

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MICHAEL F. CONSEDINE, INSURANCE
COMMISSIONER OF THE
COMMONWEALTH OF PENNSYLVANIA
Plaintiff

No. 1 PEN 2009

v.

PENN TREATY NETWORK AMERICA
INSURANCE COMPANY
Defendant

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COMMONWEALTH COURT
OF PENNSYLVANIA
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**STIPULATION TO AMEND "PETITION" FOR RELIEF
TO "APPLICATION" FOR RELIEF AND TO EXTEND THE TIME TO RESPOND**

The undersigned parties, Applicant National Health Administrators, and Respondent, Pennsylvania Insurance Commissioner Michael F. Consedine in his official capacity as Statutory Rehabilitator of Penn Treaty Network American Insurance Company and American Network Insurance Company, hereby stipulate as follows:

After July 30, 2012, National Health Administrators ("NHA") filed a "Verified Petition to Recover Professional Fees, Costs, and Other Expenses Pursuant to 40 P.S. §221.18(a)" ("The Petition"). By Rule effective July 30, 2012, such requests must be made in the form of an "Application for Relief." The undersigned parties hereby stipulate that the Petition is amended to become a "Verified Application to Recover Professional Fees, Costs and Other Expenses," pursuant to 40 P.S. §221.18(a), in the form attached hereto as Exhibit A. The undersigned parties

further stipulate that the Respondent may have until and including January 18, 2013 to respond to the Verified Application.

McNEES WALLACE & NURICK LLC

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Counsel for Respondent

Dated: December 28, 2012

EXHIBIT

A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MICHAEL F. CONSEDINE, INSURANCE :
COMMISSIONER OF THE :
COMMONWEALTH OF PENNSYLVANIA :
Plaintiff : No. 1 PEN 2009
v. :
PENN TREATY NETWORK AMERICA :
INSURANCE COMPANY :
Defendant :

**VERIFIED APPLICATION OF NATIONAL HEALTH ADMINISTRATORS
TO RECOVER PROFESSIONAL FEES, COSTS, AND OTHER
EXPENSES PURSUANT TO 40 P.S. § 221.18(a)**

National Health Administrators, by and through its undersigned counsel, hereby applies to the Court, pursuant to 40 P.S. § 221.18(a), to award professional fees and costs relating to its defense of the Petitions to Liquidate Penn Treaty Network American Insurance Company and American Network Insurance Company (the "Petitions"). In support thereof, National Health Administrators avers as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

1. National Health Administrators ("NHA") has an agency agreement with Penn Treaty Network America Insurance Company ("Penn Treaty"), and it earns commissions from the renewal of the long term care insurance policies at issue in the above-captioned matter.

2. Because of its agency agreement, NHA has a legally enforceable interest that would be materially harmed by the grant of the Michael F. Consedine's, as Pennsylvania Insurance Commissioner (the "Rehabilitator"), Application seeking to suspend payment of commissions.

3. On July 23, 2009, NHA petitioned to intervene in the above-captioned action. On August 5, 2009, the Court granted NHA's Petition to Intervene.

4. Since that time, NHA has expended significant sums in professional fees and costs in defense of the Petitions.

5. Through the current application, NHA requests that the Court order payment of professional fees and costs as set forth below.

6. In conjunction with this verified application, NHA will produce to the Court and the Rehabilitator documentation detailing: (i) the legal services provided for which it seeks 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 undiscounted value of the services; (vi) the amount billed to NHA for the services; and (vii) the amount sought by way of this application.

II. RELIEF SOUGHT

A. NHA Is Entitled To Its Professional Fees And Costs Related To Its Defense Of The Petitions

1. NHA is an entity conducting an insurance business in Pennsylvania, and is subject to the authority of the Pennsylvania Insurance Commissioner

7. Pursuant to Pennsylvania law, NHA is an entity doing an insurance business within the Commonwealth of Pennsylvania and is subject to the authority of the Pennsylvania Insurance Commissioner.

8. Section 221.3 of Article V of the Insurance Department Act of 1921, 40 P.S. § 221.3, defines an "insurer" as: "any person who is doing, has done, purports to do, or is licensed to do an insurance business, and is or has been subject to the authority of, or to liquidation,

rehabilitation, reorganization or conservation by any insurance commissioner. For purposes of this article, any other persons included under section 502 shall be deemed to be insurers." 40 P.S. § 221.3.

9. Section 221.2 (formerly section 502) states, in pertinent part, that: "[t]he proceedings authorized by this article may be applied to: (1) All insurers who are doing, or have done, an insurance business in this Commonwealth, and against whom claims arising from that business may exist now or in the future; (2) All insurers who purport to do an insurance business in this Commonwealth; (3) All insurers who have insureds resident in this Commonwealth; (4) All other persons organized or in the process of organizing with the intent to do an insurance business in this Commonwealth..." 40 P.S. § 221.2.

10. "Doing business" is defined and includes any of the following acts, whether effected by mail or otherwise: (1) the issuance or delivery of contracts or certificates of insurance to persons resident in this Commonwealth; (2) the solicitation of applications for such contracts, or other negotiations preliminary to the execution of such contracts; (3) the collection of premiums, membership fees, assessments or other consideration for such contracts; or (4) the transaction of matters subsequent to execution of such contracts and arising out of them. 40 P.S. § 221.3.

11. As an insurance broker, NHA is responsible for the issuance and delivery of contracts of insurance to persons within the Commonwealth, as well as the solicitation of insurance contracts and the collection of premiums and other fees to implement such contracts. As such, NHA is "doing an insurance business" within the meaning of Article V.

