

2. On May 18, 2012, the Intervenors filed their “Petition to Recover Professional Fees, Costs and Other Expenses Awarded Pursuant to 40 P.S. § 221.18(a) and the Court’s Memorandum Opinion and Order Dated May 3, 2012” (the “Fee Petition”) to recover professional fees and other costs and expenses incurred through February 2012.

3. The Intervenors supported the Fee Petition with billing descriptions, invoices, affidavits and exhibits, and objective data regarding attorney billing rates. *See* Fee Petition; Disk Containing Support for Fee Petition provided to the Court on May, 23, 2012 (“Fee Petition Support”); June 28, 2012 Affidavit of Douglas Y. Christian and Exhibits (“Christian Affidavit”).

4. The Intervenors notified the Court and the Rehabilitator that they “continue to incur costs and expenses in connection with their defense of the Petitions and with this petition, and will supplement this petition to recover those amounts.” Fee Petition at 2 n.1, 54.

5. On June 11, 2012, the Rehabilitator filed a Certificate of No Objection providing that he “has reviewed the Petition and does not contest the Intervenors’ request for relief” and “requests the Court enter an Order . . . approving the Petition.”

6. After a conference call in which Pennsylvania Insurance Department lawyers Ms. Daubert and Ms. Lucas represented to the Court that the Fee Petition and Fee Petition Support had been carefully reviewed and found to be in order, on July 6, 2012 the Court issued an Order granting the Fee Petition in its entirety.

costs and fees therefore may be paid from the general assets of the insurer, subject to the approval of the administrative or judicial body to which appeal was made.”) and § 221.18(a) (“The Commonwealth Court shall permit the directors to take such actions as are reasonably necessary to defend against the petition and may order payment from the estate of the insurer of such costs and other expenses of defense as justice may require.”); *Koken v. Legion Insurance Co.*, 831 A.2d 1196, 1228 (Pa. Cmwlth. 2003) (§ 221.18(a) “specifically authorizes use of insurer (in rehabilitation) funds to contest its liquidation.”)

7. On February 21, 2014, the Intervenors filed a Supplemental Fee Application, which includes copies of the original Fee Petition, Certificate of No Objection, and July 6, 2012 Order as exhibits.

8. On March 24, 2014, the Rehabilitator filed a Response to the Supplemental Fee Application reserving the right to respond to future requests for reimbursement and stating that “the Rehabilitator does not object to Intervenors’ calculations or otherwise oppose their request for relief[.]”

9. On April 4, 2014, the Court issued an Order granting the Supplemental Fee Application in its entirety.

10. Thereafter, the Court’s Order of June 8, 2015 granted the Intervenors’ Supplemental Fee Application for the period ending March 31, 2015, and the Court’s Order of September 9, 2015 granted the Intervenors’ Second Quarter 2015 Supplemental Fee Application for the period ending June 30, 2015. The Court ruled that “[b]ecause Intervenors are entitled to recover their reasonable fees and costs under Section 518(a) of Article V, 40 P.S. §221.18(a), and, alternatively, Section 506(c)(i) of Article V, 40 P.S. §221.16(c)(i), the Court grants Intervenors’ application.” Memorandum and Opinion filed September 9, 2015 at 1-2.

II. The Rehabilitator’s Continued Efforts to Liquidate the Companies

11. The Rehabilitator has not taken any actual rehabilitative actions that would produce any rehabilitative result for the benefit of the Companies in the more than six years since the Insurance Commissioner was appointed as the Rehabilitator.

12. After the decision of May 3, 2012, the Rehabilitator continued to pursue liquidation of both Companies by way of the Rehabilitator’s appeal to the Supreme Court of Pennsylvania.

13. The Rehabilitator also seeks to convert this rehabilitation to a liquidation by way of the proposed Second Amended Plan of Rehabilitation. The liquidation of PTNA is described as “an integral part” of the Plan. Rehabilitator’s Petition for Approval of the Second Amended Plan ¶ 6. The Second Amended Plan calls for the immediate liquidation of one company and the eventual sale of the book of business of the other company, ensuring its demise. Even if that book is not sold, the surviving company “will not have sufficient statutory surplus to be permitted to operate independently and write new business.” Second Amended Plan at 1.

14. The Intervenors continue to incur professional fees, costs, and expenses to defend against the Rehabilitator’s continued efforts to pursue liquidation. The Intervenors’ continued advocacy on behalf of the Companies is vital to fending off the Rehabilitator’s improper liquidation efforts.

