

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

ORDER

AND NOW, this ____ day of _____ 2015, upon consideration of the Health Insurers' Application for Entry of a Protective Order With Respect To Discovery Sought By Rehabilitator Through Corporate Designee Deposition, and of the submissions of the parties relating thereto, and for good cause shown, it is hereby ORDERED that the Application is GRANTED. It is further ORDERED pursuant to Pa.R.Civ.P. 4012 that:

1. The Rehabilitator shall conduct any discovery concerning the Health Insurers' contentions, including but not limited to Topics 2-6 and 8-13 listed in the Rehabilitator's Notice of Intent to Serve Subpoena to Produce Documents and Things for Discovery Pursuant to Pa. R. Civ. P. 4009.21 served on April 30, 2015 (the "Notice of Intent"), only by contention interrogatory served pursuant to Pa.R.Civ.P. 4005 and not by deposition. Such contention discovery shall be conducted only after the conclusion of

other discovery delineated in the Court's July 30, 2015 Case Management Order.

2. The Rehabilitator shall conduct any discovery concerning the Health Insurers' expert opinions, including, but not limited to, Topics 1-2, 5-13, 17-18, and 27-28 listed in the Notice of Intent, only in accordance with Pa.R.Civ.P. 4003.5 and the July 30 Case Management Order and not by deposition of corporate designee(s).
3. The Health Insurers may designate one or more corporate designees of their own choosing, including designation of the same witness for all Health Insurers, in response to any notice of deposition by the Rehabilitator pursuant to Pa.R.Civ.P. 4007.1, including but not limited to deposition on the topics listed in the Rehabilitator's Notice of Intent.

MARY HANNAH LEAVITT, Judge

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

24 AUG 2015

RECEIVED
CLERK OF COURT
COMMONWEALTH COURT OF PENNSYLVANIA

**HEALTH INSURERS' APPLICATION FOR ENTRY OF A
PROTECTIVE ORDER WITH RESPECT TO DISCOVERY SOUGHT BY
REHABILITATOR THROUGH CORPORATE DESIGNEE DEPOSITION**

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 (collectively, the "Health Insurers"), through their undersigned counsel, respectfully request that this Court enter a protective order pursuant to Pa.R.Civ.P. 4012 in the proposed form of order attached.

The Rehabilitator has notified the Health Insurers of her intent to seek depositions of corporate designees of the Health Insurers in her Notice of Intent to Serve Subpoena to Produce Documents and Things for Discovery Pursuant to Pa.R.Civ.P. 4009.21 served on April 30, 2015 (the "Notice of Intent", attached as

Exhibit A). The Rehabilitator's intended deposition discovery, as clarified in meet and confer discussions between counsel, fails to comply with the Pennsylvania Rules of Civil Procedure in three significant respects. The Health Insurers respectfully request a protective order to address these three categories of issues.

By way of brief explanation, and in lieu of briefing pending telephonic conference with the Court in accordance with Section III of the Case Management Order entered July 30, 2015:

1. Contention Topics.

In the Contention Topics (Topics 2-6 and 8-13), the Rehabilitator seeks to require the Health Insurers to produce corporate designees for deposition to address "[a]ll facts on which you base your contention" with respect to ten different topics (Topics 2, 4-6 and 8-13) as well as their "understanding or opinion" as to the meaning of rehabilitation under Article V (Topic 3). These Contention Topics include the following:

2. All facts on which you base your contention on page 5 of your Formal Comments that the Second Amended Plan "allocates hundreds of millions of dollars that would otherwise go to the guaranty associations to policyholders and others in the name of 'rehabilitation.'"

3. Your understanding or opinion as to what it means for a company to be rehabilitated as permitted under Article V of the Insurance Department Act of 1921.

4. All facts on which you base your contention on page 6 of your Formal Comments that Section I.B of the

Second Amended Plan is “startlingly contrary” “to the varied position asserted by the Pennsylvania Insurance Department in insurance receivership cases.”

5. All facts on which you base your contention on page 8 of your Formal Comments that the Second Amended Plan will result in a “misallocation of assets [that] benefits a relatively small number of policyholders.”

