

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE: PENN TREATY NETWORK :
AMERICA INSURANCE COMPANY IN : 1 PEN 2009
REHABILITATION :

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IN RE: AMERICAN NETWORK :
INSURANCE COMPANY IN : 1 ANI 2009
REHABILITATION :

TRANSCRIPT OF PROCEEDINGS
PRETRIAL CONFERENCE

BEFORE: THE HONORABLE MARY HANNA LEAVITT, JUDGE

DATE: SEPTEMBER 24, 2013, 10:00 A.M.

PLACE: PENNSYLVANIA JUDICIAL CENTER
601 COMMONWEALTH AVENUE
HARRISBURG, PENNSYLVANIA

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1 THE COURT: Good morning. You may
2 be seated. We are here today pursuant to a court
3 order issued earlier this summer. This is a
4 prehearing conference on the Insurance
5 Commissioner's petition to rehabilitate Penn
6 Treaty.

7 Our goal is to identify which of the
8 commentators intend to present evidence, or
9 whether they wish to participate just by
10 cross-examining witnesses. So that's one goal,
11 find out which of the formal commentators are
12 going to participate and to what extent. Another
13 goal is to set a timetable for discovery and for
14 the hearing.

15 The way we are going to proceed this
16 morning is I'm going to ask the rehabilitator to
17 identify his case and how long he expects it to
18 take place.

19 Next I will hear from you,
20 Mr. Christian, on the same thing. And then I'm
21 going to go through the list of the commentators
22 and ask you to step up to the podium and explain
23 exactly who you are, who you represent, and what
24 your position is on the Commissioner's

1 rehabilitation plan. By that I mean are you
2 going to ask the Court to approve, disapprove or
3 modify the plan.

4 All right. Mr. Buchholz.

5 MR. BUCHHOLZ: Good morning, Your
6 Honor. May I address the Court from counsel
7 table?

8 THE COURT: Sure.

9 MR. BUCHHOLZ: Thank you, Your
10 Honor. Carl Buchholz on behalf of the
11 rehabilitator, Michael Consedine.

12 In the courtroom this morning, Your
13 Honor, on behalf of the Commissioner is Chief
14 Counsel Yen Lucas; Department Counsel Preston
15 Buckman. Also on behalf of the rehabilitator
16 this morning, Your Honor, Special Deputy
17 Rehabilitator Patrick Cantilo, my partners at DLA
18 Piper, Stephen Schwab and Jayne Risk, and Cozen
19 O'Connor, James Potts.

20 Your Honor, if I may just take a
21 minute and try to organize and introduce the new
22 faces in the courtroom. I had met with all of
23 them in person over the past several weeks since
24 the comments were filed in an effort, Your Honor,

1 to organize things so that this case moves
2 forward smoothly and efficiently and effectively
3 as I know Your Honor wants it to do.

4 If I can take a minute to introduce
5 to the lawyers who are here, and one who is not
6 here, Your Honor.

7 On behalf of the Intervenors,
8 Eugene Woznicki and William Hunt, who are here in
9 the courtroom, you know their counsel,
10 Mr. Christian, Doug Christian, from the Ballard
11 Spahr firm.

12 Also here on behalf of the National
13 Organization of Life and Health Guarantee
14 Associations is Charles Richardson and Caryn
15 Glawe of the Faegre Baker Daniels firm, and Mark
16 Bradshaw of the Stevens & Lee firm.

17 Here on behalf of a group of four
18 health insurers is Harold Horwich of the Bingham
19 McCutchen firm. On behalf of I think currently
20 two individual policyholders is Tom Leonard and
21 Richard Limburg of the Obermayer firm.

22 On behalf of a larger group of
23 individual agents is Paul Hummer and Jim Gkonos
24 of the Saul Ewing firm. And, Your Honor, not

1 here but filed comments on behalf of Broadbill
2 are Elizabeth Goldstein of the Dilworth firm and
3 Andrew Parnham and Steve Warren of Belvadene &
4 Meyers (phonetic). We met with them, we have
5 been in some discussions with them. As of last
6 night, they told us they were comfortable not
7 being here, but did file comments, Your Honor.

8 So that's the cast of new
9 characters to the case, Your Honor. And we have
10 been moving forward with the rehabilitation. We
11 filed the rehabilitation plan April 30th.
12 Comments and objections, some 600-and-some of
13 them were filed by the deadline you set of August
14 30.

15 We had discussion at our last
16 telephone conference, Your Honor, about trying to
17 organize that a bit. Some were filed with the
18 Court, some were filed with Penn Treaty. So I
19 volunteered to try to get that together into one
20 set, which we sent to the Court last week and to
21 all counsel as well. So everybody has a complete
22 set of those comments at this point.

23 The comments and objections, as I
24 mentioned, bring new parties and new lawyers to

1 the process. And we have met with them in an
2 effort to move things forward and discussed with
3 them the proposed case management order, not in
4 great detail, but conceptually, Your Honor, that
5 we sent to the Court and to all counsel last week
6 in an effort to streamline things and move things
7 forward and keep the momentum that we have had.

8 That proposed case management order
9 contemplates, I think first and foremost, and I
10 think you will hear from the Obermayer lawyers on
11 this point, contemplates consideration of
12 committees, possibly a policyholder committee,
13 possibly agents' committee. And I think you may
14 hear this morning from the Saul Ewing lawyers on
15 that issue, Your Honor.

16 But we see that as a threshold
17 first issue that needs to be decided one way or
18 another so that we're not going through a process
19 again and again as new parties and new committees
20 come into the picture. Again, our goal is to
21 streamline and move forward toward an approval.

22 The proposed case management order,
23 Your Honor, contemplates a share file, an E room
24 where all of the documents, especially financial

1 documents, and there's been a lot of them over
2 the past year-and-a-half, can be put on a
3 confidential password-protected basis so that the
4 new parties and their lawyers can get up to speed
5 quickly on -- and have the benefit of all of the
6 actuarial studies, documents, underlying
7 documents, that are relevant to the case, again
8 in an effort to streamline things, have a level
9 playing field that everyone can get up to speed
10 quickly and we don't get caught up in a lot of
11 discovery and document productions and time,
12 frankly, Your Honor.

