

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOEL ARIO
INSURANCE COMMISSIONER OF THE
COMMONWEALTH OF PENNSYLVANIA
Plaintiff

v.

AMERICAN NETWORK
INSURANCE COMPANY
Defendant

No. 4 M.D. 2009

ORDER

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

Mary Hannah Leavitt, Judge

5. It is admitted only that Woznicki and PTAC make such assertions. It is denied that these assertions are accurate. To the contrary, given ANIC's insolvency, liquidation and the guaranty association coverage it provides are necessary to the protection of policyholders. Delay in liquidation, unless agent commissions are suspended, depletes ANIC's funds available to policyholders at a rate of \$2.5 million per year. The only alternative to liquidation proposed by Woznicki and PTAC is aggressive pursuit of rate increases (Petition to Intervene at 5-6 ¶ 11), presumably through litigation, in amounts sufficient not only to generate profits, but large enough profits to also fill the existing surplus hole. The rate increases required would be significantly greater than those reflected in the amended Milliman report because, not surprisingly, Woznicki and PTAC, who are profiting from the payment of agent commissions, do not suggest the termination or suspension of agent commissions. Woznicki's and PTAC's approach is not only unlikely to be successful but would be more detrimental to policyholders than liquidation because of the magnitude of the rate increases and the likelihood that many policyholders will choose or be forced to allow their coverage to lapse and thereby involuntarily forfeit any future guaranty association coverage.

6. It is admitted only that ANIC has sufficient funds to pay claims as they come due at this time and that immediate triggering of guaranty associations' obligations is therefore not essential to ensure that policyholder claims continue to be paid. All other averments of paragraph 6 are denied. To the contrary, both the Milliman report and the amended Milliman report reach the same conclusions: that ANIC is insolvent and that the rate increases which would be required for any possibility of restoring ANIC to solvency are not realistically obtainable and would be of a magnitude which would be harmful to policyholders. The Rehabilitator's position concerning guaranty association coverage has been consistent throughout this proceeding. Guaranty associations will provide complete coverage to a majority of ANIC's

policyholders. Guaranty association coverage will not fully protect all policyholders and it is therefore important to not dissipate resources to lower priority creditors. Guaranty associations will nonetheless provide substantial coverage even to those policyholders that are not fully protected and guaranty association coverage provides better protection for policyholders than any non-liquidation alternative. The "draconian" proposal here is the approach advocated by Woznicki and PTAC, not liquidation. The only alternative to liquidation proposed by Woznicki and PTAC is to impose massive rate increases on ANIC's policyholders, which will result in lapses and loss of benefits to policyholders who would be better served by the guaranty association coverage available to them in liquidation. Moreover, ordering liquidation at this time is needed to conserve ANIC's estate for the benefit of the policyholders, because unless payment of agent commissions is suspended, delay in liquidation results in a draining of \$2.5 million per year from ANIC's estate. Furthermore, it is specifically denied that there has been any rush to liquidation or that liquidation is convenient for the Rehabilitator. PTNA and ANIC have had well documented financial difficulties since at least 2001 when the Pennsylvania Insurance Department suspended them from writing new business and required that they develop a corrective action plan. The Pennsylvania Insurance Department has worked closely with PTNA's and ANIC's management since then to allow them to continue as going concerns. The placement of PTNA and ANIC in rehabilitation in January 2009 was done only after months of work by the Pennsylvania Insurance Department and PTNA's and ANIC's management to find another solution. The Rehabilitator then investigated various alternatives for rehabilitating the companies and proposed a potential solution in April 2009. It was only after many months of additional study and analysis that the Rehabilitator determined that rehabilitation efforts would be futile and that further efforts would substantially increase the risk of loss to policyholders.

7. It is admitted only that Woznicki's and PTAC's counsel for the first time requested documents concerning Milliman's analysis on October 27, 2009, over three weeks after the liquidation petition was filed, and that agent objector NHA has submitted an expert report concerning Milliman's analysis of PTNA's financial condition. It is denied that the criticisms of Milliman's analysis in NHA's expert report are accurate. To the contrary, the NHA report is based on misconceptions of the basis for Milliman's conclusions, including importantly the misunderstanding that Milliman's conclusions were based upon claim costs assumptions from an April 2008 Milliman report which had drawn conclusions from claims data through 2006. This was not the case. The Milliman conclusions that support the liquidation petition were based upon the further review of claims experience in 2007 and 2008. The NHA report also contains numerous other errors and misconceptions. Notably, however, neither Woznicki and PTAC nor NHA's expert opines that ANIC is solvent. Rather, they claim that further information and analysis are necessary and Woznicki and PTAC claim that they hope to show that it may be possible to overcome ANIC's insolvency through aggressive rate increases.

