

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joel Ario, Insurance Commissioner of :  
the Commonwealth of Pennsylvania, :  
Plaintiff :

v. :

No. 5 M.D. 2009

Penn Treaty Network America :  
Insurance Company, :  
Defendant :

Re: Petition to Suspend Agents' Commissions

**ORDER**

AND NOW, this 11<sup>th</sup> day of September, 2009, it is hereby ORDERED  
as follows:

(1) A hearing on the Application of the Statutory Rehabilitator of Penn Treaty Network America Insurance Company (In Rehabilitation) to Suspend Agents' Commissions is scheduled for Thursday, October 15, 2009, at 10:00 a.m. in Courtroom No. 3001, 3<sup>rd</sup> Floor, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Harrisburg, Pennsylvania.

(2) The legal issues to be addressed at the hearing include:

(a) Whether the Statutory Rehabilitator has the statutory power or authority to suspend the payment of earned commissions to agents, or to suspend payments to any class of creditor, in advance of filing a rehabilitation plan that addresses the claims of all creditors of Penn Treaty and corrects the condition that caused the issuance of the rehabilitation order;

(b) Whether the earned commissions of Penn Treaty's agents are assets of the insurer or the agent;

(c) Whether the claims of agents to earned commissions on premiums remitted post-rehabilitation are those of a general creditor under Section 544(e) of The Insurance Department Act of 1921, Act of May 17, 1921, P.L. 789, *as amended*, 40 P.S. §221.44(e) (Article V), or those of persons "preserving ... the assets of the insurer" or providing "services rendered in the liquidation" under Section 544(a) of Article V, 40 P.S. §221.44(a); and

(d) Whether the payment of earned commission on renewal premium collected by Penn Treaty during a rehabilitation constitutes a preference that may be avoided by the liquidator under Section 530(a) of Article V, 40 P.S. §221.30(a).

(3) The factual questions to be addressed at the hearing by the Statutory Rehabilitator include:

(a) Why an order issued under Section 505(a) of Article V, 40 P.S. §221.5(a), to suspend the payment of agents' commissions on renewal premiums received by Penn Treaty is necessary and proper (i) to prevent interference with the Statutory Rehabilitator or with the rehabilitation proceeding or (ii) to prevent a threatened or contemplated action that might lessen the value of Penn Treaty's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of the proceeding;

(b) Why the objections to the Statutory Rehabilitator's Application to Suspend Agents' Commissions do not present grounds for denying the application;

(c) Whether the suspension of agents' earned commissions will result in adverse selection, causing a further deterioration in the financial condition of Penn Treaty by encouraging healthy, younger policyholders to migrate to other insurers, leaving unhealthy, older policyholders with Penn Treaty, and thereby rendering existing rates even more inadequate;

(d) How the suspension of agents' earned commissions advances the correction of the conditions at Penn Treaty that constituted the grounds for the order of rehabilitation of Penn Treaty;

(e) How the suspension of agents' earned commissions protects the interests of policyholders, creditors and the public generally; and

(f) Whether agents continue to provide any services for Penn Treaty or its policyholders.

(4) The factual questions to be addressed at the hearing by Intervenor include:

(a) What services, if any, continue to be provided by agents whose policyholders continue to pay renewal premium to Penn Treaty; and

(b) The contractual basis for the Intervenor's position that the commissions sought to be suspended by the Statutory Rehabilitator are owing and earned commissions.



MARY HANNAH LEAVITT, Judge

**Certified from the Record**

**SEP 14 2009**

**and Order Exit**