

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOEL ARIO, INSURANCE COMMISSIONER	:	
OF THE COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	DOCKET NO. 5 M.D. 2009
	:	
PENN TREATY NETWORK AMERICA	:	
INSURANCE COMPANY,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this _____ day of _____, 2009, upon consideration of the Petition to Intervene of Eugene J. Woznicki and Penn Treaty American Corporation, and the Rehabilitator's response thereto, it is hereby ORDERED that petitioners Eugene J. Woznicki and Penn Treaty American Corporation are permitted to intervene in this proceeding on the issue of whether Penn Treaty Network America Insurance Company should be liquidated.

Mary Hannah Leavitt, Judge

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Benjamin M. Schmidt (I.D. No. 205096)
BALLARD SPAHR LLP
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*Attorneys for Intervenors
Eugene J. Woznicki and
Penn Treaty American Corporation*

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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v.	:	
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PENN TREATY NETWORK AMERICA	:	
INSURANCE COMPANY,	:	
	:	
Defendant.	:	

PETITION TO INTERVENE OF EUGENE J. WOZNICKI AND PENN TREATY AMERICAN CORPORATION ON THE ISSUE OF WHETHER PENN TREATY NETWORK AMERICA INSURANCE COMPANY SHOULD BE LIQUIDATED

Eugene J. Woznicki and Penn Treaty American Corporation (“PTAC”)

(collectively, “Intervenors”) respectfully request permission to intervene in these proceedings on the issue of whether Penn Treaty Network America Insurance Company (“Penn Treaty”) should be liquidated, and in support thereof state as follows:

1. PTAC is the controlling shareholder of Penn Treaty.
2. By Order dated August 26, 2009, PTAC was granted intervention status in Penn Treaty’s rehabilitation proceedings. PTAC sought to intervene to oppose the efforts of the Rehabilitator to terminate commission payments to agents of Penn Treaty, and it reserved its

rights to intervene in the event the Rehabilitator attempted to convert the Penn Treaty rehabilitation to a liquidation.

3. Woznicki is the Chairman of the Board of Directors of Penn Treaty, which board has authorized Woznicki to intervene on its behalf to object to the efforts by the Rehabilitator to convert the rehabilitation of Penn Treaty to a liquidation. Woznicki is also the Chairman of the Board of Directors of PTAC.

4. The Intervenors seek to intervene in order to oppose the relief sought by the Rehabilitator in his October 22, 2009 Amended Petition for Liquidation (the “Petition”).

5. The Intervenors will argue that the Rehabilitator cannot establish that it is necessary to liquidate Penn Treaty at this time and that, in fact, a liquidation at this time may increase the risk of loss to policyholders.

6. The Intervenors will further argue that a rush to liquidation, while convenient for the Rehabilitator, is not in the best interests of anyone else, including the policyholders. The recent several hundred million dollar error in the Milliman analysis on which the Rehabilitator relies and that required the filing of an amended petition—and amended Milliman report—establishes the danger of making a decision without adequate deliberation and reliable support, especially a decision as draconian as one that terminates a company’s existence. Unlike the situations presented by other recent liquidations, there is no urgency to liquidate Penn Treaty. Penn Treaty has no immediate cash flow issues; it can make payments as they become due now and for many years to come. There is no immediate need to liquidate Penn Treaty so that guaranty association payments may be triggered, as the Court concluded to be the case in the

Legion Insurance Company and Villanova Insurance Company proceedings given those companies' severe and immediate cash flow problems.¹

7. The Intervenors will contend that the approaches employed by the Rehabilitator and Milliman appear to be inadequate in many respects and that a reasonable amount of additional time is required to fully analyze the assumptions utilized and conclusions reached. Although the Intervenors have recently requested information that will help them fully understand how analyses done within a short period of time by the same actuarial firm could reach such drastically different predictions (differing by more than a billion dollars!), the Intervenors have not yet obtained this information. For now, the Court may wish to take notice of the significant criticisms of the recent Milliman/Rehabilitator approach proffered by one of

