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**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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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
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**APPLICATION FOR RELIEF TO PUBLISH OPINION  
RELATED TO SETTLEMENT AGREEMENT**

Teresa D. Miller, Insurance Commissioner of Pennsylvania, in her capacity as Statutory Rehabilitator of Penn Treaty Network America Insurance Company (“PTNA”) and American Network Insurance Company (“ANIC”), hereby requests that the Court re-designate as reported the Memorandum Opinion and Order filed on September 23, 2016 (“Opinion”) approving the Settlement Agreement with the

PTAC Intervenors.<sup>1</sup> That Opinion represents the first instance on which a Pennsylvania court has provided standards for approval of settlement agreements and for standing in insurance receivership proceedings, and is of public interest to the Companies' more than 75,000 policyholders and the insurance industry generally. The significance of the decision warrants re-designation from non-reported to reported status.

### **ARGUMENT**

Pennsylvania Rule of Appellate Procedure 3740 provides that, “[w]ithin 30 days after an opinion has been filed as unreported, any person may file an application to report the opinion.” Pa. R.A.P. 3740. The official note to the Rule as well as § 412 of the Court’s Internal Operating Procedures provide that a decision may be reported when it:

- (1) establishes a new rule of law;
- (2) applies an existing rule of law to facts significantly different than those stated in prior decisions;
- (3) modifies or criticizes an existing rule of law;
- (4) resolves an apparent conflict of authority;

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<sup>1</sup> The Court issued two Memorandum Opinions on September 23, 2016. The first, entered on the docket in 1 PEN 2009 at 1:52 pm, is entitled “Memorandum Opinion and Order Approving Settlement Agreement,” and effectively constitutes an order granting formal approval to the Settlement Agreement and establishing the terms and conditions associated with the approval. The second, entered on the docket in 1 PEN 2009 at 2:04 pm, is entitled “Memorandum Opinion and Order” and sets forth the Court’s reasoning in approving the Settlement Agreement and overruling objections. This Application seeks re-designation to reported status for second Opinion only.

- (5) involves a legal issue of continuing public interest;  
or
- (6) constitutes a significant, non-duplicative contribution to law because it contains: (i) an historical review of the law, (ii) a review of legislative history, [or] (iii) a review of conflicting decisions among the courts of other jurisdictions.

Pa. R.A.P. 3740 official cmt.; *accord* Commw. Ct. I.O.P. § 412(a). Here, the Opinion approving the Settlement Agreement with the PTAC Intervenors should be reported because it applied new rules of law, and because it pertains to a matter of continuing public interest.

The Court’s holding represents the first instance on which a Pennsylvania court specifically addressed the standard for approving a settlement agreement in an insurer receivership proceeding. As the Court noted, the decision thus contributes a Pennsylvania perspective to the existing body of case law from other states addressing the standard of review applicable to settlement approval.<sup>2</sup>

The Opinion also addresses the important issue of who is entitled to be heard and at what stage in various insurer receivership proceedings. In this case, the

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<sup>2</sup> See, e.g., *In re Exec. Life Ins. Co.*, 32 Cal. App. 4th 344, 399 (Cal. Ct. App. 1995) (holding that payment of attorneys’ fees under a settlement agreement may be approved under the same standard as substantive settlement provisions); *accord In re Rehab. of Fin. Guar. Ins. Co.*, No. 401265/12, 2013 WL 4405157, at \*2 (N.Y. Sup. Ct. Aug. 16, 2013) (stating that “the Court must give great weight and deference to the Rehabilitator’s judgment that the Settlement Agreement is in the best interests of [the insurer] and its policyholders considered as a whole”); *In re Liquidation of Int’l Underwriters Ins. Co.*, No. 12892, 1998 WL 928383, at \*6 (Del. Ch. Ct. Dec. 30, 1998) (approving a settlement agreement upon a finding that it was “fair to the [insurer’s] estate and to ... policyholders”).

Court has addressed the right of persons to be heard in this matter. The opinion thus has provided an important ruling of first impression in Pennsylvania on standing, and should be published.

The Settlement Agreement should likewise be reported because it relates to legal issues of continuing public interest in a receivership that impacts policyholders across the United States. The Opinion thus represents a significant legal development within the context of broad public interest.

The Opinion should therefore be re-designated as a reported decision of the Court.

### **CONCLUSION**

For the reasons set forth above, the Commissioner respectfully requests that the Court re-designate the Opinion filed on September 23, 2016 as a reported decision pursuant to Comments (1) and (5) to Pa. R.A.P. 3740 and Commonwealth Court Internal Operating Procedure § 412(a)(1) and (5).

Dated: October 11, 2016

Respectfully submitted,

*/s/ Stephen W. Schwab*

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