

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Penn Treaty Network America
Insurance Company
in Rehabilitation

No. 1 PEN 2009

In Re: American Network Insurance
Company
in Rehabilitation

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CLERK OF COURT

**APPLICATION OF NATIONAL ORGANIZATION OF LIFE AND HEALTH
INSURANCE GUARANTY ASSOCIATIONS REQUESTING
LEAVE TO INTERVENE FOR A LIMITED PURPOSE**

The National Organization of Life and Health Insurance Guaranty Associations ("NOLHGA"), through counsel, respectfully files this application requesting leave to intervene pursuant to Pennsylvania Rule of Appellate Procedure 3775 for the limited purpose of commenting on the rehabilitation plans for Penn Treaty Network America Insurance Company ("PTNA") and American Network Insurance Company ("ANIC") filed by the Rehabilitator on April 30, 2013 ("Plans"). NOLHGA asks that the Court approve and enter an Order in substantially the form tendered concurrently with this Application (a) permitting NOLHGA to appear by counsel in this proceeding in its associational capacity in accordance with 40 P.S. § 991.1706(l) & (o) and ordering that the Appearance **attached hereto as Exhibit 1** is deemed filed as of the date of the Order; (b) directing that NOLHGA's counsel be served with copies of all pleadings, discovery, and other papers filed or served in this proceeding that relate in any way to any rehabilitation plan; (c) ordering that NOLHGA may file a statement concerning (i) the Plans, (ii) any information filed with the Court in support of or opposition to of the Plans, (iii) the implications of rehabilitating the companies as proposed in the Plans or otherwise, in light of considerations including the financial conditions of PTNA and ANIC and the regulatory

environments in which PTNA and ANIC operate, and (iv) how policyholders would fare under the Plans as compared to liquidation (with access to guaranty association coverage); and (d) permitting NOLHGA to submit further evidence and analysis and otherwise to participate fully in the Court's consideration of the Plans or any other potential rehabilitation or other plan involving PTNA and ANIC. In support of this Application, NOLHGA states:

1. NOLHGA is a Virginia nonprofit corporation whose voluntary membership consists of the life and health insurance guaranty associations ("GAs") of the fifty states and the District of Columbia. The GAs created NOLHGA to help them perform their statutory duties more efficiently by coordinating their activities in multi-state life and health insurance company receiverships such as this one involving PTNA and ANIC, improving inter-GA communications, and sharing commonly used resources. NOLHGA does not speak on behalf of any *individual* GA; rather, it exists to serve the *collective* interests of multiple GAs in seeking to protect policyholders when a life or health insurance company with policyholders in multiple states becomes insolvent. As such, NOLHGA's positions are its own and not those of any particular member or subset of its membership.

2. NOLHGA's member GAs are nonprofit entities created by state legislatures through statutes to protect policyholders against failure in the performance of contractual obligations under life and health insurance policies and annuity contracts due to the impairment or insolvency of the member insurer that issued the policies or contracts. *See, e.g.*, 40 P.S. §§ 991.1701 *et seq*; *see also e.g.*, National Association of Insurance Commissioners Life and Health Insurance Guaranty Association Model Act ("Model Act") § 2(A). Under the GA statutes across the United States, when statutorily activated by an order of liquidation with a finding of insolvency (i.e., "triggered"), a GA is obligated, subject to state-specific statutory

limits, to protect policyholders resident in its state by either guaranteeing, assuming or reinsuring the policyholder obligations of an insolvent insurer itself, or causing the obligations to be guaranteed, assumed or reinsured by a solvent insurer. In exchange for providing that protection, any premium becomes payable to the GA and the GA becomes statutorily subrogated to the rights of the policyholders against the insolvent insurer, including specifically the policyholders' priority rights to receive distributions of the assets of the insolvent insurer. *See, e.g.*, 40 P.S. § 991.1706(g) & (m); *see also, e.g.*, Model Act § 8(D) & (K).

3. PTNA was licensed in the District of Columbia and 43 states—all except Connecticut, Kansas, Massachusetts, Maine, New Jersey, New York and West Virginia. NOLHGA's member GAs in the 44 jurisdictions in which PTNA was licensed therefore have potential obligations to PTNA's policyholders who reside in those jurisdictions. ANIC was licensed in the District of Columbia and 45 states—all except Alaska, Iowa, Michigan, New York, and Wisconsin. NOLHGA's member GAs in the 46 jurisdictions in which ANIC was licensed therefore have potential obligations to ANIC's policyholders who reside in those jurisdictions.

4. NOLHGA's member GAs are authorized to "join an organization of one or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the association." 40 P.S. § 991.1706(o); *see also, e.g.*, Model Act § 8(M). NOLHGA's member GAs have exercised that right by becoming members of NOLHGA. NOLHGA's limited intervention in this proceeding would further the statutory purpose for granting the GAs authority to join and act collectively through NOLHGA.

