IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE: AMERICAN NETWORK INSURANCE COMPANY IN REHABILITATION	:	NO. 1 ANI 2009
IN RE: PENN TREATY NETWORK AMERICA INSURANCE COMPANY IN REHABILITATION	:	NO. 1 PEN 2009

INTERVENORS' REPLY TO THE REHABILITATOR'S RESPONSE TO APPLICATION FOR MULTIPLE FORMS OF RELIEF

Intervenors offer the following reply to the arguments proffered by the Rehabilitator, none of which justifies his continuing five-year rehabilitative inaction and refusal to comply with the Orders of this Court.

I. ARGUMENT

A. Relief Prohibiting Further Unreasonable Delay, And Regarding Rate Increases And Expediting The Rehabilitations Should Be Granted.

The Rehabilitator has refused to pursue on a timely basis any meaningful actions designed to actually rehabilitate the Companies and to file and support a plan in the more than five years he has served as the Rehabilitator. Application ¶ 34.[1] Instead, he has actually harmed the Companies by costing them "hundreds of millions of dollars" in forgone premiums (Opinion at 35), and spending $40 million without any rehabilitative result. Application and Answer ¶¶ 39-48. Filing a plan is meaningless if the Rehabilitator will not support confirmation of the plan and carry it out. As this Court has ruled, "[a] rehabilitation is not be used as a period of conservatorship while the Insurance Department reviews the options." Opinion at 136. By preparing and filing plans at great expense to the Companies but failing to support them, he has harmed the Companies through inaction, continuous delays, and profligate spending.

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[1] The Rehabilitator does not specifically deny these facts. *See* Answer ¶ 34; Pa.R.C.P. 1029(b).

The Court's January 6, 2009 and May 3, 2012 Orders of Rehabilitation and Section 518(a) of Article V required the Rehabilitator to attempt to rehabilitate the Companies. There has not yet been any proper, good faith attempt to rehabilitate. The Rehabilitator has no discretion to disobey the Orders of this Court and his statutory duties. This is particularly true in the context of this Application where the Court's May 3, 2012 Order was issued after a lengthy factual hearing at which this Court was required to apply specific statutory standards to the evidence presented. The Rehabilitator should not be permitted to so casually cast aside many critical facts established during the hearing in this matter.[2]

Construing Article V as affording the Commissioner the discretion to aim high and do what is needed to save an insurer by correcting the conditions that led to the need for rehabilitation, as was done under the facts of *Mutual Fire II*, comports with both the letter of Section 516(b) and the construction and purpose of "improved methods for rehabilitating insurers" of Section 501 of Article V. By contrast, affording the Commissioner discretion to frustrate a rehabilitation by doing nothing for five years does not comport with the letter of Section 516(b) or the construction and purpose of Article V. Notably, under Section 516(d) of Article V, which has the purpose of saving an insurer in rehabilitation, this Court is vested with authority regarding whether to "prescribe" a hearing, and to reject or modify and approve as modified the Proposed Plans submitted by the Rehabilitator based upon the facts already

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[2] *Norfolk & Western Railway Co. v. Pennsylvania Public Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980) is distinguishable in the context of this case. There, the Commonwealth Court sat in appellate review – on a cold record – of a hearing of the Pennsylvania Public Utility Commission regarding the validity of a regulation promulgated by the PUC. *See id.*, 489 Pa. at 113, 413 A.2d at 1039. That matter did not involve a mandatory hearing in the Commonwealth Court's original jurisdiction where a trial judge must apply specific statutory standards to the evidence presented. Nor did that matter implicate due process concerns implicated in the life or death decisions presented under Section 518(a) of Article V. Several other cases arising outside of Article V relied upon by the Rehabilitator are likewise distinguishable.

established at the hearing in this matter and the Rehabilitator's assertions in his own Proposed Plans.

Moreover, under any standard, including a number of those set forth at pages 3-4 of his Brief, the Rehabilitator has abused any discretion that he is owed in this context. Failing to file and support a plan for over five years exhibits "unreasonableness," "bad faith," and "abuse of power." Making rate increase decisions based upon politics rather than facts exhibits "arbitrariness," "bad faith," and "abuse of power." Filing Proposed Plans that the Special Deputy Rehabilitator has sworn offer the best possibility of success and then flip-flopping and changing his mind exhibits "arbitrariness," "irrationality," and "capricious action." Conflicts of interest including engaging the same counsel for the rehabilitation team and to pursue liquidation of the Companies in the Appeal, and hiring a Special Deputy Receiver who counts among his clients the very regulators that he should be seeking needed premium rate increases for the Companies exhibits "bias," "self-dealing," "bad faith," and "irrationality." The Rehabilitator's payment of $2.7 million of Company assets to his own Department without statutory entitlement or Court approval constitutes "self-dealing." A number of comments and actions by the rehabilitation team have exhibited a mindset and approach to these rehabilitations constituting "ill-will."