8. It is admitted only that the proper test for determining whether ANIC should be placed in liquidation is whether there is reason to believe that further attempts to rehabilitate ANIC would substantially increase the risk to policyholders, other creditors or the public or would be futile. The Rehabilitator's Petition to Liquidate directly addresses that standard.

9. It is admitted only that Woznicki and PTAC so contend.

10. It is denied that Woznicki's and PTAC's advocacy will provide guidance or assistance to the Court with respect to the most important issue here, the protection of ANIC's policyholders. Woznicki's and PTAC's interests are adverse and antagonistic to the interests of ANIC's policyholders. So long as PTNA and ANIC remain out of liquidation and agent commissions continue to be paid, PTAC, which as PTNA's shareholder and ANIC's indirect

owner is the lowest priority creditor, is profiting off PTNA's and ANIC's estates at the expense of their policyholders at a rate of approximately \$1 million or more per year. PTAC owns an agency, Senior Financial Consultants, and owned an agency UIG, both of which agencies receive renewal commissions from PTNA and ANIC. PTAC sold UIG to a third party in November 2008 for a total purchase price of over \$14 million, but PTAC admits that "a significant portion of PTAC's compensation from that sale is based on a continuation of commission payments." (PTAC August 24, 2009 Petition to Intervene at 4 ¶8). The amount of commissions paid by PTNA and ANIC to the UIG buyer in the last nine months is over \$1.3 million and those commission payments are projected on an annualized basis to total approximately \$1.7 million for the year. PTAC under its agreements with the buyer is entitled to receive approximately \$950,000 to \$1 million of those PTNA and ANIC funds for 2009 alone and will be entitled to receive up to a total of \$5 million from PTNA and ANIC commissions if commission payments continue. Woznicki and PTAC thus have a strong financial interest in delaying liquidation and seeking rate increases from policyholders, as that will permit them to continue to profit off PTNA and ANIC at the expense of their policyholders. It is further denied that the Rehabilitator is seeking to avoid decisions on rate increases as "politically difficult." To the contrary, the Rehabilitator has considered and evaluated the possibility of rate increases and has concluded that the rate increases required here would be more harmful to policyholders than liquidation and that it is unlikely that such rate increases would be obtained.

11. It is admitted only that the sole alternative to liquidation which Woznicki and PTAC propose is "to aggressively pursue and obtain...rate increases." It is denied that aggressive seeking of massive rate increases is desirable or in the best interests of ANIC's elderly policyholders. ANIC's policyholders, whose average age is 74 and many of whom are on fixed incomes, have already had substantial rate increases and are paying on average

premiums of approximately \$2,000 per year. Aggressive rate increases will force policyholders to lapse and lose coverage which would be available to them through the guaranty association system in liquidation. It is also denied that Woznicki and PTAC are likely to be of significant assistance in solving ANIC's financial problems. To the contrary, these are the owners of PTNA whose management, reserving practices and pricing decisions brought PTNA and ANIC to insolvency. Moreover, PTNA's and ANIC's financial problems are not new. The companies' authority to write business was suspended nationwide in 2001 due to PTNA's statutory surplus levels, and the Pennsylvania Insurance Department worked with PTNA's management to develop a corrective action plan that ultimately allowed it to begin writing business again in 2002. Since then the Pennsylvania Insurance Department has worked with PTNA's management to allow PTNA and ANIC to continue operating. Some states, however, never agreed to permit ANIC to recommence writing business and numerous states have suspended ANIC's authority again since October 2008. PTAC has been given years to remedy PTNA's and ANIC's problems, and those efforts were to no avail. Therefore, it would be implausible that PTAC and Woznicki now suddenly have a solution.

