

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT L. PRATTER, ACTING INSURANCE  
COMMISSIONER OF THE COMMONWEALTH  
OF PENNSYLVANIA,

Plaintiff,

v.

PENN TREATY NETWORK AMERICA  
INSURANCE COMPANY,

Defendant.

ROBERT L. PRATTER, ACTING INSURANCE  
COMMISSIONER OF THE COMMONWEALTH  
OF PENNSYLVANIA,

Plaintiff,

v.

AMERICAN NETWORK  
INSURANCE COMPANY,

Defendant.

DOCKET NO. 5 M.D. 2009

DOCKET NO. 4 M.D. 2009

ORDER

AND NOW, this \_\_\_ day of \_\_\_\_\_, 2010, in consideration of the Motion in  
Limine of the Rehabilitator to Bar Cancellation of Insurance Policies as a Method of  
Rehabilitation ("Motion") and any response thereto, it is hereby

ORDERED that the Rehabilitator's Motion is GRANTED, and accordingly, the  
Intervenors are precluded from arguing or introducing evidence that cancellation of PTNA or  
ANIC long-term care insurance policies should be considered or included in any attempt to  
rehabilitate the companies and from introducing evidence of any rehabilitation plan or alternative

that includes cancelation or threatened cancelation of PTNA or ANIC long-term care insurance policies.

BY THE COURT:

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MARY HANNAH LEAVITT

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

**ROBERT L. PRATTER, ACTING INSURANCE  
COMMISSIONER OF THE COMMONWEALTH  
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**Plaintiff,**

**v.**

**PENN TREATY NETWORK AMERICA  
INSURANCE COMPANY,**

**Defendant.**

**ROBERT L. PRATTER, ACTING INSURANCE  
COMMISSIONER OF THE COMMONWEALTH  
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**AMERICAN NETWORK  
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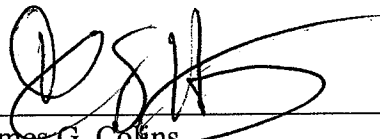
**DOCKET NO. 4 M.D. 2009**

**MOTION IN LIMINE OF THE REHABILITATOR TO BAR CANCELLATION OF  
INSURANCE POLICIES AS A METHOD OF REHABILITATION**

Petitioner Robert L. Pratter, Acting Insurance Commissioner of the Commonwealth of Pennsylvania (the "Rehabilitator"), in his capacity as Rehabilitator of Penn Treaty Network America Insurance Company ("PTNA") and American Network Insurance Company ("ANIC") hereby moves this Court to preclude Intervenors Penn Treaty American Corporation and Eugene Woznicki from arguing or introducing evidence that cancelation of PTNA or ANIC long-term care insurance policies should be considered or included in any attempt to rehabilitate the

companies and from introducing evidence of any rehabilitation plan or alternative that includes cancelation or threatened cancelation of PTNA or ANIC long-term care insurance policies. The reasons and grounds for this motion are set forth in the accompanying Memorandum of Law submitted in support hereof and the exhibits set forth in the accompanying Appendices, which are incorporated by reference as if set forth fully herein.

Respectfully submitted,



James G. Collins  
Thomas Harty  
James R. Potts  
Virginia Lynn Hogben  
Mia Meloni  
Attorney I.D. Nos. 10089, 49987, 73704, 32378,  
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ROBERT L. PRATTER, Acting Insurance  
Commissioner of the Commonwealth of  
Pennsylvania as Rehabilitator of PENN TREATY  
NETWORK AMERICA INSURANCE  
COMPANY and AMERICAN NETWORK  
INSURANCE COMPANY

Dated: November 12, 2010

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT L. PRATTER, ACTING INSURANCE  
COMMISSIONER OF THE COMMONWEALTH  
OF PENNSYLVANIA,

Plaintiff,

v.

PENN TREATY NETWORK AMERICA  
INSURANCE COMPANY,

Defendant.

ROBERT L. PRATTER, ACTING INSURANCE  
COMMISSIONER OF THE COMMONWEALTH  
OF PENNSYLVANIA,

Plaintiff,

v.

AMERICAN NETWORK  
INSURANCE COMPANY,

Defendant.

DOCKET NO. 5 M.D. 2009

DOCKET NO. 4 M.D. 2009

**MEMORANDUM OF LAW OF THE REHABILITATOR IN  
SUPPORT OF HIS MOTION IN LIMINE TO BAR CANCELATION OF  
INSURANCE POLICIES AS A METHOD OF REHABILITATION**

**INTRODUCTION**

Petitioner Robert L. Pratter, Acting Insurance Commissioner of the Commonwealth of Pennsylvania, in his capacity as Rehabilitator of Penn Treaty Network America Insurance Company and American Network Insurance Company (the "Rehabilitator"), submits this memorandum of law in support of his motion to preclude argument and evidence by Intervenor Penn Treaty American Corporation and Eugene Woznicki (collectively "Intervenor") concerning rehabilitation efforts or proposals which include cancelation of PTNA or ANIC long-term care insurance policies.