6. All facts on which you base your contention on page 8 of your Formal Comments that the Second Amended Plan “deprives the Guaranty Associations of over a hundred million dollars of assets and treats them less favorably than they would be treated in a liquidation of the Companies.”

8. All facts on which you base the contention on pages 21-22 of your Formal Comments that "Company A has no going concern value to be preserved.

9. All facts on which you base your contention on page 26 of your Formal Comments that “[t]he Re-Priced Premium method provides a sound actuarial basis for allocating assets.”

10. All facts on which you base your contention on page 26 of your Formal Comments that “the proposed asset allocation methodology would send over two dollars of assets to Company A for every dollar of net liability, but only a small fraction of a dollar of assets to Company B for every dollar of net liability.”

11. All facts on which you base your contention on page 27 of your Formal Comments that “[t]he aggregate Gross Premium Reserve for the policies in Company A is the actuarially appropriate measure of expected loss.”

12. All facts on which you base your contention on page 29 of your Formal Comments that “the proposed Risk Classes are not actuarially significant enough to accurately project future losses.”

13. All facts on which you base your contention on page 42 of your Formal Comments “that there is no hope that [the Guaranty Associations] will be paid in full from the liquidation of Company B or the ongoing operations of Company A.”

As many courts have recognized, including two federal courts in Pennsylvania, contention discovery is by its very nature “more expeditiously and more intelligently obtained by written discovery.” *Lance, Inc. v. Ginsburg*, 32 F.R.D. 51, 53 (E.D. Pa. 1962)(denying motion to compel deposition with respect to contentions); *Davis v. Lower Bucks Hosp.*, 56 F.R.D. 21, 22 (E.D. Pa. 1972)(denying motion to compel deposition answers explaining medical and legal theories); *S.E.C. v. Buntrock*, 217 F.R.D. 441, 446 (N.D. Ill. 2003) *aff'd*, No. 02 C 2180, 2004 WL 1470278 (N.D. Ill. June 29, 2004)(relying on *Lance* in granting protective order and motion to quash corporate designee depositions concerning contentions); *Rifkind v. Superior Court*, 22 Cal. App. 4th 1255, 1259, 27 Cal. Rptr. 2d 822 (1994) (legal contention questions were inappropriate topics for deposition because they “require the party interrogated to make a law-to-fact application that is beyond the competence of most lay persons” and are “unfair” because they “call upon the deponent to sort out the factual material in the case according to specific legal contentions, and to do this by memory and on the spot.”)

Moreover, contention interrogatories “should be used sparingly” because of their potential for abuse. Pa.R.C.P. No. 4003.1 Official Note. Under Pennsylvania

law, “contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.” Pa.R.C.P. No. 4005, Explanatory Comment – 2008.

Notably, the Policyholders’ Committee initially served similar requests for deposition of a corporate designee. When the Health Insurers requested the Committee to serve contention interrogatories instead, the Committee agreed and served contention interrogatories. In contrast, the Rehabilitator has refused to withdraw the demand for a corporate designee on the Contention Topics.

2. Expert Topics.

In the Expert Topics (Topics 1-2, 5-13, 17-18 and 27-28), the Rehabilitator seeks to require corporate designees to testify at deposition concerning hypotheticals, data analysis and projections. These Topics include the following:

1. The assertions made in your Formal Comments, including, except as protected by Pa. R. Civ. P. 4003.5, any and all analysis by experts and/or consultants you have retained.

2. All facts on which you base your contention on page 5 of your Formal Comments that the Second Amended Plan “allocates hundreds of millions of dollars that would otherwise go to the guaranty associations to policyholders and others in the name of ‘rehabilitation.’”

5. All facts on which you base your contention on page 8 of your Formal Comments that the Second Amended Plan will result in a “misallocation of assets [that] benefits a relatively small number of policyholders.”

6. All facts on which you base your contention on page 8 of your Formal Comments that the Second Amended Plan “deprives the Guaranty Associations of over a hundred million dollars of assets and treats them less favorably than they would be treated in a liquidation of the Companies.”

7. If you contend that the Net Accumulated Premium Method (NAPM) does not provide a sound actuarial basis for ascertaining those policies that will be “Self Sustaining” under the Second Amended Plan, all facts on which you base that contention.

