

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Penn Treaty Network America : No. 1 PEN 2009
Insurance Company in Liquidation :
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: :
In Re: American Network Insurance : No. 1 ANI 2009
Company in Liquidation :
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**ANSWER OF THE LIQUIDATOR IN OPPOSITION TO THE
APPLICATION OF THE POLICYHOLDERS' COMMITTEE FOR
PERMISSION TO SUE THE PENNSYLVANIA LIFE AND HEALTH
GUARANTY ASSOCIATION AT THE EXPENSE OF THE ESTATES OF
PENN TREATY NETWORK AMERICA AND AMERICAN NETWORK
INSURANCE COMPANIES**

Teresa D. Miller, Insurance Commissioner of Pennsylvania, in her capacity as Statutory Liquidator (the "Liquidator"), hereby answers the Application of the Policyholders' Committee for Permission to Sue the Pennsylvania Life and Health Insurance Guaranty Association at the Expense of the Estates of the Penn Treaty Network America and American Network Insurance Companies (collectively, the "Companies"). While the Liquidator does not oppose the effort of the Policyholders' Committee to challenge the conduct of the Pennsylvania Life and Health Insurance Guaranty Association ("PLHIGA") through litigation, the Liquidator does oppose any request that the Liquidator fund such litigation as well as any order that affirms the continued existence of or need for the policyholders'

committee. In further support of the Liquidator's position, the Liquidator states as follows:

1. Admitted in part and denied in part. This paragraph references a writing that speaks for itself (the portion of the hearing transcript from September 24, 2013), and any characterizations inconsistent therewith are denied. It is admitted that, at the hearing on September 24, 2013, and in the absence of any objections, this Court appointed attorneys Thomas Leonard and Richard Limburg as counsel to a policyholders' committee that would represent the interests of the Companies' policyholders in negotiations concerning a rehabilitation plan (the "Committee").

2. Admitted in part and denied in part. While it is admitted that this Court has not formally dissolved the Committee, it is denied that the Committee still exists, serves any function now that this Court has entered Orders of Liquidation, or requires an affirmative dissolution. The Committee was created for the limited purpose of representing the interests of policyholders in negotiations concerning a rehabilitation plan.

3. It is admitted that the Committee no longer exists or serves any function since this Court entered Orders of Liquidation on March 1, 2017. By way of further answer, the Committee submitted an invoice to the Liquidator in the amount of approximately \$13,000 for work performed during March 2017. In

order to avoid a potentially protracted and expensive dispute concerning the payment of the March invoice and continued role of the Committee, the Liquidator has agreed to pay the invoice as well as an invoice from the Committee's actuarial consultant for work performed in 2016 in return for the Committee's agreement not to seek reimbursement from the Companies' estates for any other expenses incurred during the Liquidations except as may be approved by this Court pursuant to the pending Application.

4. Admitted in part and denied in part. It is admitted that the Committee no longer exists or serves any function since this Court entered Orders of Liquidation on March 1, 2017. The remainder of this paragraph contains conclusions of law to which no response is required, and they are therefore denied. To the extent a response is required, the Commissioner is without information or knowledge sufficient to respond to the allegations contained in this paragraph, specifically as to what the Committee "believes," and they are therefore denied.

5. Admitted in part and denied in part. This paragraph references a writing that speaks for itself (written correspondence from the Liquidator), and any characterizations inconsistent therewith are denied. By way of further answer, it is the Liquidator's understanding that the guaranty associations for the states of Connecticut, Pennsylvania, or Wyoming have taken the position that the so-called Moody's provisions in their state guaranty association statutes apply to the

Companies' long term care insurance policies containing an inflation rider or benefit.

6. Admitted.

7. Admitted in part and denied in part. It is admitted only that the "Moody's adjustment provision" was discussed by certain interested parties during the rehabilitation proceedings. The remaining allegations in this paragraph contain conclusions of law to which no response is required, and they are therefore denied. To the extent a response is required, the Liquidator does not dispute the language of the statute cited in this paragraph.

8. Denied. The Liquidator is without information or knowledge sufficient to respond to the allegations contained in this paragraph, specifically as to what the Committee "believes strongly," and they are therefore denied.

9. Admitted in part and denied in part. This paragraph references a writing that speaks for itself (the Complaint filed by the Committee), and any characterizations inconsistent therewith are denied. It is admitted that the Committee filed a Complaint against PLHIGA in the Court of Common Pleas. Further answering, the Liquidator does not oppose the Committee's effort to challenge the application of the "Moody adjustment provision" through litigation; there is simply no basis for requiring the Companies' estates to fund such litigation. As explained above, while it is admitted that this Court has not formally

dissolved the Committee, it is denied that the Committee still exists, serves any function now that this Court has entered Orders of Liquidation, or requires an affirmative dissolution. The Committee was created for the limited purpose of representing the interests of policyholders in negotiations concerning a rehabilitation plan. Moreover, this Court did not contemplate or order that the Companies' estates would fund such litigation, nor is there any statutory basis for requiring the Companies' estates to fund the litigation, and the Committee does not cite any. The litigation seeks to benefit only a limited group of policyholder, and does not directly involve the administration of the Companies' liquidation, the marshalling of assets, or the handling or defense of claims against the Companies and therefore should not be funded by the Companies.

10. Admitted.

11. Denied. The Liquidator is without information or knowledge sufficient to respond to the allegations contained in this paragraph, specifically as to what the Committee "fears," and they are therefore denied.

12. Denied. The Liquidator is without information or knowledge sufficient to respond to the allegations contained in this paragraph, specifically as to the speculation of what other states' guaranty associations will do in the future, and they are therefore denied.

13. Admitted.

14. Admitted that the Committee accurately cites to case law from this Court.

15. Denied. The Liquidator is without information or knowledge sufficient to respond to the allegations contained in this paragraph, specifically as to what the Committee “believes,” and they are therefore denied.

16. Admitted in part and denied in part. It is admitted that the Committee seeks declaratory relief in the Court of Common Pleas and requests that such litigation be funded by the Companies’ estates. It is denied that the Companies’ estates should be required to fund the Committee’s litigation against PLHIGA or that the Committee provides any basis for doing so.

17. Denied. The Liquidator is without information or knowledge sufficient to respond to the allegations contained in this paragraph, specifically as to what the Committee “believes,” and they are therefore denied.

WHEREFORE, the Liquidator respectfully requests that this Court deny the Application of the Policyholders' Committee to the extent the Application requests that the Court affirm the continued existence of or need for the policyholders' committee or requests that the Companies' estates fund its litigation against PLHIGA. A proposed order is attached.

Dated: June 15, 2017

Respectfully submitted,

/s/ James R. Potts

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ORDER

AND NOW, this ____ day of _____, 2017, upon consideration of the application of the Policyholders Committee for permission to pursue a declaratory judgment action against the Pennsylvania Life and Health Insurance Guaranty Association ("PLHIGA") at the expense of the liquidation estates of Penn Treaty Network America Insurance Company and American Network Insurance Company, and the Answer of the Liquidator thereto, it is hereby ORDERED and DECREED that the application is DENIED to the extent it seeks to affirm the continued existence of or need for the policyholders' committee and to the extent it requests funding from the Liquidation Estates.

Mary Hannah Leavitt, President Judge