

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOEL ARIO, INSURANCE COMMISSIONER :
OF THE COMMONWEALTH OF :
PENNSYLVANIA, :

Plaintiff, :

v. :

PENN TREATY NETWORK AMERICA :
INSURANCE COMPANY, :

Defendant. :

DOCKET NO. 5 M.D. 2009

Re: Petition to Suspend Agents' Commissions

**PREHEARING STATEMENT OF INTERVENOR
PENN TREATY AMERICAN CORPORATION**

Intervenor Penn Treaty American Corporation ("PTAC") submits this Prehearing Statement pursuant to this Court's Order of August 5, 2009.

As a preliminary matter, PTAC offers two general points:

1. There may be some benefit to a determination of the legal issue of whether the Rehabilitator is entitled to the relief he seeks before the scheduling a hearing on factual issues. Oral argument on that legal issue can be held without delay. Only if it is determined that it is permissible under certain circumstances to suspend the commissions would a factual hearing be needed as to the necessity of such a drastic course of action.

2. Whether or not any such hearing awaits a determination of the legal issue, the hearing and preparation therefore should not commence until the Rehabilitator files the rehabilitation plan in early October. Only then will the parties be in a position to understand the request to suspend the commissions in the context of the overall rehabilitation efforts and be in the best position to determine the extent to which this extraordinary relief is actually warranted.

A. Legal Issues Presented By The Application

1. Whether this Court is authorized to take any action to suspend commission payments in light of the ruling of this Court in *Pennsylvania Association of Life Underwriters v. Foster*, 645 A.2d 907 (Pa.Cmwlt. 1994).

2. Is discriminatory treatment of one class of creditors permissible?

3. Are continued commission payments impermissible preferences?

B. Facts That Need To Be Established By The Rehabilitator

It is difficult to identify these facts without first considering the overall context in which the issue will be decided. Once a rehabilitation plan is filed in early October, the parties will be in a better position to identify the specific facts that need to be established by the Rehabilitator at any hearing. Reserving the right to supply an additional statement of facts once the rehabilitation plan is filed, PTAC offers to following list of facts that need to be established by the Rehabilitator to prevail on its argument that all commission payments be suspended:

1. Each and every one of the varied types of agency agreements and agent circumstances supports the claim to total cessation of all payments.
2. The financial condition of Penn Treaty requires the cessation of all payments.
3. The policyholders will be impermissibly injured if the commissions are not suspended.

4. Cessation of payments will not interfere with a successful rehabilitation of Penn Treaty and the emergence out of rehabilitation of a strong company capable of fully protecting its policyholders.

5. There are no alternative approaches to the draconian relief requested.

6. The requested relief is fair to the agents.

C. Potential Witnesses

As is the case with a statement of facts, a statement of potential witnesses should await receipt and review of the rehabilitation plan. Reserving the right to supplement this list, PTAC may call the following as witnesses:

1. Eugene Woznicki

2. William Hunt

3. Any potential witness identified by any other party.

4. Any objector who wishes to testify.

5. An expert witness to rebut expert witness testimony offered by any other party.

6. Edward Mohoric of Milliman.

7. A representative of the Rehabilitator in a position to fully explain the decision to seek suspension of the commissions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Benjamin M. Schmidt, hereby certify that I have caused to be served today, via hand delivery, a copy of the Prehearing Statement of Penn Treaty American Corporation on:

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