

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Penn Treaty Network America
Insurance Company in Rehabilitation

No. 1 PEN 2009

AND

In Re: American Network Insurance
Company in Rehabilitation

No. 1 ANI 2009

**THE HEALTH INSURERS' APPLICATION FOR AN
ORDER TO COMPEL PRODUCTION OF DOCUMENTS
AND EXTEND TIME FOR CHALLENGING PRODUCTION BY
PRICEWATERHOUSE COOPERS**

The Health Insurers seek an order compelling Pricewaterhouse Coopers (“PwC”) to produce documents improperly withheld and extending the period in which the Health Insurers can contest PwC’s production and claims of privilege.

On April 23, 2015, the Health Insurers served the Subpoena *Duces Tecum* attached hereto (the “Subpoena”). As of this date:

- PwC has not yet produced even the documents that it concedes are responsive and non-privileged.
- PwC has not created a privilege log which would serve as the basis for challenging numerous claims of privilege.
- PwC claims to have no documents responsive on topics where it clearly performed substantial work.

By Order dated July 31, 2015, the Court ordered parties to complete production and privilege logs by September 15, 2015. After phone calls and correspondence to counsel for PwC, on September 30, 2015, PwC finally served Pricewaterhouse Coopers, LLP's Objections and Responses to the Health Insurers' Requests for Production of Documents Contained in the Subpoena *Duces Tecum* (the "PwC Response"). It also produced 196 pages of documents (156 of which were its 2013 Actuarial Report (the "2013 Actuarial Report") previously provided to the Court), and raised a blizzard of privilege issues. In a subsequent meet and confer session with PwC's counsel on October 6, 2015, the Health Insurers were advised that PwC would produce additional documents "in a matter of days" and that this production would include at least "every document contained in, referred to or forming the basis of, the 2013 Actuarial Report." Counsel for PwC further agreed that PwC would review the topics identified below where PwC claimed to have no responsive documents. To date, PwC has failed to produce any of the documents it promised to produce and has failed to inform the Health Insurers as to whether it has documents to the following topics.

PwC's Role in the Proceedings

PwC occupies a unique position in this proceeding. In the wake of the Court's May 2012 ruling, the Rehabilitator was instructed to prepare and file a rehabilitation plan in this case. PwC was engaged to provide:

Assistance with the development of a plan for working with and communicating with the Court, regulators and various stakeholders as to the rehabilitation plan. Such assistance will include oral advice, development of presentation materials and written qualitative and quantitative analysis. With the exceptions of communications with the Court and parties to proceedings before the Court concerning PTNA/ANIC and state regulators, meetings and information sharing with other stakeholders are subject to the signing of an access letter and non-disclosure agreement.

Service Purchase Contracts Terms and Conditions, dated April 3, 2013. PwC was also engaged by the Rehabilitator to provide actuarial services in the ordinary course of administration of the Companies’ estates. Specifically, PwC agreed to provide a “Statement of Actuarial Opinion(s) and actuarial report(s) related to all liabilities for future policyholder obligations and other related items of the Companies....” Letter Agreement between PwC and the Rehabilitator, dated February 25, 2013, at 1. PwC also agreed to provide opinions in connection with any rate filings. *Id.* at 2.

PwC has not Responded to the Health Insurers’ Requests

The following chart sets forth the status of the Health Insurers Requests, which are the subject of their Formal Comments on the Plan:

Request No.	Topic	Status
2h and 6	The projection of assets as of the time that the companies emerge form rehabilitation proceedings.	PwC responded that it will produce non-privileged documents but has thus far failed to do so.

2f	The development of the Net Accumulated Premium Method used to allocate assets of the estate.	PwC claims to have no working papers, even though this is the subject of Appendix C to the 2013 Actuarial Report.
2c and d	The development of statutory reserves and recast statutory reserves.	PwC claims to have no working papers, even though it issued actuarial opinions for PTNA and ANIC on their statutory reserves (See 2013 Actuarial Report, Appendix G);
2a and b	The establishment of gross premium reserves using adverse deviation assumptions.	PwC claims to have no working papers, even though this is the subject of Appendix A and Appendix G to the 2013 Actuarial Report.
8	The decision to capitalize Company A with assets equal to the greater of gross premium reserves or statutory reserves.	PwC objects to this request on various privilege grounds and on the basis that the documents should be sought from the Rehabilitator. It appears that PwC does not intend to produce any documents on this topic.

Given the scope of PwC's engagement and the massive amount of work that it performed in connection with the development of the Plan, it strains belief that PwC has no responsive production for most of the topics. Since, by its own admission, PwC has failed to produce documents or a privilege log, it is impossible for the Health Insurers to test PwC's compliance with the Subpoena or any of its

claims of privilege at this time. Moreover, PwC has not undertaken to review its claims that it lacks responsive documents on key issues.

Pursuant to the Court's order of October 9, 2015, all discovery related motions were required to be filed by Friday, October 16, 2015. PwC's dilatory and evasive response to a subpoena that it has had for over five months has prevented the Health Insurers from being able to file a comprehensive motion by this deadline, challenging PwC's response to the Subpoena.

WHEREFORE, the Health Insurers respectfully request that the Court order PwC to immediately comply with the Subpoena and extend the date by which the Health Insurers may file a motion to challenge PwC's compliance.

Dated: October 16, 2015

Respectfully submitted,

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By: /s/ John P. Lavelle, Jr.

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[PROPOSED] ORDER

AND NOW, this ____ day of October, 2015, upon consideration of the Health Insurers' Application to Compel Production of Documents and Extend Time for Challenging Production by Pricewaterhouse Coopers, the Court hereby ORDERS as follows:

1. Said Application is GRANTED;
2. Pricewaterhouse Coopers shall, within ten (10) days of this Order, fully comply with the April 23, 2015 Subpoena *Duces Tecum* served by the Health Insurers; and
3. the date by which the Health Insurers must file any motion challenging Pricewaterhouse Cooper's compliance with the aforementioned subpoena is extended until twenty-one (21) days following Pricewaterhouse Cooper's completion of document production and delivery of a privilege log.

MARY HANNAH LEAVITT, Judge

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2015, I caused a true and correct copy of the foregoing Application to Compel Production of Documents and Extend Time for Challenging Production by Pricewaterhouse Coopers to be served via e-mail upon counsel to Pricewaterhouse Coopers and the following counsel:

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/s/ John P. Lavelle, Jr.
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