

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

**Response of Policyholders Committee to the
Intervenors' Application for Multiple Forms of Relief**

The Policyholders Committee of Penn Treaty Network America Insurance Company and American Network Insurance Company, by the undersigned attorneys, respectfully submits this response to the application of intervenors Penn Treaty America Corporation ("PTAC") and Eugene Woznicki ("Woznicki") for multiple forms of relief.

Rehabilitator's Compliance with Order of May 3, 2012

The Committee disagrees with the view of PTAC and Woznicki that the Rehabilitator has violated the order of May 3, 2012. Intervenor's Application, par. 23.

The Rehabilitator filed a Plan of Rehabilitation on April 30, 2013 in accordance with paragraph 3 of the May 3, 2012 order. The order of May 3, 2012 did not direct the Rehabilitator immediately to implement a program of rate increases. The Court found that "The rehabilitations of PTNA and ANIC were not caused by cash flow issues but by a need to strengthen reserves for projected claims that are many years distant."

Consedine v. Penn Treaty, 63 A.3d 368, 388 (Commw.Ct. 2012). The April 30, 2013 Plan called for involuntary benefit reductions of indefinite duration that, if implemented, would reduce the effect of historical rate disparities between policyholders in different states, as required by paragraph 4 of the May 3, 2012 Order. The proposed involuntary

benefit cuts would, if implemented, also materially reduce future demands on the assets of PTNA and ANIC. The Plan called for rate increases only after assessing the effect of the benefit reductions and potential changes in the economy.

Hundreds of unrepresented policyholders commented negatively on the April 30, 2013 Plan. Certain represented persons, including PTAC and Woznicki, commented negatively or filed objections to the Plan. As a result of the comments and objections to the Plan, the Court allowed the formation of a Policyholders Committee and directed the Rehabilitator to engage in discussions with represented persons to resolve objections to the Plan. That process is ongoing.

The Committee has an interest in participating in the discussions concerning the Plan and working toward a Plan that provides global relief. The request of PTAC and Woznicki for immediate multi-state rate increase program undermines that process by removing rate increases and corresponding benefit reductions from the purview of the Plan and commits them to a regulatory process which the Court has already found to be unsatisfactory and a contributor to unfair rate disparities. Penn Treaty, supra, 63 A.3d at 376 and 379.

The Committee does not believe that a multi-state program of regulatory rate increases is practicable where a plan of rehabilitation has been filed but not yet approved. Senior Health Insurance Company of Pennsylvania is not and has never been in rehabilitation. Contrary to what PTAC and Woznicki say, it provides no precedent for seeking regulatory rate increases where, as here, a plan of rehabilitation has been filed and is awaiting a hearing and court approval.

Should PTAC and Woznicki be dissatisfied with the amended Plan the Rehabilitator intends to file within months, they may object to the amended Plan and ask the Court to modify it. There is no compelling reason to seek regulatory rate increases that are extraneous to an approved plan of rehabilitation; that will proceed on a different timeline than a plan of rehabilitation; that will, if implemented, change the assumptions concerning premium rates and policyholder behavior being used in the projections on which the amended plan will be based; that will be confusing to policyholders because the relationship between the rate increase program and the plan will not be clear; and that will not benefit PTNA or ANIC with respect to any part of their business that may have to be turned over to Guaranty Associations but will nevertheless permanently alter those policies.

Intervenors' Expert Actuary

PTAC and Woznicki's desire their expert actuary, Karl Volkmar, to update his opinions by completing the gross premium analysis work in which he was engaged when the Plan was filed in 2013. Intervenor's Application, par. 68 to 73. However, there is no compelling reason for the estate to pay Mr. Volkmar for a gross premium analysis as of December 31, 2012, since such an analysis will be obsolete when delivered. Any work to be done by Mr. Volkmar should be current.

Because the Committee's actuary is not authorized to prepare projections, the Committee has a strong interest in any projections and reports that differ from the projections and reports being prepared by the Rehabilitator's actuary. For purposes of comparison, it would be helpful if Mr. Volkmar were to prepare projections and reports

as of the same date as the Rehabilitator's actuary and provide the same types of opinions on the same subjects.