13 Thirdly, the case management order
14 contemplates a process to identify the legal
15 issues, especially the comments filed by the
16 counsel here in the room, from whom you will
17 hear, raise a multitude of threshold legal
18 issues.

19 For example, what legal standard
20 will the plans be evaluated by; do the plans
21 treat policyholders differently; must the plans
22 include an opt out; and if so, what does that
23 mean. A multitude of kind of threshold
24 rehabilitation issues that the proposed way ahead

1 that we have provided Your Honor contemplates an
2 orderly process to identify those, to brief
3 those, to argue, if Your Honor wants them argued,
4 and decide again in an effort so that we are not
5 going back through this again and again and
6 again, get those resolved upfront.

7 The E share filing we discussed we
8 would suggest is the primary means of the
9 discovery that Your Honor suggested as a goal at
10 the beginning of the hearing, that we think
11 that's an efficient, effective way to make
12 documents available to everybody in an informal,
13 non-30-day response time. It will all be up
14 there, and everybody can have access to it at
15 once. We think that's an efficient way to handle
16 document discovery.

17 Our proposed way ahead, Your Honor,
18 anticipates amendments to the plan, that out of
19 these comments and out of these legal issues
20 there will likely be some amendments, as Your
21 Honor has suggested I think all along, it's going
22 to be a very fluid process.

23 So the proposed case management
24 order contemplates appearing for amendment of the

1 plan, some additional comments, and then moving
2 into a hearing to consider the plan.

3 So as we step back and contemplate,
4 Your Honor, all of these new parties, where we
5 are, where we have been, this was the best way we
6 could see, Your Honor, to get from here to there
7 in the most efficient and time efficient manner.

8 So we have met with the parties.
9 They have expressed an opportunity to speak this
10 morning. Your Honor has expressed an interest in
11 hearing from them. So if there's no further
12 questions, I would hand it over to I think
13 Mr. Christian.

14 THE COURT: The Court has reviewed
15 the rehabilitator's proposed order. It stops
16 short of a timetable. I understand better having
17 listened to your presentation. You are
18 suggesting first we identify the committees, if
19 any, that are going to be participating.

20 MR. BUCHHOLZ: Yes, Your Honor.

21 THE COURT: Secondly, are you
22 asking for the Court's approval of this E -- of
23 this shared E filing room, is that -- or do you
24 have the agreement of the parties?

1 MR. BUCHHOLZ: I think we have not
2 discussed in detail. We have discussed the
3 concept with the parties, and I think people are
4 in agreement with that.

5 I don't know if Mr. Christian may
6 have some comments on that. We have talked about
7 it with him. And, you know, we would do that,
8 Your Honor, as a means of efficient and effective
9 discovery rather than the formal discovery
10 process, to use that electronic E room as a way
11 to get a lot of documents out to a lot of new
12 people quickly.

13 THE COURT: All right. Finally, I
14 think we need to have threshold legal issues,
15 although to some extent those have been
16 identified by statute.

17 MR. BUCHHOLZ: Yes. Yes, Your
18 Honor.

19 THE COURT: We approve, disapprove
20 or modify the plan. All right, Mr. Christian.

21 MR. CHRISTIAN: Yes, thank you,
22 Your Honor. Again, good morning, Your Honor,
23 Doug Christian for the Intervenors, Penn Treaty
24 American Corporation and Eugene Woznicki.

1 I will state, as a threshold
2 matter, that in light of the proposed case
3 management order and some of the statements made
4 therein, I'm not sure what's before this Court
5 for approval at this time.

6 A proposed plan was filed at the
7 end of April. My understanding was that we were
8 going to talk about the process by which that
9 plan would be presented to the Court for
10 approval, disapproval or modification.

11 The proposed case management order
12 suggests or establishes that the rehabilitator is
13 no longer interested in approval of the plan as
14 filed and, in fact, has proposed many more time
15 consuming, expensive steps that will result in
16 the filing of what's called an amended plan, but
17 which, of course, it is just another version of a
18 plan that the rehabilitator wants the Court to
19 approve.

20 So under this proposal that was
21 communicated for the first time Friday afternoon,
22 I believe, there will be several steps. Then
23 there will be another plan filed. Then there
24 will be more formal comments and informal

1 comments, presumably to help the rehabilitator
2 determine whether yet another iteration of the
3 plan has to be filed, and it may go on ad
4 infinitum. And, of course, nobody is interested
5 in that.

6 But we were very, very surprised to
7 see that rather than an approach that provided
8 for the proper discovery of facts relating to the
9 proposed plan and then litigation of that plan,
10 which I think we all hoped would be in short
11 order, we have proffered a process by which an
12 amended, a so-called amended plan, will be filed,
13 I don't know, months and months from now.

14 So I -- again, it's a threshold
15 question, Your Honor. I'm not sure what's before
16 this Court for approval at this point. If, in
17 fact, it is the --

18 THE COURT: Well, the Court can
19 answer that. There is a plan. It was filed
20 April 30th. That's before the Court. And the
21 Court will approve, disapprove or modify that
22 plan.

23 MR. CHRISTIAN: In light of that,
24 Your Honor, which we think is a perfectly

1 appropriate approach here, we think the proposed
2 case management order is out of order with regard
3 to a further filing of a proposed plan.

4 Now, having heard the Court state
5 that what was filed on the 30th of April is the
6 plan that's presented for approval, disapproval
7 or modification by the Court, we do have several
8 concerns with regard to the approach suggested by
9 the rehabilitator.

10 First of all, we have no problem
11 with the concept of an E room or file share or
12 whatever, whatever it's referred to, by which
13 other interested entities will have, under the
14 appropriate safeguards, access to information.

15 We don't think that should be
16 limited to the PWC information. We think that
17 there should be information with regard to how
18 the rehabilitator has considered matters over the
19 last many months. But that's not a substitute
20 for appropriate limited discovery.

21 We think it's in everyone's
22 interest, including, of course, the Court and the
23 policyholders, for there to be discovery of
24 Mr. Cantilo and discovery of PWC.

1 And I'm not sure the discovery
2 would be limited to those two, but those two are
3 very important with regard to how we go forward
4 here.

5 The issue of trying to identify and
6 deal with legal issues first is an interesting
7 one. I don't think it's workable though.
8 Obviously this Court does not sit to provide
9 advisory opinions. There may be legal issues
10 that are listed that really will never have to
11 see the light of day in a hearing or in an
12 opinion the Court writes after a hearing.

