

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOEL ARIO,  
INSURANCE COMMISSIONER OF THE  
COMMONWEALTH OF PENNSYLVANIA,  
Plaintiff,

v.

PENN TREATY NETWORK AMERICA  
INSURANCE COMPANY  
Defendant.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

No. 5 M.D. 2009

**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2009, upon consideration of the Motion for Extension of Briefing Schedule filed by National Health Administrators, Inc. and the opposition thereto filed by the Rehabilitator, it is hereby **ORDERED** that said Motion for Extension is **DENIED**. All memoranda of law in response to the Rehabilitator's Application to Suspend Commissions and the Rehabilitator's Supplemental Memorandum of Law in support of said Application shall be filed on or before August 14, 2009 in accordance with the Court's Order of July 2, 2009.

---

Mary Hannah Leavitt, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOEL ARIO, :  
INSURANCE COMMISSIONER OF THE :  
COMMONWEALTH OF PENNSYLVANIA, :  
Plaintiff, :  
v. : No. 5 M.D. 2009  
PENN TREATY NETWORK AMERICA :  
INSURANCE COMPANY :  
Defendant. :

**OPPOSITION OF THE REHABILITATOR TO  
NHA’S MOTION FOR AN EXTENSION OF TIME**

The Statutory Rehabilitator of Penn Treaty Network America Insurance Company (“PTNA”) hereby opposes the Motion of National Health Administrators, Inc. (“NHA”) for an Extension of the Briefing Schedule and responds to NHA’s allegations as follows:

1. It is admitted that NHA has an agency agreement with PTNA under which it receives commissions from PTNA.
  
2. It is admitted that NHA was served with a Notice of the Rehabilitator’s Application to Suspend Commissions on June 12, 2009.
  
3. Denied. The allegations of paragraph 3 are legal conclusions to which no response is required. By way of further answer, it is denied NHA has a property interest in the commissions. Premiums collected by PTNA are property of PTNA and are not property of NHA. To the extent that NHA has any rights to further commissions, they are contractual claims of a general creditor of PTNA. Foster v. Health Market, Inc., 604 A.2d 1198, 1203 (Pa. Cmwlth. 1992); Holmes v. Wakelin, 48 Pa. Super. 643 (1912). Moreover, although the Rehabilitator is not seeking such relief in this Application, NHA’s claims to further commissions are terminable by the Rehabilitator as a matter of law. Liberty National Insurance Co. v. Reinsurance Agency,

Inc., 307 F.2d 164, 167 (9<sup>th</sup> Cir. 1962)(“Agents do not have a vested interest in future insurance premiums against insolvency receivers or against rehabilitators”); D.R. Mertens, Inc. v. State Department of Insurance, 478 So. 2d 1132 (Fla. App. 1985).

4. Denied. The allegations of paragraph 4 are legal conclusions to which no response is required. By way of further answer, it is denied that the Rehabilitator’s Application deprives NHA of any property rights. The Rehabilitator does not seek termination or adjudication of any rights, only suspension of payment. Temporarily suspending payment to general creditors in a receivership to prevent them from receiving favored treatment over other claimants is not a deprivation of constitutional rights and does not violate the Due Process Clause. Kuehner v. Irving Trust Co., 299 U.S. 445, 451-52 (1937); In re Purdy, 16 B.R. 860, 868-69 (N.D. Ga. 1981). Moreover, NHA has been given notice and is being given any opportunity to be heard.

5. The Rehabilitator is without knowledge or information as to when NHA retained its counsel. It is denied that any final determinations or final rulings as to PTNA’s financial condition need to be made to grant the interim suspension of payment sought by the Rehabilitator’s Application.

6. It is admitted only that NHA on July 23, 2009 filed a Motion to Intervene. It is denied that NHA needs or is entitled to discovery to respond to the Rehabilitator’s Application. It is further denied that NHA needs additional time to respond to the Application.

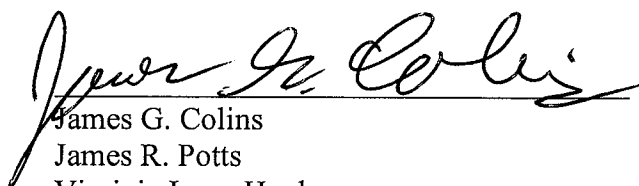
7. It is admitted that NHA’s deadline for submitting a memorandum of law in opposition to the Application is August 14, 2009.