III. The Intervenors are Entitled to Recover Supplemental Fees and Costs Incurred in The Third Quarter of 2015

15. The Intervenors seek to recover attorney’s fees and costs incurred in the third quarter of 2015 to: (a) prepare for and appear at Court conferences, meetings, and hearings, (including, but not limited to, the hearing on the proposed plan and liquidation petition that commenced on July 13 and 14, 2015); (b) prepare and appear for meetings and conferences with the Rehabilitator’s representatives and attorneys for other intervening parties; (c) review and analyze Court filings during this period; (d) research and prepare the Intervenors’ own Court filings during this period; and (e) research legal issues, meet with the Intervenors’ counsel to obtain legal advice, work on discovery, and perform other hearing preparation work including review of documents produced by the Rehabilitator and responses to discovery requests propounded by the Rehabilitator and the Policyholders’ Committee and directed to the Intervenors; and (f) prepare fee reimbursement requests and related support.

16. The attorney's fees and costs of the defense sought for the categories of work detailed above, and in the supporting documentation that is being provided to the Court for *in camera* review and that will be confidentially provided to the Rehabilitator's counsel, are recoverable pursuant to 40 P.S. §§ 221.6(c)(i) and 221.18(a), the Court's Amended Opinion and Order, and the Court's September 9, 2015 Memorandum Opinion and Order because they were reasonably necessary for the defense with respect to this delinquency proceeding and to defend against the Rehabilitator's liquidation efforts, for the reasons set forth in the Intervenors' original Fee Petition, the Intervenors' Supplemental Fee Applications, and this Application.

17. The legal authority and standards for recovering the professional fees, costs, and other expenses of the defense in this context were addressed most recently in the Court's September 9, 2015 Memorandum Opinion and Order, and previously in the Intervenors' Fee Petition. The Intervenors incorporate by reference their Fee Petition in support of this Application. *See* Fee Petition at 1-5, 40-43, 53-54 (citing, *inter alia*, 40 P.S. §§ 221.6(c)(i) and 221.18(a) and the Court's Memorandum Opinion and Order dated May 3, 2012).

A. The Intervenors' Attorneys' Fees

18. The Intervenors continue to be represented by the same Ballard attorneys that have consistently provided the defense in this matter, Ballard partner, Mr. Christian, and senior associate, Mr. Schmidt. The Ballard defense team's expertise and discounted billing rates are set forth in detail in the Fee Petition at 14-25. In addition, Ballard partner Justin Klein provided professional services during this period including meeting with the Rehabilitator's representatives.

19. Increases in billing rates since the Fee Petition are due to the progressively greater experience and seniority of the Intervenors' professionals between 2009 and 2015 reflected by standard yearly increases in the general market rates for attorneys at Ballard and other similarly

situated firms. Mr. Christian’s standard hourly billing rate is \$750, commensurate with his experience and specialized expertise. Mr. Schmidt’s standard hourly billing rate is \$480, commensurate with his experience and specialized expertise. Mr. Klein is a past Practice Leader of Ballard’s Securities Practice Group and has 43 years of experience as a respected corporate counselor in the areas of securities, corporate governance, and transactional matters. Before entering private practice, Mr. Klein served as assistant director of the Division of Corporation Finance at the United States Securities and Exchange Commission. Mr. Klein’s standard hourly billing rate is \$925, commensurate with his experience and specialized expertise.

20. The effective hourly rates for amounts sought in this Application for Messrs. Christian and Klein is \$600, for Mr. Schmidt is \$384, and for paralegals is approximately \$191.² These rates continue to be reasonable for the reasons explained in the in the Fee Petition, the prior Supplemental Fee Applications, and this Application.

21. The Intervenors seek to recover \$193,500 of attorney’s and paralegal’s fees that they incurred for the categories of work in this matter described above:

<u>Fee Earner</u>	<u>Hours Recorded</u>	<u>Recorded Value</u>	<u>Hours Billed</u>	<u>Billed Amount</u>	<u>Hours Sought</u>	<u>Effective Hourly Rate</u>	<u>Amount Sought</u>
Christian	131.6	\$98,700	131.6	\$78,960	131.6	\$600	\$78,960
Schmidt	275.3	\$132,144	275.3	\$105,715.2	275.3	\$384	\$105,715.2
Klein	7.0	\$6,475	7.0	\$5,180	7.0	\$600	\$4,200
Paralegals	24.2	\$5,781	24.2	\$4,624.8	24.2	\$191.11	\$4,624.8
TOTAL	438.1	\$243,100	438.1	\$194,480	438.1	\$441.68 (average)	\$193,500

² The “Effective Hourly Rate” in the seventh column in the table in paragraph 21 is the “Amount Sought” divided by the “Hours Recorded.”

