

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Penn Treaty Network America :
Insurance Company in Rehabilitation : 1 PEN 2009
:
:
In Re: American Network :
Insurance Company in Rehabilitation : 1 ANI 2009

Re: Second Quarter 2015 Supplemental Application of Intervenors Eugene J. Woznicki and Penn Treaty American Corporation to Recover Professional Fees, Costs and Other Expenses

BEFORE: HONORABLE MARY HANNAH LEAVITT, Judge

OPINION NOT REPORTED

FILED: September 9, 2015

MEMORANDUM OPINION AND ORDER

Before the Court is a Supplemental Application for Relief of Intervenors Eugene J. Woznicki and Penn Treaty American Corporation (PTAC) (collectively, Intervenors) to recover their professional fees, costs and other expenses incurred between April 1, 2015, and June 30, 2015. Teresa D. Miller, Insurance Commissioner of Pennsylvania, in her capacity as Statutory Rehabilitator of Penn Treaty Network America Insurance Co. (PTNA) and American Network Insurance Co. (ANIC), responds that the Court should deny Intervenors' application because they are not entitled to relief under Article V of The Insurance Department Act of 1921 (Article V).¹ Because Intervenors are entitled to recover their reasonable fees and costs under Section 518(a) of Article

¹ Act of May 17, 1921, P.L. 789, added by Section 2 of the Act of December 14, 1977, P.L. 280, as amended, 40 P.S. §§221.1 – 221.63.

V, 40 P.S. §221.18(a), and, alternatively, Section 506(c)(i) of Article V, 40 P.S. §221.6(c)(i), the Court grants Intervenors' application.²

The Rehabilitator filed her Petition for Approval of Second Amended Plan of Rehabilitation of PTNA and ANIC and for Liquidation of PTNA under authority of, *inter alia*, Section 518(a) of Article V.³ That section states:

Whenever he has reasonable cause to believe that further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policy and certificate holders, or the public, or would be futile, the rehabilitator may petition the Commonwealth Court for an order of liquidation. A petition under this subsection shall have the same effect as a petition under section 520. *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.*

40 P.S. §221.18(a) (emphasis added).⁴ Woznicki is the chairman of the boards of directors of the insurance companies, PTNA and ANIC, and has acted on their behalf since the Rehabilitator commenced rehabilitation proceedings in 2009.⁵

² Contrary to the Rehabilitator's position, the common law "American Rule" barring the recovery of attorney fees is inapplicable here because there is a statutory basis for Intervenors' application.

³ Section 518(a) was added by the Act of December 14, 1977, P.L. 280.

⁴ The Rehabilitator elevates form over substance by arguing that there is no petition for liquidation pending. A petition to liquidate an insurer in rehabilitation is qualitatively no different than a request for termination of rehabilitation under Section 518.

⁵ The Rehabilitator contends that Woznicki's only interest in this litigation is as chairman of the board of PTAC, which is the holding company of PTNA and ANIC. The Rehabilitator asserts, incorrectly, that Woznicki's term as a director of PTNA and ANIC expired in 2009. As Intervenors point out in their reply brief, the bylaws of PTNA and ANIC provide that a director is elected to serve "for the term of one year, and until his successor shall be elected and shall qualify." Intervenors' Reply Brief at 14. Because no such election has occurred, Woznicki's initial terms on the boards of PTNA and ANIC were held over and continue to this day.

Pursuant to that authority, he has submitted three prior fee petitions under Section 518(a), which garnered no objection from the Rehabilitator and which the Court granted. The Court can discern no reason to treat the present application differently. Further, Section 518(a) broadly authorizes Woznicki as a director to take “such actions as are reasonably necessary.” This authorizes Woznicki, *inter alia*, to obtain the assistance of holding company PTAC to facilitate Intervenors’ defense.

Alternatively, Intervenors are entitled to the relief sought in their application under Section 506(c) of Article V, which states:

(c) This section shall not be construed to abridge otherwise legal rights to resist a petition for liquidation or other delinquency proceedings.

(i) An insurer shall have the right to engage legal counsel for defense of and appeal with respect to a delinquency proceeding.^[6] 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.

In the event that such proceedings result in a declaration of insolvency or are subsequent thereto, the approved costs thereof shall be administrative costs or expenses as provided under section 544(b).

⁶ A “delinquency proceeding” means “any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing or conserving such insurer, and any summary proceeding under sections 510 through 513.” Section 503 of Article V, added by the Act of December 14, 1977, P.L. 280, *as amended*, 40 P.S. §221.3.

40 P.S. §221.6(c).⁷ Under Pennsylvania law, the board of directors of an insurance company is authorized to exercise the insurer's right to "sue and be sued, complain and defend and participate as a party or otherwise in any judicial, administrative, arbitrative or other proceeding in its corporate name." 15 Pa. C.S. §1502(a)(2). Woznicki, as the chairman of the boards of PTNA and ANIC, exercised the companies' "right to engage legal counsel for defense of and appeal with respect to a delinquency proceeding," which the Court finds includes the instant proceeding on the Rehabilitator's Petition for Approval of Second Amended Rehabilitation Plan.⁸ Accordingly, Intervenors are entitled to recover their "[r]easonable costs and fees" under Section 506(c)(i).

For all of the foregoing reasons, the Court enters the following order:

⁷ Section 506(c) was added by the Act of December 14, 1977, P.L. 280.

⁸ The Rehabilitator argues that Intervenors' rights under Section 506(c)(i) ended once the Court entered a final order of rehabilitation. This argument is unpersuasive. Section 506(c)(i) is directed toward multiple types and stages of "delinquency proceedings," which is broadly defined as "any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing or conserving such insurer." Section 503 of Article V, added by the Act of December 14, 1977, P.L. 280, *as amended*, 40 P.S. §221.3. The Rehabilitator's Petition for Approval of Second Amended Rehabilitation Plan, which seeks to reorganize the Companies, rehabilitate ANIC and liquidate PTNA, constitutes a "delinquency proceeding." Section 506(c)(i) also contemplates recovery of attorney fees, costs and expenses incurred subsequent to a delinquency proceeding resulting in a declaration of insolvency.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Penn Treaty Network America :
Insurance Company in Rehabilitation : 1 PEN 2009
:
:
In Re: American Network :
Insurance Company in Rehabilitation : 1 ANI 2009

ORDER

AND NOW, this 9th day of September, 2015, upon consideration of the Second 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 (Supplemental Fee Application), it is hereby ORDERED that the Supplemental Fee Application is GRANTED. The Rehabilitator is ORDERED to reimburse Intervenors for the following professional fees, costs and other expenses incurred between April 1, 2015 and June 30, 2015, divided equally between 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: \$101,820.09

In granting Intervenors' Supplemental Fee Application, the Court considered the following:

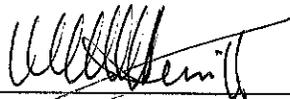
Intervenors' Supplemental Fee Application, which includes detailed explanations of the professional fees, costs and expenses incurred between April 1, 2015 and June 30, 2015;

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.



MARY HANNAH LEAVITT, Judge

Certified from the Record

SEP - 9 2015

and Order Exit