

## IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE: PENN TREATY NETWORK :  
AMERICA INSURANCE COMPANY IN : 1 PEN 2009  
REHABILITATION, :

IN RE: AMERICAN NETWORK :  
INSURANCE COMPANY IN : 1 ANI 2009  
REHABILITATION :

TRANSCRIPT OF PROCEEDINGS  
PRETRIAL CONFERENCE

BEFORE: THE HONORABLE MARY HANNA LEAVITT

DATE: DECEMBER 17, 2013, 10:04 a.m.

PLACE: PENNSYLVANIA JUDICIAL CENTER  
601 COMMONWEALTH AVENUE  
HARRISBURG, PENNSYLVANIA

Reported By: Heather M. Chiaro, CSR, RPR

## 1 A P P E A R A N C E S:

2

3 DLA PIPER  
4 BY: CARL M. BUCHHOLZ, ESQUIRE  
5 ONE LIBERTY PLACE  
6 1650 MARKET STREET, SUITE 4900  
7 PHILADELPHIA, PENNSYLVANIA 19103-7300  
8 215.656.3358  
9 carl.buchholz@dlapiper.com

10 FOR- PETITIONER MICHAEL CONSEDINE,  
11 INSURANCE COMMISSIONER AS REHABILITATOR

12

13

14 BALLARD SPAHR, LLP  
15 BY: DOUGLAS Y. CHRISTIAN, ESQUIRE  
16 1735 MARKET STREET  
17 PHILADELPHIA, PENNSYLVANIA 19103  
18 215.864.8404

19

20 FOR - INTERVENOR PENN TREATY AMERICA  
21 CORPORATION AND EUGENE WOZNICKI

22

23 BINGHAM McCUTCHEEN, LLP  
24 BY: HAROLD S. HORWICH, ESQUIRE  
25 ONE STATE STREET  
26 HARTFORD, CONNECTICUT 06103  
27 860.240.2722  
28 harold.horwich@bingham.com

29

30 FOR - AETNA, CIGNA, WELLPOINT,  
31 UNITED HEALTH CARE

32

33 SAUL EWING, LLP  
34 BY: PAUL M. HUMMER, ESQUIRE  
35 1500 MARKET STREET, 38th FLOOR  
36 PHILADELPHIA, PENNSYLVANIA 19102  
37 215.972.7788

38

39 FOR - AGENT'S GROUP  
40 FIVE STAR COS., ET AL.

41

1 A P P E A R A N C E S: (Continued)

2

3

OBERMAYER, REBMAN, MAXWELL & HIPPEL, LLP  
4 BY: THOMAS LEONARD, ESQUIRE  
1617 JFK BOULEVARD, 19th FLOOR  
5 PHILADELPHIA PENNSYLVANIA 19103  
215.665.3000

6

FOR - INTERVENOR BETTY CHRISTOPHER  
7 AND JAMES McNAMARA

8

FAEGRE BAKER DANIELS, LLP  
9 BY: CHARLES T. RICHARDSON, ESQUIRE  
1050 K STREET, N.W., SUITE 400  
10 WASHINGTON, D.C. 20001  
202.312.7440  
11 crichardson@faegrebd.com

12

FOR - INTERVENOR NOLHGA

13

14 ALSO PRESENT:

15

PATRICK H. CANTILO, ESQUIRE

16

CARYN M. GLAWE, ESQUIRE

17

LAURA SLAYMAKER, ESQUIRE

18

RICHARD P. LIMBURG, ESQUIRE

19

MARK D. BRADSHAW, ESQUIRE

20

JEFFREY BLEND, ESQUIRE

21

JAYNE RISK, ESQUIRE

22

STEPHEN SCHWAB, ESQUIRE

23

JAMES POTTS, ESQUIRE

24

PETER J. SPEAKER, ESQUIRE

PRESTON BUCKMAN, SPECIAL FUNDS  
COUNSEL, INS. DEPT.

1 (whereupon, proceedings were had in  
2 open court.)

3 THE COURT: Good morning. Be seated.  
4 All right. The purpose of today's gathering is to  
5 conduct another pre-hearing conference. At the  
6 last pre-hearing conference, the parties had agreed  
7 to meet and discuss to see if either a  
8 rehabilitation plan could be agreed to or the  
9 issues for a hearing on the rehabilitation plan  
10 narrowed in scope.

11 So at this point, I would like a  
12 report from Mr. Buchholz on behalf of the  
13 rehabilitator.

14 MR. BUCHHOLZ: Good morning. Thank  
15 you, your Honor. May I address the Court from  
16 counsels' table?

17 THE COURT: Absolutely.

18 MR. BUCHHOLZ: Thank you, your Honor,  
19 for the opportunity to update the Court. And I'd  
20 like to cover in my opening remarks, kind of, where  
21 we've been for the last 60 days, where we think we  
22 are at the end of that 60 days, and what we think  
23 the best way ahead is.

24 THE COURT: Okay.

1                   MR. BUCHHOLZ: Before I do that, I  
2 want to recognize, also on behalf of the  
3 rehabilitator, the special deputy, Patrick Cantilo,  
4 department counsel, Preston Buckman, my partners at  
5 DLA Piper, Jayne Risk, and Stephen Schwab and James  
6 Potts from the Cozen firm.

