IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT L. PRATTER, ACTING INSURANCE COMMISSIONER OF THE COMMONWEALTH OF PENNSYLVANIA,	:	
Plaintiff,	:	
v.	:	**DOCKET NO. 5 M.D. 2009**
PENN TREATY NETWORK AMERICA INSURANCE COMPANY,	:	
Defendant.	:	
ROBERT L. PRATTER, ACTING INSURANCE COMMISSIONER OF THE COMMONWEALTH OF PENNSYLVANIA,	:	
Plaintiff,	:	
v.	:	**DOCKET NO. 4 M.D. 2009**
AMERICAN NETWORK INSURANCE COMPANY,	:	
Defendant.	:	

ORDER

AND NOW, this ___ day of _________, 2010, in consideration of the Motion in Limine of the Rehabilitator to Preclude From Trial The Expert Report and Testimony of William Hager ("Motion") and any response thereto, it is hereby ORDERED that the Rehabilitator's Motion is GRANTED, and accordingly, the Intervenors are precluded from offering any and all evidence and opinions of William Hager at the trial of this matter.

BY THE COURT:

____
MARY HANNAH LEAVITT

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

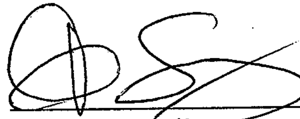
ROBERT L. PRATTER, ACTING INSURANCE COMMISSIONER OF THE COMMONWEALTH OF PENNSYLVANIA, **Plaintiff,** **v.** **PENN TREATY NETWORK AMERICA INSURANCE COMPANY,** **Defendant.**	:	**DOCKET NO. 5 M.D. 2009**
ROBERT L. PRATTER, ACTING INSURANCE COMMISSIONER OF THE COMMONWEALTH OF PENNSYLVANIA, **Plaintiff,** **v.** **AMERICAN NETWORK INSURANCE COMPANY,** **Defendant.**	:	**DOCKET NO. 4 M.D. 2009**

MOTION IN LIMINE OF THE REHABILITATOR TO PRECLUDE FROM TRIAL THE EXPERT REPORT AND TESTIMONY OF WILLIAM HAGER

Petitioner Robert L. Pratter, Acting Insurance Commissioner of the Commonwealth of Pennsylvania (the "**Rehabilitator**" or "**Commissioner**"), in his capacity as Rehabilitator of Penn Treaty Network America Insurance Company ("**PTNA**") and American Network Insurance Company ("**ANIC**") hereby moves this Court to preclude from trial the expert report and testimony of William Hager. The reasons and grounds for this motion are set forth in the

accompanying Memorandum of Law submitted in support thereof and the exhibits set forth in the accompanying Appendix, which are incorporated by reference as if set forth fully herein.

Respectfully submitted,



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Dated: November 12, 2010

CERTIFICATE OF SERVICE

I, Thomas S. Harty, hereby certify that on November 12, 2010, I served the foregoing Rehabilitator's Motion in Limine of the Rehabilitator to Preclude From Trial The Expert Report and Testimony of William Hager, supporting Memorandum of Law and Appendices by the following means:

By Hand Delivery:

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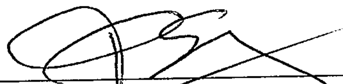

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT L. PRATTER, ACTING INSURANCE COMMISSIONER OF THE COMMONWEALTH OF PENNSYLVANIA, Plaintiff, v. PENN TREATY NETWORK AMERICA INSURANCE COMPANY, Defendant.	:	DOCKET NO. 5 M.D. 2009
ROBERT L. PRATTER, ACTING INSURANCE COMMISSIONER OF THE COMMONWEALTH OF PENNSYLVANIA, Plaintiff, v. AMERICAN NETWORK INSURANCE COMPANY, Defendant.	:	DOCKET NO. 4 M.D. 2009

MEMORANDUM IN SUPPORT OF THE COMMISSIONER'S MOTION TO PRECLUDE THE EXPERT TESTIMONY OF WILLIAM D. HAGER

I. INTRODUCTION

Presently before the Court is the Motion of Petitioner, Robert L. Pratter, Acting Insurance Commissioner of the Commonwealth of Pennsylvania (the "**Rehabilitator**" or "**Commissioner**"), in his capacity as Rehabilitator of Penn Treaty Network America Insurance Company ("**PTNA**") and American Network Insurance Company's ("**ANIC**"; collectively with PTNA the "**Defendants**"), to Preclude the Expert Testimony of William D. Hager (the "**Motion**") as detailed in Supplemental Answers to Interrogatories. See Exhibit 22.

