

**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 \_\_\_\_\_, 2015, upon consideration of the Supplemental Application for Relief of the Intervenors Eugene J. Woznicki and Penn Treaty American Corporation to Recover Professional Fees and Costs and Other Expenses Awarded Pursuant to 40 P.S. § 221.18(a) and the Court's Amended Opinion Dated December 28, 2012 (Supplemental Fee Application) incurred between November 1, 2014 and March 31, 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: \$249,640.35

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 November 1, 2014 and March 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 Supplemental Fee Application.

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MARY HANNAH LEAVITT, Judge

**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

**SUPPLEMENTAL APPLICATION FOR RELIEF OF THE INTERVENORS EUGENE J.  
WOZNICKI AND PENN TREATY AMERICAN CORPORATION  
TO RECOVER PROFESSIONAL FEES, COSTS AND OTHER EXPENSES  
AWARDED PURSUANT TO 40 P.S. § 221.18(a) AND THE COURT’S  
AMENDED OPINION DATED DECEMBER 28, 2012**

In the Intervenor’s Supplemental Application for Relief to Recover Professional Fees, Costs and Other Expenses Awarded Pursuant to 40 P.S. § 221.18(a) and the Court’s Amended Opinion Dated December 28, 2012 (the “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 November 1, 2014 and March 31, 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.<sup>1</sup>

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<sup>1</sup> 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

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.

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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) (“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. On November 4, 2014, the Rehabilitator agreed to reimburse certain of the Intervenors’ attorney’s fees and costs incurred for the period ending October 31, 2014, which have been reimbursed.

## **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 From November 1, 2014 to March 31, 2015**

15. The Intervenors seek to recover attorney’s fees and costs incurred from November 1, 2014 to March 31, 2015 to: **(a)** prepare fee reimbursement requests and related support; **(b)** prepare for and appear at Court conferences; **(c)** prepare and appear for other meetings with the Rehabilitator’s representatives; **(d)** review and analyze Court filings including the: (i) Petition for Approval of Second Amended Plan of Rehabilitation for PTNA and ANIC and for Liquidation of PTNA; (ii) proposed Second Amended Plan of Rehabilitation and Disclosure Statement for PTNA and ANIC and related documents, notices, comments, and correspondence including relating to tax issues; (iii) Application for Relief *In Limine* of Rehabilitator Teresa D. Miller to Establish Standards of Review Applicable to the Proposed Rehabilitation Plan; and (iv) other applications filed by interested parties during the period; **(e)** research and prepare the Intervenors’ Court filings including the: (i) Response of Intervenors to the Petition for Approval of Second Amended Plan; (ii) Intervenors’ Formal Comments to the Second Amended Plan; (iii) Intervenors’ Response to the Rehabilitator’s Application for Relief *In Limine* to Establish Standards of Review Applicable to the Proposed Rehabilitation Plan; (iv) Intervenors’ Memorandum Regarding the Legal Standard Applicable to the Court’s Review of the Proposed

Plans; (v) Application for Relief for an Order Rejecting the Rehabilitator's Plan, or, in the Alternative, Requiring the Rehabilitator to Provide Certain Explanations in Advance of the Hearing; and (vi) this Supplemental Fee Application; and (f) research legal issues, meet with the Intervenor's 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 was confidentially provided to the Rehabilitator's counsel on April 20, 2015, 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 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 Supplemental Fee Application. *See* Fee Petition at 1-5, 40-43, 53-54.

**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 Intervenors do not seek herein reimbursement of Mr. Klein's legal fees.

19. Increases in billing rates since the Fee Petition are due to the progressively greater experience and seniority of the Intervenors' professionals between 2009 and 2015 reflected by standard yearly increases in the general market rates for attorneys at Ballard and other similarly situated firms. During 2014 and 2015, Mr. Christian's standard hourly billing rate ranged from \$725 to \$750, commensurate with his experience and specialized expertise. During 2014 and 2015, Mr. Schmidt's standard hourly billing rate ranged from \$465 to \$480, commensurate with his experience and specialized expertise. Mr. Strasbaugh is the Practice Leader of Ballard's Tax Practice Group and received a Ph.D. from Harvard University in 1976 and a J.D. from Harvard University in 1979. Mr. Strasbaugh's standard hourly billing rate during 2014 and 2015 was \$780, commensurate with his experience and specialized expertise.

20. The effective hourly rates for amounts sought in this Supplemental Fee Application for Mr. Christian is \$591.22, for Mr. Schmidt is \$379.49, and for additional Ballard attorneys is an average of \$417.15.<sup>2</sup> 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 Supplemental Fee Application.

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

21. The Intervenors seek to recover \$247,840.40 of attorney'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	245.0	182,560.00	245.0	146,048.00	243.0	591.22	144,848.00
Schmidt	251.5	120,166.50	251.5	96,133.20	249.7	379.49	95,442.00
Additional Attorneys	18.1	14,588.00	18.1	11,670.40	12.1	417.15	7,550.40
<b>TOTAL</b>	<b>514.6</b>	<b>\$317,314.50</b>	<b>514.6</b>	<b>\$253,851.6</b>	<b>504.8</b>	<b>\$481.62 (average)</b>	<b>\$247,840.40</b>

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 \$63,462.90 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 Supplemental Fee Application by voluntarily writing off an additional 9.8 hours of Ballard services incurred for the categories of work in this matter described above with a recorded value of \$6,011.20.

25. Accordingly, by virtue of the 20% hourly fee discount and the voluntary exclusion of time for which no recovery is sought, the Ballard fees sought to be received is \$69,474.10 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 have produced to 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 Supplemental Fee Application. The spreadsheets show the recorded and billed value of time only where recovery is sought for those services in this Supplemental Fee 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 was confidentially provided to the Rehabilitator's counsel on April 20, 2015, the Intervenor's incurred \$2,089.91 in costs in connection with this matter between November 1, 2014 and March 30, 2015, of which they seek to recover \$1,799.95.

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 electronic research and travel

costs for which no recovery is sought in this period are indicated by a zero in Column F. After such write-offs, the Intervenors seek to recover \$1,799.95 in costs.

#### **IV. Conclusion**

30. In total the Intervenors seek to recover \$249,640.35 in professional fees, costs and expenses.

WHEREFORE, the Intervenors respectfully request that this Court enter an Order pursuant to 40 P.S. §§ 221.6(c)(i) and 221.18(a), awarding them \$249,640.35 in professional fees, costs, and expenses.

Respectfully submitted,

Dated: May 1, 2015

/s/ Benjamin M. Schmidt  
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*Attorneys for Intervenors Eugene J. Woznicki  
and Penn Treaty American Corporation*

## VERIFICATION

I, DOUGLAS Y. CHRISTIAN, lead counsel for the Intervenors 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 Supplemental Application for Relief of Intervenors Eugene J. Woznicki and Penn Treaty American Corporation to Recover Professional Fees, Costs and Other Expenses Awarded Pursuant to 40 P.S. § 221.18(a) and the Court's Amended Opinion Dated December 28, 2012 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 1, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that on May 1, 2015, I caused a true and correct copy of the Supplemental Application for Relief of Intervenors Eugene J. Woznicki and Penn Treaty American Corporation to Recover Professional Fees, Costs and Other Expenses Awarded Pursuant to 40 P.S. § 221.18(a) and the Court's Amended Opinion Dated December 28, 2012 to be served by U.S. Mail on counsel for the Rehabilitator, and by e-mail on the following counsel:

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