7                   Your Honor, when we were last  
8 together, September 24th, you asked the parties to  
9 get together for 60 days, and as your Honor said  
10 this morning, see if we could reach agreement or  
11 narrow the issues. And we took that charge very  
12 seriously. In fact, left this courtroom and went  
13 to the department conference room and, that  
14 afternoon, pulled together the first meeting of  
15 that group for six days later on September 30th;  
16 convened all the parties and their counsel at my  
17 offices.

18                   And, your Honor, just to give you a  
19 picture, these meetings are anywhere between 12 and  
20 15 lawyers around a huge conference table that  
21 lasts for at least half a day. And there were nine  
22 of those meetings over the last 60 days. And as I  
23 said, we took our charge very seriously. We  
24 started with some organizational things. We set up

1 a share file so that all the actuarial data could  
2 be shared among everybody, documents shared among  
3 everybody, confidentiality agreements signed.

4 But the idea, your Honor, was to make  
5 sure everybody had the benefit of all of the  
6 information, if we're going to all work shoulder to  
7 shoulder to try to resolve something. We, in fact,  
8 did that. The actuaries shared their informations.

9 The first couple of meetings, your  
10 Honor, September 30th and October 9th focused on --  
11 pretty intently -- very intently on the April 30th  
12 plan that is filed with the Court, and the  
13 objections that were filed with respect to that  
14 plan. And people got homework assignments between  
15 those meetings, to do research on the objections,  
16 legal research as to the strength, merits, and  
17 insurmountability of those objections. And about  
18 midway through the third meeting, your Honor, which  
19 was the middle of October -- October 16th -- became  
20 pretty evident that the objections to the  
21 April 30th plan were going to prove to be  
22 insurmountable, the legal objections, and you're  
23 going to hear from some of the counsel for the  
24 objectors directly on those issues this morning.

1                   And we moved our attention -- as the  
2 Court had suggested as well -- to considering  
3 alternatives, and really, starting in that  
4 October 16th meeting, started to focus on modifying  
5 the April 30th plan into what's sometimes called a  
6 "good bank/bad bank plan." And then over the  
7 course of the next six or seven meetings -- and,  
8 again, these are huge meetings with lawyers from  
9 all over the country for the better part of a  
10 day -- focused on the details of how an alternative  
11 plan would work; how the April 30th plan would have  
12 to be modified to be approvable at the hearing.

13                   In addition to the nine large lawyer  
14 meetings that I mentioned, your Honor, there were a  
15 plethora of sub-meetings, one-on-one meetings,  
16 small group meetings, actuarial meetings, actuaries  
17 working together, and my own meeting with the  
18 interveners' counsel one on one to try to resolve  
19 issues on at least one occasion, and offers to do  
20 so on other occasions. And at the end of this  
21 process, your Honor, at the end of this 60-day  
22 process, where we are is that we have what the  
23 rehabilitator believes, and, I think, others  
24 believe -- and you'll hear from them -- is the best

1 alternative for a rehabilitation. We know how  
2 strongly the Court feels about rehabilitating, and  
3 we've tried to come up with a plan, the best way to  
4 do that, that can be approved. And as I said, I  
5 think we have wide agreement. You're going to hear  
6 from Mr. Christian on his views, which are a little  
7 different.

8                   In terms of the time and the way  
9 ahead, your Honor, we're hopefully driving smoothly  
10 from here this afternoon, back to Philadelphia  
11 through the snow, meeting with the actuaries again  
12 tomorrow, the next in a series of meetings to talk  
13 about asset allocation and exactly how good bank  
14 works and bad bank works. And there's a lot of  
15 work to be done. As you know, that entails contact  
16 with other regulators in other states and a lot of  
17 things. We have our next large group meeting set  
18 right after the holidays in my offices, and propose  
19 to continue to meet to move that alternative plan  
20 down the field towards approval.

21                   In terms of the timeline, your Honor,  
22 we know that we've been here a while. We believe  
23 we've been working hard. And I think you'll hear  
24 that from others as well. It is hard work, and

1 it's going to take a lot of time. It's very  
2 complicated, and we think it's realistic to come  
3 back to the Court around the end of March with a  
4 report as to how far we've been able to move the  
5 ball down the field by then.

6 THE COURT: Is that it?

7 MR. BUCHHOLZ: That's it. Thank you,  
8 your Honor.

9 THE COURT: Thank you very much.

10 Well, I think probably next, I should hear from Mr.  
11 Leonard on behalf of the policyholder committee.

12 MR. LEONARD: Thank you, your Honor,  
13 and good morning.

14 THE COURT: Good morning.

15 MR. LEONARD: I think I ought to begin  
16 by giving you a little report on the policyholders'  
17 committee itself. We represented two policyholders  
18 when we first appeared. The committee now consists  
19 of nine policyholders. Seven committee members are  
20 PTNA policyholders. Two are ANIC policyholders.  
21 Seven are Oldco policyholders. Two are Newco  
22 policyholders. Seven are women. Two are men.  
23 Three members hold powers of attorney for parents  
24 who are on claim. The policyholders reside in

1 Virginia, Pennsylvania, New Jersey, California,  
2 Florida, Colorado, Connecticut, and Massachusetts.  
3 The policies include personal freedom policies --

4 THE COURT: Excuse me. Did you  
5 mention Pennsylvania?

6 MR. LEONARD: Two from Pennsylvania,  
7 your Honor. Virginia, Pennsylvania, New Jersey,  
8 California, Florida, Colorado, Connecticut, and  
9 Massachusetts.

