

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

**APPLICATION OF THE POLICYHOLDERS COMMITTEE FOR AN ORDER
COMPELLING PTAC AND WOZNICKI TO PROVIDE ANSWERS
TO INTERROGATORIES AND REQUESTS FOR PRODUCTION**

On April 30 and June 30, 2015, the Policyholders Committee served two sets of interrogatories and requests for production on PTAC and Woznicki. In total, the two sets contained 24 interrogatories and 11 requests for production. PTAC and Woznicki objected to every one of the Committee's requests. See Exhibit A. Among other things, PTAC and Woznicki asserted that the Committee is not permitted to take discovery; that the Committee's discovery is not relevant to the approval, modification or disapproval of the Plan; that the information the Committee seeks can be found in the record of the hearings on the Rehabilitator's petition for liquidation; and that contention interrogatories are disfavored.

By letter dated August 12, 2015, the Committee addressed PTAC and Woznicki's objections and requested a meeting to confer about the objections. PTAC and Woznicki did not respond. By emails dated August 27 and October 7, 2015, the Committee again requested a "meet and confer." Counsel finally conferred on October 8, 2015. By letter dated October 9, 2015, the Committee offered to withdraw some interrogatories and document requests and modify others. See correspondence attached as Exhibit B. PTAC and Woznicki have not accepted the Committee's offer.

According to their Formal Comments (p. 10), PTAC and Woznicki believe that the liquidation of PTNA pursuant to the Second Amended Plan will destroy the value of their ownership in the Companies. The Committee wishes to know if there is any substance to the claim that the ownership interest has value; under what conditions it may have value; and whether the source of value is profit from insurance operations, the use of Net Operating Loss carry-forwards generated by PTNA to shelter the income of another business, or some other source.

In addition, the Committee wishes to know if PTAC and Woznicki have done research on the granting of premium increases to insolvent companies; whether they have any reasons why PTNA should be the surviving company that they did not include in their formal comments; who has knowledge of the value of PTAC's ownership that will be destroyed if PTNA is liquidated; and PTAC's business plans for PTNA if it is not liquidated.

Finally, the Committee wishes to know which policies are the "certain OldCo policies with unfairly discriminatory rates" that PTAC and Woznicki believe should be liquidated as part of a business division plan, as suggested at pages 8-9 of their Formal Comments; the factual basis for PTAC and Woznicki's assertion that the benefit cuts they recommend are "market level," as stated at pages 27-28 of their Formal Comments; and whether the benefit cuts they recommend are intended to be permanent. The Committee is of the view that no value should flow to PTNA's shareholder until policyholders have been made whole and compensated for all involuntary benefit reductions

The stipulation and order for intervention dated June 19, 2015 does not prohibit intervenors from taking discovery from each other concerning their Formal Comments.

Neither do the Court's case management orders dated July 30, 2015 and October 9, 2015. Moreover, PTAC and Woznicki have selectively answered certain of the Committee's first and third set of interrogatories and requests for production.

To the extent that PTAC and Woznicki believe the answers to the Committee's discovery requests lie in the record of the proceedings on the petition for liquidation, it is incumbent on PTAC and Woznicki to identify the portions of the record that are responsive to each of the Committee's requests. It is not proper to make the Committee search such an extensive record for information that, after a lapse of four years, may or may not constitute complete and up-to-date responses, or to make the Committee guess which particular information PTAC and Woznicki believe is responsive to a particular request. The burden of identifying responsive documents in the record is much greater for the Committee than for PTAC and Woznicki, because PTAC and Woznicki created the record in question and the Committee did not.

The Committee's First Request for Production included a request for documents showing the premium rates that PTAC and Woznicki believe are necessary to rehabilitate PTNA so that PTNA is able to pay policyholder claims as they come due, including any breakdown of such rate increases by product and state. PTAC responded by listing documents of record that date back to 2009, 2012 and 2013, as well as rate increase histories for TransAmerica Life, John Hancock, Senior Health Insurance Co. of Pennsylvania and other insurers. Nowhere does PTAC indicate that these documents contain the premium rate increases that PTAC and Woznicki currently believe are necessary on a state by state basis to rehabilitate PTNA so that PTNA is able to pay policyholder claims as they come due. Even if the information the Committee seeks may

in due course be the subject of an expert report, the response is inadequate, because PTAC and Woznicki do not state that they currently have no belief independent of any expert testimony, nor do they state that they have no responsive documents independent of expert reports.

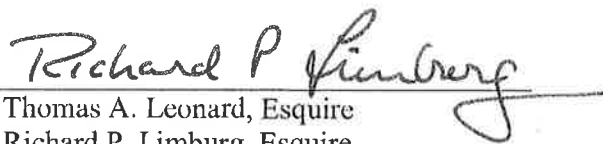
To the extent that PTAC and Woznicki object to contention interrogatories on the basis of the 2008 explanatory comment to Pa.C.R.P. 4005, it is clear that the Committee has not sought to “tie up the opposing party rather than obtain discovery,” because all the Committee has requested is a brief description of the facts and actuarial basis for certain statements in PTAC and Woznicki’s formal comments, and the identification of documents that embody such matters.

In any event, such an objection is temporary at best. The 2008 explanatory note states that contention interrogatories are appropriate once the bulk of discovery has occurred. To the extent that PTAC and Woznicki claim the facts and actuarial considerations are of record in connection with the liquidation petition, then the bulk of discovery has already occurred, making contention interrogatories appropriate at this time. To the extent that PTAC and Woznicki intend to defer a portion of their response until the discovery process is more complete, then they should so state and describe the portion they intend to defer.

For the foregoing reasons, and in light of PTAC’s failure to respond to the Committee’s offer to modify its discovery requests, the Committee requests that the Court enter an order compelling PTAC and Woznicki to answer interrogatories and requests for production contained in Exhibit C hereto, which consists of the Committee’s discovery requests as modified by the letter of October 9, plus Request for Production

No. 5 of the Committee's First Set of Interrogatories and Requests for Production dated April 30, 2015, and Interrogatory No. 24 of the Committee's Second Set of Set of Interrogatories and Requests for Production dated June 30, 2015.

Respectfully submitted,

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Dated: October 15, 2015

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[PROPOSED] ORDER

AND NOW, this ____ day of _____, 2013, upon consideration of the Application of Policyholders Committee for an Order Compelling PTAC and Woznicki to Provide Answers to Interrogatories and Requests for Production, and the response thereto, it is hereby ORDERED that the Application is GRANTED, and PTAC and Woznicki are hereby directed to answer without objection the Committee's interrogatories and document requests contained in Exhibit C to the Committee's application.

BY THE COURT:

Mary Hannah Leavitt, J.

CERTIFICATE OF SERVICE

I certify that on October 15, 2015, I caused a true and correct copy of the foregoing Application to be served on the following persons by email and regular mail at the addresses indicated below:

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/s/ Richard P. Limburg
Richard Limburg