

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In re: Penn Treaty Network America Insurance Company	1 PEN 2009
And	And
In re: American Network Insurance Company	1 ANI 2009

APPLICATION OF THE POLICYHOLDERS' COMMITTEE FOR PERMISSION TO SUE THE PENNSYLVANIA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION AT THE EXPENSE OF THE ESTATES OF THE PENN TREATY NETWORK AMERICA AND AMERICAN NETWORK INSURANCE COMPANIES

The Policyholders Committee, by their undersigned counsel, applies to the Court for permission pursue a declaratory judgment action against the Pennsylvania Life and Health Insurance Guaranty Association ("PLHIGA") at the expense of the liquidation estates of Penn Treaty Network America Insurance Company and American Network Insurance Company, and in support thereof makes the following averments:

1. The Committee was appointed in September 2013 during the rehabilitation proceedings for Penn Treaty and ANIC upon the oral application of counsel. A copy of the relevant portion of the transcript of the hearing on September 24, 2013 is attached as Exhibit A.
2. The Committee has not been dissolved by the Court.
3. On information and belief, the statutory Liquidator believes that Committee's appointment terminated as of March 1, 2017, the day when this Court ordered Penn Treaty and ANIC into liquidation.
4. The Committee does not believe that its appointment was tied to any limiting event. At the same time, the Committee recognizes that the treatment of

policyholders and creditors in liquidation is supposed to be fixed by law rather than by a plan of rehabilitation that is subject to negotiations, objections, and court approval.

5. Following the entry of the order of liquidation, the Liquidator notified policyholders on or about March 24, 2017, that “if your policy is protected by a guaranty association in Connecticut, Pennsylvania, or Wyoming and you have an inflation rider, your policy benefits may be adjusted in accordance with the guaranty association statutes in those states.”

6. On information and belief, PLHIGA has adjusted or intends to adjust policy benefits by applying a coverage limitation known as the “Moody’s adjustment” to policies that have inflation protection riders.

7. The issue of the “Moody’s adjustment” was discussed during the rehabilitation but was not resolved. In Pennsylvania, it is a question of PLHIGA’s interpretation of 40 P.S. §991.1703(b)(2)(iii), which states as follows:

(b)(2) This article shall not provide coverage for any of the following:

(iii) Any portion of a policy or contract to the extent that the rate of interest on which it is based:

(A) averaged over the period of four (4) years prior to the date on which the association becomes obligated with respect to such policy or contract, exceeds a rate of interest determined by subtracting two (2) percentage points from Moody's Corporate Bond Yield Average averaged for the same four- year period or for such lesser period if the policy or contract was issued less than four (4) years before the association became obligated; and

(B) on and after the date on which the association becomes obligated with respect to such policy or contract, exceeds the rate of interest determined by subtracting three (3) percentage points from Moody's Corporate Bond Yield Average as most recently available.

8. The Committee believes strongly that the Moody's adjustment provision does not, as a matter of law, apply to the inflation riders issued by Penn Treaty and ANIC.

9. As a result, the Committee has prepared and filed a complaint in the Court of Common Pleas seeking a declaratory judgment against PLHIGA. A copy of the complaint (minus exhibits) is attached as Exhibit B. At the time of filing this petition, the Committee has not yet been notified by the Sheriff of Delaware County that the complaint has been served.

10. On information and belief, the statutory Liquidator has not taken legal action to challenge PLHIGA's use of the "Moody's provision" to roll back inflation protection and will not pay for the Committee to do so, absent a Court order.

11. The Committee reasonably fears that PLHIGA will violate the contractual rights of Pennsylvania policyholders under their inflation riders for years to come, unless a court of competent, original jurisdiction issues a judgment declaring that the "Moody's provision" cannot be applied to inflation riders as a matter of law.

12. If PLHIGA is allowed to proceed without legal challenge, other state guaranty associations besides Connecticut and Wyoming will likely follow in PLHIGA's footsteps.

13. This Court sits as a court of equity in insurance insolvency proceedings.

14. This Court has stated that the "equitable purpose of rehabilitation and liquidation in insurance insolvency statutes is to protect first of all consumers of insurance." *Koken v. Legion Ins. Co.*, 831 A.2d 1196, 1232-1233 (Pa.Comm.w., 2003),

citing *Grode v. Mutual Fire, Marine & Inland Insurance Co.*, 572 A.2d 798, 801 n.5 (Pa.Comm.1990).

15. The Committee believes that to protect consumers of insurance in the liquidation of Penn Treaty and ANIC, it is necessary to challenge PLHIGA's use of the "Moody's provision" to roll back inflation protection.

16. The Committee's request is limited to prosecuting the declaratory judgment action which it has already commenced against PLHIGA and any resulting appeals.

17. The Committee believes the case can be determined purely as a matter of law.

WHEREFORE, the Committee respectfully requests that the Court enter an order authorizing and permitting the Committee to pursue a declaratory judgment action against the Pennsylvania Life and Health Insurance Guaranty Association at the expense of the liquidation estates of Penn Treaty Network America Insurance Company and American Network Insurance Company in accordance with the complaint attached to this petition, and any amendments thereof.

Respectfully submitted,

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Dated: June 2, 2017

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ORDER

AND NOW, this _____ day of June, 2017, upon consideration of the application of the Policyholders Committee for permission pursue a declaratory judgment action against the Pennsylvania Life and Health Insurance Guaranty Association (“PLHIGA”) at the expense of the liquidation estates of Penn Treaty Network America Insurance Company and American Network Insurance Company, and the Liquidator’s response thereto, it is hereby ORDERED and DECREED that the application is GRANTED. The Policyholders Committee is authorized and permitted to pursue a declaratory judgment action against the Pennsylvania Life and Health Insurance Guaranty Association at the expense of the liquidation estates of Penn Treaty Network America Insurance Company and American Network Insurance Company in accordance with the complaint attached to this petition, and any amendments thereof.

Mary Hannah Leavitt, President Judge