

Statement of Interest

1. The Committee has filed a Complaint against PHLIGA in the Philadelphia Court of Common Pleas (the “CCP Action”).¹
2. PLHIGA is an association created pursuant to Article XVII of the Insurance Company Law of 1921, Act of May 17, 1921, P.L. 682, No. 284, added by Act of December 18, 1992, P.L. 1519, No. 178, regarding Life and Health Insurance Guaranty Association, *as amended*, 40 P.S. §§ 991.1701-1718 (the “PLHIGA Act”), as specified in 40 P.S. § 991.1704.
3. The powers and duties of PLHIGA are set forth in 40 P.S. § 991.1706, including the power to sue and be sued as set forth in 40 P.S. § 991.1706(n)(2).
4. The PLHIGA Act requires PLHIGA to provide coverage subject to certain limitations to owners of specified insurance policies and annuity contracts in the event of an order of liquidation with a finding of insolvency as to a member insurer of PLHIGA. *See* 40 P.S. § 991.1703, 1706(c).

¹ Complaint, *Policyholders’ Committee of Penn Treaty Network America Insurance Company and American Network Insurance Company (in liquidation) v. Pennsylvania Life and Health Insurance Guaranty Association*, Case No. 170401442 (Philadelphia Court of Common Pleas, filed April 10, 2017) (the “Complaint”).

5. All insurers licensed to write covered life, health, or annuity policies or contracts in Pennsylvania are members of PLHIGA pursuant to the PLHIGA Act. *See* 40 P.S. § 991.1702 (definition of “Member insurer”).

6. In 2009, the Pennsylvania Insurance Commissioner (the “Commissioner”) initiated rehabilitation proceedings (the “Rehabilitations”) in this Court pursuant to Article V of the Pennsylvania Insurance Department Act of 1921, Act of May. 17, 1921, P.L. 789, No. 285, added by Act of Dec. 14, 1977, P.L. 280, *as amended*, 40 P.S. §§ 221.1 – 221.63 (“Article V”), as to two members of PLHIGA: Penn Treaty Network America Insurance Company (“PTNA”) and American Network Insurance Company (“ANIC”). *See* 40 P.S. §§ 221.14-18.

7. On July 27, 2016, the Commissioner filed petitions in this Court requesting with respect to PTNA and ANIC orders of liquidation with findings of insolvency pursuant to 40 P.S. § 221.20.

8. On March 1, 2017 this Court entered orders of liquidation with findings of insolvency against insurers PTNA and ANIC (the “Liquidation Orders”). *See* Mar. 1, 2017 Order of Liquidation, *In re: Penn Treaty Network America Insurance Company*, No. 1 PEN 2009 (“*In re: Penn Treaty*”), and Mar. 1, 2017 Order of Liquidation, *In re: American Network Insurance Company*, No. 1 ANI 2009 (“*In re: ANIC*”).

9. The Liquidation Orders triggered PLHIGA's obligation under the PLHIGA Act to provide coverage to PTNA and ANIC policyholders subject to the terms of the PLHIGA Act. *See* 40 P.S. §§ 991.1703; 991.1706(c).

10. The PLHIGA Act provides that PLHIGA "ha[s] standing to appear before any court in this Commonwealth with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this article." 40 P.S. §§ 991.1706.

11. PLHIGA has substantial obligations to provide coverage to PTNA and ANIC policyholders. 40 P.S. §§ 991.1706(c). The assets of the estates of PTNA and ANIC (the "Estates") are insufficient to repay PLHIGA in full, and PLHIGA has an interest in preventing improper depletion of assets of the Estates.

12. Therefore, PLHIGA has a direct and substantial interest in the Committee's Application.

Purposes for Which the Applicant Seeks Limited Intervention

13. PLHIGA seeks limited intervention in this matter for the purpose of opposing the Committee's Application.

14. Should the Court grant PLHIGA's request for limited intervention, a copy of the Answer and Response to be filed for this purpose are attached hereto as Exhibits A and B, respectively, pursuant to Pa.R.A.P. 3775(d).

15. During the Rehabilitations, this Court established a policyholders' committee to represent the interests of policyholders in presenting formal comments to the proposed Rehabilitation Plan. *See* June 5, 2013 Case Management Order and Notice attached thereto as its Exhibit A, *In re: Penn Treaty and In re: ANIC*, 1 PEN 2009 and 1 ANI 2009, attached as Exhibit 1 to Exhibit A, Notice at 4.

16. On September 24, 2013, the Commonwealth Court appointed the Policyholders' Committee to represent the interests of the policyholders in the Rehabilitations, and provided for the "payment of legal expenses incurred on behalf of the Committee". *See* Transcript of Proceedings Pretrial Conference (Sept. 24, 2013) at 48-56, *In re: Penn Treaty and In re: ANIC*, 1 PEN 2009 and 1 ANI 2009, excerpts attached as Exhibit 2 to Exhibit A.

17. After this Court entered the Liquidation Orders, on April 10, 2017 the Committee filed the Complaint initiating the CCP Action. The Complaint addresses claims of policyholders against PLHIGA relating to PLHIGA Act limitations on coverage.