The Rehabilitator argues at pages 7-11 of his Brief that rate increases should not be pursued because the Rehabilitator has filed Proposed Plans proposing benefit reductions in lieu of rate increases. Arguing that rate increases aren't needed because the Rehabilitator has decided on a benefit reduction plan that PTAC supports as a first phase of rehabilitation ignores the fact that the Rehabilitator many months ago decided to abandon his Proposed Plans. Similar to Deputy Commissioner DiMemmo's shooting down benefit reduction options proposed by his team because he was sticking to the rate increase strategy laid out in the Preliminary Plan

(although the decision had already been made to stop rate increase filings), the Rehabilitator argues against rate increases in favor of his benefit reduction strategy in the Proposed Plans, although he has already changed his mind and decided to abandon them. That is unreasonable.

The Rehabilitator's latest iteration of a rehabilitation plan, *see* his Brief at 2 n.1, is not a comprehensive rehabilitation scheme and would be unconfirmable because it fails to comply with this Court's Order that "[t]he plan of rehabilitation must address and eliminate the inadequate and unfairly discriminatory premium rates for the OldCo business." May 3, 2013 Order ¶ 4. Liquidating one of the Companies and the majority of their policies while delivering the lion's share of their assets (and future premium inflows) to NOHLGA in no way addresses and eliminates the inadequate and unfairly discriminatory rates for the OldCo business.

The Rehabilitator argues that "the Court has recognized numerous times, immediate voluntary rate increases likewise face practical hurdles." Rehabilitator's Brief at 9. To the contrary, this Court has recognized that future rate increases will not be sought on a "business as usual" basis, *see* Opinion at 10, 111, 112, 114, 162, and that "rate increases are not futile because PTNA and ANIC can impose rate increases at policy renewal...rate increases are expressly authorized where the rates on a particular product are inadequate." *Id.* at 140.

The Rehabilitator has already offered what he told the Court are two workable rehabilitation methods that would address and eliminate the inadequate and unfairly discriminatory premium rates for the OldCo business: rate increases and benefit reductions. As noted by the Rehabilitator's citation to pages 8 and 15 of their August 30, 2013 Formal Comments, Intervenors support these methods, preferably both in concert, to effect the needed rehabilitations. *See* Rehabilitator's Brief at 9. What Intervenors object to is any further delay. As justification for his flip-flopping, the Rehabilitator incorrectly argues that seeking confirmation

of the Proposed Plans would require the expenditure of estate resources "to fight legal battles." Rehabilitator's Brief at 6. Given this Court's ruling supporting premium rate increases and "benefit modifications to the OldCo policies" (Opinion at 10), seeking confirmation of the Proposed Plans as a first phase of rehabilitation would not require the expenditure of significant resources to fight hypothetical legal battles.

In an effort to take advantage of the confidentiality of the so-called negotiations regarding his "rehabilitation plans," the Rehabilitator argues the reasonableness of his conduct at the MPRG meetings. *See* Rehabilitator's Answer ¶¶ 34-35; Brief at 2, 6-7. Putting aside his cheap shots, replete with customary innuendo and misdirection,[3] his assertions are simply incorrect and they violate the confidentiality of the discussions. The Rehabilitator's conduct of delaying and frustrating the rehabilitations supports the relief sought of prohibiting further unreasonable delay, aggressive pursuit and implementation of actuarially justified rate increases, and expediting the rehabilitation of the Companies.

B. Relief Regarding Setting Expectations For The Commissioner's Involvement In The Rehabilitation Effort Should Be Granted.

