IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Penn Treaty Network America Insurance Company in Rehabilitation	:	1 PEN 2009
In Re: American Network Insurance Company in Rehabilitation	:	1 ANI 2009

REPLY OF THE INTERVENORS IN FURTHER SUPPORT OF THEIR APPLICATION FOR RELIEF FOR AN ORDER REJECTING THE REHABILITATOR'S PLAN OR, IN THE ALTERNATIVE, REQUIRING THE REHABILITATOR TO PROVIDE CERTAIN EXPLANATIONS IN ADVANCE OF THE HEARING

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I. INTRODUCTION

The Rehabilitator requests the Court to approve his Plan, but still fails to address what happens if the crucial contingencies set forth in the Plan do not fully occur.[1] The Intervenors' Application raises fundamental questions including how failure to obtain some or all of these contingencies would impact the Plan. The Rehabilitator had an opportunity to provide an explanation to the Court, but his response provided literally no guidance and simply failed to address the gravamen of the Intervenors' Application. It is extraordinarily difficult to understand how the Rehabilitator felt he could simply ignore this main issue in his opposition to the Application. But this silence speaks volumes in terms of its implications: either the Rehabilitator has no idea what the impact would be or he knows that the failure to obtain these crucial contingencies would cause the Plan to fail. Either way, this is the death knell of the Rehabilitator's improper "rehabilitation plan." No hearing is required to reach the conclusion that this approach is fatally deficient.

Instead of addressing the main point, the Rehabilitator used his response as an opportunity to argue that he has the discretion to take any action he wishes in the Plan including, apparently, to pretend that the clear directives in the Court's Orders do not exist. He argues that he and his professionals "have worked tirelessly to make the Court's instruction a reality" and that the Intervenors "identify no provision of either statute or the Order that the Rehabilitator has supposedly violated." Rehabilitator's Response at 1, 5. The Rehabilitator's arrogance in making these patently incorrect assertions is stunning. The Plan offers no possibility of making "the Court's instruction a reality" as it directly violates, *inter alia*: the January 6, 2009 Orders

[1] Governor Wolf has recently appointed Teresa D. Miller as Acting Insurance Commissioner. Most if not all of the references to "the Rehabilitator" are to one or more of the Acting Commissioner's predecessors or to the Special Deputy Rehabilitator. Thus, the Intervenors will use the pronoun "he" when referring to the Rehabilitator.

requiring that "[t]he Rehabilitator shall take such actions as are necessary to correct the condition that prompted the Board of Directors' request for and consent to the rehabilitation of Penn Treaty"; the Court's Order and accompanying Opinion of May 3, 2012 denying the Rehabilitator's request to convert the rehabilitation to a liquidation because he has not met the statutory requirements for doing so with regard to either PTNA or ANIC and directing that the January 6, 2009 Orders "remain in effect"; the Court's instruction that there must be an earnest effort to correct the condition that prompted the Board of Directors' request for and consent to the rehabilitation including preparation of an "action plan" for obtaining rate increase relief for OldCo; and the appropriately following order that "plan of rehabilitation must address and eliminate the inadequate and unfairly discriminatory premium rates for the OldCo business." The Court does not need to hold a second hearing to determine that there has not been an earnest effort to rehabilitate and that the Plan does not comply with the Court's Orders.

II. ARGUMENT

A. The Rehabilitator's Response Offers No Guidance Regarding The Impact On The Plan If Some Or All Of The Crucial Contingencies Do Not Occur

The Rehabilitator's response to the Intervenors' Application offers literally no guidance regarding what the impact on the Plan would be if some or all of the crucial contingencies set forth in the Plan do not occur. This is stunning. The main point of the Intervenors' Application is that the Rehabilitator does not tell the Court or anyone else what happens if after the Plan is approved (the only time it is approved) the contingencies are not fully met. The Rehabilitator's opposition completely ignores this!