18. The Committee was appointed to address policyholder perspectives to this Court in the Rehabilitations.

19. The Committee's CCP Action does not involve claims by or against the Estates, and does not directly involve the administration of the PTNA and

ANIC liquidation, the marshalling of assets, or the handling or defense of claims against PTNA and ANIC.

20. PLHIGA understands that the Liquidator has taken the position that the Committee no longer exists.

21. The Committee is not a legal entity with capacity to sue on behalf of itself or others.

22. The Court should deny the Policyholder' Application, and order the Committee to discontinue the CCP Action and return any Estate funds used in pursuit of that action.

WHEREFORE, the Applicant PLHIGA respectfully requests that this Court grant its application for limited intervention pursuant to Pa.R.A.P. 3775(c)(2) and deem as filed the answer and response attached hereto as Exhibit A and Exhibit B opposing the Committee's Application to sue PLHIGA at the expense of the PTNA and ANIC Estates.

Respectfully submitted,

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Insurance Guaranty Association*

Dated: June 28, 2017

VERIFICATION OF JOSEPH J. HORVATH

I, Joseph J. Horvath, hereby verify that the statements made in the foregoing Application for Limited Intervention and Answer by Pennsylvania Life and Health Insurance Guaranty Association in Opposition to the Application of the Policyholders' Committee for Permission to Sue PLHIGA at the Expense of the Estates of the Penn Treaty Network America and American Network Insurance Companies, are true and correct to the best of my knowledge and that these statements are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Dated: June 28, 2017

A handwritten signature in blue ink, appearing to read "Joseph J. Horvath", is written over a horizontal line.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Penn Treaty Network America
Insurance Company in Liquidation,

and

In Re: American Network Insurance
Company in Liquidation

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**ANSWER BY PENNSYLVANIA LIFE AND HEALTH INSURANCE
GUARANTY ASSOCIATION AS A LIMITED INTERVENOR IN
OPPOSITION TO THE APPLICATION OF THE POLICYHOLDERS'
COMMITTEE FOR PERMISSION TO SUE PLHIGA AT THE EXPENSE
OF THE ESTATES**

Pennsylvania Life and Health Insurance Guaranty Association (“PLHIGA”), as a limited intervenor pursuant to Pa.R.A.P. 3775(c)(2), respectfully submits this Answer in Opposition to the Application of the Policyholders’ Committee (the “Committee”) for Permission to Sue PLHIGA at the Expense of the Estates of the Penn Treaty Network America and American Network Insurance Companies (“Committee’s Application”) pursuant to Pa.R.A.P. 3775(d) and 3776, together with a Response in Opposition to the Policyholder’s Application, which explains PLHIGA’s objections to using funds of the Estates of Penn Treaty Network America Life Insurance Company (“PTNA”) and American Network Insurance

Company (“ANIC”) to pursue an action in Philadelphia Court of Common Pleas (the “CCP Action”).¹

PLHIGA, as a limited intervenor, answers the Committee’s Application as follows:

1. Admitted in part and denied in part. PLHIGA admits that the Committee was appointed by this Court in September 2013 during the rehabilitation proceedings for PTNA and ANIC. 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.

2. Admitted in part and denied in part. It is admitted that this Court has not entered an order expressly stating that the Committee has been dissolved, but it is denied that the Committee exists or has any legal capacity to sue. The Committee was created for the limited purpose of representing the interests of policyholders in negotiations concerning a rehabilitation plan. The Proposed Second Amended Plan of Rehabilitation was withdrawn on July 27, 2016, the date on which the Liquidator filed petitions to convert the rehabilitation proceedings to

¹ *Policyholders’ Committee of Penn Treaty Network America Insurance Company and American Network Insurance Company (in liquidation) v. Pennsylvania Life and Health Insurance Guaranty Association*, Case No. 170401442 (Philadelphia Court of Common Pleas. filed April 10, 2017).

liquidation proceedings. The limited purpose for which the Committee was created no longer exists.

3. Admitted in part, denied as stated. It is admitted that the Liquidator's belief as stated in its Response to the Policyholder's Application is that the Committee no longer exists or serves any function since the Court entered orders of Liquidation on March 1, 2017, and PLHIGA denies any further knowledge of the Liquidator's belief.

4. Denied. This paragraph contains conclusions of law to which no response is required, and they are therefore denied. By way of further answer, this Court had provided an opportunity for the creation of a policyholders' committee "to present ... Formal Comments and to represent their [policyholder] interests in the hearing on the proposed Plan of Rehabilitation." *See* June 5, 2013 Case Management Order and Notice attached thereto as its Exhibit A, *In re: Penn Treaty Network America Life Insurance Company*, 1 PEN 2009 ("*In re: Penn Treaty*") and *In re: American Network Insurance Company* and 1 ANI 2009 ("*In re: ANIC*"), attached hereto as Exhibit 1, Notice at 4; *see also* Transcript of Proceedings Pretrial Conference (Sept. 24, 2013) at 49-55, *In re: Penn Treaty* and *In re: ANIC*, 1 PEN 2009 and 1 ANI 2009, excerpts attached hereto as Exhibit 2. The Committee was formed for a limited purpose relating to the rehabilitation.