8. All facts on which you base the contention on pages 21-22 of your Formal Comments that “Company A has no going concern value to be preserved.”

9. All facts on which you base your contention on page 26 of your Formal Comments that “[t]he Re-Priced Premium method provides a sound actuarial basis for allocating assets.”

10. All facts on which you base your contention on page 26 of your Formal Comments that “the proposed asset allocation methodology would send over two dollars of assets to Company A for every dollar of net liability, but only a small fraction of a dollar of assets to Company B for every dollar of net liability.”

11. All facts on which you base your contention on page 27 of your Formal Comments that “[t]he aggregate Gross Premium Reserve for the policies in Company A is the actuarially appropriate measure of expected loss.”

12. All facts on which you base your contention on page 29 of your Formal Comments that “the proposed Risk Classes are not actuarially significant enough to accurately project future losses.”

13. All facts on which you base your contention on page 42 of your Formal Comments “that there is no hope that [the Guaranty Associations] will be paid in full from the

liquidation of Company B or the ongoing operations of Company A.”

17. The net and gross projected liabilities for each of the Companies in a liquidation of PTNA (Company B) under the Second Amended Plan.

18. The net and gross projected liabilities for each of the Companies in a circumstance where both PTNA and ANIC are liquidated.

27. The overall projected savings to guaranty associations as a result of applying the Moody's Adjustment provisions to PTNA policies with inflation riders.

28. The overall projected savings to each of your companies as a result of applying the Moody's Adjustment provisions to PTNA (“Company B” as described in the Second Amended Plan) policies with inflation riders.

Such inquiries concerning hypotheticals, data analysis and projections are the province of the expert witness. This Court has already anticipated the need for the parties, including the Rehabilitator, to conduct expert discovery and has provided for such discovery by agreement of the parties in the July 30 Case Management Order. It is through the Health Insurers’ expert’s report and any subsequent deposition that the Rehabilitator will have the opportunity to gather the knowledge and information she currently seeks by way of the Expert Topics. The timing of expert disclosures and deposition — specifically setting the deadlines for the Health Insurers’ expert disclosures and expert deposition after the conclusion of the later of depositions identified in Section I(B)(i)-(v) of the July 30 Case Management Order or the PricewaterhouseCoopers representative’s deposition —

was the subject of extensive discussion at the recent Discovery Conference with the Court that resulted in the issuance of the July 30 Case Management Order.

3. Designation Of Identity And Number Of Witnesses.

The Rehabilitator contends that it should control the selection of the Health Insurers' corporate designees and require each Health Insurer to designate one or more separate, unique witnesses – in other words, a minimum of nine separate witnesses for the nine Health Insurers. But under well-established Pennsylvania law (which adopts Federal Rule 30(b)(6) with respect to corporate designee depositions), it is the party receiving the notice of deposition who selects the deponent to testify on its behalf. If a witness consents to testify on behalf of all of the Health Insurers, and can testify as to matters known or reasonably available to the Health Insurers, that witness can be designated by all of the Health Insurers.

The party serving the notice of deposition does not have any right to dictate the identity or number of corporate designee(s). *See, e.g., Progress Bulk Carriers v. Am. S.S. Owners Mut. Prot. & Indem. Ass'n, Inc.*, 939 F. Supp. 2d 422, 430 (S.D.N.Y. 2013) *aff'd*, 2 F. Supp. 3d 499 (S.D.N.Y. 2014) (disallowing noticing party to select its deponent under Federal Rule 30(b)(6) and holding that the rule “does not permit the party issuing the notice to select who will testify on the organization’s behalf”); *Booker v. Massachusetts Dep't of Pub. Health*, 246 F.R.D. 387, 389 (D. Mass. 2007) (recognizing a party “may not impose his belief [...] as

