

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOEL ARIO,
INSURANCE COMMISSIONER OF THE
COMMONWEALTH OF PENNSYLVANIA,
Plaintiff,

v.

PENN TREATY NETWORK AMERICA
INSURANCE COMPANY
Defendant.

No. 5 M.D. 2009

ORDER

AND NOW, this ____ day of _____, 2009, upon consideration of the Petition for Leave to Intervene of National Health Administrators, Inc. and the Rehabilitator's response thereto, it is hereby ORDERED that petitioner National Health Administrators, Inc. is permitted to intervene in this proceeding.

Mary Hannah Leavitt, Judge

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JOEL ARIO,
INSURANCE COMMISSIONER OF THE
COMMONWEALTH OF PENNSYLVANIA,
Plaintiff,

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PENN TREATY NETWORK AMERICA
INSURANCE COMPANY
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No. 5 M.D. 2009

**RESPONSE OF THE REHABILITATOR
TO PETITION OF NHA TO INTERVENE**

The Statutory Rehabilitator of Penn Treaty Network America Insurance Company hereby responds to the Petition of National Health Administrators, Inc. ("NHA") for Leave to Intervene and opposes NHA's request for leave to seek discovery as follows:

1. It is admitted that NHA has an agency agreement with PTNA under which it receives commissions from PTNA.
2. It is admitted that NHA has interests which would be affected by the Rehabilitator's Application to Suspend Commissions and that it should be permitted to intervene and be heard on that Application.
3. The allegations of paragraph 3 are legal conclusions to which no answer is required. The Rehabilitator does not dispute that NHA should be permitted to intervene and be heard on the Rehabilitator's Application to Suspend Commissions.
4. The allegations of paragraph 4 are legal conclusions to which no answer is required. By way of further answer, the Rehabilitator does not dispute that NHA should be permitted to intervene and be heard on the Rehabilitator's Application to Suspend Commissions.

It is denied, however, that the suspension of commission payments would constitute a deprivation of property.

5. It is admitted only that NHA has filed objections to the Application and claims that it disputes the seriousness of PTNA's financial condition.

6. It is admitted that over 200 PTNA agents or agencies have filed pro se objections. The Rehabilitator is without knowledge or information concerning whether NHA is soliciting other PTNA agents.

7. The allegations of paragraph 7 are legal conclusions to which no answer is required.

8. It is denied that no one else adequately represents PTNA agents in this proceeding. Over 45 of the other PTNA agents are represented by counsel and 44 of these have sought to leave to intervene. It is also denied that suspension of commissions would necessarily terminate PTNA agents' claims to the commissions. While the agents could not file suit, suspension of commissions would not prevent the agents from filing proofs of claim under a rehabilitation plan or in a liquidation of PTNA and would not prevent payment of the past commissions to the extent that PTNA's financial condition permitted payment of Class E creditors. The Rehabilitator does not oppose permitting NHA to intervene.

9. It is admitted only that NHA seeks to oppose the Application to Suspend Commissions and to voice its opinions and concerns regarding the Application.

10. It is admitted only that PTNA is not presently in liquidation. It is denied that suspension of commissions is drastic, unwarranted or premature. To the contrary, PTNA is insolvent and suspension of commissions is necessary and proper to prevent dissipation of funds which will be needed for PTNA's policyholders. As is set forth in greater detail in the

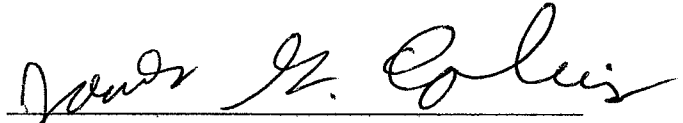
Rehabilitator's Supplemental Memorandum of Law filed July 24, 2009, suspending payment of commissions is proper in a rehabilitation. See, e.g., Koken v. Legion Insurance Co., 183 M.D. 2002 at 8 ¶¶21-22 (Pa. Cmwlth. March 28, 2002) (suspending all payments to general unsecured creditors when insurer was placed in rehabilitation); Liberty National Insurance Co., v. Reinsurance Agency, Inc., 307 F.2d 164 (9th Cir. 1962) (agents have no rights to further commissions when insurer is in rehabilitation); D.R. Mertens, Inc. v. State Department of Insurance, 478 So. 2d 1132 (Fla. App. 1985)(same).

11. It is denied that NHA needs discovery or is entitled to take discovery in this matter. NHA and its counsel and experts already have detailed information concerning PTNA's financial condition and will receive additional documents and information without any need for discovery. The Rehabilitator filed detailed financial and actuarial information with his April 2009 Preliminary Report, including PTNA's 2008 Statutory Financial Statements. In addition, the Rehabilitator will be submitting his Plan on or before October 2, 2009 which will include additional and updated information concerning PTNA's financial condition and actuarial projections.

12. It is admitted that NHA makes such assertions.

WHEREFORE, the Statutory Rehabilitator of Penn Treaty Network America Insurance Company agrees that objector National Health Administrators, Inc. should be allowed to intervene in this matter but respectfully submits that its proposed order authorizing discovery should not be entered.

Respectfully submitted,



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Commonwealth of Pennsylvania and Rehabilitator
of PENN TREATY NETWORK AMERICA
INSURANCE COMPANY

Dated: August 5, 2009

CERTIFICATE OF SERVICE

I, Virginia Lynn Hogben, hereby certify that on this date I served Notice of Filing of the foregoing Response of the Rehabilitator to Petition of NHA to Intervene on all parties listed on the Master Service List by electronic mail or facsimile, or by U.S. Mail where no electronic mail address or facsimile number was available and that I served the foregoing Response of the Rehabilitator to Petition of NHA to Intervene on the following counsel for objectors and intervenors by U.S. Mail First-Class:

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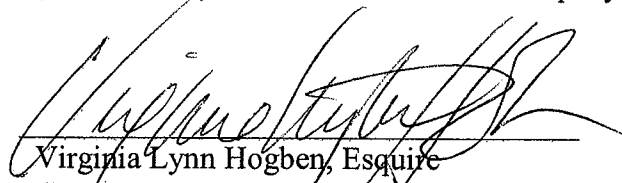
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