

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Penn Treaty Network America :  
Insurance Company in Rehabilitation : 1 PEN 2009  
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:  
In Re: American Network :  
Insurance Company in Rehabilitation : 1 ANI 2009

**CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER**

WHEREAS, certain documents that are or may be subject to discovery in this receivership proceeding (“*Receivership*”) contain sensitive or proprietary information or information as to which one or more of the undersigned parties (“*Parties*”) assert a claim of privilege (collectively, “*Confidential Information*”);

WHEREAS, the Parties may seek the discovery of Confidential Information from each other or third parties;

WHEREAS, the Parties wish to ensure that no advantage outside litigation is gained by the use of Confidential Information that is disclosed during discovery;

WHEREAS, pursuant to the Pennsylvania Rules of Civil Procedure, the Parties recognize the need to exchange Confidential Information during discovery and to protect that Confidential Information and have agreed to the entry of this Protective Order.

IT IS HEREBY STIPULATED by and between the Parties hereto, through their respective counsel, subject to approval of the Court, that a Protective Order as set forth hereinafter be entered.

IT IS HEREBY ORDERED THAT:

1. Applicability of Order. This Protective Order will govern the handling of documents, deposition transcripts and exhibits, interrogatory responses, responses to requests for admission, responses to requests for production of documents, responses to subpoenas and all other discovery obtained pursuant to the Pennsylvania Rules of Civil Procedure or which is voluntarily produced without regard to the use of the Pennsylvania Rules of Civil Procedure by or from any party, person, or entity in connection with the Receivership (this information hereinafter referred to as “*Discovery Material*”). As used herein, “*Producing Party*” shall refer to the Parties that give testimony or produce documents or other information, and “*Receiving Party*” shall refer to the Parties that receive such information. Nothing in this Order will prevent counsel from using Confidential Information in connection with any work product created by or on behalf of that counsel. However, work product containing Confidential Information will remain as confidential information that may not be shared with any entity or person except as otherwise provided in this Order.

2. Designation of Material. Any Producing Party may designate Discovery Material that is in their possession, custody, or control to be produced to a Receiving Party as “*Confidential*” under the terms of this Order if the Producing Party in good faith reasonably believes that such Discovery Material contains Confidential Information as defined in paragraph 4, below.

3. Exercise of Restraint and Care in Designating Material for Protection. Each Party or non-party that designates information or items for protection under this Order must take care to limit any such designation to specific material defined in paragraphs 4 and 5 below.

4. Confidential Information. For purposes of this Order, “*Confidential Information*” includes (a) any Party’s or non-party’s non-public policies, procedures, or trade secrets; (b) proprietary non-public information regarding any Party’s or non-party’s business or operations (including, without limitation, information reflecting the capabilities, volume, cost, value, profit, or loss of any part of any business); (c) any Party’s or non-party’s non-public financial information; or (d) any communications, documents or information shared between two parties or between a party and a non-party with an understanding and expectation of confidentiality. To the extent that any Party believes that another country’s law or procedural rule provides applicable protections for Confidential Information that vary from the Pennsylvania Rules of Civil Procedure, such Party will provide notice of that other country’s law or procedural rule and of its applicability to documents that are not otherwise protected by United States law or procedure. Each Party reserves its right to assert or contest the applicability of such foreign law.

5. Confidential Information – Heightened Protection Attorneys’ Eyes Only. For purposes of this Order, Confidential Information requiring “*Heightened Protection*” is Confidential Information that consists of personal identifying information (including without limitation names, addresses, email addresses, telephone numbers, social security numbers, and medical or health data) of any policyholder or other natural person, or of company operations (such as claims processes, IT systems and internal policies and procedures) and information concerning TPA capabilities.

Each Party shall have the right to designate as “**CONFIDENTIAL INFORMATION – HEIGHTENED PROTECTION ATTORNEYS’ EYES**”

**ONLY**” information produced in this action that fits the description above of Confidential Information requiring Heightened Protection. The Parties anticipate that the majority of the Confidential Information to be produced will not require this designation and will avoid so designating any documents or information unless the designating Party has a good faith belief that the documents or information satisfy the criteria for Heightened Protection.

