

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

<b>MICHAEL F. CONSEDINE, INSURANCE</b>	:	
<b>COMMISSIONER OF THE COMMONWEALTH</b>	:	
<b>OF PENNSYLVANIA,</b>	:	
<b>Plaintiff,</b>	:	
<b>v.</b>	:	<b>DOCKET NO. 5 M.D. 2009</b>
<b>PENN TREATY NETWORK AMERICA</b>	:	
<b>INSURANCE COMPANY,</b>	:	
<b>Defendant.</b>	:	
<b>MICHAEL F. CONSEDINE, INSURANCE</b>	:	
<b>COMMISSIONER OF THE COMMONWEALTH</b>	:	
<b>OF PENNSYLVANIA,</b>	:	
<b>Plaintiff,</b>	:	
<b>v.</b>	:	<b>DOCKET NO. 4 M.D. 2009</b>
<b>AMERICAN NETWORK</b>	:	
<b>INSURANCE COMPANY,</b>	:	
<b>Defendant.</b>	:	

ORDER

And now this \_\_\_\_ day of \_\_\_\_\_, 2012 the court after considering the motion to supplement the record by the Commissioner of Insurance by Michael F. Consedine, the Commissioner of Insurance for the Commonwealth of Pennsylvania in its capacity as Rehabilitator of Penn Treaty Network America Insurance Company and American Network Insurance Company and the court having considered the opposition of the intervenors, if any had for good cause shown:

IT IS ON THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2012 that Rehabilitator's Exhibits P-2003 and P-2004 are admitted.

BY THE COURT:

\_\_\_\_\_  
MARY HANNAH LEAVITT

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MICHAEL F. CONSEDINE, INSURANCE	:	
COMMISSIONER OF THE COMMONWEALTH	:	
OF PENNSYLVANIA,	:	
Plaintiff,	:	
v.	:	DOCKET NO. 5 M.D. 2009
PENN TREATY NETWORK AMERICA	:	
INSURANCE COMPANY,	:	
Defendant.	:	
	:	
MICHAEL F. CONSEDINE, INSURANCE	:	
COMMISSIONER OF THE COMMONWEALTH	:	
OF PENNSYLVANIA,	:	
Plaintiff,	:	
v.	:	DOCKET NO. 4 M.D. 2009
AMERICAN NETWORK	:	
INSURANCE COMPANY,	:	
Defendant.	:	

MOTION TO SUPPLEMENT THE RECORD  
BY MICHAEL F. CONSEDINE, THE COMMISSIONER OF  
INSURANCE FOR THE COMMONWEALTH OF PENNSYLVANIA

Michael F. Consedine, Insurance Commissioner of the Commonwealth of Pennsylvania (the “**Rehabilitator**”) in his capacity as Rehabilitator Penn Treaty Network America Insurance Company “(PTNA”) and American Network Insurance Company (“ANIC”) hereby moves this court to supplement the record with two emails exchanged by counsel during the pendency of the underlying litigation. The basis for this Motion is as follows:

1. In matter *sub judice* the Commissioner of the Rehabilitator seeks an Order of Liquidation for PTNA and ANIC. A trial was conducted with respect to this proceeding commencing on January 31, 2011 and continuing admittently thereafter through November 2011.

2. In its Findings of Fact and Conclusions of Law PTNA and ANIC assert that a principal and actuary employee of Milliman, Larry Pfanerstill, failed to disclose in his

curriculum vitae introduced in trial as R-963; see also Intervenor's Proposed Findings of Fact at §1337 to 1340; an article he had drafted concerning the regulatory environment in which PTNA and ANIC found itself operating. Based on this alleged omission Intervenor's assert that Mr. Pfannerstill lacks credibility and should not be considered an appropriate witness for the Court to rely upon. (Intervenor's Proposed Findings of Fact and Conclusions of Law at §1337 to 1340.) However, following trial, counsel for the Commissioner located an email in which the current curriculum vitae for Mr. Pfannerstill, including the article which was called into question was, in fact, produced pre-trial. A true and exact copy of the email enclosing the correct curriculum vitae is attached as Exhibit A.

3. Likewise, the Commissioner seeks to admit an email exchange between counsel in December 2011 as referenced in §270 of the Commissioner's Reply to Intervenor's Proposed Findings of Fact and Conclusions of Law. During trial, Edward Mohoric, a principal actually employed by Milliman, was questioned about a document referred to as a Broker's World survey. One of the complaints was that the existence of the Broker's World document was not disclosed pre-trial. However, the existence of the Broker's World survey was disclosed in exhibit R-1142 at the time that Mr. Mohoric produced his rebuttal report. Attached is the email exchange between counsel of December 20, concerning this document.

4. Counsel for the Commissioner was unaware of the existence of this information at the time of trial. This information is clearly germane to the issues at bar.

