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1 PEN 2009

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

NOTICE OF APPEAL

Notice is hereby given that Aetna Life Insurance Company, Anthem, Inc., Cigna Corporation, HM Life Insurance Company, Horizon Healthcare Services, Inc. d/b/a Horizon Blue Cross Blue Shield of New Jersey, QCC Insurance Company, United Concordia Life and Health Insurance Company, United Concordia Insurance Company and UnitedHealthcare Insurance Company, Intervenors in the above-captioned action, appeal to the Supreme Court of Pennsylvania from the orders entered in this matter on the 23rd day of September, 2016, denying Appellants' objections to Appellees' proposed Settlement Agreement and approving the Settlement Agreement. These orders have been entered in the docket on the 23rd day of September, 2016, as evidenced by the attached copy of the docket entries.

STATEMENT PURSUANT TO PA. R.A.P. 904(c)

There is no verbatim record of the proceedings.

John P. Lavelle, Jr.

Dated: October 20, 2016

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CERTIFICATE OF SERVICE

I certify that on October 20, 2016, I caused a true and correct copy of the foregoing document to be served on the following persons via First Class Mail at the addresses indicated below:

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DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 23, 2016	Memorandum Opinion Filed Leavitt, Mary Hannah			09/23/2016
Document Name:	and Order (11pgs)			

DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date

Comment: Presently before the Court is a Verified Joint Application for Relief (Joint Application) filed by Teresa D. Miller, Insurance Commissioner of the Commonwealth of Pennsylvania in her capacity as Statutory Rehabilitator of Penn Treaty Network America Insurance Company (PTNA) and American Network Insurance Company (ANIC) (collectively, Companies), Intervenors Eugene J. Woznicki and Penn Treaty American Corporation (PTAC) and Intervenor Broadbill Partners, LP (Broadbill), requesting ilie Court's approval of a Settlement Agreement. The Joint Application has garnered objections from two other intervenors:
(1) a group of parties to, or beneficiaries of, agency contracts with the Companies (Agents) and

(2) a group of Health Insurers. For the following reasons, the Court overrules the Agents' and Health Insurers' objections to the Joint Application.

The Settlement Agreement is the culmination of many months of negotiations between the Settling Parties. It arranges for a coordinated tax strategy to mitigate tax liability for the Companies' estates, and therefore conserves and maximizes assets available to pay policyholder claims. In consideration for $10 million, PTAC will (1) forbear from taking actions that would impair or eviscerate the Companies' ability to use a tax shield that belongs to the consolidated tax group; and
(2) participate in seeking a Private Letter Ruling (PLR) from the United States Internal Revenue Service to resolve a potential tax liability being imposed upon the Companies' estates. More specifically, the Settlement Agreement allows PTNA and ANIC to gain access to up to $1 billion in net operating losses and tax exclusions available to the consolidated tax group through a PLR. The agreement permits the Companies to resolve significant tax issues for the Companies' estates and policyholders, including:

(1) whether the Companies will incur discharge of indebtedness income as a result of cancelling part of their liabilities to policyholders;

(2) control over the Companies' net operating loss carryforwards;

(3) whether PTAC has the right to take a worthless stock deduction;

and (4) whether policyholders, as a result of policy restructuring, will experience adverse tax consequences. Litigation of those issues has already cost the Companies hundreds of thousands of dollars and, absent a settlement, will cost only more. Thus, the Settlement Agreement directly relates to "preserving ... the assets of the insurer," Section 544(a) of Article V, 40 P.S. §221.44(a), and will reduce the financial burden on state insurance guaranty associations.

Agents object to the Joint Application on several grounds. Agents assert that
(1) the Joint Application fails to provide a sufficient evidentiary basis from which this Court may find that the proposed settlement is in the best interests of the insolvent insurers' policyholders, claimants, and the public;

(2) the proposed classification of the $10 million cash payment to PTAC as an administrative expense entitled to first priority is contrary to Section 544(i) of Article V, 40 P.S. §221.44(i), which provides that payments for the claims of shareholders or other owners have the lowest priority and may be paid only after all other claims have been satisfied; and

(3) the proposed settlement advances a bad public policy because it uses estate assets to "buy the silence" of the party uniquely positioned to challenge the Rehabilitator's assertion that liquidation is appropriate and attempts to use the power of this Court to set a bond for appeal to squelch any further judicial review of the proposed settlement.