6. Designating Confidential Information. The designation of Discovery Material as Confidential Information for purposes of this Order shall be made in the following manner:

- a. Documents. In the case of documents or other materials (apart from depositions or other pre-hearing testimony), designation shall be made by unobtrusively affixing the legend, as appropriate:

**CONFIDENTIAL**

-or-

**CONFIDENTIAL – HEIGHTENED PROTECTION  
ATTORNEYS’ EYES ONLY**

to each page containing any Confidential Information. The Receiving Party shall exercise good faith efforts to ensure that copies that it makes of Discovery Material produced to it, and copies made by others who obtained such Discovery Material directly or indirectly from the Receiving Party include the appropriate confidentiality legend, to the same extent that the Discovery Material has been marked with the appropriate confidentiality legend by the Producing Party. All Parties

recognize that native format documents cannot be so marked, and thus, to the extent that native format documents are produced, the Producing Party will make reasonable provision for marking native format documents in connection with the transmission or retention of such documents on office systems.

b. Depositions and Other Proceedings. In the case of depositions or other pre-hearing testimony, designation of the portion(s) of the transcript (including exhibits) that contain Confidential Information shall be made (i) by a statement to such effect on the record during the proceeding in which the testimony is received, or (ii) by written notice served on counsel of record in this Receivership within thirty (30) business days after the receipt of the transcript of such proceeding. However, before such thirty (30) day period expires, all testimony, exhibits and transcripts of depositions or other testimony shall be available only to those persons described in paragraph 10(a)-(b).

c. Non-Written Materials. Any electronic, visual, or other Confidential Information not on paper shall be designated as identified in Paragraph 6(a) on the exterior surface of the container or object that contains the electronic, visual or other non-paper Confidential Information. In addition, the Producing Party shall use its best efforts to affix the legend described in Paragraph 6(a) to any electronic, visual, or other medium so that the legend is visible while the medium is being viewed.

All Parties recognize that native format documents cannot be so marked and to the extent that native format documents are produced, the Producing Party will make reasonable provision for marking native format documents in connection with transmission or retention of such documents on office systems.

d. In the event that a Receiving Party generates any copy or excerpt of such electronic, visual or other medium, whether in the same or another format, the person who generates such copy shall place the same confidential designation identified in Paragraph 6(a) on the copy or excerpt.

7. Inadvertent Disclosure. The inadvertent failure to designate Discovery Material as Confidential does not constitute a waiver of such claim and may be remedied by providing the other Party with supplemental written notice within 10 days from the discovery of the inadvertent disclosure, with the effect that such Discovery Material will be subject to the protections of this Order.

8. Notes of Confidential Information. Any notes, lists, memoranda, work product, indices or compilations prepared or based on an examination of Confidential Information that quote from or paraphrase Confidential Information with such specificity that the Confidential Information can be identified, or by reasonable logical extension can be identified, shall be accorded the same status of confidentiality as the underlying Confidential Information from which they are made and shall be subject to all of the terms of this Protective Order.

9. Notice to Non-Parties. Any Party issuing a subpoena to a non-party shall enclose a copy of this Protective Order.

10. Persons Authorized to Receive Confidential Information.

Discovery Material designated “**CONFIDENTIAL**” as identified in Paragraph 6(a), may be disclosed, summarized, described, characterized, or otherwise communicated or made available, in whole or in part, only to the following persons:

- a. The Court, persons employed by the Court who are necessary for the handling of the Receivership, and court reporters transcribing the testimony or argument at a hearing or deposition in this Receivership or any appeal therefrom;
- b. Counsel of record in this Receivership, as well as paralegals and technical, administrative, and clerical employees working under the direct supervision of such counsel;
- c. Experts or consultants assisting any counsel of record in this Receivership, provided that such experts and consultants have signed “Agreement Concerning Information Covered by Protective Order” attached hereto as Exhibit A (“*Agreement*”);
- d. Parties to adversarial proceedings conducted under Pa. R.A.P. 3783 who have a need to know such information for purposes of such adversarial proceedings;
- e. Officers, directors, or employees or agents of the Parties who have a need to know such information for purposes of this Receivership or who have been designated as witnesses pursuant to Pennsylvania Rule of Civil Procedure 4007.1;

