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COMMONWEALTH COURT
OF PENNSYLVANIA
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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 :
Company in Rehabilitation : No. 1 ANI 2009

**FOURTH 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 Fourth Quarter 2015 Supplemental Application for Relief of the Intervenors Eugene J. Woznicki and Penn Treaty American Corporation (together, the “Intervenors”) to Recover Professional Fees, Costs and Other Expenses (“Application”), the Intervenors supplement their petition to recover professional fees, costs, and other expenses for the defense with respect to this delinquency proceeding and 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 October 1, 2015 and December 31, 2015.

I. The Court Ruled that the Intervenors 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 “Intervenors 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

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 Counsel Daubert and 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.

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) (“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 Ins. 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 Intervenor 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 Intervenor’s 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 Court’s Order of June 8, 2015 granted the Intervenor’s Supplemental Fee Application for the period ending March 31, 2015 and the Court’s Orders of September 9, 2015 and December 3, 2015 granted the Intervenor’s Second and Third Quarter 2015 Supplemental Fee Applications, respectively. The Court ruled that “[b]ecause Intervenor is entitled to recover their reasonable fees and costs under Section 518(a) of Article V, 40 P.S. §221.18(a), and, alternatively, Section 506(c)(i) of Article V, 40 P.S. §221.16(c)(i), the Court grants Intervenor’s application.” Memorandum and Opinion filed September 9, 2015 at 1-2.

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 seven years since the Insurance Commissioner was appointed as the Rehabilitator.

12. After the decision of May 3, 2012, the Rehabilitator continued to pursue liquidation of both Companies by way of the Rehabilitator’s appeal to 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 Fourth Quarter of 2015

15. The Intervenors seek to recover attorney’s fees and costs incurred in the fourth quarter of 2015 to: (a) prepare and appear for in-person and telephonic Court conferences, meetings, and hearings in connection with the hearing on the proposed plan and liquidation petition; (b) prepare and appear for meetings and conferences with the Rehabilitator’s representatives and attorneys for other intervening parties; (c) review and analyze Court filings during this period; (d) research and prepare the Intervenors’ own Court filings during this period; and (e) research legal issues, meet with the Intervenors’ counsel to obtain legal advice, work on discovery, and perform other hearing preparation work including review of documents produced by the Rehabilitator and deposing the Rehabilitator’s and other parties’ hearing witnesses; and (f) prepare fee reimbursement requests and related support.

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), the Court's Amended Opinion and Order, and the Court's September 9, 2015 Memorandum 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 the reasons set forth in the Intervenor's original Fee Petition, the Intervenor's Supplemental Fee Applications, and this Application.

17. The legal authority and standards for recovering the professional fees, costs, and other expenses of the defense in this context were addressed most recently in the Court's September 9, 2015 Memorandum Opinion and Order, and previously in the Intervenor's Fee Petition. The Intervenor incorporates by reference their Fee Petition in support of this 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 continues 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 partner Justin Klein provided professional services during this period.

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 Application for Mr. Christian is \$597.20, for Mr. Schmidt is \$384, for other attorneys assisting this period is \$328.89 and for paralegals is \$177.90.² These rates continue to be reasonable for the reasons explained in the in the Fee Petition, the prior Supplemental Fee Applications, and this Application.

21. The Intervenors seek to recover \$224,868 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	193	\$144,750	193	\$115,800	192.1	\$597.2	\$115,260
Schmidt	264.8	\$127,104	264.8	\$101,683.2	264.8	\$384	\$101,683.2
Other Attorneys	6.3	\$5,525	6.3	\$4,420	2.8	\$328.89	\$2,072
Paralegals	32.9	\$7,316	32.9	\$5,852.8	32.9	\$177.9	\$5,852.80
TOTAL	497	\$284,695	497	\$227,756	492.6	\$452.45 (average)	\$224,868

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

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

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 \$56,939 less than the amount that would have been billed at Ballard's standard rates.

24. For various reasons, the Intervenors have separately reduced the amount of fees sought in this Application by voluntarily writing off an additional 4.4 hours of time and \$2,888 billed for the categories of work in this matter described above. This is indicated by a zero in the final column entitled "amount sought."

25. Accordingly, by virtue of the 20% hourly fee discount and the voluntary exclusion of certain fees billed for which no recovery is sought, the amount of Ballard fees sought to be received is \$59,827 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 Intervenors 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.

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 Intervenors' legal fees sought in this Application are also necessary in light of, and reasonable by comparison to, the law firms and vastly greater number of lawyers and consultants representing the Rehabilitator. By way of

comparison, pursuant to the Rehabilitator's Service Purchase Contract 1136 with PricewaterhouseCoopers, LLP, actuary Larry Rubin's hourly billing rate is \$750.

B. The Intervenors' 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 Intervenors incurred \$4,403.35 in costs in connection with this matter between October 1, 2015 and December 31, 2015, of which they seek to recover \$4,250.79.³

29. The spreadsheet columns state the cost date, attorney or paralegal that charged the cost, cost type, and 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 the final column entitled "amount sought." After such write-offs, the Intervenors seek to recover \$4,250.79 in costs.

IV. Conclusion

30. In total the Intervenors seek to recover \$229,118.79 in professional fees, costs and expenses.

³ This Application seeks recovery of \$496 in costs for services charged on July 27, 2015 and August 28, 2015, but that were not recorded and incurred until the Fourth Quarter of 2015. As a result, these costs have July and August 2015 "Work Dates" but were not included in the Intervenors' Third Quarter 2015 Supplemental Fee Application.

WHEREFORE, the Intervenors respectfully request that this Court enter an Order in the form of the attached proposed order awarding them \$229,118.79 in professional fees, costs, and expenses.

Respectfully submitted,

Dated: January 26, 2016

/s/ Benjamin M. Schmidt
Douglas Y. Christian (Id. No. 41934)
Benjamin M. Schmidt (Id. No. 205096)
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*Attorneys for Intervenors Eugene J. Woznicki
and Penn Treaty American Corporation*

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 Fourth 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: January 26, 2016

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2016, I caused a true and correct copy of the Fourth Quarter 2015 Supplemental Application for Relief of the Intervenor Eugene J. Woznicki and Penn Treaty American Corporation 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 :
Company in Rehabilitation : No. 1 ANI 2009

ORDER

AND NOW, this ____ day of _____, 2016, upon consideration of the Fourth 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 (Application) incurred between October 1, 2015 and December 31, 2015, it is hereby ORDERED that the 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: \$229,118.79

In granting the Application, the Court considered:

Intervenors' Application, which includes detailed explanations of the professional fees, costs and expenses incurred between October 1, 2015 and December 31, 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 Application.

MARY HANNAH LEAVITT, P.J.

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January 25, 2016

By Federal Express

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RECEIVED & FILED
COMMONWEALTH COURT
OF PENNSYLVANIA
26 JAN 2016 13 49

Re: Penn Treaty Network America Insurance Company in Rehabilitation (1 PEN 2009);
American Network Insurance Company in Rehabilitation (1 ANI 2009)

Dear Mr. Krimmel:

Enclosed for filing in the above-captioned cases, please find an original, electronic, and three copies of the Fourth Quarter 2015 Supplemental Application for Relief of the Intervenor Eugene J. Woznicki and Penn Treaty American Corporation to Recover Professional Fees, Costs and Other Expenses.

Kindly retain the original, electronic, and two copies for filing, and return the additional time-stamped copy to my attention in the enclosed self-addressed and stamped envelope.

Very truly yours,

Benjamin M. Schmidt

Benjamin M. Schmidt

BMS/sdm
Enclosures

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