Instead, the Rehabilitator complains that the only reason that anyone knows about these crucial contingencies is because of the alleged "level of detail provided by the Second Amended Plan." Rehabilitator's Response at 15. He argues that instead of disclosing the

contingencies, he could have been a lot more vague, as the New York Superintendent of Insurance allegedly was in describing the plan for rehabilitating FGIC. *See id.* The Rehabilitator argues that he shouldn't be "penalized" for disclosing contingencies and asks the Court for a free pass on explaining what the impact of failing to obtain the contingencies would be. Asking the Court to ignore problems with the Plan that are fatal to its confirmation because the Rehabilitator could have hidden them is inappropriate. This is unpersuasive because it assumes that the Intervenors and the Court would not have discovered the many fundamental problems with the Plan on their own. It is not an argument that a reasonable commissioner would make. In addition, FGIC's rehabilitation plan was not subject to contingencies similar to those set forth in the Rehabilitator's proposed Plan for the Companies.

B. The Rehabilitator's Response Shows That Many Crucial Contingencies Are Unresolved and Will Remain Unresolved Before The July Hearing At Which He Seeks Approval Of The Plan

The Rehabilitator's Response shows that the many crucial contingencies are unresolved, and will remain unresolved before the July 2015 hearing is scheduled to commence. The Rehabilitator has offered only that:

- he "entered into" or is "[e]ngaged in discussions with regulators" to obtain licenses (but does not assert that any licenses have been obtained, offer a timetable for resolution, or explain what will happen if licenses are not obtained from one or more of the ten states at issue[2]), Rehabilitator's Response at 2, 11;
- he "[n]egotiated with state GAs concerning the transfer of policies" (but does not assert that this contingency has been resolved, offer a timetable for resolution, or explain what will happen if there is none), *id.* at 11; and
- "pre-submission materials and communications" with the IRS have been "initiated" (but does not assert that an actual submission for a private letter ruling

[2] As described in the Second Amended Plan at 62, PTNA has never had licenses in Kansas, Maine, Massachusetts, New Jersey or West Virginia and ANIC has never had licenses in Alaska, Iowa, Michigan or Wisconsin. In addition, neither Company has ever been licensed in a tenth state, New York. *See* Application Ex. B., Formal Comments of Greenwald & Strongin.

has been made, offer a timetable for resolution, and explain what happens if there is none), *id.* at 11-12 & n.5.

The final two bullet points at page 12 of the Rehabilitator's response, "discussions" with interested parties, and the "filing of stipulations of fact", do not suggest that the crucial contingencies will be resolved or explain what will happen if they are not. In addition, the Rehabilitator provides the vague assurance that "machinery" is being built to implement the Plan "upon receiving a final approval order." Rehabilitator's Response at 12. If the approvals had been secured or any of the issues addressed in the Application had been resolved, the Rehabilitator would have said so in his response to the Intervenors' Application. Likewise, if he expected to resolve the issues before the hearing, he would have told the Court. His responses demonstrate that he has not yet resolved any of the crucial contingencies and that he does not expect to resolve them before July.

The Rehabilitator's assertion that phase one of the Plan "is already complete" (Rehabilitator's Response at 13) must be disingenuous. For example, with regard to items "b." and "c." at page 69 of the Plan, the Rehabilitator's Response is silent as to whether the discussions had with the guaranty associations have actually led to "[f]inding appropriate ways for Guaranty Associations to cover Non-Self Sustaining business in five ANIC-only states."

Likewise, with regard to item "d." at page 69 of the Plan – "Obtaining preliminary regulatory agreement to ANIC's assumption of PTNA Self-Sustaining LTC policies in states in which ANIC was not licensed" – the Rehabilitator's response does not state that he has actually obtained preliminary regulatory agreement with regard to any issue. He only indicates that he has had discussions with "officials" and "anticipates that the necessary agreements will be executed" only after the Court approves the Plan. Rehabilitator's Response at 15-16.

With regard to item "e." – the development of the current actuarial opinion and report – the Intervenors have requested but have not received such opinion and report. Other than the drafting of the Plan, the Rehabilitator provides no evidence that any of the "Plan Design" items are in fact "complete".