f. Graphics, translation, or design services personnel retained by counsel of record in this Receivership for purposes of this Receivership, provided that the providers of such services have signed the Agreement. A signature by an authorized representative of the company must additionally confirm that they have advised the relevant employees of their confidentiality obligations in this Order and have taken reasonable steps to ensure that such employees comply with this Order;

g. Commercial copy and/or electronic discovery-related vendors retained by counsel of record in this action for purposes of this Receivership provided that such vendors have signed the Agreement. A signature by an authorized representative of the company must additionally confirm that they have advised the relevant employees of the confidentiality obligations in this Order and have taken reasonable steps to ensure that such employees comply with this Order;

h. Witnesses giving deposition or other testimony in this Receivership;

i. Any person indicated by a document marked as Confidential Information to be an author, addressee, or copy recipient of the Confidential Information, or as to whom there has been testimony, whether at deposition or hearing, or by declaration or affidavit, that the person was the author or recipient of the Confidential Information; and

j. Any other person who has signed the Agreement and only upon: (1) stipulation of the Producing Party; or (2) order of the Court.

11. Persons Authorized to Receive Confidential Information – Heightened Protection. Discovery Material designated “**CONFIDENTIAL INFORMATION – HEIGHTENED PROTECTION ATTORNEYS’ EYES ONLY**” as identified in Paragraph 6(a), or documents derived from such material, may be disclosed, summarized, described, characterized, or otherwise communicated or made available in whole or in part only to the following persons:

a. The Court, persons employed by the Court who are necessary for the handling of the Receivership, and court reporters transcribing testimony or argument at a hearing or deposition in this Receivership or any appeal therefrom;

b. Counsel of record in this Receivership, as well as paralegals and technical, administrative, and clerical employees working under the direct supervision of such counsel;

c. Experts or consultants assisting any counsel of record in this Receivership, provided such experts and consultants have signed the Agreement;

d. During their depositions, witnesses in the Receivership who are shown properly marked **CONFIDENTIAL INFORMATION – HEIGHTENED PROTECTION ATTORNEYS’ EYES ONLY** shall be advised once, at the start of the deposition, that the Court Order in this Receivership

requires them to maintain the confidentiality of such information. If the attorney for the Party that noticed the deposition fails to advise the witness of this obligation at the start of the deposition, counsel for another Party may advise the witness of the Order and the obligations imposed on the witness;

e. Any person indicated by a document marked as **CONFIDENTIAL INFORMATION – HEIGHTENED PROTECTION ATTORNEYS’ EYES ONLY** to be an author, addressee, or copy recipient of the document, or as to whom there has been testimony, whether at deposition or hearing, or by declaration or affidavit, that the person was the author or recipient of the Confidential Information;

f. Any other person who has signed the Agreement and only upon: (1) stipulation of the Producing Party, or (2) order of the Court.

g. Graphics, translation, or design services personnel retained by counsel of record in this Receivership for purposes of this Receivership, provided that the providers of such services have signed the Agreement. A signature by an authorized representative of the company must additionally confirm that they have advised the relevant employees of their confidentiality obligations in this Order and have taken reasonable steps to ensure that such employees comply with this Order;

h. Commercial copy and/or electronic discovery-related vendors retained by counsel of record in this action for purposes of this Receivership provided that such vendors have signed the Agreement. A signature by an authorized representative of the company must additionally confirm that they have advised the relevant employees of the confidentiality obligations in this Order and have taken reasonable steps to ensure that such employees comply with this Order;

12. Use of Discovery Material. Discovery Material containing Confidential Information or Confidential Information – Heightened Protection shall be used solely for purposes of the hearing on the Second Amended Plan of Rehabilitation, including any appeal and rehearing. Any person or entity in possession of Discovery Material designated Confidential or Confidential Information – Heightened Protection shall maintain those materials in accordance with this Order.