The Rehabilitator argues that the relief sought in Intervenors' proposed order that "[t]he Court expects the personal involvement of the Insurance Commissioner in the rehabilitation effort, including attendance at meetings and Court conferences, and his direct oversight of the Special Deputy Rehabilitator" is "tantamount to seeking a writ of mandamus." Intervenors'

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[3] A lawyer for the Intervenors has attended every one of these meetings (with the exception of one), and a non-lawyer representative has attended every one, notwithstanding the fact that they quickly morphed into something other than what the Court originally ordered and the fact that the Special Deputy Rehabilitator has never bothered to hide his disdain for Intervenors' counsel and any position they might offer. In addition, the Rehabilitator's assertion that Intervenors' lead counsel has "declined multiple invitations to conduct individual discussions" is simply inaccurate. Intervenors' lead counsel has met to conduct individual discussions with the Special Deputy Rehabilitator and the Rehabilitator's counsel.

Proposed Order ¶ 4; Rehabilitator's Brief at 12. The Rehabilitator's argument that the proposed relief constitutes mandamus relief or is in any way improper is misplaced. First, the Commonwealth Court issued many directives to the Commissioner in *Mutual Fire II*, 531 Pa. 598, 605-607, 614 A.2d 1086, 1089-90 (1992), none of which was characterized as "mandamus relief." Second, the Court may state its *expectation* that the Rehabilitator become personally involved and oversee the Special Deputy Rehabilitator without the need to directly order those actions. Intervenors note that if the Rehabilitator's failure to become personally involved and to properly oversee the Special Deputy Receiver results in an inappropriate plan being proposed, the Rehabilitator is well aware that the Court has the authority to disapprove or modify such an inappropriate plan. *See* Section 516 of Article V.

C. Relief Regarding Expense Reporting And The Return Of Company Assets Paid To The PA DOI Should Be Granted.

The Rehabilitator does not deny that "[e]ven the Department itself has been paid some $2.7 million out of the coffers of the estates relating to its time and expenses for employees of the Commonwealth." Application and Answer ¶ 41. Instead, he argues that "[n]o authority exists for PTAC's demand that the Rehabilitator reimburse the estates for funds expended to conduct the rehabilitation." Rehabilitator's Brief at 14. This argument misstates Intervenors' argument and the facts. Intervenors' argument is that the Rehabilitator lacked authority to pay his own Department $2.7 million of Company assets in the first place. The facts are that the $2.7 million does not constitute "funds expended to conduct the rehabilitation" because the time of salaried Commonwealth employees who are already paid to do their jobs does not constitute a cost or expense. Rather, it is a fee to which the Rehabilitator had no statutory entitlement to receive.

The Rehabilitator argues he was authorized to pay his own Department $2.7 million in company assets either by Sections 516(a), 516(b), or 544(a) of Article V, this Court's January 6,

2009 Order ¶ 6, or decisions that arose in liquidations. *See* Rehabilitator's Brief at 14-15. He fails, however, to identify either: 1) specific statutory language that entitles the PA DOI or the Commissioner acting as the rehabilitator of an insurer to fees for services performed in a rehabilitation; or 2) an Order of this Court approving the payment of $2.7 million from these Companies to the PA DOI in this particular case.

Section 516(a) addresses the compensation necessary to retain a special deputy. The $2.7 million paid to the PA DOI is separate from the $1.75 million paid to Mr. Cantilo's firm. *See* Application ¶ 36. Accordingly, Section 516(a) is not pertinent to the $2.7 million at issue.

Section 516(b) gives the Rehabilitator "all the powers of the directors, officers and managers" and "full power to direct and manage, to hire and discharge employes subject to any contract rights they may have, and to deal with the property and business of the insurer." That section authorizes the Rehabilitator to direct, manage, hire, and discharge employees *of the insurer*. *Id.* (emphasis added). Salaried employees of the PA DOI are not employees of an insurer. The $2.7 million paid to the PA DOI is separate from wages paid to employees of the Companies. Moreover, dealing with the property and business of the insurer is too vague to create an entitlement of the PA DOI to charge an insurer in rehabilitation fees for services performed during a rehabilitation. Transferring assets from the Companies to the PA DOI is not Penn Treaty's "business."

Likewise, this Court's January 6, 2009 Orders state at paragraph six: "[t]he Rehabilitator shall authorize, where appropriate and necessary, the payment of expenses, including employee compensation, *incurred in the ordinary course of Penn Treaty's business*, as well as the actual, reasonable, and necessary costs of preserving or recovering the assets of Penn Treaty." (emphasis added). The $2.7 million paid to the PA DOI does not constitute "employee

compensation, incurred in the ordinary course of Penn Treaty's business" because Commonwealth employees are not employees of the Companies. Nor was the $2.7 million that the Rehabilitator paid to his own Department "actual, reasonable, and necessary costs of preserving or recovering the assets of Penn Treaty." Nor are the $2.7 million at issue "costs" or "expenses." It is a fiction to believe that salaried Commonwealth employees generate "costs" of administration as they are already paid to do their jobs, unlike the insurer's actual employees, actuaries, and accountants. There is a difference between "costs" or "expenses" and charging fees for services performed by salaried Commonwealth employees.[4]