C. The Rehabilitator Has Failed To Adequately Address The Fundamental Problem Of The Plan's Unreasonable Delay In Taking Any Rehabilitative Action Or Producing Any Rehabilitative Result For The Companies

Even if the Plan's phase one "Design Phase" actually had been completed and the Plan were to gain this Court's approval, the Plan's phase three requirement of a final order on the Plan disposing of all appeals – which could be filed by the Rehabilitator, the Intervenors, the Health Insurers, NOLHGA, and others – would not allow any rehabilitative action for the benefit of the Companies to be taken or produce any rehabilitative result until 2018. The Rehabilitator cheekily argues that "any such delay, however, would be attributable to the duration of the appellate process, not to any conduct of the Rehabilitator." Rehabilitator's Response at 14. To the contrary, the delay attendant to needing to obtain a final order before any rehabilitative action is taken and before producing any rehabilitative result for the benefit of the Companies is the fault of the Rehabilitator in setting the Plan up in this manner.

D. Recent Public Filings Show That Whatever Confidential Negotiations Over the Plan Have Occurred Have Failed to Resolve Fundamental Objections

The Rehabilitator identified in his Preliminary Plan of Rehabilitation filed in 2009 and in his April 2013 Plans of Rehabilitation two workable and preferred rehabilitation methods to correct the condition that led to rehabilitation: rate increases and benefit reductions. The Intervenors' August 30, 2013 Formal Comments make clear that they support these methods, preferably both in concert, to effect the needed rehabilitations. The May 3, 2012 decision provided that "[a] rehabilitation plan need not involve only rate increases; it may also involve

benefit modifications to the OldCo policies that would cost the policyholders less and still provide them reasonable coverage." Opinion at 10.[3] The Court clearly recognized that "rate increases are not futile because PTNA and ANIC can impose rate increases at policy renewal...rate increases are expressly authorized where the rates on a particular product are inadequate" (*id.* at 140); held that regulators including the Rehabilitator have "statutory obligations to approve actuarially justified rate increases" (*id.* at 141); ordered the Rehabilitator to prepare an "action plan" for obtaining critical rate increases for the OldCo policies (*id.* at 164); and supported such future rate increases for the Companies and recognized that they will not be sought on a "business as usual" basis (*see id.* at 10, 111, 112, 114, 162).

Notwithstanding the clear instructions and support of the May 3, 2012 Opinion, after representing to the Court and the public that the April 2013 Plans he filed offered the best possibility for success and that phase one of that plan would fill up to 70% of the Companies' reserve deficiencies, the Rehabilitator changed his mind and does not want the Court to approve the April 2013 Plans. As justification for his flip-flopping and continual delay in taking any rehabilitative action for the benefit of the Companies, the Rehabilitator suggests that seeking confirmation of the April 2013 Plans would have required him to address the "Informal and Formal Comments objecting to the April 2013 Plans." Rehabilitator's Response at 9.

The Rehabilitator's representations made during several Court conferences that the interested parties have been making great strides in resolving objections have been inaccurate. The Rehabilitator's assurances that the current Plan is "the production of

[3] The arguments that utilizing involuntary benefit reductions as a tool of rehabilitation is forbidden because that would breach the policies, and that benefit reductions or policy modifications would require state by state regulatory approvals (*see* Policyholders' Committee's Response at 8, 11), are unsupported by citation to any authority and are flatly contradicted by the Court's May 3, 2012 Opinion. These legal issues have long been resolved.

consideration of all of those comments and extensive negotiation with those entities to resolve as many objections as possible" and that a "consensus" can be garnered to expeditiously implement the Plan is likewise inaccurate.[4] Rehabilitator's Response at 10. The following recent public filings now show that whatever confidential negotiations have occurred, they have failed to resolve many fundamental objections:

