IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE: AMERICAN NETWORK INSURANCE COMPANY IN REHABILITATION	:	NO. 1 ANI 2009
IN RE: PENN TREATY NETWORK AMERICA INSURANCE COMPANY IN REHABILITATION	:	NO. 1 PEN 2009

INTERVENORS' REPLY TO THE REHABILITATOR'S RESPONSE TO APPLICATION FOR MULTIPLE FORMS OF RELIEF

Intervenors offer the following reply to the arguments proffered by the Rehabilitator, none of which justifies his continuing five-year rehabilitative inaction and refusal to comply with the Orders of this Court.

I. ARGUMENT

A. Relief Prohibiting Further Unreasonable Delay, And Regarding Rate Increases And Expediting The Rehabilitations Should Be Granted.

The Rehabilitator has refused to pursue on a timely basis any meaningful actions designed to actually rehabilitate the Companies and to file and support a plan in the more than five years he has served as the Rehabilitator. Application ¶ 34.[1] Instead, he has actually harmed the Companies by costing them "hundreds of millions of dollars" in forgone premiums (Opinion at 35), and spending $40 million without any rehabilitative result. Application and Answer ¶¶ 39-48. Filing a plan is meaningless if the Rehabilitator will not support confirmation of the plan and carry it out. As this Court has ruled, "[a] rehabilitation is not be used as a period of conservatorship while the Insurance Department reviews the options." Opinion at 136. By preparing and filing plans at great expense to the Companies but failing to support them, he has harmed the Companies through inaction, continuous delays, and profligate spending.

[1] The Rehabilitator does not specifically deny these facts. *See* Answer ¶ 34; Pa.R.C.P. 1029(b).

The Court's January 6, 2009 and May 3, 2012 Orders of Rehabilitation and Section 518(a) of Article V required the Rehabilitator to attempt to rehabilitate the Companies. There has not yet been any proper, good faith attempt to rehabilitate. The Rehabilitator has no discretion to disobey the Orders of this Court and his statutory duties. This is particularly true in the context of this Application where the Court's May 3, 2012 Order was issued after a lengthy factual hearing at which this Court was required to apply specific statutory standards to the evidence presented. The Rehabilitator should not be permitted to so casually cast aside many critical facts established during the hearing in this matter.[2]

Construing Article V as affording the Commissioner the discretion to aim high and do what is needed to save an insurer by correcting the conditions that led to the need for rehabilitation, as was done under the facts of *Mutual Fire II*, comports with both the letter of Section 516(b) and the construction and purpose of "improved methods for rehabilitating insurers" of Section 501 of Article V. By contrast, affording the Commissioner discretion to frustrate a rehabilitation by doing nothing for five years does not comport with the letter of Section 516(b) or the construction and purpose of Article V. Notably, under Section 516(d) of Article V, which has the purpose of saving an insurer in rehabilitation, this Court is vested with authority regarding whether to "prescribe" a hearing, and to reject or modify and approve as modified the Proposed Plans submitted by the Rehabilitator based upon the facts already

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[2] *Norfolk & Western Railway Co. v. Pennsylvania Public Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980) is distinguishable in the context of this case. There, the Commonwealth Court sat in appellate review – on a cold record – of a hearing of the Pennsylvania Public Utility Commission regarding the validity of a regulation promulgated by the PUC. *See id.*, 489 Pa. at 113, 413 A.2d at 1039. That matter did not involve a mandatory hearing in the Commonwealth Court's original jurisdiction where a trial judge must apply specific statutory standards to the evidence presented. Nor did that matter implicate due process concerns implicated in the life or death decisions presented under Section 518(a) of Article V. Several other cases arising outside of Article V relied upon by the Rehabilitator are likewise distinguishable.

established at the hearing in this matter and the Rehabilitator's assertions in his own Proposed Plans.

Moreover, under any standard, including a number of those set forth at pages 3-4 of his Brief, the Rehabilitator has abused any discretion that he is owed in this context. Failing to file and support a plan for over five years exhibits "unreasonableness," "bad faith," and "abuse of power." Making rate increase decisions based upon politics rather than facts exhibits "arbitrariness," "bad faith," and "abuse of power." Filing Proposed Plans that the Special Deputy Rehabilitator has sworn offer the best possibility of success and then flip-flopping and changing his mind exhibits "arbitrariness," "irrationality," and "capricious action." Conflicts of interest including engaging the same counsel for the rehabilitation team and to pursue liquidation of the Companies in the Appeal, and hiring a Special Deputy Receiver who counts among his clients the very regulators that he should be seeking needed premium rate increases for the Companies exhibits "bias," "self-dealing," "bad faith," and "irrationality." The Rehabilitator's payment of $2.7 million of Company assets to his own Department without statutory entitlement or Court approval constitutes "self-dealing." A number of comments and actions by the rehabilitation team have exhibited a mindset and approach to these rehabilitations constituting "ill-will."