5. As there is no jury involved in the proceeding, the Court has yet to rule with respect to the action and the parties continue to submit pleadings, it is respectfully submitted that these emails be admitted into evidence. In particular it is noted that the documents are not

controversial or require any examination of a "witness" as they are simply exchanges between the attorneys representing the parties. The witnesses were unaware of these exchanges. They are not copied thereon and or involved in the subsequent production of information.

Wherefore, it is respectfully submitted and respectfully requested that the emails attached hereto as Exhibits A and B be permitted to be entered into records as P-2003 and P-2004.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas Harty", is written over a horizontal line. The signature is stylized and somewhat illegible.

Thomas Harty  
James R. Potts  
COZEN O'CONNOR  
1900 Market Street  
Philadelphia, PA 19103  
(215) 665-2000

Dated: February 7, 2012

**CERTIFICATE OF SERVICE**

I, Thomas S. Harty, hereby certify that on February 7, 2012, I served the foregoing Motion to Supplement the Record by Michael F. Consedine, the Commissioner of Insurance for the Commonwealth of Pennsylvania on the following party by the following means:

**By Hand Delivery:**

Douglas Y. Christian, Esquire  
Ballard Spahr LLP  
1735 Market Street, 51<sup>st</sup> Floor  
Philadelphia, PA 19103  
[christian@ballardspahr.com](mailto:christian@ballardspahr.com)

Counsel for Intervenors Penn Treaty American Corporation and  
Eugene J. Woznicki



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Thomas S. Harty, Esquire  
Cozen O'Connor  
Attorney I.D. No:  
1900 Market Street, 4th Floor  
Philadelphia, PA 19103  
(215) 665-2000

# Exhibit A

From: Christian, Douglas (Phila) [<mailto:ChristianD@ballardspahr.com>]  
Sent: Wednesday, December 21, 2011 12:01 PM  
To: Meloni, Mia  
Subject: Re: Stip

Mia, That is something that was produced by Ed electronically at the time of his rebuttal report. It is from an excel file he produced (I'll send it to you if you need it). There was testimony on the subject on 11/1 and 2. This reflects his analysis of one portion of Attachment D to his rebuttal report. Tx. Doug

----- Original Message -----

From: Meloni, Mia [<mailto:mmeloni@cozen.com>]  
Sent: Wednesday, December 21, 2011 11:27 AM  
To: Christian, Douglas (Phila); Harty, Thomas <[THarty@cozen.com](mailto:THarty@cozen.com)>  
Cc: Potts, James R. <[JPotts@cozen.com](mailto:JPotts@cozen.com)>  
Subject: RE: Stip

Doug -

We are considering your proposed stipulation.

1142 does not bear a bates number, and we could not locate the testimony about the document in the transcripts. Could you tell us from what production you obtained the document (and, let us know if it is a portion of a larger document), and can you point us to the trial testimony on the document?

Thanks,  
Mia

Mia Meloni | Cozen O'Connor  
1900 Market St | Philadelphia, PA 19103 | P: 215-665-4690 | F: 215-701-2280 [mmeloni@cozen.com](mailto:mmeloni@cozen.com) | [www.cozen.com](http://www.cozen.com)



## Exhibit B



**From:** Potts, James R.  
**Sent:** Monday, August 09, 2010 3:37 PM  
**To:** 'Christian, Douglas (Phila)'  
**Cc:** Harty, Thomas; Meloni, Mia  
**Subject:** RE: Additional Expert Reports  
**Attachments:** PHILADELPHIA-#5681435-v1-Larry\_Pfannerstill\_(bio).pdf

Doug,

The biographical information included for Larry Pfannerstill with two of the reports did not include a May 2009 article. The attached bio should be substituted for what was sent earlier this afternoon.

James



**Larry J. Pfannerstill**  
FSA, MAAA  
Principal, Consulting Actuary



**CURRENT RESPONSIBILITY**

Larry is a principal and consulting actuary with the Milwaukee office of Milliman. He joined the firm in 1995.

**EXPERIENCE**

Larry's area of expertise is healthcare consulting with a focus on Long Term Care insurance plans. He has assisted LTC carriers in designing LTC benefit plans, establishing premium rates, financial valuations, and strategic market positioning. He has established premium rates for managed care plans such as PPOs, HMOs, PHOs, and self-funded arrangements. He has designed and implemented financial monitoring programs for a variety of health care organizations including traditional commercial medical organizations, LTC carriers, and government programs. Larry has also assisted health care organizations in evaluating risks associated with capitation and risk-sharing mechanisms for commercial and government products.

Larry actively supports the actuarial program at the University of Wisconsin through their Co-Curricular Learning Board and has taught industry courses on actuarial mathematics and college-level classes in applied statistics.