- All of the interested parties have filed Formal Comments objecting to major aspects of the Second Amended Plan;
- Multiple parties have filed opposing briefs regarding the applicable legal standard;
- The Intervenors have filed an Application for Relief for an Order Rejecting the Rehabilitator's Plan, or in the Alternative, Requiring the Rehabilitator to Provide Certain Explanations in Advance of the Hearing;
- The Health Insurers filed a Response to the Intervenors' Application stating that they "share the Intervenors' concerns about the uncertainties identified by the Intervenors";
- The Policyholders' Committee has filed an Application to Strike the Formal Comments of the Health Insurers;
- The Health Insurers have opposed the Policyholders' Committee Application to Strike;
- The Health Insurers have filed an Application for Relief to Modify the Plan to Eliminate the Use of Estate Assets to Pay "Uncovered Benefits" Claims Made Under Policies Terminated Pursuant to 40 P.S. §§ 221.20 and 221.21;[5]
- The Health Insurers have filed an Application for Relief to Modify the Plan to Eliminate the Payment of Agent Commissions on Company A Policies;

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[4] By inaccurately representing in court filings that confidential MPRG meetings are likely to resolve all major objections to the Plan, the Rehabilitator has sought to take advantage of and to violate the Court's Order at the September 24, 2013 hearing that the MPRG meetings held be kept strictly confidential. He has done this again at pages 9-10 of his Response. As those conversations are confidential, they will not be described herein.

[5] The Intervenors separately addressed the problems with the proposed Plan's "Uncovered Benefits" approach at pages 38-42 of their Formal Comments filed on February 13, 2015.

- The Intervenor Agents have filed an Opposition to the Health Insurer's Application regarding commissions;
- The Rehabilitator, the Policyholders' Committee, and NOLHGA have filed responses in opposition to certain of the foregoing applications; and
- The Stipulations of Fact filed by the parties will not obviate the need for a hearing should the Court decide not to immediately reject the Second Amended Plan.

No consensus has been reached regarding the Plan among all interested parties and the Rehabilitator cannot explain what the impact on the Plan would be if the many crucial contingencies identified are not obtained. The Plan does not comply with the Court's Orders and should be immediately rejected without the need for the delay and expense of another hearing.[6] As requested in the Intervenors' Application, upon immediate rejection of the Second Amended Plan for non-compliance with the Court's January 6, 2009 and May 3, 2012 Order, an appropriate plan that focuses on the first phase of the Rehabilitator's April 2013 Plans—benefit reductions—to be followed by premium rate increases where appropriate, should be promptly filed with the Court within 90 days.

E. The Rehabilitator Has Violated the Court's Rehabilitation Orders For More Than Six Years

This Court's January 6, 2009 Orders instructed that: "[t]he Rehabilitator shall take such actions as are necessary to correct the condition that prompted the Board of Directors'

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[6] Contrary to the argument that the Court cannot modify, approve, or disapprove a plan pursuant to Section 516(d) of Article V, 40 P.S. § 221.16(d) without prescribing a hearing, *see* Policyholders' Committee's Response at 3 (citing *Commonwealth ex rel. Chidsey v. Keystone Mutual Casualty Company*, 373 Pa. 105, 119, 95 A.2d 664, 671 (1952)), that case stood only for the proposition that under former Sections 502-506 of the Insurance Department Act of May 17, 1921 in effect at that time, an order of liquidation of an insurer requires notice of proceedings and a hearing. There, the Pennsylvania Supreme Court ruled that where an insurance company, its directors, and policyholders had full knowledge of liquidation proceedings for over three and a half years and did not object, there was no failure of due process. Moreover, even if a hearing were required to modify a rehabilitation plan, no hearing is required to reject an obviously deficient plan and to require the Rehabilitator to submit a modified plan. *See Foster v. Mut. Fire, Marine and Inland Ins. Co.*, 531 Pa. 598, 605-07, 614 A.2d 1086, 1089-99 (1992).

request for and consent to the rehabilitation of Penn Treaty [and American Network]." *Id.* at ¶ 5. For more than six years since then, the Rehabilitator has not taken a single rehabilitative action in compliance with that Order: no rate increases; no cancellation of policies as permitted by the January 6, 2009 Orders; no benefit reductions; and no modifications to the inflation or lifetime benefits of the OldCo Cadillac policies. This lack of any rehabilitative action for the benefit of the Companies for more than six years constitutes a clear violation of the Court's rehabilitation Orders and an abuse of any discretion owed to the Rehabilitator in this context.