¹ The Rehabilitator has been inconsistent in his positions regarding guaranty association coverage. Now, he suggests that guaranty association coverage is a panacea and argues at paragraph 30 of his Petition: "The best protection for PTNA policyholders is guaranty association coverage. *** Guaranty association coverage ... is available to PTNA policyholders and would fully protect the majority of policyholders." But just several weeks ago, relying on a Milliman analysis he commissioned, the Rehabilitator argued a diametric point in a section of his brief titled "Guaranty Association Coverage Is Insufficient To Fully Protect PTNA's Policyholders": "Examination of current claims illustrates the serious inadequacy of the guaranty association as protection for PTNA's insureds." Supplemental Memorandum Of Law In Support Of The Rehabilitator's Application To Suspend Commissions at 4 (emphasis added). The Rehabilitator further argued: "Many of the PTNA long-term care policies provide coverage greater than the applicable guaranty association coverage. *** As a whole, over 37% of PTNA's long-term care policies provide coverage greater than the applicable guaranty association limit and over 44,000 policies do not have complete guaranty association protection. *** The percentage of policies which lack complete guaranty association coverage will likely increase over time, as policy provisions such as inflation protection increase the total benefits under some policies. (Milliman Report at 2,5)." *Id.* at 3. The Intervenors will argue, consistent with these statements of the Rehabilitator, that a quick "punting" of these claims to the guaranty associations is not the answer here. In fact, it is detrimental, as needed rate increases will not be pursued by the guaranty associations. The failure to obtain those increases will mean fewer assets in the estate to deal with claims of policyholders not covered by the guaranty association payments.

the intervenors in the dispute involving the Rehabilitator's efforts to immediately termination commission payments.²

8. Moreover, the Intervenor will argue that the Rehabilitator's assertion that immediate liquidation is necessary focuses on matters irrelevant to the appropriate legal standard and fails to adequately address the core issue: whether "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..." Section 518(a) of Article V, 40 P.S. Section 221.18(a).

9. If permitted to intervene, the Intervenor will file a response to the Petition as set forth in Exhibit A. They will also fully brief the legal issues at the appropriate time and fully participate in the hearing.

10. The advocacy provided by the Intervenor should assist the Court in its decision whether to approve the request to terminate this insurance company. Such advocacy is particularly appropriate here, where the entity that is requesting this Court's approval to liquidate is the same entity that should be granting rate increases that will help save this company and fully protect all policyholders from any loss—and the same entity that will be relieved of any obligation to make such politically difficult "policy decisions" on rate increase approvals should a quick liquidation ensue.

11. But litigation of the liquidation petitions is not the only—or most desirable—method by which the future of this company and its policyholders should be decided. If granted intervenor status, Woznicki and PTAC would be able to directly assist the Court and the Rehabilitator in efforts to find a solution to the problem that threatens the greatest loss to the

² Exhibit B to Supplemental Memorandum of Law Of Intervenor National Health Administrators, Inc. Submitted Pursuant To The Court's Order Of October 7, 2009, filed on October 29, 2009.

policyholders—the failure to aggressively pursue and obtain actuarially supported rate increases that are permitted under the terms of the policies and that are designed to ensure that all appropriate claims are paid.

12. A creative solution is required if the policyholders and taxpayers³ are to avoid yet another liquidation, a drastic result that the Court has described as “a remedy of last resort.” Koken v. Legion Ins. Co., 831 A.2d 1196, 1230 (Pa. Commw. Ct. 2003). “[T]he benefits of rehabilitation—its flexibility and avoidance of inherent delays—are preferable to the static and cumbersome procedures of statutory liquidation.” Grode v. Mut. Fire, Marine & Inland Ins. Co., 132 Pa. Commw. 196, 572 A.2d 798, 803 (1990). Now is the time for a flexible and thorough rehabilitative approach, with the guidance of this Court’s expertise and the assistance of Woznicki and PTAC as intervenors. The Court, the Rehabilitator, the Intervenors, and others having an interest should be meeting, analyzing, and discussing how to solve this problem. The Rehabilitator has made a policy decision not to seek any more rate increases and instead to place the company into liquidation. With respect, any such decision should be made after full consideration of the appropriate liquidation standard and the reasoned and deliberative analyses not just of the Rehabilitator and the advisors who work for him, but of the Court, the

³ As this Court so clearly stated in the Legion proceedings: “guaranty funds are not a panacea. In Pennsylvania, the taxpayers ultimately bear the burden because the assessments upon insurers that contribute to guaranty funds are offset against the premium tax. *See, e.g.*, 72 P.S. § 7902.1.¹⁰⁷ Further, guaranty fund limits and eligibility requirements will leave many policyholders with no remedy but to file a proof of claim against the estate which cannot be paid by the liquidator for many years.” Koken v. Legion Ins. Co., 831 A.2d 1196, 1243 (Pa. Commw. Ct. 2003). In the referenced footnote, the Court stated: “To the extent other states follow this rule, state governments will bear the burden of guaranty fund payments at a time they are already facing tremendous revenue shortfalls.” Id., 831 A.2d at 1243 n.107.

