

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Penn Treaty Network America :
Insurance Company in Rehabilitation : 1 PEN 2009
:
:
In Re: American Network :
Insurance Company in Rehabilitation : 1 ANI 2009

**MEMORANDUM OPINION AND
ORDER APPROVING SETTLEMENT AGREEMENT**

AND NOW, this 23rd day of September, 2016, upon consideration of the Verified Joint Application for Relief (Application) filed by Teresa D. Miller, the Insurance Commissioner of the Commonwealth of Pennsylvania (Commissioner) in her capacity as Statutory Rehabilitator of Penn Treaty Network America Insurance Company (PTNA) and American Network Insurance Company (ANIC) (collectively, Companies), Intervenors Eugene J. Woznicki and Penn Treaty American Corporation (PTAC),¹ and Intervenor Broadbill Partners, LP (Broadbill),² requesting the entry of an order, pursuant to Rules 123 and 3776 of the Pennsylvania Rules of Appellate Procedure, approving that certain Memorandum of Understanding dated June 14, 2016, and any Definitive Agreement(s) entered pursuant thereto (collectively, Settlement Agreement), and upon consideration of all of the proceedings before the Court and the record of this receivership proceeding, and after due deliberation and sufficient cause appearing

¹ Mr. Woznicki and PTAC are collectively referred to herein as the "PTAC Intervenors."

² The Commissioner, the Intervenors, and Broadbill are collectively referred to herein as the "Settling Parties."

in support of approval of the Application, the Court finds and concludes as follows:

i. Notice of the Application has been provided to the persons identified in the Certificate of Service attached thereto. That notice satisfies the requirements of due process, and no other or further notice need be provided.

ii. Objections to the Settlement Agreement filed by intervenor Agents and Health Insurers were overruled in a memorandum opinion and order filed contemporaneously with this memorandum opinion and order.

iii. In accordance with 15 U.S.C. §1012, this matter is governed by Article V of The Insurance Department Act of 1921, Act of May 17, 1921, P.L. 789, art. V, *as amended*, 40 P.S. §§ 221.1 to 221.63 (Article V), and by Pennsylvania law.

iv. Under Section 504 of Article V, added by the Act of December 14, 1997, P.L. 280, 40 P.S. §221.4, this Court has exclusive jurisdiction to consider the Application and the relief requested.

v. The Settling Parties have negotiated the Settlement Agreement at arm's length, in good faith, and have entered into the Settlement Agreement without collusion or any actual intent to hinder, delay, or defraud the Companies' estates or any creditor of the Companies, the PTAC Intervenors, or Broadbill.

vi. The Verified Application sets forth the benefits to the Companies' estates, policyholders, creditors, and the public by the settlement, which calls for value and fair consideration in exchange for a cash payment in the amount of Ten Million Dollars (\$10,000,000) and all other consideration to be paid or provided to PTAC pursuant to the Settlement Agreement.

vii. The provisions of the Settlement Agreement are fair and reasonable to, and in the best interests of, the estates of the Companies and the policyholders and creditors of the Companies and the public.

viii. The legal and factual bases set forth in the Application establish just cause for the relief granted by this Order Approving Settlement Agreement.

ix. The cash payment and other consideration exchanged by the Settling Parties pursuant to the Settlement Agreement and the covenants contained therein constitute reasonably equivalent value and fair consideration under Article V, the Pennsylvania Uniform Fraudulent Transfer Act, the United States Bankruptcy Code, and any other substantially similar or relevant laws.

x. The Settling Parties' performance of their obligations under the Settlement Agreement is consistent with the prior orders of the Commonwealth Court, and none of the Settling Parties has acted, or omitted to act, in any way that would cause or permit the Settlement Agreement or the transactions contemplated therein to be avoided under Article V, the Pennsylvania Uniform Fraudulent Transfer Act, the United States Bankruptcy Code, or any other laws substantially similar to the foregoing.

xi. The Settling Parties are entitled to all protections and immunities available under the Pennsylvania Uniform Fraudulent Transfer Act.

xii. The Settling Parties' request that the Court also order any party filing a notice of appeal of this Order to post a supersedeas bond in the amount of \$36 million is denied because the posting of security is not essential to the settlement. The Court finds that \$36 million is an appropriate amount because it equals 120 percent of the settlement consideration (\$10 million) and the projected

minimum alternative minimum tax liability (\$20 million). However, the Court will not order an appeal bond amount unless and until an appeal of this Order is filed.

Having made the foregoing findings and conclusions, it is hereby ORDERED that:

1. The Application is GRANTED, and the Settlement Agreement attached as Exhibit A to the Application is APPROVED.

2. The terms of the Settlement Agreement are incorporated into this Order. The Settling Parties shall be bound by each of those terms as if they constituted an Order of this Court.

3. This Order shall be binding on the Settling Parties, the Companies' Boards of Directors, and any and all of their respective affiliates, controlled parties, or shareholders who filed, caused to be filed, or on whose behalf or for whose benefit were filed, formal or informal objections or comments to the Second Amended Plan of Rehabilitation, each of their respective officers, directors, agents and representatives, and all policyholders and other creditors, persons, and entities that the Court has jurisdiction to bind with regard to the matters set forth in this Order.

4. Subject to the occurrence of the Effective Date, the Settling Parties are authorized and directed to consummate the Settlement Agreement and to perform all actions as set forth therein, including the making of all disbursements contemplated under the Settlement Agreement.

5. Each of the releases and covenants not to sue set forth in the Settlement Agreement are approved.

6. Any obligation under the Settlement Agreement and this Order shall remain fully enforceable notwithstanding the filing of a liquidation petition or

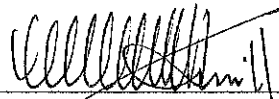
the entry of liquidation orders against the Companies. No further order pursuant to Section 536 of Article V, added by the Act of December 14, 1977, P.L. 280, 40 P.S. §221.36, or any other provision of Article V shall be necessary for the Commissioner to make the cash payment as provided in the Settlement Agreement, and no proof of claim by PTAC nor any notice of determination by the Commissioner shall be necessary for issuance of that payment.

7. The cash payment in the amount of Ten Million Dollars (\$10,000,000) to be made to PTAC pursuant to the Settlement Agreement shall be a first priority cost and expense of the administration, and shall be entitled to priority level (a) status under Section 544(a) of Article V, added by the Act of December 14, 1979, P.L. 280, *as amended*, 40 P.S. §221.44(a), including in any liquidation proceeding of the Companies.

8. In the event of the entry of orders of liquidation against the Companies as provided in the Settlement Agreement, any dissolution of PTNA or ANIC, discharge of the Companies' Unfunded Benefit Liability (as defined in the Second Amended Plan) and/or incurrence of cancellation of debt income shall not occur before the later of (i) twenty four (24) months after entry of the respective liquidation orders, or (ii) thirteen (13) months after the IRS' disposition, or the Commissioner's withdrawal, of the requested Private Letter Ruling.

9. Pursuant to Pa. R.A.P. 341(c), the Court expressly finds that immediate appeal (if any) of this Settlement Approval Order would facilitate resolution of the entire case, and therefore enters this approval order as a final judgment with respect to the issues set forth herein.

10. This Court shall retain exclusive jurisdiction to enforce the terms of, hear, and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of the Settlement Agreement and this Order.



MARY HANNAH LEAVITT, President Judge

Certified from the Record

SEP 23 2016

And Order Exit