After a 31-day hearing regarding the Rehabilitator's request to convert the rehabilitation to a liquidation, the Court found, as fact, that the Rehabilitator "has not undertaken a meaningful effort to rehabilitate the Companies and, to the contrary, has acted to frustrate rehabilitation[.]" May 3, 2012 Opinion at 1. The Court instructed that the Rehabilitator has duties that he must comply with while acting as rehabilitator of the Companies, including to: "take such actions as are necessary to correct the condition that prompted the Board of Directors' request for and consent to the rehabilitation of Penn Treaty"; prepare and submit a rehabilitation plan; and pursue rehabilitation "unless and until the Commissioner satisfies this Court that the rehabilitation should be terminated under Section 518(a) of Article V and a liquidation order entered." Opinion at 29 (quoting the Court's January 6, 2009 Orders at ¶ 5 and *Koken v. Legion Ins. Co.*, 831 A.2d 1196, 1229 (Pa. Cmwlth. 2003), *aff'd sub nom. Koken v. Villanova Ins. Co.*, 583 Pa. 400, 878 A.2d 51 (2005)).

This Court determined that the primary condition that led to rehabilitation was that: "[t]he Companies are saddled with inadequate rates on a subset of policies in a subset of problematic states. This situation arose because regulators in key states such as Arizona, California, Florida, Illinois, and Pennsylvania have denied, delayed, or limited needed premium

rates for the OldCo policies. Meanwhile, regulators in other states, such as South Dakota and Virginia, instituted the rate increases sought for the same policies in a straightforward manner." Opinion at 28. The Companies' policies were "reasonably priced when issued based upon available information." *Id.* "A significant factor that led to the OldCo policies being underpriced, the unanticipated expansion in availability of long-term care facilities and attendant increased utilization of claims, is endemic to the entire long-term care industry." *Id.* "In addition, as a consequence of being underpriced, lapse rates in the OldCo book have been lower than anticipated." *Id.* Finally, "[o]ne OldCo non-tax qualified product, which was sold between 1996 and 2001, provides policyholders with inflation or lifetime benefits, and is referred to as the 'Cadillac' policy. This particular product has contributed significantly to the need for rehabilitation." *Id.* at 28-29.

As the Court clearly instructed, insurance regulators, "who are a necessary part of a workout," have "statutory obligations to approve actuarially justified rate increases." *Id.* at 10, 141. That certain regulators are refusing to do so "presents a serious indictment of the existing system of rate regulation of long-term care insurance." *Id.* at 4. The Court ruled that "rate increases for OldCo are critical" and that the Rehabilitator must make "earnest," "meaningful," and "legitimate" efforts to obtain the actuarially justified rate increase relief for the Companies. *Id.* at 1, 139, 159, 164.

Contrary to the Policyholders' Committee's assertion that "the Court's May 3, 2012 Order does not contain any mandates concerning the substantive components of the plan, other than directing that Rehabilitator [*sic*] to submit a plan that 'address[es] and eliminates the inadequate and unfairly discriminatory rates for the OldCo business'" (Policyholders' Committees' Response at 7), the May 3, 2012 Opinion and Order set forth many additional

important concerns and expectations regarding the past and future rehabilitation effort. Approvals of actuarially justified rate increases play a crucial role in the rehabilitation. The Court was understandably critical of the 2009 abandonment of pursuit of premium rate increases, and it was specifically concerned about the Commissioner advising "state regulators to follow his example and *not* approve pending rate filings on OldCo business." *Id.* at 10 (emphasis by the Court). The Court specifically: (1) rejected a "business as usual" approach to seeking future rate increases, *id.* at 111; (2) required a "unified attack on OldCo's rate structure," *id.* at 112; (3) expected "[e]nergy in implementing the plan," *id.* at 112; (4) required a "legitimate effort to devise a rehabilitation plan, noting that "[a]ggressive efforts to pursue actuarially justified rate increases and contract modification options, for policyholders and agents, all hold potential," *id.* at 139; and (5) required that neither the Rehabilitator's "phlegmatic effort" nor his abandonment of the effort is an appropriate response to the companies' "inadequate rate structure." *Id.* at 160. The Court concluded its Opinion by instructing that: "*[t]he Court also agrees with Intervenors that rate increases for OldCo are critical and, accordingly, the Rehabilitator must prepare an action plan for obtaining such relief. An appropriate order follows.*" *Id.* at 164 (emphasis added). Accordingly, the Court ordered that the "plan of rehabilitation must address and eliminate the inadequate and unfairly discriminatory premium rates for the OldCo business." Order at 2.