13 And I'm not sure I've ever been
14 involved in a proceeding where all of the legal
15 issues were identified upfront and then decided
16 and then there was factual development or then
17 there was a hearing. I mean, the legal issues
18 have to be dealt with in the context and be
19 informed by certain factual developments, not
20 always, but often.

21 We think it's unworkable to have
22 everybody who is interested put together a, what
23 I think will be a lengthy list of legal issues to
24 be presented to the Court for the Court's

1 determination prior to a hearing, actually prior
2 to the further development of a factual record.

3 And many of these issues were
4 presented to the Court, and the Court ruled on
5 many of these issues prior to issuing -- well, in
6 issuing its ruling denying the liquidation
7 petitions of the rehabilitator.

8 So we are concerned about the
9 effort to identify all legal issues and get a
10 decision on all legal issues at the outset. It
11 also appears to delay things. Mr. Buchholz
12 referred to these as threshold legal issues.
13 Well, we dealt with a lot of threshold legal
14 issues already at great expense. And we have a
15 very clear ruling from this Court with regard to
16 many of these issues.

17 Now, in the course of determining
18 whether to approve the plan as filed or modify or
19 reject, the Court obviously will be presented
20 with briefing. And the Court, of course, will
21 have to make decisions with regard to legal
22 issues. But there's no reason here not to make
23 those decisions in the ordinary way, as a result
24 of briefing, as a result of factual development,

1 presentation.

2 We don't see the need and wonder
3 why the proposal is being made with regard to
4 identification of legal issues first.

5 I believe that addresses the issues
6 raised by Mr. Buchholz. I will say, Your Honor,
7 that when we received the proposed case
8 management order on Friday, it was, in our
9 opinion, the straw that broke the camel's back
10 because it was further indication of the lack of
11 a meaningful effort to rehabilitate and the
12 frustration of the effort to rehabilitate the
13 Court spoke to at Page 1 of its opinion of May
14 3rd, 2012.

15 We have had 17 months since that
16 opinion was issued. And we have seen, in our
17 opinion, no meaningful efforts to rehabilitate
18 these companies, no rate increases have been
19 requested. A lot of money is going out the door
20 to pay lawyers and actuaries and others. But we
21 have no money coming in the door by way of
22 premium rate increases.

23 January 6, 2009 was the date this
24 Court ordered the rehabilitator to rehabilitate

1 these companies. August of 2009, rate increase
2 efforts were stopped, four months after the
3 rehabilitator admitted in its preliminary plan
4 that aggressive and timely pursuit of rate
5 increases was crucial. I'm paraphrasing. But
6 that was the point.

7 We still have nothing. And I don't
8 know how we can -- I don't think we can
9 voluntarily convince the rehabilitator that he
10 needs to take action after all this time with
11 regard to rate increases that are routinely
12 granted with regard to other companies.

13 And there is, in the record now, in
14 this proceeding, comments that establish the
15 extent of those requests and the approval of
16 those requests by regulators all over the
17 country.

18 We believe we have no alternative
19 at this point but to file an application seeking
20 relief with regard to violations of this Court's
21 order of January 6, 2009 and May 3, 2012. And we
22 intend to do that. We don't believe we have any
23 choice. And we anticipate doing that by the
24 third week of October.

1 And we anticipate that among the
2 relief sought will be an order requiring what
3 should have been done along the way, and that is
4 pursuit of meaningful premium increases.

5 So I bring that to the Court's
6 attention because there is obviously some overlap
7 or impact on the proceedings we're discussing
8 here with regard to whether the plan should be
9 approved, disapproved or modified.

10 As the Court knows, the plan does
11 not contemplate pursuit of premium rate
12 increases. It allows for the possibility, but
13 there is no approval being sought with regard to
14 any course of action that includes premium rate
15 increases.

16 It is the position of the
17 Intervenors, Your Honor, that we cannot wait any
18 longer. We cannot wait for the year or so this
19 proposed case management order would contemplate.

20 But even if the Court, as the Court
21 has indicated, is not willing to enter that
22 order, there is still a several-month period, I
23 would doubt that we can have this hearing on the
24 plan until at least the first quarter of next

1 year, and we -- these companies, the
2 policyholders, cannot wait any longer. So I did
3 want to bring that to the Court's attention.

4 I have nothing else at this time,
5 Your Honor, unless you have any questions. I
6 think I covered the points Mr. Buchholz raised.
7 And if the Court does have any questions for me,
8 I would be happy to entertain them.

9 THE COURT: Setting aside your
10 filing seeking what I guess you would term
11 intermediate relief, does your client intend to
12 participate in the hearing on the plan and offer
13 a modification?

14 MR. CHRISTIAN: Yes, Your Honor.
15 And if I may just follow.

16 THE COURT: Yes.

17 MR. CHRISTIAN: In that regard, the
18 primary point we have made with regard to what
19 has been presented to the Court is that it is
20 unworkable to put a 50-page plan in front of the
21 Court and ask the Court to approve, not only
22 approve, but basically bless everything that's
23 said in the plan.

24 What we need are concrete steps.

1 And this point has been made in our filing. What
2 we need are concrete steps to be presented to the
3 Court and to be approved by the Court, not
4 putting 50 pages of a lot of different things in
5 front of the Court and asking the Court to bless
6 the entirety, including the, what we consider is
7 called actuarial analysis that accompanied the
8 plan.

9 So regardless of how the Court
10 wishes to proceed with this matter, my clients do
11 wish to fully participate.

12 THE COURT: Pardon me?

13 MR. CHRISTIAN: My clients do wish
14 to fully participate.

15 THE COURT: Do you have any idea
16 what timetable is needed for discovery and what
17 witnesses you would present at this juncture?

18 MR. CHRISTIAN: Well, that would be
19 decided to some extent by the guidance the Court
20 may wish to provide with regard to issues the
21 Court may wish to have addressed at the hearing.

22 I know Your Honor has done that in
23 the past, has asked the parties to consider or to
24 present facts and law on certain issues.