William Hager's ("**Hager**") motto can best be captioned "have gun will travel." This purported "insurance" expert has offered testimony in virtually every field imaginable including:

(i) Property Casualty Matters;

(ii) Life Matters;

(iii) Health Matters;

(iv) Disability Matters;

(v) Long-Term Care Matters;

(vi) Reinsurance Matters;

(vii) Agent Liability Matters;

(viii) Solvency Matters;

(ix) Regulatory Duties and Responsibilities;

(x) Coverage Questions Across All Areas of and Categories of Insurance Policies;

(xi) Bad Faith Cases;

(xii) Actuarial Malpractice Cases;

(xiii) Accounting Malpractice Cases;

(xiv) Legal Malpractice Cases;

(xv) Securities Litigation;

(xvi) Criminal Prosecutions;

(xvii) Viaticals Litigation.

Succinctly summarized, Hager is a professional expert who in this instance has offered an opinion (i) without factual foundation or basis and thus replete with speculation; (ii) loaded with legal conclusions and "advice" for the Court on the ultimate issue; and (iii) which proves cumulative in nature. Compounding the foregoing, Hager's opinions are predicated upon an incorrect understanding and application of the futility standards applicable to the Commissioner in electing to seek liquidation of PTNA and ANIC.

Hager's testimony should be precluded in this case. First, while professing to provide only "insurance" expertise, Hager offers opinions varying from actuarial assertions to legal conclusions. His "expertise" is ill-defined, if not non-existent. At best, it is cumulative of the Defendants other "experts." Second, Hager offers virtually no substantive factual foundation and often times refused to provide such information despite the mandates of Pa.R.E. 702. Third and most egregiously, Hager suggests that the Commissioner may only seek liquidation if the proceeding is futile - meaning "there is no purpose" to ongoing efforts to rehabilitate the Companies. This is not the appropriate standard.

The standard adopted in this action is clearly delineated at 40 PS §221.18, which requires a Commissioner seeking conversion from rehabilitation to liquidation to establish that:

> He *has reasonable cause to believe* that further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policy and certificate holders or the public; or would be futile . . .

As this Court explained in Legion,

> This is not to say that futility can be established only where there is a proposed plan of rehabilitation. There will be cases where the rehabilitator discovers that the insurer's finances are in total disarray, loss reserves against claim liabilities are drastically understated and investments chimerical. Evidence of this type would also establish futility.

Koken v. Legion Insurance Co., 831 A.2d 1196, 1230, 1245 (Pa. Cmwlth. 2003), aff'd sub nom. Koken v. Villanova Insurance Co., 583 Pa. 400, 878 A.2d 51 (2005) (emphasis added).

Based on such "reasonable belief" the Commissioner *may petition the Commonwealth Court for an order of liquidation*. Nonetheless Intervenors, through Hager, aggressively assert that the Commissioner be required to demonstrate that there is virtually no purpose to be served by continued rehabilitation before he can seek liquidation. As this standard is not the law, the Court need not be burdened with such "expert" testimony.

Based on the foregoing the Commissioner seeks an order of the Court precluding the testimony of Hager. In support thereof the Commissioner submits the following.

II. STATEMENT OF RELEVANT FACTS.

A. Hager's Alleged Experience.

In this case the Court is confronted with whether PTNA and ANIC, two long-term care insurers are to be liquidated.

In opposition to the Petition to Liquidate the Intervenors have offered the testimony of Hager. Hager lacks any "long term care" experience either in (i) a regulatory environment for the past 20 years (let alone any familiarity with the rehabilitation process statutorily adopted in Pennsylvania) or (ii) a professional capacity. Specifically, during his deposition Hager admitted that his "long term care" experience was non-existent. Hager admitted that he has:[1]

1. not been employed directly by a long term care company nor has he supplied actuarial services to a long term care company (Exhibit 20, p. 51:12-14).[2]

2. not provided consulting services, in any capacity, to a long term care insurance carrier, other than to provide certain testimony concerning coverage eligibility (Exhibit 20, p. 51:15-18; 26:10-27:13).

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[1] Intervenors' expert Dr. Holland acknowledges the industry has undergone substantial changes since 1990. See Exhibit 23.