In light of the Rehabilitator's refusal to do his job and his proven and continuing frustration of the rehabilitation, these were entirely proper instructions. They still are, but far from making "the Court's instruction a reality", *see* Rehabilitator's Response at 1, the Rehabilitator simply ignores them. The Orders of January 6, 2009 and May 3, 2012 remain in effect. The Rehabilitator is violating both Orders, and he has done so for years.

The Second Amended Plan does not propose "actions as are necessary to correct the condition that prompted the Board of Directors' request for and consent to the rehabilitation" including elimination of the inadequate and unfairly discriminatory rates for the OldCo business. January 6, 2009 Order at ¶ 5; May 3, 2012 Order at ¶¶ 1-4. It does not include a comprehensive "action plan" for obtaining the critical rate increases for the OldCo business. Opinion at 164. The Rehabilitator proposes to liquidate one Company and send the vast majority of both Companies' policies to liquidation while delivering the lion's share of the Companies' assets (and future premium inflow[7]) to NOHLGA. The remaining Company will: have its remaining policies sold and then be liquidated; be liquidated earlier if some or all of the crucial contingencies set forth in the Plan do not occur causing the Plan to fail; or be run-off and then liquidated as indicated in the Rehabilitator's Response at 7.[8]

Section 518(a) and the Court's January 6, 2009 and May 3, 2012 Orders of Rehabilitation, which remain in effect, require an earnest attempt to rehabilitate the Companies

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[7] In liquidation, "the guaranty funds may issue replacement policies without regard to the fact that the Companies' policies protect against rate increases caused by age or sickness. They can impose the rate increases state regulators have found anathema. The guaranty funds will not, however, be able to honor the amount of coverage for which the policyholders contracted." Opinion at 161.

[8] The cases cited in the Rehabilitator's Response in support of the Plan's proposal to liquidate the majority of the Companies' policies followed by a run-off of the remainder do not support confirmation of this Plan as those cases did not present the unfortunate circumstances here involving a rehabilitator who was proven to have frustrated the rehabilitation efforts, and who has a history of filing but failing to support proposed plans and then seeking to convert the rehabilitation to a liquidation. The Plan must be considered in light of the specific conditions that prompted the request to rehabilitate these Companies, including an insurance product that permits rate increases, and must be evaluated for compliance with the directives of the Court's Order and accompanying Opinion of May 3, 2012. For example, unlike rate increases for long-term care policies which PTNA and ANIC can impose at policy renewal and are expressly authorized where the rates on a particular product are inadequate (*see id.* at 140), the Financial Guaranty Insurance Company is a monoline bond insurer that insured financial instruments in exchange for an upfront payment of premium and could not adjust rates for its bond insurance.

before declaring that "further attempts" would increase the risk of loss or be futile. Although the Second Amended Plan flouts the Court's Orders and should therefore be immediately rejected, the Rehabilitator himself has proposed two plans verifying that two workable rehabilitation methods exist: rate increases and benefit reductions. The Rehabilitator filed a preliminary plan of rehabilitation in 2009 proposing rate increases as a rehabilitation method, but he frustrated and then abandoned the rate increase approach. The Rehabilitator then proposed a rehabilitation plan for the Companies in April of 2013, the first phase of which, if implemented, would have addressed up to 70% of the Companies' reserve deficiency; additional phases could thereafter address the remainder. Unfortunately, the Rehabilitator failed to support and pursue his own proposed plan and, to the contrary, acted to undermine it through endless delay and amendments that morphed the April 2013 Plans into yet another request to convert the rehabilitation to a liquidation. It is unnecessary and would be wasteful for the Court to hold another expensive hearing to determine that the Rehabilitator still has not made an earnest effort to correct the condition that led to rehabilitation.

