

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 :

ORDER

AND NOW, this 2nd day of July, 2009, upon consideration of the Application of the Rehabilitator of Penn Treaty Network America Insurance Company for Approval of a Suspension of the Payment of Commissions to Insurance Agents, it is hereby ORDERED as follows:

1. The Rehabilitator shall file a memorandum of law on or before July 24, 2009, that addresses the following points:

(a) Identify the states in which Penn Treaty policyholders have guaranty fund coverage available and the maximum amount of coverage available from that fund; identify the states in which Penn Treaty policyholders have no guaranty fund coverage available; and present an exhibit listing the state-by-state location of PennTreaty policyholders as of December 31, 2008, or as of the most recent date for which that information is available;

(b) Identify case law precedent from Pennsylvania or other jurisdictions that have adopted a version of the NAIC Model Supervision, Rehabilitation and Liquidation Act, where courts have specifically ordered the

suspension of payment of agents' commissions in advance of filing a rehabilitation plan that addresses the claims of all creditors of an insolvent insurance company;

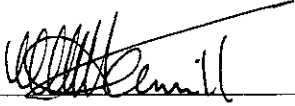
(c) Identify case law precedent from Pennsylvania or other jurisdictions that have specifically ordered the suspension of payments to an insolvent insurer's class of creditors, other than agents, prior to the filing of a rehabilitation plan; and

(d) Identify case law precedent under the U.S. Bankruptcy Act of 1938¹ where the courts have authorized a suspension of payments to one class of creditors in advance of the filing and approval of a Chapter 11 reorganization that addressed the claims of all creditors; and

(e) Explain the significance to the Rehabilitator's Application of this Court's holding in *Pennsylvania Association of Life Underwriters v. Foster*, 645 A.2d 907 (Pa. Cmwlth. 1994), which held that earned agents' commissions are not assets of the insolvent insurer estate.

2. Any interested party that has entered its appearance may file a responsive memorandum of law that responds to the Rehabilitator's memorandum of law filed on June 3, 2009, and to the Rehabilitator's memorandum of law required by this Order, on or before August 14, 2009.

3. Requests for a change in this briefing schedule shall be submitted on or before July 17, 2009.



MARY HANNAH LEAVITT, Judge

¹ See, e.g., *Koken v. Legion Insurance Company*, 900 A.2d 418, 423 n.12 (Pa. Cmwlth. 2006).