[2] In addition to his other professional capacities, he is also a "actuary", although he admits that he is not acting as an actuary in this case. (Exhibit 20 p. 138:22-139:13).

3. not been admitted as an expert in either Federal or State Courts concerning "a long term care carrier" (Exhibit 20, p. 35:17-36;2).

4. not sought or assisted (ever) in the prosecution of a rate increase application on behalf of a long term care company (Exhibit 20, p. 36:10-38:7).

5. no recollection of ever having sought rehabilitation of a long term care company while serving as the Commissioner of Insurance for the State of Iowa. (Exhibit 20, p. 43:8-18).

6. certainly never assisted a long term care carrier engaged in a rehabilitation or liquidation process in the pursuit of rate increase applications (Exhibit 20, p. 51:19-12).

Notwithstanding his complete lack of experience in the long term care arena, Hager did not even consult with an outside industry representative prior to voicing his opinions. (Exhibit 20, p. 62:7-11). Nonetheless Hager tosses about a myriad of criticisms which he is rarely ever able to substantiate.

B. Hager Did Not Prepare a Report.

Hager has not issued an expert report in connection with this proceeding. Instead, the Intervenors' counsel served Supplemental Interrogatory Answers which purportedly set forth Hager's opinions. See Exhibit 22. The Answers were devoid of factual content or any explanation as to how Hager reached his conclusions. See Exhibit 22. In pertinent parts, Hager opines as follows:

1. Continued rehabilitation is not futile because it:

(a) Permits a more thorough record without a rush to liquidation "especially given the huge change in Milliman projections and the several errors in Milliman analysis." (See Exhibit 22 at 2).

(b) Permits future actuarial projections to be more reliable as they would be based on additional and more complete credible and other data. (See Exhibit 22 at 2).

(c) Permits actuarial justified premium rate increases to continue. (See Exhibit 22 at 3).

(d) *Permits the Court* and parties to undertake a proper and thorough rehabilitation effort, including an unbiased approach to seeking, achieving, and implementing premium rate increases and rehabilitation plan alternatives. (See Exhibit 22 at 3).

(e) *Permits the Court* to consider the beneficial effect on the claims of expected advances in the medical area, as outlined by Dr. Holland. (See Exhibit 22 at 3).

(f) Avoids the detrimental effect of liquidation on certain policyholders whose policies do not need premium rate increases. (See Exhibit 22 at 3).

(g) Provides more flexibility and fashioning options than it does in liquidation. (See Exhibit 22 at 3.)

(h) Permits the DOI more time to pursue its initiative to increase guaranty association limits. (See Exhibit 22 at 3).

(i) Permits a more efficient claims handling approach than available at the guaranty association. (See Exhibit 22 at 3).

(j) *Permits the Court* and parties to appropriately approach the rehabilitation without the detrimental effect of an announced intent to liquidate the companies. (See Exhibit 22 at 3).

2. The continued rehabilitation according to Mr. Hager further does not "substantially increase the risk to policyholders" and instead allows them to benefit from "future premium rate increases." (See Exhibit 22 at 5).

3. The effort to rehabilitate on the part of the DOI has been deficient because the Commissioner:

(a) Has not taken such action as to "correct the condition" that prompted the Board of Directors request for and consent to the "rehabilitation of Penn Treaty." (See Exhibit 22 at 5).

(b) Has not aggressively filed for premium rate increases. (See Exhibit 22 at 5).

(c) Has not aggressively filed premium rate increase requests including not using the Courts to obtain rate increases. (See Exhibit 22 at 5).

(d) Unreasonably elevated the factor of an impact of premium rate increases on the policyholders over other factors including solvency of the companies. (See Exhibit 22 at 5).

(e) Stopped all new premium rate increase filings in August of 2009 and doing so without notice and approval by the Court and based on incomplete information. (See Exhibit 22 at 5).

(f) *Not set an example for other regulators* by informing other regulators that the Pennsylvania Department of Insurance had decided not to grant premium rate increases in Pennsylvania. (See Exhibit 22 at 5).

(g) By eliminating the premium rate increase committee and dismissing the person (Cam Waite) who was instrumental in the premium rate increase effort. (See Exhibit 22 at 5).

(h) By failing to adopt the recommendations by Mr. Waite and Signal Hill in pursuit of premium rate increases. (See Exhibit 22 at 5).