10 And the policies include personal  
11 freedom policies, paid-up reduced benefit policies,  
12 tax-qualified and non-tax qualified policies,  
13 90-day and zero day elimination period, lifetime  
14 benefits, and limited benefits. We have been  
15 briefing the committee on an ongoing basis  
16 concerning the confidential discussions that have  
17 been held among counsel.

18 And the multi-party discussions, your  
19 Honor, we have found to be extremely helpful. We  
20 have found that there is a spirit of cooperation  
21 and willingness to come together to develop the  
22 modifications of the plan along the good bank/bad  
23 bank model and the committee, by and large, is  
24 supportive of that concept and want to continue to

1 move forward.

2                   We have filed objections to the plan,  
3 your Honor. We plan to file additional objections  
4 to the plan in the next couple weeks. We have had  
5 the opportunity to talk with the actuaries from  
6 Pricewaterhouse and from Towers Watson. They both  
7 have been very helpful and they've shared with us  
8 their 12-31-12 projections. The third set of  
9 actuaries have not done 12-31 projections, and we  
10 have not met with them. They've taken the position  
11 that their written submission is all they have to  
12 say and there's no reason to meet.

13                   As your Honor knows, we have asked the  
14 Court for permission to retain an actuary, not to  
15 do a new set of projections, but to advise the  
16 committee on the other projections and how to  
17 evaluate them. So it's a limited engagement. The  
18 rehabilitator supports that. There is one  
19 objection that you will be receiving after these  
20 hearings, though, so it's not unanimous approval on  
21 that.

22                   I'd just like to say, your Honor, that  
23 PTAC has been difficult in terms of moving the  
24 process forward because they contend that they

1 support the plan as it is. And the thing that I  
2 have difficulty with is that the plan calls for  
3 300 percent premium increases, and that would  
4 clearly be burdensome on a number of the  
5 policyholders, if not all of them, and it would  
6 result in the plans being completely out of the  
7 market. They're priced near the top of the market  
8 in many instances now, so that if there were  
9 dramatic increases or if there were dramatic cuts,  
10 they would be out of the market. If PTAC contends  
11 that --

12 THE COURT: Could you clarify? When  
13 you speak of the 300 percent premium increase, are  
14 you talking about PTNA, Oldco? Are you talking  
15 about ANIC, Oldco? Are you talking about Newco,  
16 ANIC, PTNA?

17 MR. LEONARD: I sort of was using it  
18 generically, your Honor, across the board.

19 THE COURT: Across the board. Okay.  
20 That would be the average.

21 MR. LEONARD: That would be about the  
22 average, yeah, with some combination of increases  
23 or benefit cuts. But the hole is a 300 percent  
24 hole. And we feel strongly that there's at least a

1 billion dollars, maybe up to \$2 billion available  
2 from the guaranty associations, and that should not  
3 be left off the table, it should be part of the  
4 discussion on how we fill the void here.

5           If PTAC thinks that the insolvency is  
6 only a half or a third as great as the  
7 rehabilitator, it's difficult for me to understand  
8 how they can support these 300 percent increases  
9 that the rehabilitator's actuary calls for. I  
10 think it's worth noting, your Honor, that under the  
11 plan as it exists, the plan will trigger mandatory  
12 guaranty association coverage in Pennsylvania. As  
13 soon as the company fails to pay a claim that would  
14 have been covered but for a benefit cut, the  
15 Pennsylvania guaranty association will be  
16 implicated under 40 Pertinent Statute section  
17 991.1706(b)(1) and (b)(2)(ii). This would cause an  
18 administrative nightmare and would, in all  
19 probability, cause regulators in other states to  
20 trigger the guaranty association benefits on a  
21 discretionary basis to protect the insureds in  
22 their state.

23           I guess my conclusion, your Honor, is  
24 that, while there are problems to be dealt with in

1 the good bank/bad bank scenario, it achieves the  
2 benefit of rehabilitating as much of the company as  
3 can be rehabilitated. It provides the  
4 policyholders with a choice, if they went to the  
5 good bank, because they're self-supporting policies  
6 or because they want to choose to pay additional  
7 money or take the benefit cuts, they can do that.  
8 And if they prefer to go into the bad bank and  
9 trigger the guaranty associations, they have that  
10 choice as well.

11 We think we can rehabilitate a  
12 significant portion of the company using that  
13 strategy, and we can trigger the guaranty  
14 associations now for the benefit of the  
15 policyholders' committee that want to go that route  
16 and will give them the choice. We think that will  
17 enable us to get to the point where we have a plan  
18 that we can agree on. Thank you, your Honor.

19 THE COURT: Thank you. Is there  
20 anyone else that would like to speak that considers  
21 itself aligned with the rehabilitator? And I'm not  
22 suggesting that the policyholder committee is  
23 necessarily, but you are sitting over there.

24 MR. LEONARD: Well, we've been working

1 cooperatively, your Honor, but I expect that we'll  
2 have disagreements, also.