8. Denied. The August 14, 2009 deadline gives NHA ample time to brief the legal issues of whether suspension of commission payments is proper. NHA does not have a right to discovery and delay while PTNA's assets are being depleted at a rate of almost \$2 million per month. The Rehabilitator's Application does not seek an adjudication terminating rights, only interim delay of payments. NHA has already been accorded greater opportunity to be heard than is afforded to creditors in other insurance rehabilitations, where payment to general creditors has been stayed without hearing from the inception of the rehabilitation. See, e.g., Koken v. Legion Insurance Co., 183 M.D. 2002 at 8 ¶¶ 21-22 (Pa. Cmwlth. March 28, 2002).

9. It is denied that further delay is appropriate. If NHA wishes to contest the seriousness of PTNA's financial problems, it should do so after payments are suspended. No permanent harm would result from acting on the Application at this time. If NHA were to later show that PTNA's resources are sufficient to pay general creditors, the suspended commissions could be paid retroactively. In contrast, the harm from delay cannot be undone. If PTNA's estate continues to be depleted at the rate of almost \$2 million per month for an additional four months, as NHA seeks, and PTNA's funds are insufficient to cover policyholders, it is unlikely as a practical matter that the Rehabilitator will be able to get back most of the erroneously paid commissions. Further delay, moreover, may force premature liquidation of PTNA and foreclose rehabilitation possibilities by making liquidation necessary to prevent continued depletion of resources needed to pay policyholders.

WHEREFORE, the Statutory Rehabilitator of Penn Treaty Network America Insurance Company respectfully requests that this Court deny objector NHA's Motion for Extension of Time.

Respectfully submitted,



James G. Colins  
James R. Potts  
Virginia Lynn Hogben  
Attorney I.D. Nos. 10089, 73704, 32378  
COZEN O'CONNOR  
1900 Market Street  
Philadelphia, PA 19103  
(215) 665-2000

Counsel for Plaintiff,  
JOEL ARIO, Insurance Commissioner of the  
Commonwealth of Pennsylvania and Rehabilitator  
of PENN TREATY NETWORK AMERICA  
INSURANCE COMPANY

Dated: July 30, 2009

**CERTIFICATE OF SERVICE**

I, Virginia Lynn Hogben, hereby certify that on this date I served Notice of Filing of the foregoing Opposition of the Rehabilitator to NHA's Motion for an Extension of Time on all parties listed on the Master Service List by electronic mail or facsimile, or by U.S. Mail where no electronic mail address or facsimile number was available and that I served the foregoing Opposition of the Rehabilitator to NHA's Motion for an Extension of Time on the following counsel for objectors and intervenors by U.S. Mail First-Class:

Michael R. Kelly, Esquire  
Charles T. Young, Esquire  
McNees Wallace & Nurck LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166

Counsel for Objector National Health Administrators, Inc.

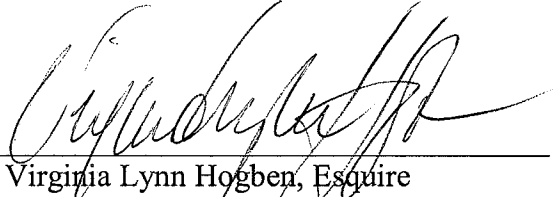
Paul M. Hummer, Esquire  
James S. Gkonos, Esquire  
Saul Ewing LLP  
Centre Square West, 38<sup>th</sup> Floor  
1500 Market Street  
Philadelphia, PA 19102

Constance B. Foster, Esquire  
Saul Ewing LLP  
Centre Square West  
Penn National Insurance Plaza  
2 North Second Street, 7<sup>th</sup> Floor  
Harrisburg, PA 17101-1619

Counsel for Intervenor-Objectors Affinion Group, et al.

Michael J. Glasheen, Esquire  
McCarter & English, LLP  
Mellon Bank Center  
1735 Market Street, Suite 700  
Philadelphia, PA 19103

Counsel for Objector Pennsylvania Life Insurance Company



---

Virginia Lynn Hogben, Esquire  
COZEN O'CONNOR  
Attorney I.D. No: 32378  
1900 Market Street  
The Atrium – Fourth Floor  
Philadelphia, PA 19103  
(215) 665-2000

Dated: July 30, 2009

PHILADELPHIA\5236402\1 230508.000