(i) By filing the liquidation petitions without first discussing a course of action with the Court. (See Exhibit 22 at 5).

(j) Failing to seek guidance from the court. (See Exhibit 22 at 5).

(k) In his management of PTNA's and ANIC's investments portfolios. (See Exhibit 22 at 7).

(l) Relied on the wildly varying projections of Milliman. (See Exhibit 22 at 7).

(m) In following a DOI policy to liquidate (See Exhibit 22 at 7).

(n) Not seeking guidance from the Intervenors and their actuaries. (See Exhibit 22 at 7).

(o) Taking the path of least resistance. (See Exhibit 22 at 7).

Hager then concludes his report by suggesting to the Court the findings it should enter at paragraph 6 of his opinion. See Exhibit 22 at7-8.

C. Hager Repeatedly Refused or Failed to Provide Facts to Support His Opinions

Notwithstanding the breadth of his opinions during his deposition Hager repeatedly was unable to provide substantial factual information in support of his opinions. Specifically:

1. He could not identify any factual basis upon which he criticized the "actuarial assumptions" and projections of Milliman as he did not provide an actuarial opinion. (See Exhibit 20, p. 83:21-84:5);

2. He did not review the actuarial projections that exist now and whether they were complaint with the Society of Actuary Standards. (See Exhibit 20, p. 85:8-12);

3. He did not review the actuarial reports for determining their accuracy. (See Exhibit 20, p. 84:19-22);

4. While he concluded that the Commissioner exhibited "bias," he was unable to direct counsel to any facts which support his contention that the Commissioner exhibited such prejudice during Penn Treaty's rehabilitation process and instead sought liquidation. (See Exhibit 20 at 90:4-9424; 96:8-97:23);

5. When questioned as to the "detrimental effects of liquidation" to certain policyholders set forth in his report, he acknowledged he was speaking about only the 20% of the new policyholders of PTNA and ANIC – <u>not</u> the 80% of owners who purchased policies pre-2000 who are commonly referred to as "OldCo." (See Exhibit 20 at 98:24-99:13);

6. While criticizing the Commissioner for not considering other alternatives, he was unable to provide any opinion as to what alternatives should actually be considered. (See Exhibit 20, p. 100:2-11);

7. While suggesting that various members or representatives of the Intervenors should be actively involved in rehabilitation, he was unable to name any individual or individuals specifically he thought should be so involved. (Exhibit 20, p. 102:3-13). He, in fact, was unaware what management team actually remained behind from PTNA that predated the rehabilitation process. (Exhibit 20. p. 103:4-8);[3]

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[3] So limited was his review, he is clearly unaware that Cam Waite remains with PTNA as a paid consultant and has testified that the premium rate increase needed to rehabilitate the company was not achievable (See Exhibit 1 ¶ 1); the Court was informed of the Commissioner's intent to

8. Although critical of the Commissioner for not filing for a premium rate increase, Hager was once again unable to supply any specifics to support his opinion other than to contend that the Commissioner should apply for "actuarially" justified rate increases. Even though he had never read the existing reports to determine their accuracy. (Exhibit 20 p. 106:13-22);

9. Hager was unable to explain what rate increases the Commissioner should have pursued. (Exhibit 20 p. 106:13-107:13);

10. When asked to explain how the Department of Insurance had "unreasonably elevated the factor" or the impact of premium rate increases on policyholders over other factors, including solvency of the company, he provided no substantive factual information. (Exhibit 20). In fact, Hager refused to supply such information and pointed to the "totality" of the record. (Exhibit 20, p. 110:20-113:8).

11. Similarly, while criticizing the Commissioner's "investment choices," Hager admitted he had no relevant experience pertinent to the Court and, in fact, his last time being involved with "investment strategies" was approximately 20 years prior i.e., from 1986 to 1990 as "Commissioner of Insurance." (Exhibit 20 pp. 121:10-122:11).

12. Just as problematic, although very critical of the Rehabilitator's choice to rely upon Milliman (Exhibit 20 p. 122:12-125:1) Hager again admitted that he had not been asked to testify as an actuary and offered no such opinion. (Exhibit 20 pp. 138:22-139:4).

13. When confronted with the suggestion that the Commissioner had been "deficient" in taking the path of least resistance, Hager was once again unable to supply any factual support for his contentions. Instead, he cited the "totality of my report." (Exhibit 20 p. 128:10-129:6).

