

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Penn Treaty Network America Insurance :
Company in Rehabilitation : No. 1 PEN 2009

In Re: American Network Insurance :
Company in Rehabilitation : No. 1 ANI 2009

**SECOND QUARTER 2015 SUPPLEMENTAL APPLICATION
FOR RELIEF OF THE INTERVENORS EUGENE J. WOZNICKI
AND PENN TREATY AMERICAN CORPORATION TO
RECOVER PROFESSIONAL FEES, COSTS AND OTHER EXPENSES**

In the Intervenor’s Second Quarter 2015 Supplemental Application for Relief to Recover Professional Fees, Costs and Other Expenses (the “Second Quarter 2015 Supplemental Fee Application”), the Intervenor Eugene J. Woznicki And Penn Treaty American Corporation (together, the “Intervenor”) supplement their petition to recover professional fees, costs, and other expenses to defend against the Rehabilitator’s efforts to liquidate Penn Treaty Network America Insurance Company (“PTNA”) and American Network Insurance Company (“ANIC”) (together, the “Companies”) incurred between April 1, 2015 and June 30, 2015.

I. The Court Ruled that the Intervenor are Entitled to Professional Fees and Costs

1. In denying the Rehabilitator’s petitions to convert the rehabilitation of the Companies to a liquidation, the Court concluded that the “Intervenor have provided a thorough and careful defense to the petitions and are entitled to an award of reasonable attorneys’ fees and costs pursuant to Section 518(a) of Article V, 40 P.S. 221.18(a), in an amount to be determined at a later date.” Amended Opinion at 159, Conclusion of Law ¶ 6.¹

¹ In Pennsylvania, the directors of an insurer are expressly permitted to take such actions as are reasonably necessary to defend the insurer against a delinquency proceeding or a liquidation petition and to recover the reasonable costs, fees and other expenses of that defense from the general assets of the insurer. See 40 P.S. § 221.6(c)(i) (“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.”) and § 221.18(a)

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.

(“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 Intervenors’ attorney’s fees and costs incurred through March 31, 2015 have also been reimbursed, most recently by way of the Court’s Order of June 8, 2015 granting the Intervenors’ Supplemental Fee Application for the period ending March 31, 2015.

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. The Rehabilitator continues to pursue liquidation of both Companies by way of the Rehabilitator’s appeal pending in 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 Second Quarter of 2015

15. The Intervenors seek to recover attorney’s fees and costs incurred in the second quarter of 2015 to: (a) prepare fee reimbursement requests and related support; (b) prepare for and appear at Court conferences including oral argument on the expedited applications for relief filed by the Intervenors and other parties; (c) prepare and appear for other meetings with the Rehabilitator’s representatives; (d) review and analyze Court filings; (e) research and prepare the Intervenors’ own Court filings; and (f) research legal issues, meet with the Intervenors’ counsel to obtain legal advice, work on discovery, and perform other hearing preparation work.

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) and the Court’s Amended 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 all the reasons set forth in the original Fee Petition, the February 21, 2014 Supplemental Fee Application, and this Second Quarter 2015 Supplemental Fee Application.

17. The legal authority and standards for recovering the professional fees, costs, and other expenses of the defense in this context were addressed in the Intervenor's Fee Petition and were not disputed by the Rehabilitator. The Intervenor's incorporate by reference their Fee Petition in support of this Second Quarter 2015 Supplemental Fee 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 Intervenor's Attorneys' Fees

18. The Intervenor's 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 partners Justin Klein and Wayne Strasbaugh provided assistance during this period, although the Intervenor's do not seek herein reimbursement of their legal fees.

19. Increases in billing rates since the Fee Petition are due to the progressively greater experience and seniority of the Intervenor's 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.

20. The effective hourly rates for amounts sought in this Second Quarter 2015 Supplemental Fee Application for Mr. Christian is \$590.55 and for Mr. Schmidt is \$384.00.²

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

These rates continue to be reasonable for the reasons explained in the in the original Fee Petition, the February 21, 2014 Supplemental Fee Application, and this Application.

