IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael F. Consedine, Insurance Commissioner v. Penn Treaty Network America Insurance Company and American Network Insurance Company	1 PEN 2009 1 ANI 2009

FORMAL COMMENTS AND OBJECTIONS REGARDING THE PENN TREATY PLAN OF REHABILITATION

1. Betty B. Christopher and James C. McNamara submit these comments and objections through their undersigned counsel regarding the proposed plan for the rehabilitation of Penn treaty Network America Insurance Company (the "Plan").

2. Betty B. Christopher is both a policyholder of Penn Treaty Network America and an agent. She resides at 227 Crosshills Road, Heathsville, VA 22473.

3. James C. McNamara is both a policyholder of Penn Treaty Network America and an agent. He resides at 15 Fairview Drive, Danville, PA 17821.

4. Both Ms. Christopher and Mr. McNamara are willing and able to serve on a committee of policyholders, should such a committee be formed.

5. Ms. Christopher and Mr. McNamara make the following comments and objections regarding the Plan:

FIRST, the Rehabilitator proposes a temporary suspension of benefits both for policies on claim and not on claim, but does not propose a firm date for restoration of benefits and even states that benefits may not be fully restored or may not be restored at

all. Without an end date, the suspension is effectively permanent unless the Rehabilitator takes action to restore benefits at an unknown time in the future, in his sole discretion, based on undisclosed criteria.

SECOND, the mechanism for temporary suspension of benefits is not disclosed. Will the Rehabilitator modify the policies in writing? Will the Rehabilitator modify the policies unilaterally? Or will the Rehabilitator avoid modifying the policies in writing and simply refuse to pay otherwise covered benefits in accordance with a written policy suspending certain benefits until further notice?

THIRD, the Plan does not condition any modification of the policies or any suspension of benefits on policyholder consent. PTNA's LTC policies are mostly individual, guaranteed renewable contracts. The policies provide that premium rates can be adjusted when actuarially necessary, but only for the whole series of the same product. There is no contractual provision permitting PTNA or the Rehabilitator to reduce benefits from one policy year to another or at any time. The Rehabilitator's unilateral suspension of benefits will be a breach of the policies.

FOURTH, the breach of the policies will result in non-payment of benefits when due. The Rehabilitator admits that being placed in rehabilitation and non-payment of benefits when due triggers mandatory Guaranty Association coverage. See p. 50 of the Plan.

FIFTH, the Plan fails to make any use of financial contributions by state Guaranty Associations, notwithstanding the proposed breach of the policies.

SIXTH, the Plan does not permit policyholders to submit proofs of claim regarding the proposed suspension of benefits. The Plan does not grant policyholders

automatic claims regarding the proposed suspension of benefits. There should be a procedure to preserve policyholders' claims for out-of-pocket expenses that would be covered but for the suspension of benefits.

SEVENTH, cutting benefits to match premiums for underpriced products on a state by state basis is functionally the same as increasing premiums to match claims on underpriced products on a state by state basis. Increasing premiums to reduce the funding gap on anticipated claims requires the approval of state insurance regulators. By the same token, reducing the same funding gap by reducing benefits and rendering the policies less valuable should be subject to approval by state insurance regulators as well. Both are ways of matching the product and the price. The Plan does not provide for obtaining the approval of state insurance regulators for the suspension of benefits.

EIGHTH, it is not right or just that the Rehabilitator should be permitted to do indirectly through the Court what he cannot accomplish directly through the state insurance regulators to whom the regulation of the pricing of insurance products is entrusted by statute.

NINTH, assuming policy benefits are modified and reduced during rehabilitation and the company subsequently enters liquidation, the Plan does not make clear whether Guaranty Association coverage will apply to the policies as modified during rehabilitation or to the policies as they were written before rehabilitation.

TENTH, the Plan implies that once benefits are cut, premium rate increases will only be available to avoid additional benefit cuts: "[Following] the Initial Benefit Suspensions ..., the Rehabilitator may, in his discretion, pursue state regulatory approval of rate increases to mitigate the need for additional benefit suspensions and/or may

further suspend benefits in the future." See p. 15 of the Plan. This appears to mean that premium rate increases will not be available to restore suspended benefits, contrary to the Rehabilitator's stated intention to restore suspended benefits when financially feasible.

ELEVENTH, Examples 1 and 2 at pages 14 and 15 of the Plan are misleading. The Plan states: "The Rehabilitator intends to initially reduce benefits by an average of 70% of each policy's Funding Gap (the 'Initial Benefit Suspensions')." See p. 15 of the Plan. However, Examples 1 and 2 only discuss the benefit cuts needed to reduce the Funding Gap by 29% and 51%, respectively. Thus, Examples 1 and 2 do not illustrate realistic benefit suspensions. Examples 1 and 2 are also misleading because they fail to state the pertinent Net Accumulated Premium Margins and how they are calculated, even though the NAPM is crucial for determining the Allocated Assets.

TWELFTH, the methodology for modifying or reducing LTC benefits is overly dependent on the NAPM. The use of the NAPM effectively eliminates the insurer's contractual obligation as a factor in determining the assets to be allocated to a policy to determine that policy's unfunded value. The fact that a policy is underpriced does not alter the insurer's contractual obligation to the insured. It is not fair and equitable to ignore the size of the policyholders' claim on the ground that the insurer set the premium too low, at least where the reduced benefits are likely the only payment a policyholder will ever receive for his contract claim.

THIRTEENTH, the Plan states that the Rehabilitator will evaluate the effect of the initial suspension of benefits before deciding if additional suspensions of benefits are necessary. The Plan does not provide a timeline for the evaluation, or the form the evaluation will take. The Plan does not require the Rehabilitator to report and explain his

evaluation to the Court. The Plan does not require the Rehabilitator to seek Court approval for additional suspensions of benefits. The Plan does not require notice to the policyholders before any additional suspensions of benefits.