## **FACTUAL BACKGROUND**

PTNA and ANIC are long-term care insurers. The policies they issued are guaranteed renewable policies, policies which cannot be canceled or non-renewed by the insurer as long as the policyholder keeps paying the premiums for the policy. Rates may not be increased on individual policyholders based on their characteristics or risk, but the insurer may seek rate increases on a policy form as a whole based on actuarial experience for the policy form. (Ex. 11, Hunt Dep. 35-36). Such rate increases cannot be imposed by PTNA or ANIC unless the companies obtain approval from the applicable state regulators. (Ex. 11, Hunt Dep. 42-43).

During the course of discovery and in preparation for this hearing, faced with evidence not only that PTNA and ANIC are severely insolvent, but that the rate increases which Intervenor propose are not realistic or attainable, Intervenor have argued that the Rehabilitator could or should cancel PTNA and ANIC insurance policies as a method or part of method of rehabilitating the companies. (See, e.g., Ex. 22 at 8 ¶ 4(d); Ex. 6, DiMemmo Dep. 225-26, 351-53). Indeed, Intervenor state that one of their expert witnesses, William Hager, will testify that this Court should approve a rehabilitation plan that includes “threats to cancel or cancellation of policies in states in which regulators do not grant justified premium rate increases.” (Ex. 22 at 8 ¶ 4(d)). As is demonstrated below, Intervenor’s contentions and proposed expert testimony that PTNA and ANIC long-term care insurance policies can or should be canceled in rehabilitation or as part of a possible rehabilitation plan are antithetical to and barred by Pennsylvania law.

## **ARGUMENT**

Protection of policyholders must be accorded the highest priority in any insurer rehabilitation or liquidation proceedings. Foster v. Mutual Fire, Marine & Inland Insurance Co., 531 Pa. 598, 624-25, 614 A.2d 1086, 1100 (1992); Koken v. Legion Insurance Co., 831 A.2d 1196, 1232, 1242, 1246-47 (Pa. Cmwlth. 2003), aff’d sub nom. Koken v. Villanova Insurance Co., 583 Pa. 400, 878 A.2d 51 (2005); Grode v. Mutual Fire, Marine & Inland Insurance Co.,

132 Pa. Cmwlt. 196, 203 n. 5, 215, 572 A.2d 798, 801 n. 5, 807 (1990), aff'd in relevant part sub nom. Foster v. Mutual Fire, Marine & Inland Insurance Co., 531 Pa. 598, 614 A.2d 1086 (1992).

If, after all, insurance is to perform its function of risk assumption and distribution of loss, then those statutes which govern it must first protect the insuring public, particularly in situations where the insurer becomes incapable of covering the risks it contracted to assume. Rehabilitation and liquidation are of vital importance to the consumer, who relies in the first place on the industry itself and then on its regulators for protection.

Foster v. Mutual Fire, 531 Pa. at 624-25, 614 A.2d at 1100 (quoting Grode v. Mutual Fire). This Court has specifically recognized and held that “the equitable purpose of rehabilitation and liquidation in insurance insolvency statutes is to protect first of all consumers of insurance” Koken v. Legion Insurance Co., 831 A.2d at 1232, 1247 (quoting Grode v. Mutual Fire) (emphasis in original); see also Grode v. Mutual Fire, 132 Pa. Cmwlt. at 203 n. 5, 572 A.2d at 801 n.5.

The actions which a rehabilitator may take and the validity of any possible rehabilitation plan must be measured by this requirement of protection of the policyholders. This Court has made clear that the Rehabilitator is to “serve the interests of policyholders.” Koken v. Legion Insurance Co., 831 A.2d at 1242. In an insurer rehabilitation or liquidation,

the goal should be to enforce a policyholder’s reasonable expectation of coverage[.] . . . Article V [of the Insurance Department Act] does not require, or even authorize, the abandonment of the policyholders’ reasonable expectations.

Koken v. Legion Insurance Co., 831 A.2d at 1247 (emphasis added).

PTNA’s and ANIC’s long-term care insurance policies are guaranteed-renewable and cannot be canceled by the company so long as the policyholder pays the premiums. Golden Rule Insurance Co. v. Insurance Department, 163 Pa. Cmwlt. 509, 512, 641 A.2d 1255, 1256 (1994); see also Old Equity Life Insurance Company v. Commissioner of Internal Revenue, 67 T. C. 48,

50 (U.S. Tax Ct. 1976). "A guaranteed renewable policy ... obligates [the insurer] to renew the policy at the policyholder's election. [The insurer] cannot unilaterally cancel the policy regardless of the degree of risk." Golden Rule Insurance Co. v. Insurance Department, 163 Pa. Cmwlth. at 512, 641 A.2d at 1256. The insurer is permitted to raise premiums on guaranteed renewable policies, but that right to raise premiums is subject to state regulatory requirements of prior approval of rate increases and state regulators' power to disapprove proposed rate increases. Golden Rule Insurance Co. v. Insurance Department, 163 Pa. Cmwlth. at 512-21, 641 A.2d at 1256-61; Old Equity Life Insurance Company v. Commissioner of Internal Revenue, 67 T. C. at 50-51. Intervenor's admit that PTNA and ANIC cannot raise rates on their long-term care policies unless the state regulators in the policy state approve the rate increases. (Ex. 11, Hunt Dep. 42-43). Absent regulatory approval of rate increases, the policyholders are therefore entitled to continue coverage at their existing premiums and their coverage cannot be canceled so long as they pay those premiums.