to whom to designate” as a corporate designee, and “it is ultimately up to the corporation to designate its [...] witness”). The corporate designee need not have personal knowledge of the matters set out in the deposition notice. *Id.* at 389; *see generally* 8A Fed. Prac. & Proc. Civ. § 2103 (3d ed.) (explaining “[t]here is no obligation to select a person with personal knowledge of the events in question, but there is an obligation to proffer a person who can answer regarding ‘information known or reasonably available to the organization’”). In fact, the corporate designee need not even be associated with the organization so long as that designee can testify as to matters known or reasonably available to the organization. *See* Pa.R.C.P. No. 4007.1(e) (allowing any person “who consents to testify” on behalf of the corporation to be designated); *Great W. Funding, Inc. v. Mendelson*, 158 F.R.D. 339, 345 (E.D. Pa. 1994) *aff’d*, 68 F.3d 456 (3d Cir. 1995)(acknowledging without concern that “one [deponent] was the sole 30(b)(6) corporate designee of two other plaintiffs”).

In accordance with Section III of the Case Management Order of July 30, 2015, the Health Insurers respectfully request a telephonic conference with the Court to address this Application in lieu of briefing.

WHEREFORE, the Health Insurers respectfully request that their Motion for Protective Order be granted and that a Protective Order be entered pursuant to Pa.R.Civ.P. 4012 in the proposed form attached hereto.

Respectfully submitted,

Dated: August 21, 2015

MORGAN, LEWIS & BOCKIUS LLP

By: /s/ John P. Lavelle, Jr.

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Company, United Concordia Insurance
Company and UnitedHealthcare Insurance
Company*

CERTIFICATE OF SERVICE

I certify that on August 21, 2015, I caused a true and correct copy of the foregoing document to be served on the following persons by email at the email addresses indicated below:

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/s/ John P. Lavelle, Jr. _____
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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

**NOTICE OF INTENT TO SERVE SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO P.A. R. CIV. P. 4009.21**

Teresa Miller, Acting Insurance Commissioner of the Commonwealth of Pennsylvania, in her capacity as statutory and court-appointed rehabilitator (the "Rehabilitator") of Penn Treaty Network America Insurance Company and American Network Insurance Company, intends to serve a subpoena identical to that attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made, the subpoena may be served.

Dated: April 30 , 2015

/s/ Carl M. Buchholz

Carl M. Buchholz
Stephen W. Schwab
Jayne A. Risk
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*Attorneys for Teresa Miller, Acting Insurance
Commissioner of Pennsylvania, in her capacity as
statutory rehabilitator of Penn Treaty Network
America Insurance Co. and American Network
Insurance Co.*

CERTIFICATE OF SERVICE

I, Adam D. Brown, certify that on April 30, 2015, the foregoing Notice of Intent to Serve Subpoena to Produce Documents and Things Pursuant to Pa. R. Civ. P. 4009.21 was served via e-mail upon counsel for the Health Insurers, and via e-mail upon the following counsel:

<p>Douglas Y. Christian Benjamin M. Schmidt Ballard Spahr LLP 1735 Market Street, 51st Floor Philadelphia, PA 19103-7300 christiand@ballardspahr.com schmidtB@ballardspahr.com</p> <p>James R. Potts Cozen O'Connor 1900 Market Street – Fourth Floor Philadelphia, PA 19103 JPotts@cozen.com</p> <p>Paul M. Hummer Saul Ewing LLP Centre Square West 1500 Market Street, 38th Floor Philadelphia, PA 19102-2186 PHummer@saul.com</p> <p>Charles T. Richardson Caryn M. Glawe Faegre Baker Daniels 1050 K Street NW, Suite 400 Washington, DC 20001-4448 charlie.richardson@FaegreBD.com caryn.glawc@FaegreBD.com</p>	<p>Elizabeth J. Goldstein Dilworth Paxson, LLP 112 Market Street, Suite 800 Harrisburg, PA 17101 egoldstein@dilworthlaw.com</p> <p>Stephen H. Warren O'Melveny & Myers LLP 400 South Hope Street Los Angeles, CA 90071 swarren@omm.com</p> <p>Harold S. Horwich Benjamin J. Cordiano Morgan Lewis LLP One State Street Hartford, CT 06103-3178 harold.horwich@morganlewis.com benjamin.cordiano@morganlewis.com</p> <p>Thomas A. Leonard Richard P. Limburg Obermayer Rebmann Maxwell & Hippel LLP One Penn Center, 19th Floor 1617 John F. Kennedy Blvd. Philadelphia, PA 19103-1895 thomas.leonard@obermayer.com richard.limburg@obermayer.com</p>
---	--

/s/ Adam D. Brown

Adam D. Brown

No. 1 PEN 2009

1 ANI 2009

In Re: Penn Treaty Network America Insurance
Company in Rehabilitation
In Re: American Network Insurance Company
in Rehabilitation

vs.