21. The Intervenors seek to recover \$100,000.80 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	63.5	47,625.00	63.5	38,100.00	62.5	590.55	37,500.00
Schmidt	161.2	77,376.00	161.2	61,900.80	161.2	384.00	61,900.80
Additional Attorneys	0.7	546.00	0.7	546.00	0.0	0.00	0.00
Garland (Paralegal)	1.5	375.00	1.5	300.00	1.5	200.00	300.00
TOTAL	226.9	125,992.00	226.9	100,846.80	225.2	\$439.40 (average)	99,700.80

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 \$25,075.20 less than the amount that would have been billed at Ballard's standard rates.

24. For various reasons, the Intervenor's have separately reduced the amount of fees sought in this Application by voluntarily writing off an additional 1.7 hours of Ballard services incurred for the categories of work in this matter described above with a billed value of \$1,146.

25. Accordingly, by virtue of the 20% hourly fee discount and the voluntary exclusion of time for which no recovery is sought, the amount of Ballard fees sought to be received is \$26,221.20 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 Intervenor's 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 Supplemental Fee Application are also necessary in light of, and reasonable by comparison to, the law firms and attorneys representing the Rehabilitator.

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's incurred \$2,366.02 in costs in connection with this matter between April 1, 2015 and June 30, 2015, of which they seek to recover \$2,119.29.³

³ This Second Quarter 2015 Supplemental Fee Application seeks recovery of \$514.15 in costs and expenses charged between February 16, 2015 and March 31, 2015, but that were not

29. Spreadsheet columns A through C state the cost date, attorney or paralegal that charged the cost, and cost type. Columns D through F list 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 Column F. After such write-offs, the Intervenor seek to recover \$2,119.29 in costs.

IV. Conclusion

30. In total the Intervenor seek to recover \$101,820.09 in professional fees, costs and expenses.

WHEREFORE, the Intervenor respectfully request that this Court enter an Order pursuant to 40 P.S. §§ 221.6(c)(i) and 221.18(a) and the Court's Amended Opinion Dated December 28, 2012, awarding them \$101,820.09 in professional fees, costs, and expenses.

Respectfully submitted,

Dated: July 10, 2015

/s/ Benjamin M. Schmidt
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recorded and incurred until after April 1, 2015. As a result, these costs and expenses have February and March 2015 "Work Dates" but were not included in the Intervenor's Supplemental Fee Application for the period ending March 31, 2015.

VERIFICATION

I, DOUGLAS Y. CHRISTIAN, lead counsel for the Intervenor 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 Second Quarter 2015 Supplemental Application for Relief of the Intervenor 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: July 10, 2015

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2015, I caused a true and correct copy of the Second Quarter 2015 Supplemental Application for Relief of the Intervenor Eugene J. Woznicki and Penn Treaty American Corporation to Recover Professional Fees and Costs and Other Expenses to be served by U.S. Mail on counsel for the Rehabilitator, and by e-mail on the following counsel:

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/s/ Benjamin M. Schmidt _____
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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Penn Treaty Network America Insurance :
Company in Rehabilitation : No. 1 PEN 2009

In Re: American Network Insurance :
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ORDER

AND NOW, this _____ day of _____, 2015, upon consideration of the Second 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 (Supplemental Fee Application) incurred between April 1, 2015 and June 30, 2015, it is hereby ORDERED that the Supplemental Fee Application is GRANTED. The Rehabilitator is ORDERED to reimburse the Intervenors for the following professional fees, costs and other expenses of the defense, in equal amounts of one half of the following total, from the estates of Penn Treaty Network America Insurance Company and American Network Insurance Company within 10 days of the entry of this Order:

1. Ballard Spahr LLP: \$101,820.09

In granting the Supplemental Fee Application of the Intervenors, the Court considered the following:

Intervenors' Supplemental Fee Application, which includes detailed explanations of the professional fees, costs and expenses incurred between April 1, 2015 and June 30, 2015;

Intervenors' original Fee Petition, which included detailed explanations of the professional fees, costs and expenses incurred, and objective data regarding billing rates for attorneys employed by large law firms in the Philadelphia area;

The significantly discounted alternative fee arrangement offered by Ballard Spahr LLP; and

The Rehabilitator's response to the Supplemental Fee Application.

MARY HANNAH LEAVITT, Judge