The Rehabilitator argues at pages 7-11 of his Brief that rate increases should not be pursued because the Rehabilitator has filed Proposed Plans proposing benefit reductions in lieu of rate increases. Arguing that rate increases aren't needed because the Rehabilitator has decided on a benefit reduction plan that PTAC supports as a first phase of rehabilitation ignores the fact that the Rehabilitator many months ago decided to abandon his Proposed Plans. Similar to Deputy Commissioner DiMemmo's shooting down benefit reduction options proposed by his team because he was sticking to the rate increase strategy laid out in the Preliminary Plan

(although the decision had already been made to stop rate increase filings), the Rehabilitator argues against rate increases in favor of his benefit reduction strategy in the Proposed Plans, although he has already changed his mind and decided to abandon them. That is unreasonable.

The Rehabilitator's latest iteration of a rehabilitation plan, *see* his Brief at 2 n.1, is not a comprehensive rehabilitation scheme and would be unconfirmable because it fails to comply with this Court's Order that "[t]he plan of rehabilitation must address and eliminate the inadequate and unfairly discriminatory premium rates for the OldCo business." May 3, 2013 Order ¶ 4. Liquidating one of the Companies and the majority of their policies while delivering the lion's share of their assets (and future premium inflows) to NOHLGA in no way addresses and eliminates the inadequate and unfairly discriminatory rates for the OldCo business.

The Rehabilitator argues that "the Court has recognized numerous times, immediate voluntary rate increases likewise face practical hurdles." Rehabilitator's Brief at 9. To the contrary, this Court has recognized that future rate increases will not be sought on a "business as usual" basis, *see* Opinion at 10, 111, 112, 114, 162, and that "rate increases are not futile because PTNA and ANIC can impose rate increases at policy renewal...rate increases are expressly authorized where the rates on a particular product are inadequate." *Id.* at 140.

The Rehabilitator has already offered what he told the Court are two workable rehabilitation methods that would address and eliminate the inadequate and unfairly discriminatory premium rates for the OldCo business: rate increases and benefit reductions. As noted by the Rehabilitator's citation to pages 8 and 15 of their August 30, 2013 Formal Comments, Intervenors support these methods, preferably both in concert, to effect the needed rehabilitations. *See* Rehabilitator's Brief at 9. What Intervenors object to is any further delay. As justification for his flip-flopping, the Rehabilitator incorrectly argues that seeking confirmation

of the Proposed Plans would require the expenditure of estate resources "to fight legal battles." Rehabilitator's Brief at 6. Given this Court's ruling supporting premium rate increases and "benefit modifications to the OldCo policies" (Opinion at 10), seeking confirmation of the Proposed Plans as a first phase of rehabilitation would not require the expenditure of significant resources to fight hypothetical legal battles.

In an effort to take advantage of the confidentiality of the so-called negotiations regarding his "rehabilitation plans," the Rehabilitator argues the reasonableness of his conduct at the MPRG meetings. *See* Rehabilitator's Answer ¶¶ 34-35; Brief at 2, 6-7. Putting aside his cheap shots, replete with customary innuendo and misdirection,[3] his assertions are simply incorrect and they violate the confidentiality of the discussions. The Rehabilitator's conduct of delaying and frustrating the rehabilitations supports the relief sought of prohibiting further unreasonable delay, aggressive pursuit and implementation of actuarially justified rate increases, and expediting the rehabilitation of the Companies.

B. Relief Regarding Setting Expectations For The Commissioner's Involvement In The Rehabilitation Effort Should Be Granted.

The Rehabilitator argues that the relief sought in Intervenors' proposed order that "[t]he Court expects the personal involvement of the Insurance Commissioner in the rehabilitation effort, including attendance at meetings and Court conferences, and his direct oversight of the Special Deputy Rehabilitator" is "tantamount to seeking a writ of mandamus." Intervenors'

[3] A lawyer for the Intervenors has attended every one of these meetings (with the exception of one), and a non-lawyer representative has attended every one, notwithstanding the fact that they quickly morphed into something other than what the Court originally ordered and the fact that the Special Deputy Rehabilitator has never bothered to hide his disdain for Intervenors' counsel and any position they might offer. In addition, the Rehabilitator's assertion that Intervenors' lead counsel has "declined multiple invitations to conduct individual discussions" is simply inaccurate. Intervenors' lead counsel has met to conduct individual discussions with the Special Deputy Rehabilitator and the Rehabilitator's counsel.

Proposed Order ¶ 4; Rehabilitator's Brief at 12. The Rehabilitator's argument that the proposed relief constitutes mandamus relief or is in any way improper is misplaced. First, the Commonwealth Court issued many directives to the Commissioner in *Mutual Fire II*, 531 Pa. 598, 605-607, 614 A.2d 1086, 1089-90 (1992), none of which was characterized as "mandamus relief." Second, the Court may state its *expectation* that the Rehabilitator become personally involved and oversee the Special Deputy Rehabilitator without the need to directly order those actions. Intervenors note that if the Rehabilitator's failure to become personally involved and to properly oversee the Special Deputy Receiver results in an inappropriate plan being proposed, the Rehabilitator is well aware that the Court has the authority to disapprove or modify such an inappropriate plan. *See* Section 516 of Article V.