1 So the answer to that may in part
2 be guided by whatever advice or guidance we may
3 get from the Court.

4 But with regard to whether this
5 plan, as presented, should be approved, modified
6 or rejected, it may very well be that the only
7 depositions we need are Mr. Cantilo and a
8 representative of PWC.

9 Now, it may not be that limited,
10 but it is certainly not going to be anything akin
11 to what happened in the context of the
12 liquidation petitions.

13 THE COURT: Your actuary will
14 testify about rate increases that you believe
15 should be part of the rehabilitation plan.

16 MR. CHRISTIAN: Yes.

17 THE COURT: Thank you.

18 MR. CHRISTIAN: There will also
19 need to be some paper discovery, but we are
20 mindful, especially given the tremendous,
21 tremendous cost, the dissipation of the assets of
22 these estates, we need -- we are mindful of the
23 need to streamline this. And believe me, we have
24 no interest in prolonging this or making it

1 anymore expensive than it already is.

2 MR. BUCHHOLZ: Your Honor, just
3 three quick clarifications, if I may, and it
4 won't take more than a minute.

5 MR. CHRISTIAN: Thank you.

6 MR. BUCHHOLZ: I think Your Honor
7 is searching a bit for a timeline. Our proposal
8 was open ended. And we did that on purpose, Your
9 Honor, because we didn't want to be presumptuous
10 as to what schedule Your Honor may have in mind
11 or your own schedule, but.

12 THE COURT: Well, and that was the
13 stated purpose of the prehearing conference.

14 MR. BUCHHOLZ: Right. So when we
15 put pen to paper, Your Honor, and put what we
16 thought were reasonable dates in those lines we
17 left in the proposed order, Your Honor, I think
18 it took us out through the middle or end of
19 August of next year to complete what that case
20 management order contemplates, number one.

21 Number two, Mr. Christian mentioned
22 with some surprise about an amendment of the
23 plan. I think we have always been talking about
24 an amendment of the plan. I think the Court has

1 acknowledged that, I think, it's a fluid process
2 and things change as facts are revealed and
3 things go forward. So I think that's --

4 THE COURT: Well, let me ask you
5 this. Has the rehabilitator, in response to the
6 comments that have been received, considered any
7 amendments?

8 MR. BUCHHOLZ: We are doing that
9 now.

10 THE COURT: Have you negotiated
11 with any of the commentators about amendments?

12 MR. BUCHHOLZ: As I mentioned in my
13 introduction, Your Honor, Broadbill is not here
14 today because we have been in some discussions
15 with them about how to resolve their issues and
16 change some things in the proposal to resolve
17 their issues. And, Your Honor, we have had one --

18 THE COURT: Excuse me, who is
19 Mr. Broadbill?

20 MR. BUCHHOLZ: Broadbill is an
21 investor in the company, represented by the
22 Dilworth firm here in town, Your Honor, and
23 Belvadene (phonetic).

24 THE COURT: Have they submitted

1 comments?

2 MR. BUCHHOLZ: Yes, Your Honor.

3 THE COURT: I don't have them on my
4 list. My list is not correct.

5 MR. BUCHHOLZ: I think they were
6 included in the CD we sent around to everybody on
7 Friday last week. But we can get the Court
8 another copy.

9 THE COURT: Have you been
10 negotiating with Aetna, the Five Star Companies,
11 NOLHGA?

12 MR. BUCHHOLZ: We have met with
13 them and had some conceptual discussions, Your
14 Honor. We would like to continue those, but we
15 need some time to do that.

16 And that is built into the schedule
17 that we have provided, the proposed order we
18 provided to the Court. I think that's a very
19 constructive process to go through.

20 And then third and finally, Your
21 Honor, with respect to legal issues upfront,
22 we're not trying to delay, we're trying to
23 streamline. We're trying to tackle them all once
24 and for all at the top rather than going back two

1 and three times and confronting them again and
2 again in the concrete step process that the
3 Intervenors would have.

4 And finally, with respect to rate
5 increases, I think we would contemplate rate
6 increases, Your Honor, to be dealt with in the
7 process of evaluating the plan, the normal
8 process. We don't anticipate any additional
9 proceedings required for rate increases. Thank
10 you.

11 MR. CHRISTIAN: May I, Your Honor,
12 very briefly?

13 THE COURT: Yes.

14 MR. CHRISTIAN: I don't think
15 there's any question about the rehabilitator
16 ultimately presenting a different plan to the
17 Court for approval than the plan that is
18 currently filed.

19 The rehabilitator states on his
20 website it is likely that the proposed plans will
21 be amended, the Court will consider any amended
22 plans and may approve, disapprove or modify.

23 That really is the threshold issue.
24 Are we going to talk about streamlining, are we

1 going to proceed down this path and then find out
2 at some point in the future that, no, we didn't
3 mean that, we meant this? We didn't mean to seek
4 approval for the plan that was filed in April, we
5 want approval for a different plan?

6 That is the threshold issue. They
7 need to figure out, and I don't know how long
8 it's going to take them to figure this out, but
9 they need to figure out what plan they want
10 approved, and then we can get to the bottom of
11 whether that plan should be approved, disapproved
12 or modified.

13 The comment Mr. Buchholz made about
14 this plan, this case management order
15 contemplating August, August of 2014, it's
16 five-and-a-half years into a rehabilitation where
17 there really hasn't been a rehabilitation effort.

18 We, believe me, we have -- we
19 believe we have been very patient with regard to
20 the rehabilitator. We believe we have no choice,
21 in the best interests of everybody involved here,
22 to bring this issue of whether the rehabilitator
23 has violated the Court's orders to the Court for
24 decision.

1 Of course, the rehabilitator can
2 state a position at some point with regard to
3 whether that is properly before the Court. If he
4 wants to try to make that argument, that's his
5 prerogative. But we cannot wait.

6 August, under this proposed case
7 management order, is when the matter -- not when
8 the matter would be done, but when the matter
9 would be ready for resolution.

10 So you tack how many more months
11 between preparation for the hearing, the hearing,
12 and appropriate time to make a decision with
13 regard to the issues presented in the hearing,
14 you're out to 2015 at this point. We cannot wait
15 any longer.

16 Now, my last point, Your Honor,
17 when the Court asked about discovery in the
18 context of the litigation of the -- the
19 litigation on the propriety of the rehabilitation
20 plans, I indicated two very important
21 depositions.