5. NOLHGA's limited intervention in its associational capacity would also facilitate the efficient administration of this case. By statute in each jurisdiction, NOLHGA's

member GAs have "standing to appear before any court" having jurisdiction over an impaired or insolvent insurer concerning which the GAs are or may become obligated. 40 P.S.

§ 991.1706(I); *see also, e.g.*, Model Act § 8(J). Here, NOLHGA seeks limited intervention in its associational capacity to advance the collective interests of the GAs. *See, e.g., Am. Booksellers Assoc. v. Rendell*, 332 Pa. Super. 537, 554-55, 481 A.2d 919, 927 (1984) (noting that "the association may be an appropriate representative of its members, entitled to invoke the court's jurisdiction" so long as "the nature of the claim asserted and the relief sought" does not require participation by individual members). No individual GA is seeking to intervene at this time.

6. It is in the best interests of PTNA's and ANIC's over 100,000 policyholders that the protections they may ultimately be entitled to receive from the various GAs be delivered, to the extent practicable, in a coordinated and comprehensive manner and with as little disruption as possible to policyholder services and claims payments. Toward that end, NOLHGA has been monitoring the receiverships of PTNA and ANIC and coordinating the GAs so that the GAs are prepared to respond and discharge their statutory obligations to policyholders if those obligations arise.

7. Since 2009, NOLHGA and its actuarial and legal consultants have studied PTNA and ANIC's history, business and financial condition. Through those efforts, NOLHGA has collected information and developed analyses that NOLHGA believes would assist the Court as it reviews the proposed Plans. In addition, while the liquidation petitions were pending, NOLHGA engaged in contingency planning for the possible liquidations of PTNA and ANIC. NOLHGA would like to share with the Court information about how the GAs would provide protection for policyholders in liquidation and the impact of liquidation on PTNA and ANIC's policyholders. To NOLHGA's knowledge, such information has not previously been presented

to the Court in connection with this proceeding. NOLHGA is uniquely qualified to present and explain that information.

8. Since the Court issued its May 3, 2012 Memorandum Opinion and Order denying the Rehabilitator's petitions for liquidation ("May 2012 Order"), NOLHGA has focused on (a) analyzing the May 2012 Order and later filings by the Rehabilitator and intervenors, and (b) preparing to analyze and respond to whatever plan the Rehabilitator filed pursuant to the May 2012 Order.

9. The Plans propose, among other things, significant benefit reductions and possible premium rate increases. If the Plans are not approved or ultimately not successful and PTNA and ANIC are placed in liquidation, then NOLHGA's member GAs will become obligated in liquidation to ensure that PTNA's and ANIC's obligations to their policyholders are guaranteed, assumed, or reinsured up to statutory coverage limits. To the extent GAs provide coverage to PTNA or ANIC policyholders, GAs would have subrogation claims against the PTNA and ANIC estates. As such, NOLHGA and its member GAs have a direct and substantial interest in the administration of PTNA's and ANIC's businesses and any plan to rehabilitate them. As a result of their potential subrogation claims against the estate, the GAs are creditors, as that term is defined in 40 P.S. § 221.3: "'Creditor' is a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed or contingent." For these reasons, NOLHGA, in consultation with its experts, is reviewing the proposed Plans, considering the impact of each element of the Plans on policyholders, and analyzing the consequences in light of current PTNA and ANIC financial information and the GA's obligations. NOLHGA has already determined that it is necessary to provide additional

information to the Court in connection with the Court's consideration of the Plans in the following areas, among others:

- Benefit Adjustments – The Plans include significant benefit adjustments/suspensions. There are examples of benefit adjustments being imposed in prior rehabilitations, and there is case law that addresses when such adjustments are legally permitted. NOLHGA is looking carefully at the proposed benefit adjustments to determine whether they affect the legality or viability of the Plans.
- Premium Rate Increases – The Plans contemplate possible premium rate increases across the country on policyholder blocks with an average age of over 70. Any rate-increase strategy needs to take into account the fact that 300,000 of PTNA/ANIC's policies are no longer in force, and there is no way to recapture the premium that should have been charged to those policyholders.
- Financial Impact – In light of current PTNA and ANIC financial information, NOLHGA is considering, and will advise the Court concerning, the projected financial impact of rehabilitation (or delayed liquidation) on policyholders, GAs, and those who ultimately bear the cost of GA assessments.
- Solvency and Guaranty Association Laws – Legislatures in fifty-two jurisdictions in the U.S. have implemented uniform systems of insurance company solvency regulation and established the guaranty association safety net to step in when insurers fail under specified conditions. NOLHGA is evaluating the extent to which the Plans are consistent with the principles of these laws and the intended purpose of the guaranty association system and will advise the Court of its analysis and conclusions.

10. No party to this proceeding represents the interests of NOLHGA or its member GAs, and none is in a position adequately to do so.


11. Allowing NOLHGA to intervene in this proceeding in its associational capacity for the limited purposes described herein will not delay or prejudice the adjudication of the rights of the parties. To the contrary, NOLHGA merely proposes (a) to continue to examine the Plans the Rehabilitator has proposed in light of current information about PTNA and ANIC from the perspective of the GAs who will protect policyholders—and become subrogated to policyholders' rights against PTNA and ANIC—if the Plans (or any alternative) do not succeed, and (b) to provide information and analysis to enable the Court to consider how the Plans would impact the GAs' rights and interests as the Court determines whether to approve the Plans or, instead, to pursue some other course of action.