14. When confronted with the demand that he provide such factual information, he simply stated that "I have nothing to add to the answer to those questions." (Exhibit 20 p. 129:7-130:6).

15. Finally, while criticizing the Commissioner for not instituting suit against states which had not granted rate increases, he had no information as to what states should have been sued. (Exhibit 20 p. 105:20-24).[4]

C. The Rules of Evidence Prohibit Admission of Hager's "Expert" Opinion

Pursuant to Rule 702 of the Pennsylvania Rules of Evidence:

---

file the Petition for Liquidation (See Exhibit 29); and the majority of management remained in tact either directly or on a consulting basis.

[4] And he is apparently unaware that the company never filed such a suit beforehand.

> If the scientific, technical or other specialized knowledge beyond that possessed by a layperson will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise.

The evidence rule governing expert testimony has three fundamental requirements including (i) the witness must qualify as an expert by knowledge, skill, experience, training or education; (ii) the expert must testify to scientific, technical or other specialized knowledge; and (iii) the expert's testimony must assist the trier in fact. An expert witness is a witness who possesses knowledge not within ordinary reach or understanding, and who because of this knowledge is specifically qualified to address a particular subject. *Bergman v. United Services Auto. Ass'n*, 742 A.2d 1101, 1105 (Pa. Super. 1999).

In this instance, Hager offers no such expertise, skill or acumen that qualifies him to address a particular subject relevant to this litigation. Admittedly, Hager has virtually no experience with respect to the long term care industry. In fact, he has openly acknowledged that he has had no experience either from a regulatory or a management perspective with "long term care" insurance carriers. He has not been employed by a long term care carrier nor has be supplied actuarial services to such a company. Hager has also not provided consulting services, in any capacity to the long term care industry. Hager has not served as an expert for a long term monoline carrier . More importantly,: (i) he has no experience in the prosecution of long term care rate increase applications; and (ii) has no recollection of ever having been involved in the rehabilitation or liquidation of a long term care company prior to this proceeding.

Notwithstanding his lack of experience, Hager has opined on a myriad of topics for which he lacks proper qualifications. Hager has no basis to offer opinions as to rate increases, the rehabilitation process, or the operation and management of the company as he has no relevant experience. Not only is he ill-suited to serve as an expert in this capacity, but Hager took no

action to rectify these deficiencies by, for example, conferring with a duly qualified representative who could offer him some guidance and assistance in the preparation of his report.

As a consequence, Hager's testimony should be precluded as he lacks sufficient qualifications, expertise, and skill. No better evidence of Hager's inexperience is available than the Intervenors' other expert Dr. Holland who readily acknowledged that the industry has dramatically evolved and changed over the course of the past 20 years. (See Exhibit 23). Thus, Holland renders any experience Hager had 20 years ago irrelevant. As such, an Order precluding Hager from testifying should be entered accordingly.

D. Hager's Refusal to Disclose the Facts and Data Underlying His Opinion Bar the Admission of His Testimony

Rule 705 of the Pennsylvania Rules of Evidence requires:

> The expert may testify in terms of opinion or inference and for reasons therefore; however the expert must testify as to the facts or data of which the opinion or inference is based.

Repeatedly during his deposition, Hager was requested to provide "facts and data" to support his opinions. In some instances, he was forced to acknowledge that he simply had no underlying information to support the opinions he had offered in his report, as detailed above. By way of example, he lacked information concerning rate increases; alternatives the Commissioner should provide; the persons that should be involved in the rehabilitation process; what rate increases the Commissioner failed to aggressively file; what facts he had to support his claim that the Commissioner had "unreasonably" elevated rate increases over other factors, including solvency of the company; and what facts he had to support the claim the Commissioner had followed the path of least resistance. An examination of the record and citations provided clearly establish

that Hager belligerently and consistently refused to provide such information and instead attempted to point towards the "totality of the record."[5]

This is not a case where the Court needs to waste valuable time on an expert so clearly unqualified, who instead wants to pontificate, without foundation. His opinions are buttressed by virtually nothing in almost every instance and the waste of judicial time and resources is unnecessary.