22 With regard to the relief that we
23 are seeking as a result of the violation of the
24 Court's orders by the rehabilitator, there will

1 be discovery necessary in that case as well.

2 And as Your Honor knows, we filed a
3 motion, an application, to have information
4 relating to discussions the rehabilitator had
5 with other regulators, not in an effort -- I
6 mean, our concern is these discussions were not
7 in an effort to do what needs to be done here,
8 which is get the premium rate increases, but in
9 an effort by this team, which is the appeal team
10 as well, other than, apparently, Mr. Cantilo, in
11 effort to prevail on the appeal.

12 And for the reasons we have stated
13 in many, many pages of briefing, we have a
14 serious concern about that. But there may be
15 some -- there will be some additional discovery
16 necessary in that context, and I just wanted to
17 make sure there was no misunderstanding. We
18 don't think the two depositions are enough to
19 deal with that matter as well. Thank you, Your
20 Honor.

21 THE COURT: I have four
22 appearances. One is Mr. Horwich, and the other
23 one is Mr. Hummer. Are those the only lawyers
24 representing the various commentators that have

1 entered an appearance?

2 Are there any commentators that --
3 all right, Mr. Leonard, did you fill out --

4 MR. LEONARD: Your Honor, we were
5 embroiled in a traffic jam on the Schuylkill
6 Expressway and arrived about 12 seconds before
7 you came through the door, came right in and did
8 not fill out the form. And we weren't late, but
9 we were so late that I didn't stop to do that.
10 So I apologize.

11 THE COURT: All right. Mr.
12 Bradshaw.

13 MR. BRADSHAW: Mark Bradshaw from
14 Stevens & Lee on behalf of NOLHGA.

15 THE COURT: All right. If you
16 would, before you leave, please fill out an entry
17 of appearance.

18 All right, I would like to hear
19 from Mr. Horwich. Have you filed a pro hac vice?

20 MR. HORWICH: I have not, but we
21 will, Your Honor.

22 THE COURT: You will do so.

23 MR. HORWICH: Yes.

24 THE COURT: All right.

1 MR. HORWICH: So addressing --

2 THE COURT: The question is a
3 reasonable one, are you before the Court to ask
4 that the plan as filed be approved, disapproved
5 or modified; and number two, to what extent you
6 intend to participate in the hearing, do you
7 intend to present witnesses, do you intend simply
8 to cross-examine the witnesses of the parent
9 company, Intervenor and the Rehabilitator.

10 MR. HORWICH: Let me try and
11 address those.

12 THE COURT: All right.

13 MR. HORWICH: As the plan currently
14 exists, our clients would intend to oppose the
15 plan. As we said in our papers, we believe that
16 the way the plan is constructed now, it will
17 impose additional loss on the public for
18 insufficient benefit to the policyholders.

19 We do believe that there may be
20 possibilities to modify the plan in a way that
21 would address our concerns, but frankly, we have
22 not been able to obtain enough information from
23 the rehabilitator to attempt to engineer any
24 modifications to propose.

1 We don't fault the rehabilitator
2 for that. They have provided us a great deal of
3 information and have been very cooperative with
4 us in seeking that, but they have had tremendous
5 pressure to produce their reports in
6 contemplation of the hearing in support of the
7 plan that they have filed.

8 But we have an ongoing request for
9 information from them, which will, we hope, help
10 us be a more constructive participant in
11 developing any modifications that may be done to
12 the plan so that, at the end of the day, we may
13 have a more informed and non-opposition position.
14 But we just don't know. We don't have enough
15 information to know whether we --

16 THE COURT: What kind of
17 modification might be satisfactory?

18 MR. HORWICH: Well, we don't know
19 yet. We think there may be opportunities to opt
20 to offer policyholders more options that would,
21 in fact, move the process in a direction that we
22 think would be better for them, better for the
23 public. So, again, we just don't have enough
24 data to know.

1 We do intend to participate in the
2 hearing, Your Honor --

3 THE COURT: What kind of option?
4 You mean a policy conversion?

5 MR. HORWICH: Possibly policy
6 conversions, possibly voluntary premium
7 increases.

8 THE COURT: Pardon me?

9 MR. HORWICH: Possibly voluntary
10 premium increases, possibly further reductions in
11 benefits, we just don't -- we don't have enough
12 data in forms that we can use it to be able to
13 run models.

14 THE COURT: All right. I'm not
15 going to hold you to that. I'm just asking for
16 some examples or illustrations. And I understand
17 you may have a totally different idea of what
18 modification you would want to advance when we
19 reach that point in the proceeding.

20 MR. HORWICH: Right.

21 THE COURT: Okay.

22 MR. HORWICH: We believe that the
23 rehabilitator, certainly as to us, has proceeded
24 in good faith and been helpful in providing us

1 what information they can, given their resources
2 and timeframe.

3 THE COURT: Right.

4 MR. HORWICH: We do expect to call
5 witnesses. We will have one witness who will
6 describe to the Court how the loss that we
7 perceive will ultimately result from this plan
8 will flow back into the public. And we have
9 given Your Honor a slight preview of how that
10 works. I think Your Honor is probably already
11 familiar with the mechanisms.

12 And secondly, we would proffer a
13 witness who will show that the operation of the
14 plan as it is currently contemplated would result
15 in an increase in what we refer to as the
16 ultimate net loss in the proceeding, that
17 continuing to run the company under the plan will
18 result in ultimately larger losses that will be
19 visited on the public.

20 One issue that I guess I would like
21 to raise with the Court having to do with the
22 process and with discovery. Receivership is a
23 funny sort of proceeding. It's not your usual
24 plaintiff versus defendant proceeding. And it's

1 the only proceeding that I'm aware of in which a
2 party can actually ask the Court for an advisory
3 opinion.

4 Now, the Pennsylvania statutes
5 don't provide for that specifically, but in
6 common law, receivership is done all the time.
7 And in practice under the United States
8 bankruptcy code, when parties attempt to form a
9 plan, there's specific rules that contemplate
10 that they can go to the court for guidance on
11 particular legal issues in support of that plan.

12 So the request that has been made
13 to resolve certain legal issues that, at least in
14 our view, is well within the norms of
15 reorganization practice.