13. Storage of Confidential Information. The recipient of any Confidential Information that is provided under this Protective Order shall use his/her/its best efforts to maintain such information in a reasonably secure and safe manner that ensures that access is limited to the persons authorized under this Order.

14. Filing of Confidential Material. Any information or documents designated as “**CONFIDENTIAL INFORMATION - HEIGHTENED PROTECTION ATTORNEYS’ EYES ONLY**” are to be filed with the Court under seal, only in accordance with the applicable Local Rules when seeking to file Confidential Information under seal. If any information designated as

**“CONFIDENTIAL INFORMATION - HEIGHTENED PROTECTION ATTORNEYS’ EYES ONLY”** is quoted, attached to, or substantially paraphrased in any pleading, motion, memorandum, appendix, or other judicial filing, then the pleading, motion, memorandum, appendix, or other judicial filing shall be submitted in its entirety under seal, unless the Confidential Information can be redacted. The attorneys of record where practicable, shall make reasonable efforts to redact Confidential Information contained within documents produced under this Protective Order and file such redacted copies for the public record. Nothing contained herein limits a producing party’s use or disclosure of its own discovery material.

15. Challenging Designation of Materials. A Party shall not be obligated to challenge the propriety of a Confidential Information designation at the time it is made, and failure to do so shall not preclude a subsequent challenge thereto during the pendency of this Receivership.

a. Challenge. The Receiving Party may challenge the propriety of a Confidential Information designation by providing to the Producing Party a writing which briefly: (i) identifies with reasonable particularity the documents and/or information that are the subject of the challenge; and (ii) describes the basic legal or factual grounds for the challenge.

b. Meet-and-Confer and Motion. Once a challenge is made, the Parties shall meet and confer regarding the appropriateness of the designation. Thereafter, either Party may move for an appropriate order or request a call with the Court to decide the matter expeditiously either (i) to confirm the confidentiality of

the information or (ii) to seek to have that designation removed and the Discovery Material produced or generated without the confidentiality legend described in Paragraph 6(a). Regardless of which Party files a motion, the burden of proof and the burden of persuasion in such motion remains with the designating Party, and any motion which has Confidential Information marked Heightened Protection Attorneys' Eyes Only attached to, submitted with, or described in it, shall be filed under seal.

c. Status of Challenged Designation Pending Judicial Determination. Until the Court enters this Protective Order or rules on any challenge to a Confidential Information designation made under this section, all Parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation.

16. No Waiver of Privilege. Disclosure (including production) of information that a Party or non-party later claims should not have been disclosed because of a privilege, including, but not limited to, the attorney-client privilege or work product doctrine ("*Privileged Information*"), shall not constitute a waiver of, or estoppel as to, any claim of attorney-client privilege, attorney work-product, or other ground for withholding production as to which the Producing Party would be entitled in the Receivership or any other federal or state proceeding. Upon discovery by a Producing Party (or upon receipt of notice from another Party) that it did or may have produced Privileged Information, the Producing Party shall, within ten (10) days of such discovery, request the return of such information in

writing by identifying the Privileged Information and stating the basis on which the Privileged Information should be withheld from production. After being notified, all Receiving Parties must promptly sequester the Privileged Information and any copies they have; must not use or disclose the information until the claim is resolved; and must take reasonable steps to retrieve the Privileged Information if they disclosed the Privileged Information before being notified. If no objection is made to the Producing Party's privilege claim, then within twenty (20) days, all Receiving Parties shall destroy the original and all copies of the designated Privileged Information. All Receiving Parties shall promptly certify the destruction to the Producing Party in writing.

17. Additional Parties or Attorneys. In the event that additional persons join or intervene in this action, the newly joined persons shall not have access to Confidential Information until counsel for each such person has executed the Agreement and agree to be fully bound by this Order. If any additional attorneys make appearances in this Receivership, those attorneys shall not have access to Confidential Information until they execute the Agreement.

18. No Prejudice For Further Relief. This Protective Order is without prejudice to the right of any Party to seek other or further relief from the Court.