12. Because NOLHGA is still evaluating the Plans, it further requests permission to file its position statement by the deadline to be established by the Court. *Cf.* Rule of App. Procedure 3775. NOLHGA will, of course, meet whatever deadlines and other requirements the Court may establish to ensure the prompt resolution of this proceeding.

WHEREFORE, NOLHGA respectfully requests that the Court approve and enter an Order in substantially the form **attached hereto as Exhibit 2** (a) permitting NOLHGA to appear by counsel in this proceeding in its associational capacity and ordering that the Appearance **attached hereto as Exhibit 1** is deemed filed as of the date of the Order; (b) directing that NOLHGA's counsel be served with copies of all pleadings, discovery and other papers filed or served in this proceeding that relate in any way to any rehabilitation plan; (c) ordering that NOLHGA may file a statement concerning (i) the Plans, (ii) any information filed with the Court in support of or opposition to the Plans, (iii) the implications of

rehabilitating the companies as proposed in the Plans or otherwise, in light of considerations including the financial conditions of PTNA and ANIC and the regulatory environments in which PTNA and ANIC operate, and (iv) how policyholders would fare under the Plans as compared to liquidation (with access to guaranty association coverage); and (d) permitting NOLHGA to submit further evidence and analysis and otherwise to participate fully in the Court's consideration of the Plans or any other potential rehabilitation or other plan involving PTNA and ANIC.

Respectfully submitted,



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Dated: May 28, 2013

*Attorney for the National Organization of Life and
Health Insurance Guaranty Associations*

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Of Counsel

Exhibit 1

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Penn Treaty Network America	:	
Insurance Company	:	
in Rehabilitation	:	No. 1 PEN 2009
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	:	
In Re: American Network Insurance	:	
Company	:	
in Rehabilitation	:	
	:	

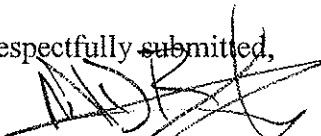
ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Please enter my appearance on behalf of Limited Intervenor, the National Organization of Life and Health Insurance Guaranty Associations ("NOLHGA").

Dated: May 28, 2013

Respectfully submitted,



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Attorney for the National Organization of Life and Health Insurance Guaranty Associations

Exhibit 2

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Penn Treaty Network America
Insurance Company
in Rehabilitation

No. 1 PEN 2009

In Re: American Network Insurance
Company
in Rehabilitation

**ORDER GRANTING APPLICATION OF NATIONAL ORGANIZATION OF
LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATIONS APPLICATION
TO INTERVENE FOR A LIMITED PURPOSE**

The National Organization of Life and Health Insurance Guaranty Associations ("NOLHGA") has filed an Application Requesting Leave To Intervene For A Limited Purpose in this proceeding pursuant to Pennsylvania Rule of Appellate Procedure 3775. Having considered NOLHGA's Application and being fully advised, the Court now GRANTS the Application.

IT IS THEREFORE ORDERED that (a) NOLHGA may appear by counsel in this proceeding in its associational capacity in accordance with 40 P.S. § 991.1706(l) & (o), and the Appearance attached to NOLHGA's Application as Exhibit 1 is deemed filed as of the date of this Order; (b) NOLHGA's counsel shall be served with copies of all pleadings, discovery and other papers filed and/or served in this proceeding with respect to the rehabilitation plan; (c) NOLHGA may file a statement concerning (i) the Plans, (ii) any information filed with the Court in support of or opposition to the Plans, (iii) the implications of rehabilitating the companies as proposed in the Plans or otherwise, in light of considerations including the financial conditions of PTNA and ANIC and the regulatory environments in which PTNA and ANIC operate, and (iv) how policyholders would fare under the Plan as compared to liquidation (with access to

guaranty association coverage); and (d) NOLHGA may hereafter submit further evidence and analysis and otherwise participate fully in the Court's consideration of any possible rehabilitation or other plan involving PTNA and ANIC.

Date: _____

MARY HANNAH LEAVITT, Judge

Copies to:

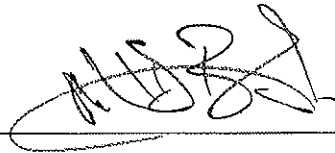
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CERTIFICATE OF SERVICE

I, MARK D. BRADSHAW, ESQUIRE, certify that on this date, I served a certified true and correct copy of the foregoing document upon the following counsel of record, by depositing the same in the United States mail, postage prepaid, addressed as follows:

James R. Potts, Esquire
Cozen O'Connor
1900 Market Street
Philadelphia, PA 19103
Counsel for Rehabilitator

A handwritten signature in black ink, appearing to read 'J. Potts', is written over a horizontal line.

Date: May 28, 2013