COMMONWEALTH COURT
OF PENNSYLVANIA

TO The Health Insurers (as defined in attached Schedule A)

1. You are ordered by the Court to come to DLA Piper LLP (US), One Liberty Place, 1650 Market St.
Suite 4900 at Philadelphia, Pennsylvania 19103 at 9:00 AM.

to testify on behalf of The Health Insurers in the above case, and to remain until
excused.

2. And to bring with you the following: See attached Schedule A

If you fail to attend or to produce the documents or things required by this subpoena, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

Issued by: Adam D. Brown, DLA Piper LLP (US), (215) 656-3300, Pa. Bar No. 205899
(State attorney's name, address, telephone number and identification number)

BY THE COURT,

Date: April 30, 2015

By 
Chief Clerk

Seal of the Court

SCHEDULE A

REQUESTS FOR DOCUMENTS AND THINGS

DEFINITIONS

1. The terms "you" or "your" or "Health Insurers" shall refer to 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, together with each and every other legal entity within their direct or indirect control; their merged or acquired predecessors in interest, if any; their agents, representatives; and any other person(s) or corporation(s) acting in a consulting or advisory capacity or acting on behalf of the foregoing.

2. The term "document" shall include, but is not limited to, any kind of written, typewritten, printed, recorded, computer-produced or graphic material, however produced or reproduced, including brochures, drawings, graphs, photographs, films, videotapes, microfilms, microfiche, notices, memoranda, electronic mail, letters, reports, plans, telegrams and telexes, newspaper articles, advertisements, summaries and/or records of telephone conversations, summaries and/or records of personal conversations, summaries and/or records of meetings and conferences, summaries and/or reports of negotiations or investigations, diaries, questionnaires, commentaries, notebooks, projections, ledger sheets, accounts, bills, invoices, purchase orders, journals, publications, contracts, deposit and withdrawal slips, cancelled checks, records, tapes, transcripts of records and recordings, and business records relating to the subject matter to which each Request refers, and includes, without limitation, originals, copies, drafts, and/or any other writings now in the possession, custody, or control of Health Insurers, their agents, employees,

attorneys and all other persons acting on their behalf. The term "document" also includes "electronically stored information," in accordance with Pennsylvania Rule Civil Procedure 4009.

3. The term "person" shall include, but is not limited to, natural persons, proprietorships, corporations, public corporations, partnerships, firms, groups, associations, organization, or any other entity, whether operated for profit or not for profit.

4. The term "Formal Comments" shall mean the Formal Comments of the Health Insurers to the Proposed Second Amended Plan of Rehabilitation, filed with the Pennsylvania Commonwealth Court on February 13, 2015.

5. The term "Second Amended Plan" shall mean the Rehabilitator's Second Amended Plan of Rehabilitation filed with the Pennsylvania Commonwealth Court on October 8, 2014.

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

1. All expert reports, statements, affidavits, and any other expert material that Health Insurers intend to use, offer, or rely upon at the hearing on the Rehabilitator's Application for Approval of the Second Amended Plan.

2. All other documents Health Insurers intend to use, offer, or rely upon at the hearing on the Rehabilitator's Application for Approval of the Second Amended Plan.

3. All documents on which you rely for your assertion on pages 5-6 of your Formal Comments that the Second Amended Plan "allocates hundreds of millions of dollars that would otherwise go to the Guaranty Associations to policyholders and others in the name of 'rehabilitation.'"

4. All documents on which you rely for your assertion on page 8 of your Formal Comments that the Second Amended Plan will result in a "misallocation of assets [that] benefits a relatively small number of policyholders," including any and all documents reviewed, prepared, or assembled by any experts or consultants that support that assertion.