12. Pennsylvania courts have stated that a broker is "doing an insurance business." Commonwealth v. Biddle, 139 Pa. 605, 610, 21 A. 134, 135 (1891)("But when we look at the

prohibitions we find they are from paying or receiving, forwarding, securing, helping, or aiding in placing insurance, or effecting any contracts, etc., and the prohibited acts themselves are all expressed in the plural, -'premiums,' 'applications,' 'contracts.' These phrases are not applicable to an owner making a single contract of insurance on his own property. They apply to agents, brokers, and others doing an insurance business").

13. NHA is subject to the authority of, or to liquidation, rehabilitation, reorganization, or conservation by the Pennsylvania Insurance Commissioner. For example, section 221.16 states: "If it appears to the rehabilitator that there has been criminal or tortious conduct, or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agent, broker, employee, or other person, he may pursue all appropriate legal remedies on behalf of the insurer." 40 P.S. § 221.16.

14. NHA is clearly an insurer within the meaning of Article V of the Insurance Department Act of 1921.

2. NHA may apply to the Court for its fees and costs incurred in defense of the Petitions

15. Section 221.6(c)(1) states, in pertinent part: "An insurer shall have the right to engage legal counsel for defense of and appeal with respect to a delinquency proceeding. Reasonable 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..."

16. Section 221.18(a) further provides: "Whenever 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, the rehabilitator may apply to the Commonwealth Court for an order of liquidation. A application under this

subsection shall have the same effect as a application under section 520. The Commonwealth Court shall permit the directors to take such actions as are reasonably necessary to defend against the application and may order payment from the estate of the insurer of such costs and other expenses of defense as justice may require." 40 P.S. § 221.18(a).

17. Pursuant to section 221.18(a), NHA had the right to engage legal counsel in defense of the Petitions. McNeese Wallace & Nurick LLC, as NHA's legal counsel in this matter, is entitled to its reasonable fees and costs associated with the defense of the Petitions.

B. NHA's Professional Fees And Costs Were Reasonably Necessary To Defend Against The Petitions

18. In determining the reasonableness of attorneys fees and costs, Pennsylvania courts examine: "the amount of work performed; the character of the services rendered; the difficulty of the problems involved; the importance of the litigation; the amount of money or value of the property in question; the degree of responsibility incurred; whether the fund involved was 'created' by the attorney; the professional skill and standing of the attorney in his profession; the results he was able to obtain; the ability of the client to pay a reasonable fee for the services rendered; and very importantly, the amount of money or the value of the property in question." LaRocca Estate, 246 A.2d 337, 339, 431 Pa. 542,456 (1968); Township of South Whitehall v. Karoly, 891 A.2d 780, 784 (Pa. Commw. Ct. 2006).

19. As noted by counsel for Penn Treaty American Corporation in its own application to recover fees, it is beyond dispute that this was a complex and time consuming matter. Although counsel for Penn Treaty American Corporation took the lead on much of this litigation, there is no question that NHA was required to remain in the case and participate in order to ensure its rights were not infringed.

20. The outcome of this matter could have dire effects not only for NHA, but also for policyholders, state guaranty associations, insurance departments, and the public. As such, the above-captioned action, and NHA's involvement therein, was extremely important.

21. Over the course of the last three years, McNees Wallace & Nurick LLC has provided a range of services to NHA in relation to its defense against the Petitions, including document preparation, hearing preparation and attendance, research, and counseling. In total, and excluding the time necessary to prepare the instant Petition, McNees has spent 359 hours defending the Petitions on NHA's behalf. Attached hereto as Exhibit "A" are invoices from McNees to NHA in regard to NHA's defense of the Petitions. These invoices have been redacted to exclude any attorney-client privileged information.

22. Such services were primarily provided by member Michael Kelley and of counsel Charles Young, both members of the firm's Insurance Recovery and Counseling group. Kelley and Young were assisted at various times by an McNees associate (who is also a member firm's Insurance Recovery and Counseling group) and various firm paralegals and specialists.

23. Since 2009, NHA has incurred \$103,864.00 in fees and costs associated with its defense of the Petitions. Of that \$103,864.00, NHA has remitted to McNees Wallace & Nurick LLC the sum of \$65,411.63. Attached hereto as Exhibit B is a statement of NHA's current account with McNees in relation to the defense of the Petitions.

24. To date, NHA has incurred \$6,260.00 in professional fees for the preparation of the instant application.

25. NHA submits that the fees and costs invoiced to it by McNees Wallace & Nurick are reasonable in light of the work done.

26. NHA further submits that the fees and costs invoiced to it by McNees Wallace & Nurick were reasonably necessary to defend against the Petitions.

WHEREFORE, Intervenor National Health Administrators requests the Court grant this application and enter an order pursuant to 40 P.S. § 221.18(a) awarding \$103,864.00 in professional fees and costs incurred by NHA in connection with its defense of the Petitions, as well as for the preparation of this application, plus additional amounts later to be determined in connection with NHA's preparation of this application.

McNEES WALLACE & NURICK LLC

By Michael R. Kelley

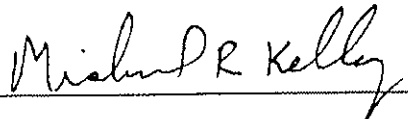
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Dated: December 28, 2012

Counsel for National Health Administrators, Inc.

VERIFICATION

I, MICHAEL R. KELLEY, lead counsel for NATIONAL HEALTH ADMINISTRATORS, INC. ("NHA") state that I am authorized on behalf of NHA to submit this verification of the facts stated in the Verified Application of National Health Administrators to Recover Professional Fees, Costs, and Other Expenses Pursuant to 40 P.S. § 221.18(a) 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.



Dated: December 28, 2012