19. No Waiver of Grounds For Producing Material. This Protective Order shall not be construed as waiving any right to assert a claim of privilege, relevance, overbreadth, undue burden, or other grounds for not producing material called for, and access to such material shall be only as otherwise provided by the discovery rules and other applicable laws.

20. Conclusion of Receivership. This Protective Order shall survive the termination of this action. Within thirty (30) days after receiving notice of the entry of an order, judgment, or decree finally disposing of this Receivership with no further right of appeal by any person or entity, persons having received Confidential Information shall either return such material, including any notes of Confidential Information as set forth in Paragraph 8 (above), and all copies thereof, to counsel for the Producing Party, or shall destroy all such Confidential Information and, in either case, shall certify that fact to counsel for the Producing Party. Counsel of record shall make arrangements for the return of Confidential Material that counsel of record provided to any persons or entities in Paragraphs 10 or 11 (above), except the Court, court personnel, and court reporters. Within this thirty (30) day period, Counsel shall also serve on counsel for the Producing Party copies of all signed Agreements obtained in accordance with any disclosure or provision of Confidential Information made pursuant to Paragraphs 10 or 11 (above). Counsel of record for the Parties shall be entitled to retain court papers, depositions, and hearing transcripts, provided that retained materials will continue to be covered by this Protective Order. A Producing Party may, at any time, following the conclusion of this Receivership, advise a Receiving Party of its obligations under this paragraph and the Receiving Party shall either return the Confidential Information or certify its destruction within the 30 days provided above in this paragraph.

21. No Loss of Confidential Status by Use in Receivership or Appeal. In the event that any Confidential Information is used in any court proceeding in this Receivership or any appeal therefrom, such Confidential Information shall retain Confidential status if the Court so rules. Counsel wishing

to maintain confidentiality, may seek any relief that is appropriate, including petitioning the Court to close the courtroom.

22. Protected Material Subpoenaed or Ordered Produced in Other Actions. If any Receiving Party or any person receiving documents through a Receiving Party is served with a subpoena, order, interrogatory, document or civil investigative demand, or any other legal demand (collectively, a “*Demand*”) issued in any other action, investigation, or proceeding, and such Demand seeks Discovery Material that was produced or designated as Confidential Information by someone other than the Receiving Party, the Receiving Party shall give prompt written notice by hand, overnight courier, email, or facsimile transmission within seven (7) business days of receipt of such Demand to the person, Party, or third party who produced or designated the material as Confidential Information, and shall object to the production of such materials on the grounds of the existence of this Order. The burden of opposing the enforcement of the Demand shall fall upon the Producing Party.

23. Advice Based on Discovery Material Allowed. Nothing in this Protective Order shall bar or otherwise restrict any attorney from rendering advice to his client with respect to this Receivership and, in the course of rendering advice, referring to or relying generally on the examination of Confidential Information.

24. Redaction Allowed. Any Producing Party may redact from the documents and things it produced any information, or text, or other matter that the Producing Party claims is subject to attorney client privilege, work product immunity, or any other privilege or protection against disclosure under applicable statutory or common law. The Producing Party shall mark each thing where matter

has been redacted with a legend stating, "REDACTED" or a comparable notice. Where a document consists of more than one page, each page on which information has been redacted shall indicate where the redaction was made. The Producing Party shall preserve an unredacted version of each such document and will produce a privilege log for any documents subject to the attorney client privilege, work product immunity, or any other privilege or protection against disclosure under applicable statutory or common law, as required under the July 30, 2015 Case Management Order in this case, stating the nature of the material redacted and the basis for redaction no later than twenty-one (21) days following the production of the document(s) containing redacted material. The privilege log is to be produced in electronic and searchable format. This paragraph shall not limit any parties from arguing that the asserted privilege or protection against disclosure is not recognized under applicable law or does not apply.