The Rehabilitator's argument that Section 544(a) of Article V entitles to him to fees for the time of already salaried Commonwealth employees to the Companies is also wrong. Section 544(a) states the order of distribution of claims from the insurer's estate in liquidation and has no bearing in these rehabilitations. While Section 544(a) provides that the costs and expenses of administration are a class (a) claim, there is no language stating that fees for the time of Commonwealth employees who are already paid a salary to do their jobs constitutes "costs and expenses of administration." Section 545(a) goes on to state that the rehabilitator "shall present to the court a report of the claims against the insurer with his recommendations. The report shall include the name and address of each claimant, the particulars of the claim, and the amount of the claim finally recommended, if any." Under Section 545(b), "[t]he court may approve, disapprove, or modify, the report on claims by the liquidator, except that the liquidator's agreements with other parties shall be final and binding on the court to the extent permitted by law." Here, the Rehabilitator has not made a claim and presented this Court with a report for

[4] Due to the lack of reporting, there is no evidence regarding when and what alleged services were performed, who performed the services, the amount of time expended, and the fee sought for each task.

approval. In addition, the Rehabilitator's payment of Company assets to his own Department as a "fee" constitutes precisely the type of self-dealing that is not final and binding on the Court because payments to the PA DOI do not constitute "agreements with other parties", but instead are payments based on a receiver's agreement with himself.

Reliance on *Koken v. Colonial Assurance Company*, 885 A.2d 1078 (Pa. Cmwlth. 2005) must also be rejected because that case did not involve a rehabilitation, and the issue of a rehabilitator's power under Section 516 was not addressed. Moreover, in that liquidation, the Liquidator submitted exhibits and testimony to establish "that the Liquidator's expenses were properly stated and reasonable" and the Liquidator sought approval of a report on claims which included certain unidentified "costs associated with Insurance Department employees providing services for the Colonial estate." *Id.* at 1085-86. It is unclear from the decision what these associated costs or expenses entailed, and the decision does not state that they involved "fees" for billing out salaried Commonwealth employees. Here, the Rehabilitator has not submitted any report of claims or distribution in connection with a liquidation. Nor has he requested or received Court approval to pay his own Department $2.7 million. That a former commissioner received an Order approving payment of certain costs and expenses in a liquidation in 2005 does not entitle this Commissioner to charge these two Companies in rehabilitation fees without Court approval.

In support of the proposition that the Rehabilitator may bill the time of salaried Commonwealth employees to an insurer "whether the company in question is in rehabilitation or liquidation," the Rehabilitator cites *Phillipi v. Secretary of Banking*, 5 A.2d 430, 432 (Pa. Super. Ct. 1939). *See* Rehabilitator's Brief at 14-15. That case, however, involved a different statute and the liquidation of a mortgage pool of a closed bank by the Secretary of Banking, and not a

rehabilitation of an insurer or any other institution. Notably, the *Phillipi* court based its ruling upon the following statutory language:

> The secretary in possession of an institution as receiver . . . . shall also be entitled to reasonable fees and commissions, both as to income and as to principal, for any services performed, and all reasonable expenses incurred, by him on behalf of any estate of which the institution was fiduciary . . . .

Id. at 432. The Legislature thus provided that the secretary of banking as a receiver is entitled to reasonable fees and commissions for any services performed in addition to reasonable expenses incurred. The Legislature used different language in Article V. The conclusion is inescapable that if the Legislature had intended for the rehabilitator of an insurer to be entitled to fees for services performed, it would have said so in Article V using the same type of explicit language that it did in the statute involving the Secretary of Banking as a receiver. The money should be repaid, and the Court should prohibit such practices in the future.

D. Relief Regarding Discovery Should Be Granted.

Intervenors have requested discovery and a hearing on this Application, followed by an expedited schedule for approval, disapproval or modification of the plans of rehabilitation for the Companies. *See* Application ¶¶ 83, 80(c). Discovery and a hearing will establish that the Rehabilitator has not only been ineffective, but that he has harmed the Companies and continues to frustrate the rehabilitations. As part of that discovery, Intervenors respectfully request that their Application for Relief and to Compel filed on April 29, 2013 be granted.