5. All documents on which you rely for your assertion on page 8 of your Formal Comments that the Second Amended Plan "deprives the Guaranty Associations of over a hundred million dollars of assets and treats them less favorably than they would be treated in a liquidation of the Companies," including any and all documents reviewed, prepared, or assembled by any experts or consultants that support that assertion.

6. All documents on which you rely for your assertion that the Net Accumulated Premium Method (NAPM) used in the Second Amended Plan must be modified before the Second Amended Plan is approved, as set forth on pages 25-26 of your Formal Comments,

including any and all documents reviewed, prepared, or assembled by any experts or consultants that support that assertion.

7. All documents on which you rely for your assertion on page 26 of your Formal Comments that “[t]he Re-Priced Premium method provides a sound actuarial basis for allocating assets . . . ,” including any and all documents reviewed, prepared, or assembled by any experts or consultants that support that assertion.

8. All documents on which you rely for your assertion on page 26 of your Formal Comments that “the proposed asset allocation methodology would send over two dollars of assets to Company A for every dollar of net liability, but only a small fraction of a dollar of assets to Company B for every dollar of net liability,” including any and all documents reviewed, prepared, or assembled by any experts or consultants that support that assertion.

9. All documents on which you rely for your assertion on page 27 of your Formal Comments that “[t]he aggregate Gross Premium Reserve for the policies in Company A is the actuarially appropriate measure of expected loss,” including any and all documents reviewed, prepared, or assembled by any experts or consultants that support that assertion.

10. All documents on which you rely for your assertion on page 29 of your Formal Comments that “the proposed Risk Classes are not actuarially significant enough to accurately project future losses,” including any and all documents reviewed, prepared, or assembled by any experts or consultants that support that assertion.

11. All documents on which you rely for your assertion on page 42 of your Formal Comments “that there is no hope that [the Guaranty Associations] will be paid in full from the liquidation of Company B or the ongoing operations of Company A,” including any and all

documents reviewed, prepared, or assembled by any experts or consultants that support that assertion.

12. All documents relating or referring to any plan or plans of rehabilitation or components thereof, for ANIC and/or PTNA, that you have considered or support for purposes of identifying an alternative to the proposed Second Amended Plan of Rehabilitation.

13. If you have prepared an alternative plan of rehabilitation or components thereof for either or both of the Companies, or propose an alternative to the proposed Second Amended Plan of Rehabilitation, produce a copy of that alternative plan or components, and all documents reflecting or relating to any accounting, actuarial, or other expert or consultant analysis performed on your behalf or at your direction related thereto, and any and all documents reviewed, prepared, or assembled by any experts or consultants in connection with the development of the plan or components thereof.

14. If you intend to offer expert testimony that any of the actuarial opinions or conclusions relied upon by the Rehabilitator and her advisers are incorrect, all documents regarding actuarial analysis and assumptions prepared or relied upon by any expert whose conclusions or opinions you will present at the hearing on the Second Amended Plan of Rehabilitation directly or as the basis for the testimony of another witness.

SCHEDULE B

TOPICS OF DEPOSITION

1. The assertions made in your Formal Comments, including, except as protected by Pa. R. Civ. P. 4003.5, any and all analysis by experts and/or consultants you have retained.

2. All facts on which you base your contention on page 5 of your Formal Comments that the Second Amended Plan “allocates hundreds of millions of dollars that would otherwise go to the guaranty associations to policyholders and others in the name of ‘rehabilitation.’”

3. Your understanding or opinion as to what it means for a company to be rehabilitated as permitted under Article V of the Insurance Department Act of 1921.

4. All facts on which you base your contention on page 6 of your Formal Comments that Section I.B of the Second Amended Plan is “startlingly contrary” “to the varied position asserted by the Pennsylvania Insurance Department in insurance receivership cases.”

5. All facts on which you base your contention on page 8 of your Formal Comments that the Second Amended Plan will result in a “misallocation of assets [that] benefits a relatively small number of policyholders.”

6. All facts on which you base your contention on page 8 of your Formal Comments that the Second Amended Plan “deprives the Guaranty Associations of over a hundred million dollars of assets and treats them less favorably than they would be treated in a liquidation of the Companies.”