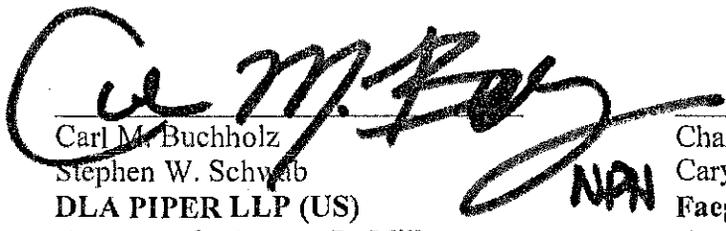
25. Violations of Protective Order. In the event that any person or Party should violate the terms of this Protective Order, the aggrieved Producing Party may apply to the Court for relief against any such person or Party violating any of the terms of this Protective Order. In the event that the aggrieved Producing Party seeks injunctive relief, it must apply to or move before the Court issuing this Order. The Parties and any other person subject to the terms of this Protective Order agree that this Court shall retain jurisdiction over it and them for the purpose of enforcing this Protective Order.

26. Right to Seek Modification. The Parties reserve the right to apply to the Court for an order modifying this Order or seeking further protections against discovery or other use of Confidential Information. Any protected third party requiring further confidentiality protection than is provided by this Order

may petition the Court for a separate order governing disclosure of its Confidential Information.

27. Headings. The headings herein are provided only for the convenience of the Parties, and are not intended to define or limit the scope of the express terms of this Protective Order.

By their signature upon the stipulation for the entry of this Protective Order and their signatures below, counsel for the Parties signify their understanding of this Protective Order and their agreement to abide by its terms unless and until it is modified or superseded by further order of this Court. The attorneys of record are responsible for employing reasonable measures, consistent with this Protective Order, to control duplication of, access to and distribution of copies of Confidential information and to collect or destroy all documents at the conclusion of this Receivership.



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**NAN**

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*Attorneys for Policyholders Committee*

APPROVED, AND SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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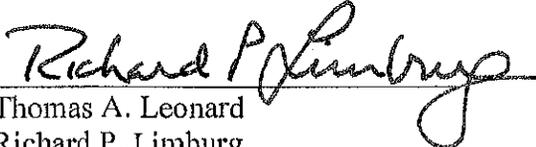
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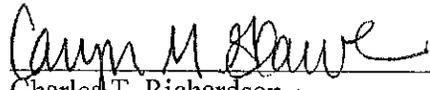
  
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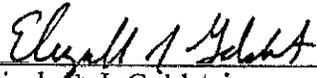
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("Health Insurers")*

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Thomas A. Leonard  
Richard P. Limburg  
**Obermayer Rebmann Maxwell & Hippel  
LLP**  
*Attorneys for Policyholders Committee*

APPROVED, AND SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
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APPROVED, AND SO ORDERED, this 4<sup>th</sup> day of August, 2015.

  
\_\_\_\_\_  
Mary Hannah Leavitt, Judge

Certified from the Record

# **EXHIBIT A**

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Penn Treaty Network America Insurance Company in Rehabilitation	:	1 PEN 2009
	:	
	:	
	:	
In Re: American Network Insurance Company in Rehabilitation	:	1 ANI 2009

**AGREEMENT CONCERNING INFORMATION COVERED BY  
PROTECTIVE ORDER**

The undersigned states, subject to the penalties for perjury:

1. I hereby acknowledge that I have read the attached Confidentiality Agreement and Protective Order (“Protective Order”) entered in the Commonwealth Court of Pennsylvania in the matter captioned In Re: Penn Treaty Network America Insurance Company in Rehabilitation (No. 1 PEN 2009) and In Re: American Network Insurance Company in Rehabilitation (No. 1 ANI 2009).

2. I have received documents, information, or materials that have been or may be designated Confidential pursuant to the Protective Order.

3. I promise to abide by the Protective Order with respect to Confidential documents and information furnished to me in this Receivership.

4. I agree to be bound by the terms of the Protective Order, including but not limited to the provisions governing violations of the Protective Order.

5. I acknowledge that if I fail to fully comply with the Protective Order, I may be held in contempt of court, and may also be subject to injunctions or other court orders.

6. As a condition to receipt of documents marked Confidential in this Receivership, I consent to personal jurisdiction over me in the Commonwealth Court of Pennsylvania, solely for the purpose of enforcing the Protective Order.

Signed: \_\_\_\_\_

Signed this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State. Zip