As this Court is well aware; "[it] is axiomatic that an expert's opinion not be based on conjecture or guesswork." *Commonwealth v. Galvin*, 985 A.2d 783, 801 (Pa. 2009). An opinion may be found conjectural because it does not have an adequate basis in fact. *Hussey v. May Dep't Stores*, 357 A.2d 635, 637 (Pa. Super. 1976); *see also First Methodist Episcopal Church v. Banger Gas Co.*, 130 A.2d 517, 525 (1957) (stating that "where there is no reasonable basis for an [expert] opinion, it is valueless and hence inadmissible"); *Betz v. Erie Ins. Exch.*, 957 A.2d 1244, 1258 (Pa. Super. 2008) (requiring that expert testimony be stated with "reasonable certainty . . . to avoid speculation under the rubric of 'expert opinion'"). An expert's testimony "is incompetent if it lacks an adequate basis in fact" and in that case is inadmissible. *Helpin v. Trus. of the Univ. of Pa.*, 969 A.2d 601, 617 (Pa. Super. 2009).

Here all Hager offers is guesswork, conjecture and speculation. His testimony is therefore not admissible.

E. Hager's Opinions as to Milliman and the Actuarial Statements Contained in his Report Must be Excluded as he is not Testifying as an Actuary

In this instance, Hager repeatedly offers opinion testimony as to the nature and extent of the actuary's performance and the relative value the Court should place on the Commissioner's

[5] If that were the case and his record included the petition and testimony by Mssrs. DiMemmo and Robinson, one could assume that he actually supported the Petitioner's case as opposed to the Intervenor's. These documents may be more accurately classified as favorable to the Commissioner.

reliance thereon. While criticizing Milliman and the Commissioner, Hager admits that he is not testifying as an actuary and has no underlying basis to offer such criticisms or opinions in the first instance. As a consequence, Hager is not qualified or permitted to question the conduct of the actuaries or examine their reports in a manner which leads him to conclusions without foundation. He cannot further critique the Commissioner for relying upon the Milliman reports. In short, his testimony is inadmissible hearsay testimony and lacks the credibility and underlying support with respect to these contentions.

F. Hager Should be barred with respect to his Futility Testimony

In this case, Hager has testified that any rehabilitation of PTNA and ANIC is not "futile" because it will serve a "purpose." He lists a number of critical elements that he deems relevant which renders rehabilitation not futile. Hager's definition is not the standard adopted by the Court.

In Koken v. Legion Insurance Co., this Court defined the term futility for purposes of this proceeding. A rehabilitator may consider rehabilitation "futile" where it is discovered that the loss reserves against claims liabilities of an already insolvent insurer are drastically understated. Evidence of this type establishes futility. Hager fails to even consider this standard and does not apply it (because he cannot) to the relevant facts in some appropriate manner. Instead, Hager seeks to opine as to what the Court should do—that is not the job of an expert to offer opinions as to whether the evidence submitted is insufficient. This is the responsibility of the Court. As such, there is no purpose to his opinion testimony and the same should be barred accordingly.

G. Hager's Testimony Constitutes, in Large Part, Legal Opinions

Experts are not permitted to offer conclusions of law or to substitute their judgment in place of the Court. *See 41 Valley Assocs. v. Bd. of Supervisors of London Grove Twp.*, 882 A.2d 5, 14 n.12 (Pa. Cmwlth. 2005) (stating that "[i]n general, expert opinion on a question of law is

inadmissible"); *Corbett v. Weisband*, 551 A.2d 1059, 1075 (Pa. Super. 1988) (holding that an expert could not testify as to the ultimate issue of whether negligence rose to the level of being "highly extraordinary"); *Francis v. Northumberland Cty.*, 636 F. Supp. 2d 368, 387 n.41 (M.D. Pa. 2009) (rejecting a medical expert's testimony that certain conduct constituted "reckless indifference" because this is a legal concept that only a legal expert is competent to address).

In this instance, that is exactly what Hager seeks to do throughout the course of his report. In essence, Hager would like to be an expert witness who offers testimony without foundation and qualification; while at the same point rendering the Court's decision. His report is littered with such legal conclusions. By way of example, Hager suggests that liquidation should not be permitted because it must be "made on a thorough record without rush to liquidation." (See Exhibit 22, p. 2). Continued rehabilitation must be permitted Hager opines because:

> (i) it permits the Court and parties to undertake a proper and through rehabilitation effort. (ii) it permits the Court to consider the beneficial effects of expected advances in the medical area as outlined my Mr. Hager. (See Exhibit 22, p. 3, subparagraph a).
>
> (iii) it permits the Court and parties time to appropriately approach the rehabilitation. (See Exhibit 22, p. 3, subparagraph j).

