timing or terms of an order of liquidation if the Rehabilitator's petitions pursuant to 40 Pa.C.S. §221.18 are granted, which request is set forth in the Health Insurer's Response to Petitions for Liquidation dated August 26, 2016, and further upon consideration of the responses the Health Insurers' request for relief, the request for relief is hereby DENIED.

Mary Hannah Leavitt, P.J.

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