7. If you contend that the Net Accumulated Premium Method (NAPM) does not provide a sound actuarial basis for ascertaining those policies that will be “Self Sustaining” under the Second Amended Plan, all facts on which you base that contention.

8. All facts on which you base the contention on pages 21-22 of your Formal Comments that "Company A has no going concern value to be preserved."

9. All facts on which you base your contention on page 26 of your Formal Comments that "[t]he Re-Priced Premium method provides a sound actuarial basis for allocating assets."

10. All facts on which you base your contention on page 26 of your Formal Comments that "the proposed asset allocation methodology would send over two dollars of assets to Company A for every dollar of net liability, but only a small fraction of a dollar of assets to Company B for every dollar of net liability."

11. All facts on which you base your contention on page 27 of your Formal Comments that "[t]he aggregate Gross Premium Reserve for the policies in Company A is the actuarially appropriate measure of expected loss."

12. All facts on which you base your contention on page 29 of your Formal Comments that "the proposed Risk Classes are not actuarially significant enough to accurately project future losses."

13. All facts on which you base your contention on page 42 of your Formal Comments "that there is no hope that [the Guaranty Associations] will be paid in full from the liquidation of Company B or the ongoing operations of Company A."

14. Whether, to your knowledge, "Uncovered Benefits" have been provided to policyholder/claimants in other estates where guaranty association coverage is also provided to the same policyholders/claimants.

15. Whether you have prepared, you support or intend to support, an alternative plan of rehabilitation, or proposed elements or components for a plan, for either or both of the Companies.

16. If you have prepared, or you support or intend to support, an alternative plan of rehabilitation, or any of its elements or components, for either or both of the Companies, whether you believe the proposed alternative to the Second Amended Plan is feasible for achieving rehabilitation.

17. The net and gross projected liabilities for each of the Companies in a liquidation of PTNA (Company B) under the Second Amended Plan.

18. The net and gross projected liabilities for each of the Companies in a circumstance where both PTNA and ANIC are liquidated.

19. All guaranty associations which to your knowledge have decided to apply the "Moody's Adjustment" provisions referenced on page 42 of your Formal Comments (hereinafter "Moody's Adjustment").

20. All guaranty associations which to your knowledge have not yet decided whether they will apply the Moody's Adjustment.

21. All communications with guaranty associations wherein the Moody's Adjustment provision was mentioned.

22. Whether the Moody's Adjustment provisions have ever been applied by a guaranty association to a Long Term Care Policy product.

23. Whether the Moody's Adjustment provisions have ever been applied by a guaranty association based on the provisions of an "inflation rider" in an insurance policy or other product.

24. Whether you believe the Moody's Adjustment provisions should be applied by all guaranty associations when addressing coverage of PTNA or ANIC policies that include "inflation riders."

25. If you do not believe the Moody's Adjustment provisions should be applied by all guaranty associations when addressing coverage of PTNA or ANIC policies that include "inflation riders," the jurisdictions in which you believe the Moody's Adjustment provisions should apply, and in which jurisdictions it should not apply.

26. Whether you have ever been assessed by a guaranty association and objected to the assessment on the basis that the guaranty association failed to apply the Moody's Adjustment where an inflation rider or inflation protection was purchased by a policyholder.

27. The overall projected savings to guaranty associations as a result of applying the Moody's Adjustment provisions to PTNA policies with inflation riders.

28. The overall projected savings to each of your companies as a result of applying the Moody's Adjustment provisions to PTNA ("Company B" as described in the Second Amended Plan) policies with inflation riders.

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August 21, 2015

VIA FEDERAL EXPRESS

Michael F. Krimmel, Chief Clerk
Commonwealth Court of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue
Suite 2100
Harrisburg, PA 17106

24 AUG 2015 11 47

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

Dear Mr. Krimmel:

Enclosed for filing please find the Health Insurers' Application for Entry of a Protective Order with Respect to Discovery Sought by Rehabilitator through Corporate Designee Deposition along with exhibits and a proposed order.

Respectfully,



John P. Lavelle, Jr.

JPL/dmn
Enclosure

cc: All Counsel of Record (w/encl., via e-mail)