16 Secondly, I would like to address
17 the scope of discovery. The discovery that's
18 occurred in this case to date obviously has been
19 very comprehensive and very intrusive.

20 And the result of that, for better
21 or worse, has been a real chill on the ability of
22 parties to talk with each other candidly because
23 there's a genuine concern among the parties in
24 this case that everything they say will

1 ultimately be the subject of deposition
2 testimony.

3 And frankly, Your Honor, it's very
4 difficult to reorganization a company without the
5 ability of the constituents to have candid, open
6 conversations with each other without figuring
7 that they're going to have a subpoena served on
8 them to be deposed about the conversations that
9 they have had.

10 I understand that there's a need
11 for discovery in connection with confirmation of
12 the plan. I think that's completely appropriate.
13 But to the extent that we can have some
14 limitations on the discovery so that the parties,
15 including the rehabilitator, my clients, NOLHGA,
16 committees, if you decide to appoint them, can
17 confer in good faith to see if something can be
18 achieved, that would be, I think, a major step in
19 the resolution of this case.

20 That's all I have. Thank you.

21 THE COURT: Thank you. All right,
22 Mr. Hummer.

23 MR. HUMMER: Good morning, Your
24 Honor.

1 THE COURT: Good morning.

2 MR. HUMMER: As you know, I
3 represent the agent group, or an agent group.
4 And we are seeking modification of the plan and
5 specifically the elimination of those provisions
6 of the plan that contemplate either the permanent
7 or temporary cessation of payments of commissions
8 to agents on earned premiums.

9 It's our view, as the Court is
10 aware, that it's well established in the
11 Pennsylvania law that those are not assets of the
12 estate and, therefore, not properly subject to
13 termination pursuant to the rehabilitation plan.

14 In terms of participation in
15 whatever hearing the Court schedules, we're a
16 little bit hampered in terms of identifying
17 evidence or witnesses because the plan --

18 THE COURT: Can you move the
19 microphone closer to you?

20 MR. HUMMER: I'm sorry?

21 THE COURT: Could you move the
22 microphone --

23 MR. HUMMER: I'm sorry. Is that
24 better? The plan does not identify the theory on

1 which the rehabilitator seeks to terminate the
2 payment of commissions. And to my knowledge the
3 rehabilitator has not indicated in the current
4 go-round, in any other pleading, the theory on
5 which he is proceeding. So it's difficult to
6 know how we would respond to that.

7 But we certainly contemplate the
8 possibility of some or all of the agents we
9 represent testifying in response to any factual
10 issues that the Court has -- or that the
11 rehabilitator raises either with respect to their
12 particular entitlements to commissions or
13 anything else that affects that factually is our
14 principal argument, however, as the Court is
15 aware, and so we would envision our participation
16 being relatively limited. Thank you, Your Honor.

17 THE COURT: Thank you.

18 Mr. Bradshaw.

19 MR. BRADSHAW: Good morning, Your
20 Honor. Mark Bradshaw from the Harrisburg office
21 of Stevens & Lee representing NOLHGA. I'm sure
22 you understand what the acronym stands for.

23 With me, Your Honor, is Charlie
24 Richardson, who was identified on the formal

1 comments that we filed. He is lead outside
2 counsel for NOLHGA. And I just thought that to
3 the extent that we got into areas that I was not
4 capable of articulating the organization's
5 approach as well as I might, perhaps
6 Mr. Richardson could jump in.

7 With regard to our participation,
8 we contemplate full participation in the
9 proceedings, by which we mean that we would
10 intend to present expert testimony from an
11 actuary who had supplied the basis for his
12 analysis in our comments.

13 We may or may not want to present
14 one or two NOLHGA representatives to describe the
15 guarantee associations and so on. I would think
16 that that might be the sort of thing that the
17 parties could stipulate to.

18 I really don't think that the
19 manner in which NOLHGA operates and the member
20 GA's is particularly controversial, and I don't
21 know that it would really require an evidentiary
22 presentation, but that's something we could get
23 into with the other parties.

24 We would probably anticipate

1 somewhere in the neighborhood of six hours of
2 direct and then, of course, what happens on cross
3 is outside of our control.

4 We would want to reserve the right
5 to cross-examine based on who is actually called.
6 And we would like to participate in whatever
7 discovery takes place with regard to experts or
8 actuaries or what have you.

9 With regard to the Court's inquiry
10 as to NOLHGA's position on the plan, in our
11 comments we presented to the Court an analysis of
12 the proposed rehabilitation plans and attempted
13 to illustrate what we believe the likely impact
14 on the policyholders would be.

15 And based, Your Honor, on the
16 current financials and the analysis that our
17 actuary has engaged in of the proposed plans,
18 NOLHGA candidly is concerned that the plans will
19 not cure the insolvency as presently proposed,
20 but rather will simply delay asset depletion and
21 then only do so for several years.

22 We think, fundamentally, speaking
23 as NOLHGA, that this type of plan is inconsistent
24 with the system of insolvency regulation that has

1 been adopted in every state in the union.

2 And we urge the Court to carefully
3 consider the information that has been provided
4 by NOLHGA in considering whether this plan can or
5 should be approved.

6 THE COURT: So you oppose the plan.

7 MR. BRADSHAW: In its current
8 format, we believe that it cannot succeed.

9 THE COURT: What format would make
10 an approval?

11 MR. BRADSHAW: Candidly, based on
12 our actuarial analysis, I'm not sure there is an
13 answer to that question.

14 THE COURT: So essentially you
15 believe the company should be, both companies,
16 should be liquidated.

17 MR. BRADSHAW: Our actuarial
18 analysis supports that. And we believe that the
19 guarantee association format would actually
20 benefit the policyholders to a greater extent
21 than what we believe has been proposed.

22 May Mr. Richardson address the
23 Court?

24 THE COURT: Yes.

1 MR. RICHARDSON: We put a lot of
2 data in the --

3 THE COURT: Yes, you certainly did.

4 MR. RICHARDSON: -- in the
5 comments. And the first two things are things
6 the Court is probably already familiar with in
7 terms of what happens if a plan doesn't
8 ultimately succeed. But the last four are our
9 attempt, through our actuary, to analyze the data
10 that we were given.