3 THE COURT: I expect that you would.  
4 Would you like to speak?

5 MR. RICHARDSON: Yes, ma'am. Thank  
6 you, your Honor.

7 My name is Charlie Richardson. I  
8 represent NOLHGA. We have participated in the  
9 conversations with the rehabilitator, the  
10 interveners, the policyholder committee, and the  
11 other formal commenters. When we were before the  
12 Court on September the 24th, you suggested that  
13 NOLHGA's participation focus on the Oldco book and  
14 what, if anything, could be done to turn that  
15 around. You said that what we should be proposing  
16 is a modification that will take that book of  
17 business into a company to be liquidated. We took  
18 those suggests seriously, as Mr. Leonard has just  
19 mentioned, and have looked back, both on your  
20 May 3rd order as well as the comments in it that  
21 have been filed by policyholders and others, and  
22 engaged fully in the discussions that Mr. Buchholz  
23 described.

24 The good bank/bad bank approach

1 strikes, we think, an appropriate balance of  
2 rehabilitating the policies that can be  
3 rehabilitated, liquidating the policies that  
4 cannot, and giving the policyholders the option of  
5 taking steps to modify their policies in order to  
6 have them rehabilitate. For any policies that are  
7 liquidated, the guaranty associations, obviously,  
8 will honor their statutory obligations to the  
9 fullest extent and work with the rehabilitator to  
10 ensure seamless administration of the policy  
11 benefits.

12                   Now, as Mr. Buchholz mentioned, there  
13 are still many elements of the good bank/bad bank  
14 rehabilitation plan to be worked out in order to  
15 assure the plan best protects 90,000-plus  
16 policyholders. We're committed to continuing to  
17 work diligently with the rehabilitator, the  
18 interveners, the policyholder committee, and other  
19 formal commenters to develop a modified  
20 rehabilitation plan that protects policyholders is  
21 consistent with the governing law and orders of  
22 this Court and recognizes the current financial  
23 situation of Penn Treaty and ANIC as laid out in  
24 our formal comments, your Honor. Thank you.

1           THE COURT: Now, I understand --  
2 really, you're here representing NOLHGA, not  
3 individual guaranty fund. So when you say the  
4 guaranty funds are ready, willing, and able to step  
5 up to the plate, you're really not -- you don't  
6 have a warrant of attorney from 50 guaranty funds.

7           MR. RICHARDSON: NOLHGA is the  
8 national voice --

9           THE COURT: Right.

10          MR. RICHARDSON: -- we're  
11 communicating with the individual GAs, and we hope  
12 to bring to the conversations that coordinated --

13          THE COURT: Perspective and --

14          MR. RICHARDSON: You got it.

15          THE COURT: But you don't necessarily  
16 have unanimity, you have -- you have a -- you  
17 represent 50 organizations, but you, personally,  
18 are an attorney for NOLHGA.

19          MR. RICHARDSON: That's right.

20          THE COURT: Okay.

21          MR. RICHARDSON: That's absolutely  
22 right, your Honor.

23          THE COURT: All right. Is there --

24          MR. HORWICH: Good morning, your

1 Honor.

2 THE COURT: Good morning.

3 MR. HORWICH: Harold Horwich  
4 representing the health insurance companies. I  
5 don't have a great deal to add, your Honor, to what  
6 others have said. What I would say is this: This  
7 is a really complicated restructuring problem. And  
8 in order to get a plan that is not going to be a  
9 heavily litigated contested plan, we're going to  
10 need parties who are prepared to make compromises  
11 and to reach agreements on fairly fundamental  
12 issues. And I think the structure that the parties  
13 are now talking about, the good bank/bad bank  
14 structure, presents a structure that will allow  
15 those kinds of compromises.

16 I think already, just to get as far as  
17 we are now, recognizing that there are a lot of  
18 details left, parties have come to middle ground in  
19 a lot of different ways. And I don't know that  
20 it's appropriate for us to lay out for the Court  
21 what the course of negotiations are, but our  
22 feeling is that the good bank/bad bank approach  
23 gives us a structure that will allow parties to  
24 reach consensus on a very wide variety of issues so

1 that when we come back to your Honor with a plan,  
2 if there are objections to the plan, we think those  
3 objections will be in very, very narrow range.  
4 Thank you.

5 THE COURT: Thank you.

6 Well, Mr. Hummer, do you want to speak  
7 next?

8 MR. HUMMER: I can, your Honor. As  
9 you know, I represent the agent objectors, and our  
10 objections are narrowly focused on a small  
11 provision of the pending plan, which is the  
12 proposal to cut off commissions while the company  
13 remains in rehabilitation, which we think is  
14 unsupported by Pennsylvania law. Absent that  
15 objection, we take at face value Mr. Cantilo's  
16 certification to the Court, that the plan that is  
17 before the Court is a reasonable approach to  
18 rehabilitating the companies.

19 And we note that the current plan has  
20 the benefit -- if it succeeds -- of rehabilitating  
21 all the policies or as many policies as remain in  
22 force, as opposed to a good bank/bad bank, which  
23 necessarily entails the liquidation of -- or puts  
24 many companies into it -- or many policies of the

1 company to be liquidated.

2           And so for that reason, you know, we  
3 are not invested in the actuarial analysis, but we  
4 accept what the receiver filed and we are  
5 supportive of a plan that's before the Court,  
6 subject to our objections.