12. It is denied that the solution proposed by Woznicki and PTAC, aggressive pursuit of rate increases, is a creative alternative to liquidation or that it is in the best interest of ANIC's policyholders. To the contrary, the postponement of liquidation and rate increases that Woznicki and PTAC seek would take additional funds from policyholders and enable PTAC to continue to receive \$1 million per year or more from PTNA's and ANIC's estates. It is also denied that Woznicki and PTAC are likely to be of significant assistance in solving PTNA's financial problems. To the contrary, these are the owners of PTNA whose management, reserving practices and pricing decisions brought PTNA and ANIC to insolvency.

13. The allegations of paragraph 13 are conclusions of law to which no response is required. By way of further answer, the Rehabilitator does not oppose allowing PTAC to intervene and be heard on the Petition for Liquidation at its own expense.

14. It is admitted that PTAC is the indirect owner of ANIC. The remaining allegations of paragraph 14 are conclusions of law to which no response is required. By way of further answer, the Rehabilitator does not oppose allowing PTAC to intervene and be heard on the Petition for Liquidation at its own expense.

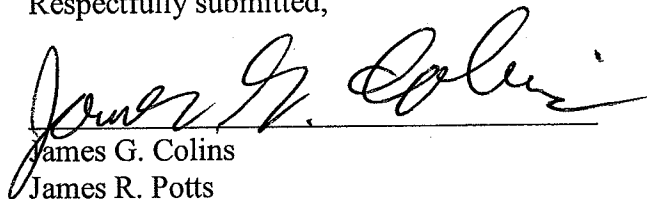
15. The allegations of paragraph 15 are conclusions of law to which no response is required. By way of further answer, the Rehabilitator does not oppose allowing Woznicki to intervene and be heard on the Petition for Liquidation at his own expense. It is denied that Woznicki and PTAC are entitled to payment of any of their expenses or costs from ANIC's estate under 40 P.S. § 221.18(a). To the contrary, payment of Woznicki's or PTAC's costs and expenses would not be in the interest of justice, as Woznicki's and PTAC's interest in this proceeding is in conflict with the interests of ANIC's policyholders.

16. It is admitted that Woznicki and PTAC have different interests from ANIC's policyholders which are not represented by the Rehabilitator.

17. It is admitted that the Rehabilitator consents to the intervention of Woznicki and PTAC in this proceeding. The Rehabilitator does not consent to any attempt by Woznicki or PTAC to obtain payment of their costs or expenses from ANIC's estate.

WHEREFORE, the Rehabilitator does not oppose the entry of the attached Order permitting Eugene J. Woznicki and Penn Treaty American Corporation to intervene in this proceeding.

Respectfully submitted,



James G. Colins

James R. Potts

Virginia Lynn Hogben

Attorney I.D. Nos. 10089, 73704, 32378

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Counsel for Plaintiff, JOEL ARIO, Insurance
Commissioner of the Commonwealth of
Pennsylvania as Rehabilitator of AMERICAN
NETWORK INSURANCE COMPANY

Dated: November 9, 2009

CERTIFICATE OF SERVICE

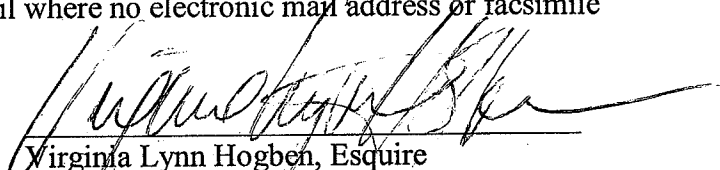
I, Virginia Lynn Hogben, hereby certify that on November 9, 2009 I served the foregoing Answer of the Rehabilitator to Petition of Woznicki and PTAC to Intervene on the following parties by the following means:

By Electronic Mail and U.S. First-Class Mail:

Douglas Y. Christian, Esquire
Ballard Spahr Andrews
& Ingersoll, LLP
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Counsel for Penn Treaty American Corporation, Eugene J.
Woznicki and the Directors of American Network Insurance
Company

On this date, I also served a Notice of Filing of the Answer of the Rehabilitator to Petition of Woznicki and PTAC to Intervene on all parties listed on the Master Service List by electronic mail or facsimile, or by U.S. Mail where no electronic mail address or facsimile number was available.



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