11 We will, of course, look at the
12 reports that we received on Friday from PWC as
13 well. And we're not stating that ultimate
14 conclusion. We're not stating that ultimate
15 conclusion.

16 We're trying to bring to the Court
17 all the data that you need to decide whether
18 these plans can and should be approved or can and
19 should succeed.

20 And we tried to put as much of that
21 in front of the Court as we could based on the
22 12-31-12 financial data and the actuarial
23 material to which we did have access.

24 THE COURT: Well, I asked the

1 question because if your position is that there
2 is no plan, given the data, that will take the
3 company out of receivership, none whatsoever, and
4 that includes putting all of the old Co
5 policyholders in a separate company which could
6 be liquidated --

7 MR. RICHARDSON: Yes.

8 THE COURT: -- I'm not sure that
9 the portraits allow your participation for this
10 very simple reason. It's only the Pennsylvania
11 Insurance Commissioner that has the statutory
12 authority to file a petition to liquidate.

13 We have had a lengthy, lengthy
14 hearing already on that point. So if your
15 position is really just going to be to ask the
16 Court to convert the rehabilitation to a
17 liquidation -- and I don't hear you saying
18 anything else -- we will have to consider
19 carefully whether or not we are going to accept
20 your data and your participation.

21 MR. RICHARDSON: Got it. Two
22 things. We wanted to make sure we followed the
23 June 5th order and looked at the plans as
24 proposed.

1 THE COURT: And I certainly
2 understand that. You have to call facts as you
3 see them.

4 MR. RICHARDSON: Of course.

5 THE COURT: But what we're looking
6 for is -- and I'm not saying your information
7 won't be considered, I'm just not sure to what
8 extent your participation will be allowed, if you
9 cannot use this data to assist the Court in
10 determining to what extent the plan could be
11 modified.

12 MR. RICHARDSON: That is what we
13 attempted to do in those materials. We tried to
14 call it right down the middle as carefully as we
15 could based on what our actuaries tell us the
16 impact of the plans would be on policyholders.

17 We wanted to give the Court all of
18 that information, no moogey-foogey, call it right
19 down the middle. And that's what we would hope
20 to help the Court struggle through as you look
21 about the viability of these plans.

22 THE COURT: All right. We have
23 had -- many important facts have already been
24 established in this proceeding. We know the book

1 of business that was written before 2001 that
2 have caused the company's insolvency problem.
3 Not all of the policies written by these two
4 companies are underpriced and are not profitable.
5 But we do know there is a large book of business
6 that is very unprofitable. And really the plan's
7 focus is on what to do with that old book of
8 business.

9 And what the rehabilitator has
10 proposed is reducing benefits in ways that will
11 make those policies more like the other books of
12 business that are not underpriced, although they
13 may be now because we haven't had a rate increase
14 in many, many years, but at least as of the end
15 of 2009, they were not.

16 I would suggest that your
17 participation should focus on the old Co book and
18 what, if anything, can be done to turn that
19 around.

20 And if there's nothing that can be
21 done, then it would seem to me that what you
22 should be proposing is a modification that will
23 take that book of business into a company and be
24 liquidated.

1 MR. RICHARDSON: We anticipated
2 that last point about the premiums. And that
3 last section of our comments goes to that very
4 point, based on the end of 2012 data.

5 So I'm hopeful that we can be
6 helpful to the Court on that very point, both the
7 old Co and the new Co and the level of premiums
8 across all the policy. We anticipated that would
9 be one -- and that's the very end of our
10 comments.

11 THE COURT: Thank you.

12 MR. CHRISTIAN: Your Honor, may I,
13 just for the record, before you move to the next
14 commenter or subject?

15 THE COURT: Yes.

16 MR. CHRISTIAN: We share, the
17 intervenors share the Court's concern with regard
18 to anyone who wants to participate in the hearing
19 for the stated purpose of trying to establish if
20 the company should be liquidated. We've got a
21 difficult enough task without hearing that.

22 So, again, just for the record, we,
23 based on what we have read in NOLHGA's comments
24 and what we have heard today, the Intervenor do

1 not believe that NOLHGA is a proper participant
2 in the hearing.

3 Of course, we will be happy to
4 present the issues more formally at the
5 appropriate time, but I just wanted to make sure
6 that at the earliest opportunity I made that
7 point.

8 THE COURT: We have a formal
9 comment that's been submitted by Mr. James
10 Layton. Is he in the courtroom? Is this someone
11 to whom you have spoken, Mr. Buchholz?

12 MR. BUCHHOLZ: I don't think so,
13 Your Honor.

14 THE COURT: All right. Is he here?
15 Doesn't sound like it. All right. Mr. Leonard.

16 MR. LEONARD: Good morning, Your
17 Honor. Your Honor, we filed objections on behalf
18 of two policyholders. And I think the objections
19 can be summarized with one word, the plan was too
20 vague.

21 There are a number of things that
22 have to be addressed, there are a number of
23 questions that have to be answered. Clearly the
24 process has begun, but clearly more work has to

1 be done after input from other stakeholders.

2 And I would submit that thus far,
3 Your Honor, the proceedings have been a bit
4 lopsided. There are lots of competent lawyers
5 representing a lot of stakeholders here, but the
6 policyholders have not had representation.

7 And while we come before you
8 representing two policyholders, and these
9 policyholders are the pre-2001 policyholders, the
10 so-called Cadillac policies.

11 THE COURT: The old Co.

12 MR. LEONARD: Right. That may be
13 usurped under certain aspects of a rehabilitation
14 plan and their contractual rights subjugated, and
15 we believe, Your Honor, that a policyholders'
16 committee is necessary. We believe that a
17 policyholders' committee has to be able to retain
18 an actuary and get its arms around the problems
19 that exist here and cut through some of the
20 conflicting testimony that is on the record.

21 We also think, Your Honor, to be a
22 bit of a volunteer, that the rehabilitator has
23 proceeded properly, they have been in touch with
24 us, they have come to visit us, they have offered

1 to set up this E discovery room that would enable
2 us to get up to speed quickly. We think that's a
3 proper approach to this problem.

4 We think that after we get up to
5 speed, there may be limited discovery that would
6 still be necessary, but I think we can really
7 expedite the process by moving forward as
8 suggested by the rehabilitator.