Hager even goes so far as to tell the Court that the "better course of action" which should be followed is to hold "monthly meetings with the Court," (See Exhibit 22, p. 1), and other such recommendations, which are final issues for this Court to decide not for Hager to propose.

Indeed, Hager has no qualifications or expertise in Pennsylvania insurer rehabilitation and liquidation law. That lack of any relevant experience is illustrated by his claim that this Court should approve a rehabilitation plan that includes "threats to cancel or cancellation of policies in states in which regulators do not grant justified premium rate increases." (Ex. 22 at 8 ¶ 4(d)). Such a proposal, which would deprive policyholders of substantial coverage which they

will receive in liquidation, is absolutely illegal under Pennsylvania law, as is demonstrated in the Motion in Limine of the Rehabilitator to Bar Cancelation of Insurance Policies as a Method of Rehabilitation which has been filed herewith.

In sum, Hagar has offered legal conclusion repeatedly as to what this Court should find. It is this Court's role to reach a decision following a thorough review of the facts and circumstances – not the hyperbole and bluster offered by a witness who lacks the appropriate qualifications. As such, it is respectfully submitted that Hager's testimony be excluded accordingly.

H. Hager's Testimony is Cumulative

Finally, Hager's testimony is cumulative in nature. (See generally Exhibits 20, 22). Intervenors have retained an actuary (Volkmar) to critique Milliman and the Commissioner's other professionals offering opinion analysis in this action. (See Exhibit 2). Hager's efforts to add additional testimony without foundation, is simply grandstanding and cumulative in nature. There is no need or basis for this testimony. Given that he is not acting as an an actuary in this matter and has no experience in seeking long term care rate increases, Hager's testimony offers no substantive value other than for him to parrot Volkmar and bandy about criticisms without foundation, other than his meek reference to the "totality of the record." The Court need not waste additional time addressing these concerns.

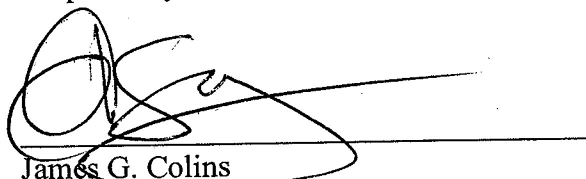
There is no dispute that the Commissioner refused to "aggressively pursue rate increases" after it was determined that the company was hopelessly insolvent. The Commissioner has made that clear. The Commissioner's view, one that Hager has long ignored, is that the company is hopelessly insolvent. Hager's efforts to grandstand his way through testimony screaming that the Commissioner should pursue such rate increases; when he is not offering any actuarial justification for his opinion is simply untenable and unnecessary.

Finally, Hager claims that the Court should consider the testimony of Holland. The Court can make that decision – Holland's views will be expressed if the Court so permits. There is no reason for Mr. Hager to be telling the Court that answer particularly as the Rehabilitator believes it is not permissible testimony under the circumstances. For these reasons, it is respectfully submitted that Hager's testimony is cumulative and unnecessary and should be precluded by the Court accordingly.

III. CONCLUSION

In closing, Hager's testimony will not assist the Court in understanding the evidence and determining any facts which are at issue in this case. Instead his opinions, or better "findings" will create undue confusion and potentially lead to prejudicial error. Inasmuch as Hager has no actual experience in Pennsylvania Insurance Law or with long term care insurance carriers his testimony goes well beyond any field of expertise he may offer. As a consequence, it is respectfully submitted that Hager's testimony be precluded accordingly.

Respectfully submitted,



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ROBERT L. PRATTER, Acting Insurance Commissioner of the Commonwealth of Pennsylvania as Rehabilitator of PENN TREATY NETWORK AMERICA INSURANCE COMPANY and AMERICAN NETWORK INSURANCE COMPANY

CERTIFICATE OF SERVICE

I, Virginia Lynn Hogben, hereby certify that on November 12, 2010, I served the foregoing Motion to Preclude the Expert Testimony of William D. Hager on the following person by the following means:

Via Hand Delivery:

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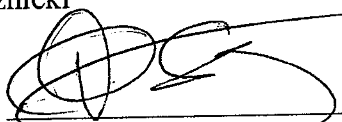

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