5. Admitted in part, denied in part. This paragraph references a writing that speaks for itself (a written correspondence from the Liquidator), and any characterizations inconsistent therewith are denied. PLHIGA admits that its coverage obligations regarding policy benefits, including inflation benefit riders, are subject to limitations on coverage as provided in Article XVII of the Insurance Company Law of 1921, Act of May 17, 1921, P.L. 682, No. 284, added by Act of December 18, 1992, P.L. 1519, No. 178, regarding Life and Health Insurance Guaranty Association, *as amended*, 40 P.S. §§ 991.1701-1718 (the “PLHIGA Act”).

6. Admitted in part; denied in part. It is admitted that the provisions of 40 P.S. § 991.1703(b)(3)(iii) limit coverage available for portions of policies, including inflation benefit riders, to the extent that they are based on rates of interest in excess of those specified in that statutory section, and that PLHIGA intends to apply the statute in accordance with its provisions. Any other allegations of paragraph 6 are denied.

7. Admitted in part; denied in part. PLHIGA understands that the “Moody’s adjustment provision” may have been discussed in confidential or other settlement discussions by certain interested parties during the rehabilitation proceedings; but denies that the “Moody’s adjustment provision” is an issue before this Court. The statute speaks for itself and all characterizations are denied. The

remaining allegations in this paragraph contain conclusions of law to which no response is required, and they are therefore denied.

8. Denied. The entirety of this paragraph is denied. The legal conclusion stated as the Committee's belief is a conclusion of law, as to which no response is required and is denied. To the extent a response is required, PLHIGA is without knowledge or information sufficient to respond to any allegations as to what the Committee believes, and those allegations are accordingly deemed denied.

9. Admitted in part and denied in part. This paragraph references a writing that speaks for itself (the Complaint), and any characterizations inconsistent therewith are denied. PLHIGA is without information or knowledge sufficient to respond to the allegations concerning whether the Sherriff of Delaware County had provided the Committee with notice of service of the Complaint. By way of further answer, the Committee has agreed that a response to the Complaint is not required until after this Court's resolution of the instant Committee's Application.

10. Admitted in part and denied in part. PLHIGA has no information or knowledge concerning whether the Liquidator has taken legal action against PLHIGA regarding 40 P.S. § 991.1703(b)(3)(iii), and admits it is not aware of any such legal action. PLHIGA is without information or knowledge sufficient to respond to the allegations concerning whether the Liquidator intends to fund the

Committee's CCP Action. PLHIGA denies the Committee's characterization of PLHIGA's conduct and any other allegations of paragraph 10.

11. Denied. PLHIGA denies any allegation that it is violating any contractual rights. PLHIGA is without information or knowledge sufficient to respond to any allegations concerning the Committee's fears. The remaining allegations in this paragraph contain conclusions of law to which no response is required, and they are therefore denied.

12. Denied. PLHIGA is without information or knowledge sufficient to respond to the allegations concerning the intentions of other guaranty associations and they are therefore denied.

13. Admitted in part, denied in part. Proceedings under Article V of the Pennsylvania Insurance Department Act of 1921, Act of May. 17, 1921, P.L. 789, No. 285, added by Act of Dec. 14, 1977, P.L. 280, as amended, 40 P.S. §§ 221.1 – 221.63, are subject to statutory standards and equitable principles.

14. Admitted in part; denied in part. The allegations in this paragraph contain conclusions of law to which no response is required, and they are therefore denied. PLHIGA admits that the cited reporters contain the quoted language, but opinions cited speak for themselves and any characterizations are denied.

15. Denied. PLHIGA lacks information or knowledge regarding what the Committee believes and the allegations are accordingly denied. PLHIGA further

denies all characterization of PLHIGA's conduct and any remaining allegations of paragraph 15. By way of further answer, the Committee was created for the limited purpose of representing the interests of policyholders in negotiations concerning a rehabilitation plan. The CCP Action does not directly involve the administration of the PTNA and ANIC liquidation, the marshalling of assets of the estates of PTNA and ANIC (the "Estates"), or the handling or defense of claims against PTNA and ANIC, and should not be funded at the expense of PTNA and ANIC Estate assets.

16. Admitted in part and denied in part. It is admitted that the Committee has commenced the CCP Action against PLHIGA. It is denied that the PTNA and ANIC Estates should be used to fund the Committee's CCP Action against PLHIGA. It is further denied that the Committee was created to pursue third party litigation or that that is an appropriate function of any policyholder committee appointed by this Court.

17. Denied. The allegations in this paragraph contain conclusions of law to which no response is required, and they are therefore denied.

WHEREFORE, limited intervenor PLHIGA respectfully requests that this Court deny the Committee's Application, direct the Committee to file a Praecipe to Settle, Discontinue and End the CCP Action with the Philadelphia Court of Common Pleas, and require that the Committee return to the Estates any PTNA

and ANIC Estate assets to the extent they were expended on funding the CCP
Action.

Respectfully submitted,

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Dated: June 28, 2017