Health Insurers object to the Joint Application for the following reasons:
(1) the payment of $10 million to PTAC circumvents the statutory distribution scheme in Section 544 of Article V;

(2) the payment to PTAC exceeds the benefits to policyholders, claimants and the public cited by the Settling Parties;

(3) the Joint Application and proposed Memorandum of Understanding among the Settling Parties is vague and does not provide the Court with sufficient infonnation to weigh the competing contentions of the parties; and

(4) there is no legal basis for conditioning an appeal on the posting of a $3 6 million bond.

As a threshold matter, the Court must decide whether Agents and Health Insurers have standing to object to the Joint Application. This Court's previous order granted Health Insurers the status of

limited intervenors . . . for purposes of ... participation in the proceedings before the Commonwealth Court relating to the Second Amended [Rehabilitation] Plan (or any future modifications thereof), including discovery and appeal from order(s) on the proposed Plan and on petitions for liquidation or liquidation orders pursuant to such proposed Plan.

In Re: Penn Treaty Network America Insurance Company in Rehabilitation (Pa. Cmwlth., No. 1 PEN 2009, Stipulation and Order ofIntervention, filed June 19, 2015) at 3. The Rehabilitator withdrew the Second Amended Rehabilitation Plan by notice filed with the Court on July 27, 2016. Objecting to the Settlement Agreement is beyond the scope of the Court's limited intervention order. Health Insurers never sought, nor did the Court ever grant, a subsequent order expanding Health Insurers' limited right to intervene beyond the "discrete controversy" identified in the intervention order.

Moreover, Health Insurers do not explain how approving the Settlement Agreement will harm them directly, which the Pennsylvania Supreme Court has held is a threshold question for establishing standing. Johnson v.

American Standard, 8 A.3d 318, 333 (Pa. 2010) ("[A] party must be aggrieved in order to possess standing to pursue litigation."). Unless adversely affected by the matter at issue, an entity is not aggrieved and thus "has no standing to obtain a judicial resolution of that challenge." Hospital & Health System Association of Pennsylvania v. Department of Public Welfare, 888 A.2d 601, 607 (Pa. 2005). This standard is even more stringent in the context of an insurance receivership proceeding. Under Pennsylvania Rule of Appellate Procedure 3775, a limited intervenor such as Health Insurers must have "a direct and substantial interest" in a "discrete controversy relating to the administration of the insurer's business or estate[.]" Pa. R.A.P. 3775(a), (c)(2).

Conspicuously absent from Health Insurers' objections is any explanation of how they will be aggrieved by the Settlement Agreement, save for a single conclusory statement that they "will bear the burden of the assessments from the state insurance guaranty associations." Health Insurers' Revised Objection to Application for Approval of Settlement Agreement at 13, n.3. This assertion of harm does not constitute a direct or immediate interest. Although the interests of Health Insurers and individual guaranty associations are not perfectly aligned, it bears noting that the guaranty associations, which have their own counsel, have not objected to the Joint Application.

Even on their merits, Health Insurers' objections to the Settlement Agreement are unpersuasive. Health Insurers' objections focus primarily on the $10 million payment to PT AC. They contend that the estates are not receiving fair value for the amount being paid and that the Rehabilitator did not pursue alternatives to the Memorandum of Understanding that would have avoided such a payment. Health Insurers take issue with two of the claimed benefits of the settlement, i.e., preservation of tax benefits and joint submission of the PLR request to the IRS. Because the settlement payment is payable whether or not the PLR is successful, Health Insurers argue that this creates the possibility that the Companies may not receive the tax benefit they seek even with PTAC's assistance. They believe that the maximum risk is a potential $20 million tax bill. Health Insurers also opine that the Settling Parties' tax objectives can be achieved without PTAC's assistance because the Rehabilitator could exercise her authority under Article V to issue enough new shares of PTNA to break up the consolidated tax group, resulting in PTAC retaining the net operating losses attributable to its operations.

Regarding the Settling Parties' desire to achieve mutual releases and conclude litigation on all contested issues between the Rehabilitator and the PTAC Intervenors, Health Insurers posit that "[w]hile peace undeniably has a value, there is currently no war." Health Insurers' Revised Objection at 13. Again, Health Insurers urge the Court to reject the Joint Application because these justifications for the settlement are not worth $10 million.

To begin, Health Insurers' claim that "there is currently no war" is simply incorrect. The Rehabilitator and the PTAC Intervenors disagree on a number of issues, including the interpretation and effect of the tax sharing agreement to which the Companies and PT AC are parties and whether the Rehabilitator has the authority to use net operating losses without PTAC's consent.

DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date

The Rehabilitator has contested the PTAC Intervenors' positions on numerous tax issues, and would continue to do so absent the Settlement Agreement. This is one of the key reasons why the Settlement Agreement holds value: it provides the policyholders and the Settling Parties with certainty surrounding those issues. See Linney v. Cellular Alaska Partnership, 151 F.3d 1234, 1242 (9th cir. 1998) ("[T]he very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'") (citation omitted).1Health Insurers overlook the substantial potential benefits of the PLR, which would be much more difficult, if not impossible, to achieve without the Settlement Agreement. The PLR represents potential savings in tax liability, greatly exceeding the settlement cost, but the PLR process otherwise holds value because it provides certainty to the Companies and policyholders regarding tax matters, regardless of its outcome.

As for the size of the $10 million payment, the Court agrees with the Settling Parties that it is a reasonable amount to achieve "peace," especially relative to the size of the assets of the Companies and the ongoing costs of litigation should there be no settlement. Health Insurers are also too dismissive of the risk posed by the complex tax issues involved in this case, which is real and by their own admission could result in a $20 million tax liability for the estates. 14 It is unnecessary, and unwarranted, for the Court to resolve the tax issues in ruling on the Joint Application. The Court defers to the Rehabilitator's assessment of the risk inherent in these complex issues and her judgment that the Settlement Agreement is in the best interests of the policyholders, claimants and the public.

Agents' participation in these proceedings, like that of Health Insurers, has also been limited from the beginning. In their petition to intervene filed with the Court on July 15, 2009, Agents sought to intervene in the rehabilitation proceedings "for the purpose of opposing the [Rehabilitator's] Application ... for Approval of a Suspension of the Payment of Commissions to Insurance Agents[.]" Ario v. Penn Treaty Network America Insurance Company, No.5 M.D. 2009, Petition to Intervene filed July 15, 2009, at 2. In support of their petition, Agents averred that the Rehabilitator's application to suspend or terminate their commissions would have "a direct and immediate effect on [their] property and contractual rights[.]" Id. at 6. This Court granted intervention because Agents "demonstrate[d] a direct interest in the above-noted matter" i.e., the Rehabilitator's Application to Suspend Agents' Commissions. Ario v. Penn Treaty Network America Insurance Company (Pa. Cmwlth., No. 5 M.D. 2009, order filed August 5, 2009). Thus, Agents' objections to the Settlement Agreement are beyond the scope of the Court's order allowing them to intervene. Moreover, in the event either or both Companies are liquidated, Agents are potential future claimants against the estates and can file a proof of claim under Article V.

Finally, Agents and Health Insurers object to the Settling Pmties' request that the Court require any party seeking to appeal or stay an order of the Court granting the Joint Application to post security in the amount of $36 million. The Court will not address this issue for two reasons. First, the posting of security is not essential to the settlement. Second, should an appeal be filed, the Court finds that $36 million is an appropriate amount because it equals 120 percent of the settlement consideration ($1 0 million) and the projected minimum alternative minimum tax liability on which the parties agree ($20 million). The Court will

DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
	address any objections to this mnount of the security if and when they are raised. For these reasons, the objections of Agents and Health Insurers to the Joint Application are overruled. The Court will grant the Joint Application and approve the Settlement Agreement by separate me orandu pinion and order. AND NOW, this 23rd day of September, 2016, the objections of the intervening Agents and Health Insurers to the Verified Joint Application of the Commissioner, Penn Treaty American Corporation, Eugene Woznicki, and Broadbill Partners LP for Approval of Settlement Agreement are OVERRULED.			

DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 23, 2016	Memorandum Opinion Filed Leavitt, Mary Hannah			09/23/2016
Document Name:	and Order Approving Settlement Agreement (6pgs)			

DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date

Comment: upon consideration of the Verified Joint Application for Relief (Application) filed by Teresa D. Miller, the Insurance Commissioner of the Commonwealth of Pennsylvania (Commissioner) in her capacity as Statutory Rehabilitator of Penn Treaty Network America Insurance Company (PTNA) and American Network Insurance Company (ANIC) (collectively, Companies), Intervenors Eugene J. Woznicki and Penn Treaty American Corporation (PTA C), and Intervenor Broadbill Partners, LP (Broadbill)/ requesting the entry of an order, pursuant to Rules 123 and 3776 of the Pennsylvania Rules of Appellate Procedure, approving that certain Memorandum of Understanding dated June 14, 2016, and any Definitive Agreement(s) entered pursuant thereto (collectively, Settlement Agreement), and upon consideration of all of the proceedings before the Court and the record of this receivership proceeding, and after due deliberation and sufficient cause appearing in support of approval of the Application, the Court finds and concludes as follows:

i. Notice of the Application has been provided to the persons identified in the Certificate of Service attached thereto. That notice satisfies the requirements of due process, and no other or further notice need be provided.

ii. Objections to the Settlement Agreement filed by intervenor Agents and Health Insurers were overruled in a memorandum opinion and order filed contemporaneously with this memorandum opinion and order.

iii.In accordance with 15 U.S.C. §1012, this matter is governed by Article V of The Insurance Department Act of 1921, Act of May 17, 1921, P.L. 789, art. V, as amended, 40 P.S. §§ 221.1 to 221.63 (Article V), and by Pennsylvania law.

iv. Under Section 504 of Article V, added by the Act of December 14, 1997, P.L. 280, 40 P.S. §221.4, this Court has exclusive jurisdiction to consider the Application and the relief requested.

v. The Settling Parties have negotiated the Settlement Agreement at arm's length, in good faith, and have entered into the Settlement Agreement without collusion or any actual intent to hinder, delay, or defraud the Companies' estates or any creditor of the Companies, the PTAC Intervenors, or Broadbill.

vi. The Verified Application sets forth the benefits to the Companies' estates, policyholders, creditors, and the public by the settlement, which calls for value and fair consideration in exchange for a cash payment in the amount of Ten Million Dollars ($10,000,000) and all other consideration to be paid or provided to PT AC pursuant to the Settlement Agreement.

vii. The provisions of the Settlement Agreement are fair and reasonable to, and in the best interests of, the estates of the Companies and the policyholders and creditors of the Companies and the public.

viii. The legal and factual bases set forth in the Application establish just cause for the relief granted by this Order Approving Settlement Agreement.

DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date

ix. The cash payment and other consideration exchanged by the Settling Parties pursuant to the Settlement Agreement and the covenants contained therein constitute reasonably equivalent value and fair consideration under Article V, the Pennsylvania Uniform Fraudulent Transfer Act, the United States Bankruptcy Code, and any other substantially similar or relevant laws.

x. The Settling Parties' performance of their obligations under the Settlement Agreement is consistent with the prior orders of the Commonwealth Court, and none of the Settling Parties has acted, or omitted to act, in any way that would cause or permit the Settlement Agreement or the transactions contemplated therein to be avoided under Article V, the Pennsylvania Uniform Fraudulent Transfer Act, the United States Bankruptcy Code, or any other laws substantially similar to the foregoing.

xi. The Settling Parties are entitled to all protections and immunities available under the Pennsylvania Unifonn Fraudulent Transfer Act.

xii. The Settling Parties' request that the Court also order any party filing a notice of appeal of this Order to post a supersedeas bond in the amount of $36 million is denied because the posting of security is not essential to the settlement. The Court finds that $3 6 million is an appropriate amount because it equals 120 percent of the settlement consideration ($10 million) and the projected minimum alternative minimum tax liability ($20 million). However, the Court will not order an appeal bond amount unless and until an appeal of this Order is filed. Having made the foregoing findings and conclusions, it is hereby

ORDERED that:

l. The Application is GRANTED, and the Settlement Agreement attached as Exhibit A to the Application is APPROVED.

2. The terms of the Settlement Agreement are incorporated into this Order. The Settling Parties shall be bound by each of those terms as if they constituted an Order of this Court.

3. This Order shall be binding on the Settling Parties, the Companies' Boards of Directors, and any and all of their respective affiliates, controlled parties, or shareholders who filed, caused to be filed, or on whose behalf or for whose benefit were filed, formal or informal objections or comments to the Second Amended Plan of Rehabilitation, each of their respective officers, directors, agents and representatives, and all policyholders and other creditors, persons, and entities that the Court has jurisdiction to bind with regard to the matters set forth in this Order.

4. Subject to the occurrence of the Effective Date, the Settling Parties are authorized and directed to consummate the Settlement Agreement and to perform all actions as set forth therein, including the making of all disbursements contemplated under the Settlement Agreement.

5. Each of the releases and covenants not to sue set forth in the

DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date

Settlement Agreement are approved.

6. Any obligation under the Settlement Agreement and this Order shall remain fully enforceable notwithstanding the filing of a liquidation petition or the entry of liquidation orders against the Companies. No further order pursuant to Section 536 of Article V, added by the Act of December 14, 1977, P.L. 280, 40 P.S. §221.36, or any other provision of Article V shall be necessary for the Commissioner to make the cash payment as provided in the Settlement Agreement, and no proof of claim by PTAC nor any notice of determination by the Commissioner shall be necessary for issuance of that payment.

7. The cash payment in the amount of Ten Million Dollars ($10,000,000) to be made to PTAC pursuant to the Settlement Agreement shall be a first priority cost and expense of the administration, and shall be entitled to priority level (a) status under Section 544(a) of Article V, added by the Act of December 14, 1979, P.L. 280, as amended, 40 P.S. §221.44(a), including in any liquidation proceeding of the Companies.

8. In the event of the entry of orders of liquidation against the Companies as provided in the Settlement Agreement, any dissolution of PTNA or ANIC, discharge of the Companies' Unfunded Benefit Liability (as defined in the Second Amended Plan) and/or incurrence of cancellation of debt income shall not occur before the later of (i) twenty four (24) months after entry of the respective liquidation orders, or (ii) thirteen (13) months after the IRS' disposition, or the Commissioner's withdrawal, of the requested Private Letter Ruling.

9. Pursuant to Pa. R.A.P. 341(c), the Court expressly finds that immediate appeal (if any) of this Settlement Approval Order would facilitate resolution of the entire case, and therefore enters this approval order as a final judgment with respect to the issues set forth herein.

10. This Court shall retain exclusive jurisdiction to enforce the terms of, hear, and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of the Settlement Agreement and this Order.

September 23, 2016	Order Granting Application for Extension of Time to File			09/23/2016
	Leavitt, Mary Hannah			

Document Name: upon consideration of the Second Request for Extension to Respond to Liquidation Petitions

Comment: filed by Teresa Miller, Insurance Commissioner of Pennsylvania, in her role as Statutory Rehabilitator of Penn Treaty Network America (In Rehabilitation) and American Network Insurance Company (In Rehabilitation), and Intervenors Eugene J. Woznicki and Penn Treaty American Corporation, it is hereby ORDERED that the deadline for Intervenors to respond to the Rehabilitator's July 27, 2016, Verified Petition to Convert Rehabilitation to Liquidation is extended until October 28, 2016, without prejudice to the right of Intervenors or the Rehabilitator to seek a further extension by agreement or Court order.