E. Relief Regarding Intervenors' Professional Fees Should Be Granted.

Given the actuarial issues involved, Intervenors have requested advance authorization for Mr. Volkmar's actuarial work. As acknowledged at page four of the Policyholders' Committee's Response, Mr. Volkmar's contributions would be "helpful." Unlike with the Rehabilitator's consent to a $200,00 budget for the actuary retained by the Policyholders' Committee, he argues

at page 17 of his Brief that Intervenors should bankroll Mr. Volkmar's work without certainty regarding his professional fees will be paid. Unfortunately, due to PTAC's economic misfortunes, the Rehabilitator's suggested approach would make it difficult to have Mr. Volkmar complete this important work. For the same reason, Intervenors have requested the Court to approve their legal fees and expenses incurred in this proceeding. Intervenors' professionals would of course abide by the same transparent, justification, and approval of their costs, expenses, and fees by this Court that Intervenors have requested the Rehabilitator and his Department, Special Deputy Rehabilitator, Chief Rehabilitation Officer, and other professional and consultants comply with.

F. Relief Regarding Setting Expectations For The Rehabilitator To Retain Separate Counsel Should Be Granted.

The Rehabilitator argues that the relief sought in Intervenors' proposed order that "[t]he Court expects the Rehabilitator to refrain from using the same counsel to represent him in both the rehabilitation and the appeal" is unnecessary because "[s]ince the May 3, 2012 Order, the law firm of Cozen O'Connor has been primarily assisting the Department in the preparation of the rehabilitations." Intervenors' Proposed Order ¶ 11; Rehabilitator's Answer ¶ 57. This is incorrect. The 18+ MPRG meetings referenced in the Rehabilitator's Brief were held at DLA Piper LLP's office and attended by at least two DLA Piper lawyers. Moreover, Cozen O'Connor has also been assisting the Department and DLA Piper to prosecute its appeal, as demonstrated by Cozen O'Conner's filing of the Post-Trial Motion and working with DLA Piper LLP attorneys on, *inter alia*, objections to the text of the hearing transcripts during the appeal. Moreover, the Rehabilitator's assertion that Intervenors "raised no objection until about the week of March 18, 2013" is not accurate. *See* Appendix A hereto (letters dated December 3, 2012 and

November 13, 2012) and Appendix B hereto (January 22, 2013 letter), which objected to the Rehabilitator's using the same counsel to represent him in both the rehabilitation and the appeal.

G. The Rehabilitator's Evasive Answers To Averments Results In Admissions.

The Rehabilitator has deployed several ruses in an attempt to evade admitting factual averments of the Application. His manner of answering the Application is yet another indication of the depths to which he will sink to avoid doing his job of rehabilitating the Companies. Intervenors' factual averments that the Rehabilitator has failed to specifically deny result in admissions, not merely as a procedural requirement, but also because the factual averments are so obviously true. Just a few examples of the Rehabilitator's evasion are set forth in the table attached as Appendix C hereto.

In *Piehl v. City of Philadelphia*, 930 A.2d 607, 615 (Pa. Cmwlth. 2007), this Court rejected the Attorney General's "ruse" of responding to a factual averment by denying it as a conclusion of law, and ruled that the failure to meet a factual averment with a specific denial "results in an admission" under Rule 1029(b). As set forth below and in Appendices C and D, the Rehabilitator has deployed several ruses: 1) lumping together answers to multiple paragraphs of the Application in an effort to conceal his failure to specifically deny averments; 2) refusing to admit averments in response to which the Rehabilitator has not even pled a general (let alone specific) denial; 3) making up and then denying or admitting different averments than the ones that Intervenors alleged while failing to plead any response to the actual averments of the Application; and 4) otherwise responding with general averments that are unresponsive to the actual averments of the Application. Just as in *Piehl*, the failure to specifically deny averments results in admissions. *See also First Wis. Trust Co. v. Strausser*, 439 Pa. Super. 192, 200, 653 A.2d 688, 692 (1995) (general denials resulted in admissions under Rule 1029(b)); 6 Standard Pa. Practice 2d § 30:15 (2009) ("In all instances, the averments in a reply must be sufficient to

reassure the court that those averments are not merely a subterfuge"); *id.* § 30:16 ("A general denial or a demand for proof, except as otherwise provided, have the effect of an admission.").[5]

