

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Penn Treaty Network America :
Insurance Company (In Liquidation) : 1 PEN 2009
:
In Re: American Network Insurance :
Company (In Liquidation) : 1 ANI 2009

BEFORE: HONORABLE MARY HANNAH LEAVITT, President Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY PRESIDENT JUDGE LEAVITT

FILED: July 24, 2017

Before the Court is the Policyholders Committee's application for permission to pursue a declaratory judgment action in the Philadelphia Court of Common Pleas 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 (collectively, the Companies).¹ The Liquidator has filed an answer opposing the Committee's application and denying the continued existence of the Committee. PLHIGA has filed an application for limited intervention to oppose the Committee's application. For the following reasons, the Court denies the Committee's application and denies PLHIGA's application.

On September 24, 2013, the Court recognized the formation of the Policyholders Committee and appointed counsel thereto during a prehearing conference on the Statutory Rehabilitator's plan to rehabilitate the companies. The

¹ The Committee seeks a declaratory judgment that the statutory coverage limitation of Section 1703(b)(2)(iii) of the Life and Health Insurance Guaranty Association Act, Act of May 17, 1921, P.L. 682, No. 284, added by the Act of December 18, 1992, P.L. 1519, *as amended*, 40 P.S. §991.1703(b)(2)(iii), which the Committee refers to as the "Moody's adjustment," does not apply to inflation riders in certain policies.

purpose of the Committee was to give the policyholders a voice in the negotiation of a rehabilitation plan and, as explained by counsel, to protect their contractual rights in the event that rehabilitation required reformation of policies. *See generally* Notes of Testimony, September 24, 2013, at 49-52. Although rehabilitation of the Companies was unsuccessful, the Committee participated in the negotiation of multiple rehabilitation plans and provided valuable input. The Committee's official role ended, however, when the Court entered orders on March 1, 2017, converting the rehabilitation of the Companies to liquidation.² At this time there is no statutory basis for the Court to require the Liquidator to fund the Committee's litigation against PLHIGA from the Companies' estate. If the Committee wishes to file a claim against the estate, it must follow the proof of claim procedure in Section 537 of the Insurance Department Act of 1921, Act of May 17, 1921, P.L. 789, added by the Act of December 14, 1977, P.L. 280, 40 P.S. §221.38. For these reasons, the Committee's application is denied.

For its part, PLHIGA seeks to intervene in this proceeding under Pa. R.A.P. 3775(c)(2) for the limited purpose of opposing the Policyholders Committee's application. In its proposed response, PLHIGA asks the Court to deny the Committee's application, direct the Commission to discontinue its declaratory judgment action in the Philadelphia Court of Common Pleas, and order the Committee to return any estate funds it expended in pursuit of that action. Because the Court denies the Committee's application, PLHIGA's application for limited intervention to oppose it is moot.³

² The Court does not find it necessary to enter an order formally dissolving the Committee. The member policyholders are free to continue their collective effort to advocate for their rights in liquidation. At this point, however, they are responsible for their attorney fees.

³ The Court takes no position on the propriety of the Committee's declaratory judgment action but notes that it would not have the authority to order the Committee to discontinue that action.

Accordingly, the Court enters the following order.



MARY HANNAH LEAVITT, President Judge

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ORDER

AND NOW, this 24th day of July, 2017, the 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 is DENIED.

The Application for Limited Intervention by Pennsylvania Life and Health Insurance Guaranty Association for the Limited Purpose of Opposing the Policyholders' Committee Application for Permission to Sue PLHIGA at the Expense of the Estates is DENIED.



MARY HANNAH LEAVITT, President Judge

Certified from the Record

JUL 24 2017

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