FOURTEENTH, if approved as written, the Plan will give the Rehabilitator complete discretion to act without further notice to the Court or the Policyholders. This gives excessive authority to the Rehabilitator and deprives the policyholders of the protection of Court supervision.

FIFTEENTH, the Plan does not contemplate any further court proceedings following approval of the Plan, unless and until the Rehabilitator determines to terminate the rehabilitation. This gives excessive authority to the Rehabilitator and deprives the policyholders of the protection of Court supervision.

SIXTEENTH, the Plan does not provide a process for submitting a proof of claim, or appealing the denial of a claim.

SEVENTEENTH, the Plan does not adequately disclose the Non-Forfeiture Option ("NFO") to be offered as an Opt Out Benefit.

EIGHTEENTH, the Plan does not adequately explain the allocation of assets for purposes of Opt Out Benefits. On the contrary, the proposed amendment of the Opt Out Benefits provisions of the Plan merely states: "It should be noted that the determination of Opt-out Value will differ materially from the asset allocation methodology applicable only to Benefit Suspensions, described in Section III.C., of the Plan." The Plan provides no explanation of the asset allocation methodology for purposes of calculating Opt Out Value, or how and why it differs from the asset allocation methodology for determining Benefit Suspensions.

NINETEENTH, the Rehabilitator states that the Plan should be "fair and equitable," but does not state what "fair and equitable" means in practice. Therefore, a policyholder cannot evaluate the Rehabilitator's statement that he believes the Plan is "fair and equitable." See p. 21 of the Plan.

TWENTIETH, the Rehabilitator states that the Plan "should put policyholders and creditors as a group in a position not inferior to what liquidation would produce." The Rehabilitator fails to provide any analysis or explanation of what liquidation would produce and fails to compare what the Plan would produce with what liquidation would produce. See p. 21 of the Plan.

TWENTY-FIRST, the Rehabilitator does not state that the Plan is or ought to be in the best interests of the policyholders. See p. 21 of the Plan.

TWENTY-SECOND, the Rehabilitator states that the Plan is "designed to address discriminatory premium rates." See p. 21 of the Plan. It is not clear that the concept of "discriminatory premium rates" constitutes a legal wrong by one group of policyholders against another, or by an insurer against a group of policyholders; that a group of policyholders may be entitled to relief from another group of policyholders or from the insurer for "discriminatory premium rates;" or that as a result, the Rehabilitator should allocate general account assets more heavily toward some policies than others based on premium rates; or that the Rehabilitator should cut benefits more heavily on some policies than others based on premium rates.

TWENTY-THIRD, the allocation of assets equal to the Unmodified Policy Value when calculating benefit suspensions for Policies On Claim and Paid-Up Policies is not fair to Policyholders Not on Claim, because a disproportionate share of the assets is

thereby allocated to the Policies On Claim and Paid Up Policies to the detriment of the Policyholders Not on Claim.

TWENTY-FOURTH, the Plan does not disclose the actuarial studies and projections on which it is based. The actuarial assumptions are discussed generally, but the actual assumptions and analysis of the projections and findings are not disclosed. There is no basis for policyholders to evaluate the actuarial basis for the Plan.

TWENTY-FIFTH, the Rehabilitator does not represent that the proposed Plan is viable. On the contrary, the Rehabilitator represents that the Plan will likely not be successful and that rehabilitation is a remote possibility: "While the Plan does provide the potential for the future restoration of full policy benefits to any policyholders remaining at that time and the payment of all other creditor claims in full, *the Rehabilitator does not anticipate at this time and based on current information that this is likely to occur.* Therefore, *the Rehabilitator is not anticipating that the company will be able to exit rehabilitation* and recommence issuing new business. However, if sufficient rate increases are approved and implemented and/or financial results are otherwise significantly better than projected, an exit from rehabilitation may be possible." See p. 20 of the Plan (emphasis supplied). The Plan should not be approved if it is not viable.

TWENTY-SIXTH, it is not fair that a policy that has only been on claim for a month should have a significantly shorter maximum benefit period than a policy that has not been on claim. E.g., 7 years vs. 12 years in Virginia. There should be a graduated reduction of maximum benefit periods depending on how long a policy has been on claim.

TWENTY-SEVENTH, without waiving any of the foregoing comments and objections, (a) if the elimination period is increased to 90 days, PTNA should pay co-insurance charges that will not be covered by Medicare; (b) the elimination of non-tax-qualified benefit triggers should be moderated to allow care if policyholders cannot perform certain Instrumental Activities of Daily Living such as travelling to doctor's appointments on their own, taking medications correctly, and preparing simple meals; and (c) the Plan should clarify that the reduction of compound inflation protection is prospective only and will not reduce benefits accumulated before the effective date of the Plan.

6. The foregoing comments and objections regarding the Plan for PTNA are equally applicable to the Plan for American Network Insurance Company ("ANIC").

7. Ms. Christopher and Mr. McNamara desire to participate through counsel in any hearings on the Plan.

WHEREFORE, Ms. Christopher and Mr. McNamara request that the Rehabilitator address the foregoing comments and objections and modify the proposed Plans for PTNA and ANIC accordingly.

Respectfully submitted,

By: Thomas A. Leonard

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CERTIFICATE OF SERVICE

I certify that on August 28, 2013, I caused a true and correct copy of the foregoing Formal Comments and Objections Regarding the Penn Treaty Plan of Rehabilitation to be served on the following persons by email at the email addresses indicated below:

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