Intervenors, and other interested parties. If they are permitted to intervene, Woznicki and PTAC are committed to fully participating in a process designed to protect policyholders and that considers several perspectives. They do not request the delay of a liquidation that needs to happen now; they request a reasonable period of time for all interested parties and the Court to bring their considerable experience and perspective to the table to solve this problem.

13. PTAC is permitted to intervene under Pa.R.Civ.P. 2327, which states:

Rule 2327. Who may intervene.

At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules if...

(4) the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.

14. PTAC satisfies Rule 2327(4). It is the direct owner of Penn Treaty, and the requested relief, if granted, will effectively extinguish or at the very least greatly affect the value of PTAC's assets. Moreover, in the Legion and Villanova matters, this Court granted intervention status to Legion's and Villanova's parent company, Mutual Risk Management, Ltd., so that it could contest the liquidation attempt. See Koken v. Legion Ins. Co., 831 A.2d 1196, 1201 (Pa. Commw. Ct. 2003).

15. Woznicki, the Chairman of the Board of Directors of Penn Treaty who is authorized by that Board to contest the liquidation attempts, is permitted to intervene pursuant to Section 518(a) of Article V, 40 P.S. Section 221.18(a) (stating, in pertinent part: "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

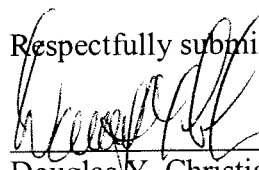
and other expenses of defense as justice may require.”)⁴ In the Legion matter, this Court permitted Legion’s Director Robert A. Mulderig to participate in the liquidation proceedings and object to the liquidation attempt. See Koken v. Legion Ins. Co., 831 A.2d 1196, 1208, 1227 n.72 (Pa. Commw. Ct. 2003).

16. The interests of PTAC and the Directors of Penn Treaty are not adequately represented by the Rehabilitator or any other party.

17. Counsel for the Rehabilitator has confirmed that the Rehabilitator consents to the intervention of Woznicki and PTAC.

For the reasons stated herein, Eugene J. Woznicki and Penn Treaty American Corporation respectfully request the Court to enter the attached Order permitting them to intervene on the issues presented by the Petition.

Respectfully submitted,



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Benjamin M. Schmidt (I.D. No. 205096)
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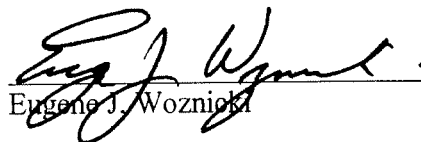
*Attorneys for Intervenors
Eugene J. Woznicki and Penn Treaty American Corporation*

Dated: November 2, 2009

⁴ The Intervenors intend to file an application at the appropriate time seeking relief pursuant to this section with regard to actions reasonably necessary to defend against the Petition and costs relating thereto.

VERIFICATION

I, EUGENE J. WOZNICKI, Chairman of the Boards of Directors of Penn Treaty American Corporation, Penn Treaty Network America Insurance Company, and American Network Insurance Company, state that I am authorized on behalf of the Boards of Directors of those companies to submit this verification of the facts stated in the Petition 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.


Eugene J. Woznicki

Dated: November 2, 2009

Exhibit A

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RESPONSE OF INTERVENORS EUGENE J. WOZNICKI AND PENN TREATY AMERICAN CORPORATION TO THE AMENDED PETITION FOR LIQUIDATION

Eugene J. Woznicki and Penn Treaty American Corporation (“PTAC”)

(collectively, “Intervenors”) respectfully request that this Court deny the Rehabilitator’s Amended Petition for Liquidation (“Petition”) of Penn Treaty Network America Insurance Company (“Penn Treaty”), and in response to each paragraph of the Petition state as follows:

1. Admitted.
2. Admitted.
3. The allegations of this paragraph are denied as conclusions of law.
4. Admitted.
5. Admitted.

6. Admitted.

7. The referenced document is a writing that speaks for itself; therefore any allegations relating to the contents thereof are denied.

8. Admitted.

9. Admitted.

10. Admitted.

11. After reasonable investigation, the Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph; therefore, they are denied. By way of further answer, the Intervenors deny that the Rehabilitator has undertaken a thorough analysis regarding the options available to him to avoid liquidation.

12. The referenced document is a writing that speaks for itself; therefore any allegations relating to the contents thereof are denied. After reasonable investigation, the Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of this paragraph; therefore, they are denied.

13. After reasonable investigation, the Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph; therefore, they are denied.

14. After reasonable investigation, the Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph; therefore, they are denied.

15. The Intervenors admit that an amended Milliman report, purporting to correct several hundred million dollars worth of errors, is attached to the Petition as Exhibit A.