**PROFESSIONAL DESIGNATIONS**

- Fellow, Society of Actuaries
- Member, American Academy of Actuaries

**EDUCATION**

- BS, Mathematics and Education, University of Wisconsin, Whitewater
- MS, Actuarial Science, University of Wisconsin, Madison



**Larry J. Pfannerstill, FSA, MAAA**  
**Consulting Actuary**

**PUBLICATIONS**

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- Conflicting Perspectives on LTC Rate Increases - Published by Long-Term Care News, May 2009
- Intensive Care, How Three States Reduced the Cost of Caring for the Elderly, Contingencies - Published by American Academy of Actuaries, March/April 2004
- Why Don't People Purchase Long Term Care Insurance, Milliman USA Client Notes, Second Quarter, 2001
- Changes to LTC Model Regulation, Milliman USA Client Notes, Third Quarter 2000
- Group LTC Market is Ripe for Expansion, Milliman USA Client Notes, Fourth Quarter 1999
- Experience Monitoring for Long Term Care, Milliman USA Client Notes, Second Quarter 1999
- "New HCFA rules to Impact Physician Incentive Plans", Medical Group Management Journal, November 1996

**SPEECHES AND PRESENTATIONS**

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- |                |  |
|----------------|--|
| March 2010     | "LTC Claims Practices and Their Impact on Reserving": Intercompany Long Term Care Insurance Conference   |
| September 2009 | "Long Term Care - Guaranteeing the Promise": LIMRA/LOMA DI and LTC Insurer's Forum   |
| October 2008   | "Private Long Term Care and Public/Private Managed Long Term Care": Society of Actuaries Annual Meeting  |
| September 2008 | "Premium Deficiency Reserves": Society of Actuaries Valuation Actuary Symposium  |
| June 2008      | "The Future of LTC - Claims and Underwriting Practices": Society of Actuaries Spring Life Meeting  |
| October 2007   | "The Financial Impact of LTCI Policyholder Behavior While on Claim, Impact on Claim Reserves": Society of Actuaries Annual Meeting                 |
| February 2007  | "Actuarial Considerations With Upgrades on LTC Policies": Intercompany Long Term Care Conference   |
| June 2006      | "Health Valuation Seminar Part 3 - The Impact of Rate Increases on Calculating Reserves for LTC Plans": Society of Actuaries Spring Health Meeting |
| October 2004   | "Long Term Care Rate Increases - Lessons Learned": Society of Actuaries Annual Meeting   |
| September 2004 | "LTC Pricing: No Right Way": Presented at LIMRA / LOMA / Milliman Long Term Care and Disability Income Conference                                  |
| May, 2004      | "Inflation Protection: Future Purchase Option vs. Compound Inflation", presented at Group LTC Producer's Conference                                |
| January, 2004  | "Michigan Managed Care Pharmacy Directors Meeting", An update on Medicare Reform Legislation   |
| June, 2003     | "Small Business Health Fairness Act of 2003", Presentation to the United States Chamber of Commerce, Insurance Committee                           |

**Larry J. Pfannerstill, FSA, MAAA**  
**Consulting Actuary**

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|----------------|--|
| May, 2003      | "Actuarial Aspects of Association Health Plans", Association health Plan Legislative Update and Implementation Workshop, sponsored by the American Society of Association Executive. |
| November, 2002 | "Rate Increase Issues for LTC Insurance", National Long Term Care Insurance Producer's Summit  |
| November, 2002 | "Advanced Pricing for Producers", National Long Term Care Insurance Producer's Summit  |
| March, 2000    | "LTC Market Trends", Milliman & Robertson Inc. Health Forum  |
| June, 1999     | "Financial Issues in Long Term Care Insurance", Society of Actuaries Spring Meeting  |
| January, 1999  | "Managing in a Managed Care Environment Financing practices/Cost Services", University of Wisconsin - Milwaukee, January 1999  |
| October, 1998  | "Nursing Facility Ad-on Premium Rate Calculation", Minnesota Department of Human Resources   |
| June, 1998     | "Rate Development for Insured Plans", Detroit Medical Center/Coordinated Health Care   |
| June, 1998     | "Managing Medicaid: The Financial Issues", Milliman & Robertson Inc. Health Care Trends seminar  |
| June, 1997     | "Physician Incentive Plans HCFAs New Rules on Physician Compensation: How will They Affect You?", The Society of Actuaries Spring Meeting  |
| June, 1997     | "Estimating Claim Reserves: Predicting the Future", Milliman & Robertson Inc. Health Care Trends seminar   |
| June, 1997     | "Using and Actuarial Cost Model to Measure Financial Performance", Milliman & Robertson Inc. Health Care Trends seminar  |
| October, 1996  | "An Update on Medical Savings Accounts", Society of Actuaries 1996 Annual Meeting  |

**PROFESSIONAL AND INDUSTRY COMMITTEES**

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Member of Society of Actuaries' Flexible Benefits Examination Committee 1993 - 1996

**EDUCATION**

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Larry is a Fellow in the Society of Actuaries and a Member of the American Academy of Actuaries. He graduated from the University of Wisconsin-Whitewater, with a bachelor's degree in education and a major in mathematics. He earned a master's degree in actuarial science from the University of Wisconsin-Madison.