Because there has been no meaningful attempt to rehabilitate the Companies, the Rehabilitator's request to liquidate should be immediately rejected and the Rehabilitator should be ordered, and if need be sanctioned,[9] until he undertakes a meaningful effort to correct the conditions that led to rehabilitation, as he has been under orders to do for more than six years.

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[9] The Rehabilitator incorrectly argued that the Intervenors "voluntarily compromised their right to request sanctions." Rehabilitator's Response at 18. The settlement agreement attached to the Rehabilitator's Response does not address sanctions and does not prohibit any of the relief sought by way of the Intervenors' Application for Relief for an Order Rejecting the Rehabilitator's Plan, including the suggestion that this Court enforce its Orders through the use of sanctions, if necessary. To the contrary, Paragraph B in the Settlement Agreement provided that the Intervenors would withdraw their Application for Multiple Forms of Relief and would not seek relief sought therein by way of future application "*provided, however, that this Agreement does not limit in any way any objections or comments the Intervenors may make to*

F. The Court Should Disregard The Rehabilitator's And The Policyholders' Committee's Responses Referring To Actuarial Reports Or Analysis

Despite the fact that the Rehabilitator has not yet produced any expert report or provided to the Intervenors the actuarial report or work papers that the Second Amended Plan is based upon, the Rehabilitator's and the Policyholders' Committee's responses refer to the need for rate increases on average of 300% and to the size of the "hole" as being "at least a $3 billion deficit." Rehabilitator's Response at 10; Policyholders' Committee's Response at 5. The Court should disregard these statements. The Court has heard this before from Milliman and determined that Milliman's projections had already missed the mark, were not credible, and in some cases that Milliman's judgments had even been directed by the Rehabilitator. The Court has already conducted a hearing and determined, as fact, that a comprehensive rehabilitation plan for the Companies based upon rate increases, benefit reductions, and especially modifications to the inflation or lifetime benefits of the OldCo Cadillac policies is in order. Furthermore, it is inappropriate for the Rehabilitator or the Policyholders' Committee to make arguments based upon any actuarial analysis when no reports or work papers relating to the Plan have been provided to the Intervenors that would enable them to gauge the reasonableness of the assumptions and analysis and provide a reply to the Court in their own filing.

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any plan filed by the Rehabilitator or any argument consistent therewith at any hearing or in any briefing relating to the plan, comment or objections." (emphasis added). The instant Application constitutes "briefing relating to the plan, comment, or objections" and was filed in response to the Court's invitation to the parties to submit briefing on over-arching legal issues. The intent of the parties in the Settlement Agreement was for the Intervenors to reserve their arguments until the time for comments or objections to the Plan, which the Intervenors have fully complied with by waiting until February 13, 2015 to submit Formal Comments objecting to the Second Amended Plan. The Intervenors also note that they entered the Settlement Agreement because they needed the prompt payment of their fees incurred in the rehabilitation and appeal in order to continue their participation in these proceedings.

In addition, the Policyholders' Committee's argument that a large number of policyholders would allow their policies to lapse, rather than agree to pay their fair share, is unpersuasive. Policyholders' Committee's Response at 5. The OldCo Cadillac policyholders have enjoyed the protection of their policies for many years while paying below market premium rates. Notably, one of the conditions that led to rehabilitation was that lapse rates for the OldCo policyholders, including those in the responsible states that did pass appropriate rate increases, were much lower than anticipated. Because the OldCo policyholders cannot purchase comparable coverage for less elsewhere, even taking into account policy modifications and rate increases, there is no reason to believe that large numbers of policyholders would choose to lapse rather than to start paying their fair share.

III. CONCLUSION

Accordingly, the Intervenors request that their Application be granted and that the Court immediately reject the Second Amended Plan.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2015, I caused a true and correct copy of the foregoing Reply of The Intervenors in Further Support of their Application for Relief to be served via U.S. Mail upon counsel for the Rehabilitator, and via e-mail upon the following counsel:

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