The referenced document is a writing that speaks for itself; therefore any allegations relating to the contents thereof are denied.

16. The referenced document is a writing that speaks for itself; therefore any allegations relating to the contents thereof are denied.

17. The referenced document is a writing that speaks for itself; therefore any allegations relating to the contents thereof are denied.

18. The referenced document is a writing that speaks for itself; therefore any allegations relating to the contents thereof are denied.

19. The referenced document is a writing that speaks for itself; therefore any allegations relating to the contents thereof are denied.

20. The referenced document is a writing that speaks for itself; therefore any allegations relating to the contents thereof are denied.

21. The referenced document is a writing that speaks for itself; therefore any allegations relating to the contents thereof are denied.

22. After reasonable investigation, the Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph; therefore, they are denied. The Intervenors admit that a copy of a communication from Ernst & Young LLP is attached to the Petition as Exhibit B.

23. The first sentence of this paragraph is denied as a conclusion of law. After reasonable investigation, the Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of this paragraph; therefore, they are denied. The allegations of the third sentence of this paragraph are denied.

24. The referenced document is a writing that speaks for itself; therefore any allegations relating to the contents thereof are denied.

25. The referenced document is a writing that speaks for itself; therefore any allegations relating to the contents thereof are denied.

26. After reasonable investigation, the Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph; therefore, they are denied.

27. After reasonable investigation, the Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph; therefore, they are denied.

28. After reasonable investigation, the Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph; therefore, they are denied.

29. The allegations of this paragraph are denied as conclusions of law. By way of further answer, the Intervenors deny that an Order of Liquidation is warranted.

30. The allegations of the first, third and fourth sentences of this paragraph are denied. After reasonable investigation, the Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of this paragraph; therefore, they are denied.

31. Admitted. By way of further answer, the Intervenors deny that any guaranty association protection is needed, as claims may continue to be paid.

32. Denied.

33. Denied.

34. After reasonable investigation, the Intervenor is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph; therefore, they are denied. By way of further answer, the Intervenor deny that the Rehabilitator has undertaken a thorough analysis regarding the options available to him to avoid liquidation.

35. Denied.

36. Denied.

37. After reasonable investigation, the Intervenor is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph; therefore, they are denied.

38. The allegations of this paragraph are denied as conclusions of law.

39. After reasonable investigation, the Intervenor is without knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of this paragraph; therefore, they are denied. The allegations of the second sentence of this paragraph are admitted, except that the allegations of the last clause of that sentence is denied as a conclusion of law.

40. Denied, except that the Intervenor admit that many policyholders are elderly and that many have claims for payment of nursing and other care.

41. The referenced document is a writing that speaks for itself; therefore any allegations relating to the contents thereof are denied. By way of further answer, the Intervenor deny that an immediate suspension of commissions is warranted, and they deny that either of the Milliman reports represents an acceptable analysis of the financial condition of Penn Treaty. They emphatically deny that such reports can or should be utilized by the Court to determine whether to terminate Penn Treaty.

42. The allegations of this paragraph are denied as conclusions of law.

43. After reasonable investigation, the Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph; therefore, they are denied.

44. After reasonable investigation, the Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph; therefore, they are denied.

For the reasons stated herein, Eugene J. Woznicki and Penn Treaty American Corporation respectfully request the Court to enter the attached Order denying the relief requested in the Petition.

Respectfully submitted,

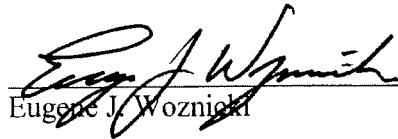
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*Attorneys for Intervenors
Eugene J. Woznicki and Penn Treaty American
Corporation*

Dated: November 2, 2009

VERIFICATION

I, EUGENE J. WOZNICKI, Chairman of the Boards of Directors of Penn Treaty American Corporation, Penn Treaty Network America Insurance Company, and American Network Insurance Company, state that I am authorized on behalf of the Boards of Directors of those companies to submit this verification of the facts stated in the Response 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.


Eugene J. Woznicki

Dated: November 2, 2009


CERTIFICATE OF SERVICE

I, Douglas Y. Christian, hereby certify that I have caused to be served today, via hand delivery, a copy of the Petition To Intervene Of Eugene J. Woznicki And Penn Treaty American Corporation On The Issue Of Whether Penn Treaty Network America Insurance Company Should Be Liquidated, on:

James Reeves Potts, Esquire
COZEN & O'CONNOR
1900 Market Street
Philadelphia, PA 19103

and via first-class mail, postage prepaid, on the persons listed on the attached Master Service List.

Date: November 2, 2009



Douglas Y. Christian