C. Relief Regarding Expense Reporting And The Return Of Company Assets Paid To The PA DOI Should Be Granted.

The Rehabilitator does not deny that "[e]ven the Department itself has been paid some $2.7 million out of the coffers of the estates relating to its time and expenses for employees of the Commonwealth." Application and Answer ¶ 41. Instead, he argues that "[n]o authority exists for PTAC's demand that the Rehabilitator reimburse the estates for funds expended to conduct the rehabilitation." Rehabilitator's Brief at 14. This argument misstates Intervenors' argument and the facts. Intervenors' argument is that the Rehabilitator lacked authority to pay his own Department $2.7 million of Company assets in the first place. The facts are that the $2.7 million does not constitute "funds expended to conduct the rehabilitation" because the time of salaried Commonwealth employees who are already paid to do their jobs does not constitute a cost or expense. Rather, it is a fee to which the Rehabilitator had no statutory entitlement to receive.

The Rehabilitator argues he was authorized to pay his own Department $2.7 million in company assets either by Sections 516(a), 516(b), or 544(a) of Article V, this Court's January 6,

2009 Order ¶ 6, or decisions that arose in liquidations. *See* Rehabilitator's Brief at 14-15. He fails, however, to identify either: 1) specific statutory language that entitles the PA DOI or the Commissioner acting as the rehabilitator of an insurer to fees for services performed in a rehabilitation; or 2) an Order of this Court approving the payment of $2.7 million from these Companies to the PA DOI in this particular case.

Section 516(a) addresses the compensation necessary to retain a special deputy. The $2.7 million paid to the PA DOI is separate from the $1.75 million paid to Mr. Cantilo's firm. *See* Application ¶ 36. Accordingly, Section 516(a) is not pertinent to the $2.7 million at issue.

Section 516(b) gives the Rehabilitator "all the powers of the directors, officers and managers" and "full power to direct and manage, to hire and discharge employes subject to any contract rights they may have, and to deal with the property and business of the insurer." That section authorizes the Rehabilitator to direct, manage, hire, and discharge employees *of the insurer*. *Id.* (emphasis added). Salaried employees of the PA DOI are not employees of an insurer. The $2.7 million paid to the PA DOI is separate from wages paid to employees of the Companies. Moreover, dealing with the property and business of the insurer is too vague to create an entitlement of the PA DOI to charge an insurer in rehabilitation fees for services performed during a rehabilitation. Transferring assets from the Companies to the PA DOI is not Penn Treaty's "business."

Likewise, this Court's January 6, 2009 Orders state at paragraph six: "[t]he Rehabilitator shall authorize, where appropriate and necessary, the payment of expenses, including employee compensation, *incurred in the ordinary course of Penn Treaty's business*, as well as the actual, reasonable, and necessary costs of preserving or recovering the assets of Penn Treaty." (emphasis added). The $2.7 million paid to the PA DOI does not constitute "employee

compensation, incurred in the ordinary course of Penn Treaty's business" because Commonwealth employees are not employees of the Companies. Nor was the $2.7 million that the Rehabilitator paid to his own Department "actual, reasonable, and necessary costs of preserving or recovering the assets of Penn Treaty." Nor are the $2.7 million at issue "costs" or "expenses." It is a fiction to believe that salaried Commonwealth employees generate "costs" of administration as they are already paid to do their jobs, unlike the insurer's actual employees, actuaries, and accountants. There is a difference between "costs" or "expenses" and charging fees for services performed by salaried Commonwealth employees.[4]

The Rehabilitator's argument that Section 544(a) of Article V entitles to him to fees for the time of already salaried Commonwealth employees to the Companies is also wrong. Section 544(a) states the order of distribution of claims from the insurer's estate in liquidation and has no bearing in these rehabilitations. While Section 544(a) provides that the costs and expenses of administration are a class (a) claim, there is no language stating that fees for the time of Commonwealth employees who are already paid a salary to do their jobs constitutes "costs and expenses of administration." Section 545(a) goes on to state that the rehabilitator "shall present to the court a report of the claims against the insurer with his recommendations. The report shall include the name and address of each claimant, the particulars of the claim, and the amount of the claim finally recommended, if any." Under Section 545(b), "[t]he court may approve, disapprove, or modify, the report on claims by the liquidator, except that the liquidator's agreements with other parties shall be final and binding on the court to the extent permitted by law." Here, the Rehabilitator has not made a claim and presented this Court with a report for

[4] Due to the lack of reporting, there is no evidence regarding when and what alleged services were performed, who performed the services, the amount of time expended, and the fee sought for each task.

approval. In addition, the Rehabilitator's payment of Company assets to his own Department as a "fee" constitutes precisely the type of self-dealing that is not final and binding on the Court because payments to the PA DOI do not constitute "agreements with other parties", but instead are payments based on a receiver's agreement with himself.

Reliance on *Koken v. Colonial Assurance Company*, 885 A.2d 1078 (Pa. