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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re Penn Treaty Network America Insurance Company in Rehabilitation	:	NO. 1 PENN 2009
In Re: American Network Insurance Company in Rehabilitation	:	NO. 1 ANI 2009

APPELLANTS' JURISDICTIONAL STATEMENT

Appellants, certain agents of Penn Treaty Network America Insurance Company ("PTNA") and American Network Insurance Company ("ANIC"), submit this Jurisdictional Statement pursuant to Pa.R.A.P. 909 and 910.

I. Report of the Opinion Below

This is an appeal from an unreported September 23, 2016 Memorandum Opinion and Order Approving Settlement Agreement and an unreported September 23, 2016 Memorandum

Opinion and Order overruling the objections of the Appellants and others to that settlement agreement.

II. Basis of Jurisdiction

The above-captioned actions are in the Commonwealth Court's original jurisdiction pursuant to Article V of the Insurance Act of 1921, 40 P.S. §221.1 *et seq.* The Order Approving Settlement Agreement references and is based in part upon the Order overruling objections; appellate issues arising from the latter are necessarily merged into the appeal of the former. Official Note to Pa.R.A.P. 341; *K.H. v. J.R.*, 826 A.2d 863, 871 (Pa. 2003). The Order Approving Settlement Agreement is a final, immediately appealable order pursuant to Pa.R.A.P. 341(c). The Supreme Court has jurisdiction over this appeal pursuant to 42 Pa.C.S.A. §723(a) and Pa.R.A.P. 1101(a).

III. Text of the Order in Question

The orders appealed from and the accompanying unreported opinion are attached as Exhibits A and B hereto.

IV. Procedural History

The above-captioned actions are rehabilitation proceedings for PTNA and ANIC commenced in the Commonwealth Court under Article V of the Insurance Act of 1921, 40 P.S. §221.1 *et seq.* The Supreme Court previously resolved an appeal of other orders in the underlying proceedings in In re Penn Treaty Network America, 119 A.3d 313 (Pa. 2015)(per curiam).

Appellants are agents of PTNA and ANIC entitled to receive commissions for policies they sold on behalf of PTNA and ANIC. Appellants are intervenors in the rehabilitation proceedings.

On June 14, 2016, the Rehabilitator and the PTAC Intervenors, comprised of Penn Treaty American Corporation ("PTAC"), the parent company of PTNA and ANIC and various PTAC shareholders, filed a Verified Joint Application for Approval of Settlement Agreement. The settlement agreement provided for a payment of $10 million from the PTNA and ANIC estates to the PTAC Intervenors, who had previously opposed liquidation, in exchange for, among other things, their consent to liquidation of PTNA and ANIC. The settlement agreement also provided for PTAC's cooperation in the Rehabilitator's request for a private letter ruling from the Internal Revenue Service to address certain disputed tax matters but the $10 million payment was not contingent on the success of the private letter ruling request or on the actual recognition of any tax benefits by PTNA or ANIC. The settlement agreement provided that the $10 million payment would be made as an administrative payment pursuant to 40 P.S. §244(a) ("the actual and necessary costs of preserving or recovering assets of the insurer") thereby giving the settlement payment a priority of payment higher than that for payments to policyholders or Appellants.

Appellants and others timely filed objections to the Application for Approval of Settlement Agreement on various bases, including: (1) that the payment allegedly to resolve tax disputes and preserve tax assets was illusory since the payment was not conditioned on the actual success of the private letter ruling request; (2) that the effect, and perhaps real purpose, of the agreement was contrary to statute and to public policy since it used estate assets to buy the consent of the PTAC Intervenors to the liquidation of PTNA and ANIC and provided for payment to the equity owners prior to satisfaction in full of liabilities owed to policyholders and other creditors, contrary to the priority of payments established in Pennsylvania's liquidation

laws; and (3) there was an inadequate record from which the Court could find that the settlement satisfied the statutory requirements for approval.

Following additional briefing, and without holding a hearing or oral argument, on September 23, 2016, the Court issued the memorandum opinions and orders that are the subject of this appeal.

V. Questions Presented

1. Did the Court err in finding that Appellants, intervenors in the rehabilitation and creditors of PTNA and ANIC, lacked standing to object to the settlement?

2. Did the Court err in approving the settlement agreement?

3. Did the Court err in concluding that the settlement agreement was in the best interest of insureds, creditors and the public generally?

4. Did the Court err in overruling the objections to the settlement agreement including the objections that:

    a. There was an inadequate record upon which to conclude that the settlement was in the best interests of insureds, creditors and the public generally;
    b. The proposed standard of review was overly deferential to the Commissioner;
    c. The proposed settlement was contrary to law;
    d. The proposed settlement did not provide for "reasonably equivalent value and fair consideration" under the relevant state laws;
    e. The $10 million settlement payment does not constitute an "administrative expense" under 40 P.S. §221.4 and other relevant law;
    f. The $10 million payment violates the priority of payment classifications of Pennsylvania law; and
    g. The proposed settlement was contrary to public policy?

Respectfully Submitted,

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Counsel for Intervenors 5 Star Companies, LLC, A Best Brokerage Service Inc., Acsia Long Term Care, Inc., American Enterprises Marketing Corporation, American Independent Marketing, American Insurance Planners, Leonard Anderson, Association Member Benefits Advisors LLP, Richard D. Baskerville, James P. Bosley, Richard L. Brown, Louis Brownstone, California Long Term Care Insurance Services, Inc., Linda S. Capierseho, Michael M. Capierseho, Capstone LTC Advisors, Century Senior Services, Cher-Britt Service Company, Mark David Cohn, Cornerstone Senior Services, Dean L. Wilde Agency, Inc., Ken Dehn, William Ebert, Phyllis Ellis, Sheila English, Lori Fjelstad, J. Peter Freed, Stephen D. Forman, G.A. Legg & Associates, Linda A. Gardner, Gardner Group, Michael M. Gerulis, Jr., Global Commission Funding LLC, Goldencare USA, Inc., Danny Gordon, James W. Grigg, IMH Electronics, Inc., James Grigg Consortium, Paul Hamilton, Paul Hauser, Greg Hickman, Barbara Quaife Hopkins, Carl Hoskins, Irving Levit Insurance Management Corp., Robert Isenhower, Jim Sines Insurance Agency, Inc., Michael J. Kahn, David Kitaen, William Laufbahn, Geoffrey A. Legg, Lehmann Wood Johnson, Inc. Judy Levit, Long Term Care Assoc., Inc., LS Associates, LTC Advisors, Linda Gardner, LTC Financial Partners, LLC, LTC Global Group, Long Term Care, LLC, Norman E. Lyon, Randall A. Hargett, Barbara Haselden, Stacy Macdonald, Macdonald Insurance , Medical Insurers Assoc. of VA, Inc., Michael M Gerulis, Jr. Insurance Agency, M.J. Kahn & Associates, Inc., David D. Morgan, Jerry W. Morgan, Steven Moskowitz, National Coverage Agency Financial Services, National Coverage Agency, Inc., Larry Novick, Larry Obermoller, Laurence J. Ochs, Tim O'Loughlin, One Way Financial & Estate Solutions, Inc., John B. Owen, Personal Health Services, Inc., Mario Posteraro, Premier Senior Marketing, LLC.,

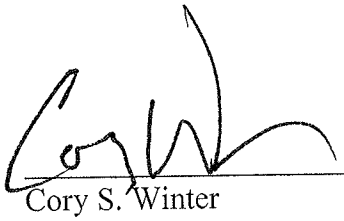
Public Employees Insurance Company Agency, Inc. Elizabeth W. Raring, Robert Raring, Marion Reitmeyer, Robert Reindl, Richard Rosen Insurance, Mel D. Rose, Richard E. Rosen, Linda L. Sandvall, Sarasota Health & Financial Services, Inc., Thomas A. Schueth, Senior Care Consultants, Jim Sines, Craig Smith, Maurice Solie, Specialty Planners, Inc., Ken Story, Matthew R. Sussman, Barbara Taube, The Gjurasic/Story Group, LLC, Ron Triebwasser, United Insurance Group Agency, Inc., Larry Van Boening, Vavak-Reitmeyer & Assoc. Insurance, John W. Wane, Western Asset Protection, Inc., William E. Laufbaum Agency, William L. McAree Insurance Agency, Inc., William Terry Wood , and John Yesbeck.

Dated: October 21, 2016

Certificate of Compliance

I hereby certify that the above Jurisdictional Statement is less than 1000 words, exclusive of the caption and signature line, according to the word processing system used to prepare the statement.

Dated: October 21, 2016



Cory S. Winter

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

Re: Settlement Agreement

BEFORE: HONORABLE MARY HANNAH LEAVITT, President Judge

OPINION NOT REPORTED FILED: September 23, 2016

MEMORANDUM OPINION and ORDER

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)[1] and Intervenor Broadbill Partners, LP (Broadbill),[2] requesting the Court's approval of a Settlement Agreement.[3] The Joint Application has garnered objections from two other intervenors: (1) a group of parties to, or beneficiaries of, agency contracts with the

[1] Mr. Woznicki and PTAC are collectively referred to as the "PTAC Intervenors."

[2] The Rehabilitator, the PTAC Intervenors, and Broadbill are collectively referred to as the "Settling Parties."

[3] The proposed Settlement Agreement is comprised of a Memorandum of Understanding and other definitive agreements among the Settling Parties.

Companies (Agents) and (2) a group of Health Insurers.[4] 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,[5] 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;[6] and (2) participate in seeking a Private Letter Ruling (PLR) from the United States Internal Revenue Service to resolve a potential tax liability being

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[4] 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.

[5] The $10 million payment to PTAC will be classified as a first priority cost and expense of the administration of receivership. *See* Section 544(a) of The Insurance Department Act of 1921, Act of May 17, 1921, P.L. 789, Article V, added by the Act of December 14, 1977, P.L. 280, *as amended*, 40 P.S. §221.44(a).

[6] The consolidated tax group refers to the parties to a Tax Sharing Agreement effective June 6, 2001, among PTAC and its subsidiaries, including PTNA and ANIC. The agreement, which was filed with the Insurance Department, forms the basis of tax payments made by the subsidiaries, if filing a consolidated return with PTAC. Pursuant to the agreement, the subsidiaries "shall make payments to [PTAC], as required, in an amount equal to the tax provision required as if the Subsidiaries were not a member of the controlled group." Joint Memorandum of Law of Broadbill and PTAC, Exhibit 1. The agreement further provides that "[a]t [PTAC]'s discretion, the Subsidiaries may be entitled to calculate and receive credit for any tax benefit or expense resulting from any credits or expenses arising as a result of inclusion in the controlled group, including but not limited to ... the use of parent company net operating losses[.]" *Id.* The Rehabilitator and PTAC Intervenors disagree over the effect of the Tax Sharing Agreement and whether the Rehabilitator is authorized to use the net operating losses without PTAC's consent. Settlement of that disputed tax issue is a significant feature of the Settlement Agreement.

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.[7]

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.

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[7] It is not unusual for a distressed insurance company to acquire the right to use valuable tax attributes through a settlement. For example, in the Reliance Insurance Company liquidation, this Court approved a settlement agreement that allocated tax attributes similarly to the Settlement Agreement in the case *sub judice*. The Reliance case specifically provided for payments from the insurance estate to the parent for using consolidated net operating losses and designated such payments by the statutory liquidator as an administrative priority under Section 544(a) of Article V, 40 P.S. §221.44(a).

§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 information to weigh the competing contentions of the parties; and (4) there is no legal basis for conditioning an appeal on the posting of a $36 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 of Intervention, filed June 19, 2015) at 3. The Rehabilitator withdrew the Second Amended Rehabilitation Plan

by notice filed with the Court on July 27, 2016.[8] 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.[9]

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).

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[8] On July 27, 2016, the Rehabilitator filed Verified Petitions to Convert Rehabilitation to Liquidation. The conversion petitions are a separate and distinct part of this receivership proceeding, subject to specific provisions of Article V governing, *inter alia*, actions by and against the statutory liquidator and the proof of claim process. *See generally* Sections 526-548 of Article V, 40 P.S. §§221.26 - 221.48.

[9] *See* Pa. R.A.P. 3775(c)(2) ("Limited intervention. When the applicant's interest involves a discrete controversy relating to the administration of the insurer's business or estate, the Court may grant the applicant limited intervention to participate as a party in the discrete controversy.").

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 PTAC.[10] 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.

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[10] Health Insurers characterize the payment as "$10 or $15 million." On its face, however, the Memorandum of Understanding provides for a cash payment of only $10 million. The remaining $5 million, if it is paid at all, would be made as a capital contribution to AINIC, a subsidiary of ANIC (not directly to the PTAC Intervenors) in connection with a sale of AINIC that the Settling Parties would "negotiate in good faith." Memorandum of Understanding, ¶ I.H.2. That transaction is contingent on circumstances outside these proceedings.

They believe that the maximum risk is a potential $20 million tax bill.[11] 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 PTAC are parties and whether the Rehabilitator has the authority to use net operating losses without PTAC's consent. 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*

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[11] Health Insurers' $20 million figure represents a 20 percent alternative minimum tax on 10 percent of the approximately $1 billion of reserve recapture taxable income that the estates might recognize in the absence of a PLR. Health Insurers' Revised Objection at 10. However, there is the potential that the $20 million figure could be higher.

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).[12] Health Insurers overlook the substantial potential benefits of the PLR, which would be much more difficult, if not impossible, to achieve without the Settlement Agreement.[13] 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

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[12] Indeed, if the Settlement Agreement is not approved or does not take effect, the Rehabilitator has reserved her right to dispute issues advanced by the PTAC Intervenors.

[13] A PLR cannot be requested without the agreement of PTAC, which is the common parent of the consolidated tax group of which PTNA and ANIC are members. PTAC's cooperation provides a valuable benefit to the Companies and their policyholders and is gained only by virtue of the Settlement Agreement.

[14] By the estimation of PTAC Intervenors and Broadbill, the Settlement Agreement provides PTNA and ANIC with access to up to $1 billion in consolidated net operating losses as well as tax exclusions available to the consolidated tax group through a PLR, without which the Companies could potentially incur more than $280 million in income tax claims and policyholders could suffer negative tax consequences.

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.[15] 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.

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[15] The Court finds no merit to Agents' objection to the $10 million payment to PTAC as a subversion of creditor priorities and a mechanism to "buy the silence" of the equity holders. Health Insurers raise a similar objection. The payment is not made in satisfaction of claims by equity against the estates. Rather, it is consideration for the Rehabilitator obtaining benefits for the estates, policyholders, creditors and the public, *i.e.*, the ability to pursue the PLR and insolvency exception together with access to the consolidated net operating losses. In short, PTAC is being compensated for use of its valuable asset and tax services.

Finally, Agents and Health Insurers object to the Settling Parties' 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 ($10 million) and the projected minimum alternative minimum tax liability on which the parties agree ($20 million). The Court will address any objections to this amount 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 memorandum opinion and order.

MARY HANNAH LEAVITT, President Judge

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

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.

MARY HANNAH LEAVITT, President Judge

Certified from the Record

SEP 23 2016

And Order Exit

Exhibit B

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

MEMORANDUM OPINION AND
ORDER APPROVING SETTLEMENT AGREEMENT

AND NOW, this 23rd day of September, 2016, 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 (PTAC),[1] and Intervenor Broadbill Partners, LP (Broadbill),[2] 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

[1] Mr. Woznicki and PTAC are collectively referred to herein as the "PTAC Intervenors."

[2] The Commissioner, the Intervenors, and Broadbill are collectively referred to herein as the "Settling Parties."

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 PTAC 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.

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 Uniform 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 $36 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:

1. 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 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.

MARY HANNAH LEAVITT, President Judge

Certified from the Record

SEP 23 2016

And Order Exit

PROOF OF SERVICE

I hereby certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing Notice of Appeal upon the following via the methods indicated below:

Via First-Class Mail

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Via First-Class Mail and Electronic Delivery

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Dated: October 21, 2016

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