22. These amounts were determined as follows. Timekeepers kept timesheets that generated monthly billing reports that were reviewed by Mr. Christian for accuracy.

23. The monthly invoices submitted to the Intervenors for payment show the services rendered on their behalf, the particular fee earner who performed those services, when those services were rendered, the amount of time that was billed for those services, and the amount billed for those services. The total fees for those services were then discounted by 20% of Ballard's standard hourly rates, and that discounted amount was billed to the Intervenors. By virtue of that discount, the amount that was billed to the Intervenors was \$48,620 less than the amount that would have been billed at Ballard's standard rates.

24. For various reasons, the Intervenors have separately reduced the amount of fees sought in this Application by voluntarily writing off an additional \$980 of Mr. Klein's time billed for the categories of work in this matter described above.

25. Accordingly, by virtue of the 20% hourly fee discount and the voluntary exclusion of fees billed by Mr. Klein for which no recovery is sought, the amount of Ballard fees sought to be received is \$49,600 less than the amounts recorded at Ballard's standard non-discounted rates.

26. To support the legal fees being sought, in addition to this verified Application, the Intervenors are producing to the Court and the Rehabilitator spreadsheets describing: (i) the legal services provided for which they seek reimbursement; (ii) the legal professional who performed the services; (iii) when the services were rendered; (iv) the amount of time it took to perform the services; (v) the amount recorded as the undiscounted value of the services; and (vi) the amount sought by way of this Application. The spreadsheets show the recorded and billed value of time only where recovery is sought for those services in this Application.

27. As set forth in the original Fee Petition at pages 23-25 and footnote 3 of the February 21, 2014 Supplemental Fee Application, the Intervenor's legal fees sought in this Application are also necessary in light of, and reasonable by comparison to, the law firms and vastly greater number of lawyers and consultants representing the Rehabilitator. By way of comparison, pursuant to the Rehabilitator's Service Purchase Contract 1136 with PricewaterhouseCoopers, LLP, actuary Larry Rubin's hourly billing rate is \$750.

B. The Intervenor's Costs and Expenses

28. As described in a spreadsheet that is being provided to the Court for *in camera* review and that is also being confidentially provided to the Rehabilitator's counsel, the Intervenor incurred \$8,948.30 in costs in connection with this matter between July 1, 2015 and September 30, 2015, of which they seek to recover \$8,163.97.

29. The spreadsheet columns state the cost date, attorney or paralegal that charged the cost, cost type, and the amounts recorded, billed, and sought. Write-offs of costs such as business meals and certain travel costs for which no recovery is sought in this period are indicated by a zero in the final column entitled "amount sought." After such write-offs, the Intervenor seeks to recover \$8,163.97 in costs.

IV. Conclusion

30. In total the Intervenor seeks to recover \$201,663.97 in professional fees, costs and expenses.

WHEREFORE, the Intervenor respectfully request that this Court enter an Order in the form of the attached proposed order awarding them \$201,663.97 in professional fees, costs, and expenses.

Respectfully submitted,

Dated: October 21, 2015

/s/ Benjamin M. Schmidt
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*Attorneys for Intervenor Eugene J. Woznicki
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VERIFICATION

I, DOUGLAS Y. CHRISTIAN, lead counsel for the Intervenors Eugene J. Woznicki and Penn Treaty American Corporation, state that I am authorized on their behalf to submit this verification of the facts stated in the Third Quarter 2015 Supplemental Application for Relief of the Intervenors Eugene J. Woznicki and Penn Treaty American Corporation to Recover Professional Fees and Costs and Other Expenses to which this Verification is attached and that such facts are true and correct to the best of my knowledge, information and belief. I further understand that the statements made herein are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

/s/ Douglas Y. Christian
Douglas Y. Christian

Dated: October 21, 2015

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2015, I caused a true and correct copy of the Third Quarter 2015 Supplemental Application for Relief of the Intervenors Eugene J. Woznicki and Penn Treaty American Corporation to be served by U.S. Mail on counsel for the Rehabilitator, and by e-mail on the following counsel:

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