7           THE COURT: Thank you.

8           Mr. Christian.

9           MR. CHRISTIAN: Your Honor, at our  
10 last conference in this courtroom at the end of  
11 September I expressed concern in light of some --  
12 actually, in light of the proposed case management  
13 order we had received that day about not really  
14 knowing what was presented to the Court for  
15 approval, and whether the rehabilitator was  
16 interested still in approval of his plan that he  
17 filed at the end of April.

18           The Court made it very clear in  
19 response to my concerns. The Court said, and I  
20 quote, well, the Court can answer that. There is a  
21 plan. It was filed April 30th. That's before the  
22 Court, and the Court will approve, disapprove or  
23 modify that plan.

24           Now, the Court sent us to negotiate to

1 agreement or to impasse the extent to which the  
2 parties could agree to phase 1 of this plan that  
3 was filed at the end of April. And phase 1, as we  
4 discussed, was the benefit reduction component of  
5 this plan.

6                   We have heard today very little -- and  
7 I understand the conversations were confidential,  
8 and I respect that -- but what we're hearing today  
9 is not the result of that negotiation. What we're  
10 hearing today -- and we heard it from a couple  
11 lawyers, including Mr. Buchholz -- they want to  
12 move an alternate plan down the field, and they  
13 want to come back in March and give a report with  
14 regard to where they are on the plan.

15                   Counsel for the insurance companies,  
16 who, of course, stand to gain by the soonest  
17 liquidation possible to keep their assessments  
18 down, just stated, when we come back to your Honor  
19 with a plan -- and I think he suggested there would  
20 be little objection or something along those lines.  
21 I think they're jumping to conclusions here. There  
22 will be objections, not necessarily to good  
23 bank/bad bank, which can mean a million different  
24 things, but with regard to what's being discussed

1 now. But that's really -- that's really not  
2 relevant for purposes of what we're doing here  
3 today.

4           We have a plan, a plan that was  
5 filed -- a very, very problematic plan. I'm not  
6 going to suggest otherwise. And we, in our  
7 comments, laid out the concerns we have. Everybody  
8 has concerns, to some degree, about this plan,  
9 except the rehabilitator who filed the plan, who  
10 verified the plan, and who asked for this Court to  
11 approve the plan. A plan that, by the way, was  
12 described in the very first page of the plan as  
13 offering the best possibility for success after a  
14 very detailed study of the alternatives.

15           As the Court may recall, we basically  
16 begged the rehabilitator to take a little more time  
17 in April to deal with some of the problems  
18 presented by this plan, but the rehabilitator said,  
19 no, we're ready, we're ready to go. This is our  
20 plan and we're filing it. It was filed, presumably  
21 at the expense of millions of dollars, to prepare  
22 and support this and to publicize it, to get it out  
23 to all the policyholders, to get comments. I mean,  
24 this is millions and millions of dollars of the

1 estate with regard to this plan.

2                   And now they're walking away from it.  
3 They can use the word "modify" all they want to try  
4 to, kind of, avoid the consequences of their  
5 actions here, but they cannot avoid those  
6 consequences, they are now saying, never mind,  
7 never mind. Five years ago, almost -- five years  
8 ago, the rehabilitator walked into this  
9 courthouse -- or maybe the old one -- and filed an  
10 application, filed a request for a rehabilitation  
11 order, and he got it. And that order required him  
12 to take actions to correct the condition that led  
13 to the need for rehabilitation. Three months  
14 later, the rehabilitator, the very same  
15 rehabilitator, files a preliminary plan in which he  
16 talks about the importance, the crucial importance  
17 of seeking rate increases.

18                   That's 51 months ago. 45 months ago  
19 or so, certainly more than -- actually, it's more  
20 than four years ago -- they stopped seeking rate  
21 increases. How can anybody justify that state of  
22 affairs? We have a rehabilitator who has stated  
23 under oath in his preliminary plan that rate  
24 increases were crucial, and that he has stopped

1 seeking these rate increases. And when this Court,  
2 in its ruling in May, talked about the indictment  
3 of the rate regulation system and talked about the  
4 need for an action plan, the Court agreed. The  
5 Court stated in its opinion it agreed with the  
6 interveners that an action plan is necessary with  
7 regard to premium rate increases.

8           What's the action plan? We have not  
9 seen any action on premium rate increases. So what  
10 the rehabilitator does at the end of April, almost  
11 a year after the Court order requiring the  
12 rehabilitator to put together a plan, it puts  
13 together a plan and it talks about the importance,  
14 not of rate increases, but of benefit reductions,  
15 benefit reductions offering the best possibility  
16 for success. Benefit reductions that would deal  
17 with up to 70 percent of the funding gap -- Page 1  
18 of their plan. The benefit reductions up to  
19 70 percent, that's terrific. That's terrific.

20           And then we have this negotiation that  
21 morphs into discussion with entities that want  
22 nothing more than to have these companies  
23 liquidated. They want a quick liquidation. We all  
24 know that. And what do we have at the end of this

1 60-day period? We have repudiation of this plan.  
2 There is -- apparently, there's no interest in  
3 having the Court do anything with this plan.