9 I must say that I think
10 Mr. Christian's suggestion comes with ill grace,
11 after running a company for years and years and
12 getting it into this condition, to contend now
13 that he's going to seek some sort of sanctions I
14 think is just going to delay the process and not
15 advance the ball, which is to determine whether
16 or not a feasible rehabilitation is practical
17 here.

18 So I think there would be --
19 policyholders need a committee, and I think they
20 have to be granted the right to retain an actuary
21 to move this process forward.

22 I also think, Your Honor, once
23 again, being a volunteer, having listened to what
24 I have just listened to, that NOLHGA should be

1 kept around because one of the things that I'm
2 entertaining is the notion that under the
3 Pennsylvania statute, when we go into
4 rehabilitation and we look at reformation of
5 contract, those two facts, as you discussed in
6 your opinion, trigger the guarantee association
7 involvement.

8 And I think that a case can be
9 made, and we may pursue it, that the guarantee
10 associations are triggered in a rehabilitation
11 where there are changes to the policy, and they
12 have an oar in the water, or an oar should be in
13 the water, as we move forward here and focus on
14 whether or not they are involved, even if there
15 is not a dissolution of the company.

16 THE COURT: Could you be a little
17 bit more specific on what you mean?

18 MR. LEONARD: Well, it's an
19 inchoate theory that I'm developing, Your Honor.
20 But I think that in parts of your opinion, and in
21 the statute itself, the notion that the guarantee
22 associations can be triggered prior to a
23 liquidation is contained in those statutes.

24 Where there is a rehabilitation and

1 where as part of the rehabilitation
2 policyholders' rights are going to be affected
3 adversely, where their contractual rights are
4 going to be diminished, it might be that the
5 guarantee associations are triggered to some
6 extent and have to step to the plate and
7 contribute in those circumstances.

8 I think we're going to look at
9 developing that, which is a somewhat novel
10 approach to the role of the guarantee
11 associations, but one that we're going to explore
12 if we're permitted to intervene here.

13 THE COURT: So your position is to
14 oppose, modify?

15 MR. LEONARD: Our position is to
16 oppose the plan in its current form. But we
17 think the proper steps are quick discovery in the
18 E discovery room, limited discovery thereafter,
19 and the formulation of an amended plan that takes
20 into consideration some of the materials that
21 will be submitted and some of the positions that
22 will be taken by the potentially new parties to
23 this proceeding. And then we would get a new
24 plan before the Court that we could fight about

1 anew.

2 THE COURT: Okay.

3 MR. LEONARD: Thank you, Your
4 Honor.

5 THE COURT: Is Mr. O'Malley in the
6 courtroom?

7 MR. CANTILO: Your Honor, I have
8 spoken to Mr. O'Malley, and he advised me that he
9 would not be coming to this hearing.

10 THE COURT: Thank you.
11 Dr. Michelle Leonard?

12 All right. The Court has heard
13 from each of the commentators who have expressed
14 an intention to participate in the plan. At this
15 point we will adjourn the prehearing conference.

16 What I would like to do is see
17 Mr. Christian and Mr. Cantilo and
18 Mr. Buchholz and Mr. Potts, I guess, I don't want
19 too many people, in a conference room on the
20 third floor. And everyone else should just stay
21 here for now.

22 (Brief recess.)

23 THE COURT: The Court is not going
24 to enter a specific case management order this

1 morning. There will be negotiations by all who
2 are present today, and some policyholders who
3 filed comments but are not here today, over the
4 next 30 days or 60 days to see if an agreement
5 cannot be reached among the stakeholders with
6 respect to at least Phase 1 of the plan as
7 proposed by the rehabilitator.

8 The second point the Court will
9 make is that those discussions by the
10 stakeholders will be absolutely privileged and
11 beyond any discovery should it prove necessary to
12 have a hearing on the plan as proposed, Phase 1
13 plan proposed by the rehabilitator.

14 There is a need to have
15 policyholders represented in those discussions.
16 And at this point I would like to hear from
17 Mr. Leonard.

18 MR. LEONARD: Thank you, Your
19 Honor. Your Honor, I would move that the Court
20 appoint me and my partner, Richard Limburg, as
21 counsel to a policyholders' committee that begins
22 with Betty Christopher and James C. McNamara,
23 whom we currently represent, and whom the Court
24 -- and, thereafter the Court would authorize us

1 to seek the assistance of the rehabilitator
2 and/or to advertise to obtain additional
3 policyholders for the committee and to approve
4 the payment of legal expenses incurred on behalf
5 of the committee.

6 THE COURT: The application is
7 approved with the proviso that you are not
8 authorized to have any actuarial advice that you
9 choose to obtain at the expense of the estate.

10 MR. LEONARD: Understood, Your
11 Honor. Thank you.

12 THE COURT: You're welcome.

13 MR. CHRISTIAN: For purposes of
14 clarification, is this a single committee
15 representing policyholders of both PTNA and ANIC,
16 or are we talking about two separate committees?
17 Just a housekeeping question.

18 THE COURT: There's no other
19 application. So I -- the answer is I would
20 encourage any policyholder to join Mr. Leonard's
21 committee rather than set up competing
22 committees.

23 MR. CHRISTIAN: I agree with that.
24 I'm just wondering whether the application was

1 for a single policyholder committee comprised of
2 policyholders of both ANIC -- well ANIC or PTNA,
3 or whether it was specifically with regard to
4 PTNA.

5 THE COURT: I believe it would be
6 for both companies.

7 MR. LEONARD: That was my
8 intention, Your Honor, that there be one
9 policyholder committee and that we would have
10 policyholders both pre-2001 and thereafter.
11 Thank you.

12 THE COURT: Does anybody -- do you
13 have any final comment, Mr. Buchholz?

14 MR. BUCHHOLZ: No, Your Honor.

15 THE COURT: Mr. Christian?

16 MR. CHRISTIAN: No, thank you, Your
17 Honor.

18 THE COURT: Any of the other
19 attorneys present today?

20 All right, that will conclude our
21 prehearing conference today.

22 (The proceedings were concluded at
23 12:05 p.m.)

24

1 I hereby certify that the
2 proceedings and evidence are contained fully and
3 accurately in the notes taken by me on the within
4 proceedings and that this copy is a correct
5 transcript of same.

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Karen Blouch, RMR
Notary Public

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