



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.

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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**

15. The Intervenors seek to recover attorney’s fees and costs incurred in the first quarter of 2016 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 and correspondence during this period; (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 depositions of the Rehabilitator’s and other parties’ hearing witnesses; (f) prepare fee reimbursement requests and related support; and (g) analyze potential settlement approaches in connection with the hearing on the proposed plan and liquidation petition in this proceeding.

16. The Intervenors have also retained Grant Thornton LLP to prepare an expert report regarding tax and accounting issues in connection with the Rehabilitator's proposed Second Amended Plan for the Companies and to testify at a deposition noticed by the Rehabilitator and at the pending hearing on the Second Amended Plan. The work of the Grant Thornton LLP professionals has also aided the parties in addressing potential settlement approaches to this dispute.

17. The professional 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, including to address potential settlement approaches to this dispute, for the reasons set forth in the Intervenors' original Fee Petition, the Intervenors' Supplemental Fee Applications, and this Application.

18. 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 Intervenors' Fee Petition. The Intervenors incorporate 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 Intervenors' Legal Fees**

19. The Intervenors 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. 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 2016 reflected by standard yearly increases in the general market rates for attorneys at Ballard and other similarly situated firms.

20. The approximate effective hourly rates for amounts sought in this Application for Mr. Christian is \$620, for other attorneys including Mr. Schmidt is \$398, and for paralegals is \$144.<sup>2</sup> These rates continue to be reasonable for the reasons explained in the Fee Petition, the prior Supplemental Fee Applications, and this Application.

21. The Intervenor's seek to recover \$84,295.20 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	81.9	\$63,472.5	81.9	\$50,778	81.9	\$620	\$50,778
Schmidt	74.9	\$37,824.5	74.9	\$30,259.6	73.9	\$398.61	\$29,855.6
Other Attorneys	4.4	\$4,180	4.4	\$3,344	2.3	\$397.27	\$1,748
Paralegals	13.3	\$3,458	13.3	\$2,766.4	9.2	\$143.88	\$1,913.6
<b>TOTAL</b>	<b>174.5</b>	<b>\$108,935</b>	<b>174.5</b>	<b>\$87,148</b>	<b>167.3</b>	<b>\$483.07 (average)</b>	<b>\$84,295.2</b>

22. These amounts were determined as follows. Timekeepers kept timesheets that generated monthly billing reports that were reviewed by Mr. Christian for accuracy.

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

23. The monthly invoices submitted to the Intervenor 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 Intervenor. By virtue of that discount, the amount that was billed to the Intervenor was \$21,787 less than the amount that would have been billed at Ballard's standard rates.

24. For various reasons, the Intervenor have separately reduced the amount of fees sought in this Application by voluntarily writing off an additional 7.2 hours of time and \$2,852.80 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 \$24,639.80 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 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 Intervenor's 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' Experts' Fees and Expenses**

28. As set forth above, the Intervenors have also retained and utilized the services of tax and accounting experts at Grant Thornton LLP during the first quarter of 2016.

29. The Intervenors seek to recover \$43,560 in professional fees and \$2,178 in expenses billed to the Intervenors by Grant Thornton LLP in connection with the preparation of the expert report of Gregory Fairbanks and for Mr. Fairbanks's time preparing for and testifying at his deposition.

30. The amounts billed by Grant Thornton LLP are described in Grant Thornton LLP's Bill Number 952982363 dated February 10, 2016 that Intervenors will provide *in camera* to the Court and confidentially to the Rehabilitator's counsel. As set forth therein, Grant Thornton LLP's professionals billed the Intervenors for 78.4 hours of work during this period at hourly rates ranging from \$430 to \$565 per hour.

31. In total the Intervenors seek to recover \$45,738 in professional fees and expenses billed to the Intervenors by Grant Thornton LLP during the first quarter of 2016.

**C. The Intervenors' Costs and Expenses**

32. As described in a spreadsheet provided to the Court for *in camera* review and being confidentially provided to the Rehabilitator's counsel, the Intervenors incurred \$23,954.78 in costs and expenses in this matter from January 1, 2016 to March 31, 2016.

33. The spreadsheet's columns state the work date, timekeeper that charged the cost, cost type, and the amounts recorded, billed, and sought. Write-offs of business meals and certain



travel costs for which no recovery is sought are indicated by a zero in the “amount sought” column. After such write-offs, the Intervenor seek to recover \$23,234.50 in costs and expenses.

#### **IV. Conclusion**

34. In total the Intervenor seek to recover \$153,267.70 in professional fees, costs and expenses.

WHEREFORE, the Intervenor respectfully request that this Court enter an Order in the form attached awarding them \$153,267.70 in professional fees, costs, and expenses.

Respectfully submitted,

Dated: May 3, 2016

/s/ Benjamin M. Schmidt  
Douglas Y. Christian (Id. No. 41934)  
Benjamin M. Schmidt (Id. No. 205096)  
BALLARD SPAHR LLP  
1735 Market Street, 51<sup>st</sup> Floor  
Philadelphia, PA 19103  
(215) 665-8500  
christiand@ballardspahr.com  
schmidtb@ballardspahr.com

*Attorneys for Intervenor 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 First Quarter 2016 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: May 3, 2016

**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 First Quarter 2016 Supplemental Application for Relief of the Intervenor Eugene J. Woznicki and Penn Treaty American Corporation to Recover Professional Fees and Costs and Other Expenses (Application) incurred between January 1, 2016 and March 31, 2016, it is hereby ORDERED that the Application is GRANTED. The Rehabilitator is ORDERED to reimburse the Intervenor 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: \$107,529.70
- 2. Grant Thornton LLP: \$45,738.00

In granting the Application, the Court considered:

Intervenor's Application, which includes detailed explanations of the professional fees, costs and expenses incurred between January 1, 2016 and March 31, 2016;

Intervenor's 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.

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MARY HANNAH LEAVITT, P.J.