The Rehabilitator has lumped together answers to multiple paragraphs of the Application. *See* Answer ¶¶ 4-6, 8-12, 15-17, 19-23, 24-29, 30-31, 34-35, 36-37, 39-44, and 75-78. This violates the pleading requirements in Rules 1022, that "[e]very pleading shall be divided into paragraphs numbered consecutively" and 1029(a), to specifically refer each answer to the corresponding paragraph of the preceding pleading. The purpose of these Rules is to enable an adversary and the court to determine whether a party has responded to the averments contained in a specific paragraph. A comparison of the factual averments in the Application and the Rehabilitator's answers that are lumped together shows an absence of specific denials to Intervenors' averments in at least the following paragraphs: 4, 5, 6, 8, 9, 10, 11, 15, 16, 17, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30,[6] 31, 34, 35, 36, 39, 40, 41 (factual first sentence), 42, 43, 44, 75, 76, and 77. Accordingly, by operation of Rules 1022, 1029(a), and 1029(b), the averments of these paragraphs are admitted.

The Rehabilitator has refused to admit certain averments of the Application to which he has failed to even make a general (let alone specific) denial. *See* Answer ¶¶ 3, 4, 5, 6, 13, 15, 16,

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[5] Under the Rules of Procedure, made applicable by Pa.R.A.P. 106, a responsive pleading must "admit or deny each averment of fact in the preceding pleading or any part thereof to which it is responsive." Pa.R.C.P. 1029(a). "Admissions and denials in a responsive pleading shall refer specifically to the paragraph in which the averment admitted or denied is set forth." *Id.* "Averments in a pleading to which a responsive pleading is required are admitted when not denied specifically or by necessary implication. A general denial or a demand for proof...shall have the effect of an admission." Pa.R.C.P. 1029(b).

[6] The Rehabilitator contends he lacks sufficient information to determine the "extent of time and expense incurred by third parties when commenting on the Proposed Plans"; however, he did not aver that he performed a reasonable investigation and he must know the truth of the allegations that Intervenors went to tremendous time and expense to submit comments (some of which included expensive actuarial analyses) to the Proposed Plans. *See* Note to Pa.R.C.P. 1029(c).

17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 36, 38, 39, 40, 41 (factual first sentence), 42, 43, 44, 46, 48, 51, 52, 60, 68, 75, 76, and 77. Accordingly, he is deemed to have admitted the averments in these paragraphs. Nor does Rule 1029 contain an exception to admitting facts relating to procedural matters, matters of public record, or matters testified about in a hearing. The failure to specifically deny factual averments in paragraphs 4, 5, 6, 15, 16, 17, 24, 25, 26, 27, 28, and 29 of the Application while responding with a statement to the effect that "[t]he procedural history of this proceeding is reflected in the record, which speaks for itself" results in admissions. *See* Pa.R.C.P. 1029(b).

The Rehabilitator has sought to dodge averments by denying or admitting different allegations than actually alleged in the Application. Examples of the Rehabilitator's evasion are contained in the table attached as Appendix D hereto. A comparison of the averments made in paragraphs 2, 7, 35, 38, 45, 49, 53, 65, and 74 of the Application with the Rehabilitator's answers shows that he has failed to specifically deny and denied different or fewer than all allegations actually averred in the Application. A comparison of the averments made in paragraphs 18, 63, 64, 69, 79, and 81 of the Application with the Rehabilitator's answers shows that the Rehabilitator has failed to specifically deny and has simply made up and then admitted or denied different allegations than actually averred in the Application. Accordingly, the averments made in paragraphs 2, 7, 8, 9, 10, 11, 14, 18, 34, 35, 38, 45, 49, 53, 63, 64, 65, 74, 79, and 81 of the Application are deemed admitted. *See* Pa.R.C.P. 1029(b).

Finally, the Rehabilitator has responded to the factual averments in paragraphs 4, 5, 6, 58, 61, and 63 of the Application with a general averment disclaiming relevance. Rule 1029 requires an admission or denial of facts known to a party. A general statement disclaiming relevancy is

neither a specific denial nor any other permissible pleading exception. As a result, the factual averments in these paragraphs are deemed admitted. *See* Pa.R.C.P. 1029(b).

II. CONCLUSION

Accordingly, Intervenors request that the Application be granted.

Respectfully submitted,

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Information on the exhibits to the Intervenors' Reply to the Rehabilitator's Response to Application for Multiple Forms of Relief may be obtained by calling Penn Treaty at 1-800-222-3469, extension 3635.