The Alleged Conflicts of Interest and Requests for Production

The Committee disagrees with the view of PTAC and Woznicki that the Rehabilitator has a conflict of interest, due to his appeal from the order of May 3, 2012, that prevents him from faithfully carrying out his duties. Intervenor's Application, par. 65. It is within the contemplation of Pennsylvania's rehabilitation statute that the Rehabilitator may appeal from an order denying a petition for liquidation, just as the directors may appeal from an order granting a petition for liquidation. Section 221.18 does not prohibit such appeals. It is the nature of litigation that, absent a stay, losers at trial must comply with orders with which they disagree. That is not the kind of conflict of interest that Courts can or should do anything about, other than enforce compliance with the orders appealed from. As discussed above, the Rehabilitator has complied with the order of May 3, 2012 and with the Court's directions since the filing of the Plan. Because the Rehabilitator is in compliance, there is no purpose to be served by the production of the Rehabilitator's communications with regulators and others concerning the appeal or the status of PTNA and ANIC following the order of May 3, 2012.

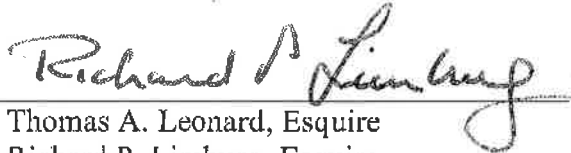
Similarly, the Committee has confidence in the Special Deputy Rehabilitator and does not believe that his relationships with state insurance regulators disqualify him or prevent him from carrying out his duties faithfully.

Reporting Expenses

The Committee does agree with PTAC and Woznicki that more reporting, and more current reporting, of estate expenses is desirable.

WHEREFORE, the Committee respectfully requests that the Court deny the greater part of the Intervenor's Application for Multiple Forms of Relief, and grant only that part which seeks greater transparency with respect to estate expenses.

Respectfully submitted,

By: 
Thomas A. Leonard, Esquire
Richard P. Limburg, Esquire
Obermayer Rebmann Maxwell & Hippel LLP
One Penn Center, 19th Floor
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895
(215) 665-3000

Dated: May 27, 2014

CERTIFICATE OF SERVICE

I certify that on May 27, 2015, I caused a true and correct copy of the foregoing Application to be served on the following persons by email at the email addresses indicated below:

Patrick H. Cantilo
Special Deputy Rehabilitator
Cantilo & Bennett, LLP
11401 Century Oaks Terrace, Suite 300
Austin, TX 78758
phcantilo@cb-firm.com

Carl Buchholz
DLA Piper LLP (US)
One Liberty Place
1650 Market Street
Philadelphia, PA 19103-7300
carl.buchholz@dlapiper.com

Charles T. Richardson
Faegre Baker Daniels
1050 K Street NW, Suite 400
Washington, DC 20001-4448
crichardson@faegrebd.com

Douglas Y. Christian
Ballard Spahr LLP
1735 Market Street
51st floor
Philadelphia, PA 19103
christiand@ballardspahr.com

Harold S. Horwich
Bingham McCutchen LLP
One State Street
Hartford, CT 06103-3178
harold.horwich@bingham.com

Paul M. Hummer
Saul Ewing LLP
Centre Square West
1500 Market Street, 38th floor
Philadelphia, PA 19102-2186
phummer@saul.com

Jeffrey Blend
Lauren Moore
O'Melveny & Myers, LLP
1625 Eye Street, NE
Washington, DC 20006
lmoore@omm.com

/s/ Richard P. Limburg
Richard Limburg

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[Proposed] ORDER

AND NOW, this _____ day of _____, 2014, upon consideration of the Intervenor's Application for Multiple Forms of Relief, and the responses thereto, it is hereby ORDERED that the Application is DENIED, except that part which seeks greater transparency with respect to estate expenses, which is granted as follows: _____.

BY THE COURT:

Mary Hannah Leavit, J.