Although PTNA's and ANIC's policies would be canceled by liquidation, the policyholders' coverage would not be canceled because policyholders have the right in liquidation to continue their coverage with their guaranty association up to the guaranty association limits. In addition, the policyholders will have a claim against the estate for any reduction in their coverage as a result of the guaranty association limit. Canceling policies as a means of rehabilitating PTNA or ANIC would therefore cause serious and unnecessary loss of coverage to policyholders, the very thing that rehabilitation is to protect first and foremost before all other interests and creditors. Any rehabilitation plan or action by a rehabilitator which could cancel policyholders' coverage therefore violates the fundamental priority of protecting policyholders' coverage and accordingly is impermissible under Pennsylvania law and cannot be considered in determining whether or not rehabilitation is futile. Intervenor's attempt to benefit



themselves, the lowest priority creditors, at the expense of their companies' policyholders must be rejected.

The fact that the Rehabilitation Orders in this matter include a general grant of authority to cancel or refuse to renew policies (PTNA Rehabilitation Order ¶ 10; ANIC Rehabilitation Order ¶ 10) does not change this. Such a grant of powers to a rehabilitator to cancel or non-renew policies is a general provision routinely included in rehabilitation orders of insurers (see, e.g., Ex. 25, *Koken v. Legion Insurance Co.*, No. 183 M.D. 2002, slip op. at 10 ¶ 27 (Pa. Cmwlth. March 28, 2002); Ex. 24, *Koken v. PHICO Insurance Co.*, 427 MD 2001 (Pa. Cmwlth. August 16, 2001)), not a direction or power tailored to the facts concerning PTNA and ANIC or the guaranteed renewable policies they issued.

Moreover, construing the Rehabilitation Orders to permit the Rehabilitator to cancel PTNA's or ANIC's long-term care policies would violate Pennsylvania law. Pennsylvania law requires that any rehabilitation treat policyholders and other creditors at least as well as they would fare in liquidation. *Foster v. Mutual Fire*, 531 Pa. at 613, 617, 614 A.2d at 1093-94, 1096; *Koken v. Fidelity Mutual Life Insurance Co.*, 803 A.2d 807, 826 (Pa. Cmwlth. 2002); *Grode v. Mutual Fire*, 132 Pa. Cmwlth. at 209, 572 A.2d at 804. As the Supreme Court held in *Foster v. Mutual Fire*, "a rehabilitation plan cannot impose harsher consequences than a liquidation [and] creditors must fare at least as well under a rehabilitation plan as they would under a liquidation." *Foster v. Mutual Fire*, 531 Pa. at 613, 614 A.2d at 1093-94.

Any rehabilitation plan which includes any cancelation of or reduction in policyholders' coverage below the coverage they would receive from guaranty associations and the estates in liquidation is barred by this requirement. PTNA's and ANIC's policyholders will have continued coverage in liquidation from their state guaranty associations. Indeed, this coverage is substantial -- over 90% of PTNA and ANIC policyholders are in states with guaranty association

coverage of \$300,000 or higher, a level which fully covers most claims, and policyholders whose claims exceed their guaranty association limits would be entitled in liquidation to partial payment from the estate in addition to their full guaranty association coverage. Therefore cancellation would place policyholders in a far worse situation than liquidation and cannot be permitted under Pennsylvania law.

### CONCLUSION

For the reasons set forth above, the Rehabilitator respectfully requests that his Motion in Limine be granted, that Intervenors be barred from arguing or introducing evidence that cancellation of PTNA or ANIC long-term care insurance policies should be considered or included in any attempt to rehabilitate the companies and that Intervenors be barred from introducing evidence of any rehabilitation plan or alternative that includes cancellation or threatened cancellation of PTNA or ANIC long-term care insurance policies.

Respectfully submitted,



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INSURANCE COMPANY

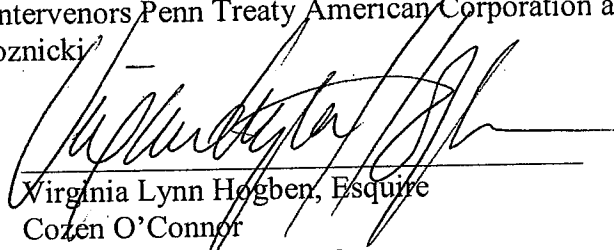
**CERTIFICATE OF SERVICE**

I, Virginia Lynn Hogben, hereby certify that on November 12, 2010, I served the foregoing Motion in Limine on the following party by the following means:

**By Hand Delivery:**

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