4           Now, what I didn't hear is whether  
5 they intend to file an application to withdraw the  
6 plan, which would be an awful, I mean an awful  
7 situation five years into a rehabilitation. I  
8 mean, this is what they're saying. They're walking  
9 into court and saying, forget what we filed, we'll  
10 get back to you in March with a report about how  
11 far down the field we've moved the alternate plan.  
12 That's not the way this is supposed to work. No  
13 money is coming in the door by way of premium rate  
14 increases. Nothing is happening or even proposed  
15 at this point apparently with regard to benefit  
16 reductions. The rehabilitator is flouting this  
17 Court's order -- orders, I should say. There are  
18 no two ways about it. They have been ordered time  
19 and again to take action. Even without the orders,  
20 they should be taking action as the rehabilitator.

21           So here's where we are now. We have  
22 still no indication of any efforts to seek premium  
23 rate increases, notwithstanding the fact that  
24 you've got companies out there like Genworth and

1 the companies referenced in the comments of  
2 Broadbill and the interveners in response to the  
3 plan that indicate what other companies are  
4 receiving. But you're not going to get anything if  
5 you don't try. And the question is: Why are they  
6 not trying? Why are they not making life difficult  
7 for these regulators? Why aren't they making them  
8 do their job? Why isn't this regulator doing its  
9 job? Something has to change, your Honor.

10                   When I last stood before your Honor at  
11 the end of September, I talked about the need for  
12 relief. The Court then talked about a negotiation  
13 on phase 1 to see if the parties could reach  
14 agreement on phase 1. These discussions morphed  
15 into something else fairly quickly. We must file  
16 that now. We are filing an application for  
17 multiple forms of relief. We intend to file that  
18 this week. It's a very, very important aspect of  
19 this rehabilitation. Nothing is happening.  
20 Tremendous waste. Tremendous waste.

21                   Mr. Buchholz talked about how many  
22 lawyers were at these meetings. I mean, three  
23 partners from one law firm representing the  
24 rehabilitator. You know, it's just -- it's a

1 terrible, terrible expense, and what do they have  
2 to show for it? What they have to show for it is  
3 getting together with these guys and saying:  
4 Here's our approach to the Court. Let's say, you  
5 know, we've hit upon something else,  
6 notwithstanding what the rehabilitators said about  
7 this plan being the best -- and verified, by the  
8 way -- the best plan opportunity for success.  
9 Well, you know, we changed our minds. So let's  
10 tell the judge we've got something else going on,  
11 and let's say there is going to be support for it.

12                   Well, there may be support for it.  
13 There's not going to be unanimous support for it.  
14 There are going to be objections. There is going  
15 to be an objection to every plan that's proffered  
16 by the rehabilitator in this case. It is not the  
17 standard that should be applied when the  
18 rehabilitator says, I don't think we're going to be  
19 able to resolve these objections, so we're going to  
20 try something else where there might be fewer  
21 objections. That's not the -- if there are  
22 objections, that's the Court 's job, to deal with  
23 those objections and to either approve, disapprove,  
24 or modify.

1                   I'm sorry. I will admit that I get,  
2 perhaps, a little too emotional about this. But  
3 it's been five years. It's been a long time. And  
4 here we are in December of 2013, and we have the  
5 rehabilitator walking into this courtroom and  
6 saying, we'll get back to you. That's not the way  
7 this should work.

8                   I would like to know whether the  
9 rehabilitator intends to withdraw -- attempt to  
10 withdraw the plan that he filed. The plan has been  
11 presented for approval, all the comments are in.  
12 Does the rehabilitator attempt to withdraw? And I  
13 asked this question last week and they refused to  
14 answer it, because they understand the consequences  
15 of answering that honestly.

16                   What we're talking about here -- what  
17 these guys are talking about is not a modification  
18 of this plan, it is an entirely different approach.  
19 Now, our position is, this Court should set a  
20 discovery schedule -- limited discovery schedule  
21 and a hearing with regard to phase 1 of this plan.  
22 If the Court wishes -- if the rehabilitator wishes  
23 to attempt to withdraw the plan, then he should  
24 file a formal motion to that effect, and it can be

1 responded to.

2           Your Honor, it is time -- it's time  
3 for action here. It's time for the rehabilitator  
4 to do its job, and he just refuses to do it. I  
5 don't know if he's buying time, expecting an  
6 appellate -- I mean, I have no idea what's  
7 motivating him.

8           THE COURT: How do you define doing  
9 his job? Filing for rate increases?

10           MR. CHRISTIAN: Taking action to  
11 correct the condition, yes.

12           THE COURT: I mean specifically. Not  
13 generally taking action, but specifically.

14           MR. CHRISTIAN: Specifically, right.  
15 This is what we will request in our application for  
16 relief.

17           THE COURT: And you believe those  
18 should be filed now, even though the objectors are  
19 now in negotiation on trying to resolve the  
20 objection to the plan as it was filed?

21           MR. CHRISTIAN: I don't believe --  
22 yes, I do think they should have them now, but I  
23 don't believe that's what these lawyers are doing.  
24 They are not -- they've moved beyond this plan. I

1 mean, we heard that already. They're talking about  
2 a new plan. They're talking about an alternate  
3 plan. They're not neg- -- what they're doing --  
4 and the Court said NOLHGA -- the Court said  
5 guaranty fund -- in its opinion, guaranty funds do  
6 not belong in the driver's seat of an insolvency  
7 proceeding. And we've got the lawyer for the  
8 guaranty association, has now made it to the front  
9 of the courtroom.

10                   These -- what they are putting  
11 together by committee is a plan that's in their  
12 clients' best interests. Now, I'm not -- I'm not  
13 suggesting that a workout is not -- is not  
14 appropriate. I mean, everybody should be heard.  
15 But we've got a plan that was filed, and they've  
16 moved beyond that.

17                   THE COURT: Well, I'm still not sure  
18 exactly -- and every lawyer represents their  
19 client's interests. That's our adversarial system.  
20 And you're representing your clients, Counsel. I'm  
21 just not sure what you want the Court to do. I  
22 understand you're going to have application filed  
23 for some kind of ancillary relief while we consider  
24 a rehabilitation plan. But do you want the Court

1 to schedule a hearing on the rehabilitation as  
2 filed, to suggest -- is that what you want, or do  
3 you want more negotiations on the good bank/bad  
4 bank paradigm?

5 MR. CHRISTIAN: Your Honor, given what  
6 we know about how they're discussing good bank/bad  
7 bank, it's a -- is not a -- anything we could ever  
8 support. And it's not because we're trying to be  
9 difficult, it's because it is not rehabilitation of  
10 these companies in the form they're discussing it  
11 in. I know there is confidentiality, and we're not  
12 here to talk about the substance of those  
13 discussions. What we need to know --

14 THE COURT: Do you want the  
15 discussions to end? I'm not sure they can. But do  
16 you want them to end?

17 MR. CHRISTIAN: I'm not -- look, I  
18 don't -- they can talk -- they can talk with  
19 whoever they want. The problem is the tremendous  
20 expense -- tremendous expense involved here, and  
21 it's the estate. I would say that --

22 THE COURT: I couldn't agree more.  
23 But what, exactly, do you want the Court to do?  
24 Have the rehabilitator file -- fire lawyers?

1                   MR. CHRISTIAN: Here's what we're  
2 going to ask the Court to do. We're going to ask  
3 the Court to ask the rehabilitator whether he  
4 intends to withdraw the plan. If he does intend to  
5 withdraw the plan, then it has to be by way of a  
6 motion. It really -- just as they've handled  
7 withdrawal of previous requests. If the plan is  
8 not -- if the -- actually, if the plan is not  
9 withdrawn -- I'm sorry. Whether it's withdrawn or  
10 not, we want a hearing on the benefit reduction  
11 component, as proposed by the rehabilitator of the  
12 plan. We want an order with regard to immediate  
13 premium rate increase activities.

14                   And by the way, there is some -- it  
15 takes some time to get those together. So it's not  
16 as though they're going to be able to walk out a  
17 day after the Court orders the relief, if the Court  
18 does order it, and get the relief. But they --  
19 nothing prevents them from preparing to get those  
20 filings made.

21                   We want -- the last time I saw  
22 Commissioner Consedine in this courtroom was  
23 January of 2011, the very first day of our many,  
24 many day hearing. We want engagement by the

1 commissioner. There is no reason --

2 THE COURT: That's a soft objective.  
3 You know, there's no -- you can't issue an order to  
4 someone to work hard. So what you want  
5 specifically is to go forward on the benefit  
6 reduction and you want ancillary relief, you want  
7 interim rate increases while the hearing on the  
8 benefits reduction, phase 1 of the plan, goes  
9 forward?

10 MR. CHRISTIAN: Yes, your Honor. And  
11 we need accountability. We need transparency.  
12 Nothing should be done in secret here. Everybody  
13 should understand how much money is being spent and  
14 on what. They really don't have carte blanche to  
15 spend the money.

16 THE COURT: So you would like more  
17 reporting on the amounts being spent?

18 MR. CHRISTIAN: Absolutely.

19 THE COURT: Anything else?

20 MR. CHRISTIAN: Transparency in  
21 communications. Transparency with regard to  
22 expenditures. We --

23 THE COURT: What you want on the  
24 reports are the expenditures to be filed and made

1 part of the public record?

2 MR. CHRISTIAN: Yes, your Honor.

3 THE COURT: Okay. Is there anything  
4 else -- specific? Not more transparency. But  
5 that's a value objective, that's not something  
6 that goes in an order.

7 MR. CHRISTIAN: We have other types of  
8 relief we will be requesting. We will be  
9 requesting that -- you've heard Mr. Leonard talk  
10 about the need for an actuary, and we have -- we do  
11 have concerns about that, which we will -- we will  
12 address in short order. But we --

13 THE COURT: All right. You know, I  
14 think, probably, we shouldn't have any more  
15 discussion about motions that you have not yet  
16 filed with the Court.

17 In terms of a -- your report to the  
18 Court is that discussions are futile and we need to  
19 go forward on the plan as filed in April; is that  
20 it? Is that a summary --

21 MR. CHRISTIAN: Yes, we have reached  
22 impasse on what the Court sent us out to negotiate.

23 THE COURT: That's not quite -- you  
24 want a hearing on phase 1?

1 MR. CHRISTIAN: Yes, your Honor.

2 THE COURT: Immediately. Sooner, not  
3 later.

4 MR. CHRISTIAN: Yes.

5 THE COURT: All right.

6 MR. CHRISTIAN: Thank you, your Honor.

7 THE COURT: Thank you.

8 MR. BUCHHOLZ: Your Honor, may I?

9 THE COURT: Yes.

10 MR. BUCHHOLZ: Your Honor is not going  
11 to hear from any of the other lawyers here this  
12 morning that the activities of the last 60 days  
13 were futile. I think quite the contrary. And the  
14 plan that we filed April 30th, when we filed it, we  
15 thought was the best possible plan. Your Honor set  
16 an objection process. We took that objection  
17 process seriously. There were serious objections  
18 filed. And we negotiated, researched, discussed  
19 back and forth, and, as I described earlier, at  
20 some point in that 60-day process, reached the  
21 conclusion that they were insurmountable, that they  
22 were going to result in protracted litigation --  
23 difficult, if not impossible, to approve that plan,  
24 and that they needed to be amended and modified.

1 And that's where this group, for the remainder of  
2 that 60-day period, has been intently focused.

3 THE COURT: Well, now we have the  
4 question that Mr. Christian raised: Are you going  
5 to withdraw the plan or is the plan, as filed, that  
6 sort of foundation, and the amendments and  
7 modifications of the superstructure? I don't  
8 like --

9 MR. BUCHHOLZ: The plan, as filed, is  
10 a foundation. We don't think it needs to be  
11 withdrawn. We think it can be modified and  
12 amended, and that's what we're working on to do,  
13 your Honor.

14 THE COURT: Okay. I didn't mean to  
15 cut you off.

16 MR. BUCHHOLZ: No. You know, and as  
17 for -- Commissioner Consedine, you know, has been  
18 extremely engaged personally, and also appointed a  
19 special deputy rehabilitator, who has been doing, I  
20 dare say, nothing but being focused on this case.  
21 And if the Court would like to hear more of the  
22 specifics without getting into negotiating  
23 positions on the good bank/bad bank plan, Mr.  
24 Cantilo is here and available to do that.

1                   THE COURT: Well, we are on the  
2 record, and I think it will be very difficult to  
3 get into the substance of a plan that has not yet  
4 been filed, without breaching the confidentiality.

5                   It might be a good time to recess and  
6 go off the record. But I want, first, to find out  
7 if anybody else would like to put a statement on  
8 the record before we recess.

9                   All right. Why don't we -- at this  
10 point, we'll recess the hearing; maybe conclude it.  
11 I will let you know. But for now, we will recess  
12 for 30 minutes.

13   (Whereupon, a recess was  
14 held.)

15                   THE COURT: All right. At this point,  
16 the Court will explain what will happen. There  
17 will not be a case management order entered this  
18 morning. There will be a continuation of the  
19 negotiation by everyone that was present today and  
20 was present at the first pre-hearing conference on  
21 September 24th.

22                   The second point we want to clarify on  
23 the record today is the discussion between and  
24 among the stakeholders in the pending

1 rehabilitation of PTNA and Penn Treaty, that is,  
2 and ANIC will remain absolutely privileged and  
3 beyond discovery should it -- and the expectation  
4 that, eventually, there will be a hearing on a  
5 rehabilitation plan that is expected to be modified  
6 as reported to the Court today by the  
7 rehabilitator.

8                   We will -- the Court will expect the  
9 rehabilitators to report back to the Court in early  
10 March on the amendment to the rehabilitation plan  
11 that has been filed for PTNA and ANIC. And with  
12 that, the hearing -- pre-hearing conference  
13 concludes.

14                   MR. BUCHHOLZ: Your Honor, might we  
15 use your courtroom for a few minutes, amongst the  
16 lawyers, to stay beyond so we can schedule the next  
17 round of meetings through early March?

18                   THE COURT: Absolutely.

19                   MR. BUCHHOLZ: Thank you, your Honor.

20                   THE COURT: And if you want to go back  
21 to the conference room, you're welcome to that as  
22 well. Great. Thank you.

23                   (Which were all the proceedings had  
24 in the above-entitled cause for  
this date and time.)

C E R T I F I C A T I O N

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

I, Heather M. Chiaro, a Certified Court Reporter, Registered Professional Reporter, Pennsylvania Certified Shorthand Reporter and Notary Public, do hereby certify the foregoing to be a true and accurate transcript of my original stenographic notes taken at the time and place hereinbefore set forth.

\_\_\_\_\_  
Heather M. Chiaro  
Certified Stenographic Reporter  
Registered Professional Reporter  
Notary Public

DATED: December 23rd, 2013

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying court reporter.)

LAWYER'S NOTES

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

LINE

PAGE

1 CASE: IN RE: PENN TREATY/AMERICAN NETWORK INS.  
2 HEARING BEFORE: THE HONORABLE MARY HANNA LEAVITT  
3 TAKEN: 12/17/13

4

5 PAGE LINE ERROR CORRECTION REASON

6 \_\_\_\_\_

7 \_\_\_\_\_

8 \_\_\_\_\_

9 \_\_\_\_\_

10 \_\_\_\_\_

11 \_\_\_\_\_

12 \_\_\_\_\_

13 \_\_\_\_\_

14 \_\_\_\_\_

15 \_\_\_\_\_

16 \_\_\_\_\_

17 \_\_\_\_\_

18 \_\_\_\_\_

19 \_\_\_\_\_

20 \_\_\_\_\_

21 \_\_\_\_\_

22 \_\_\_\_\_

23 \_\_\_\_\_

24 \_\_\_\_\_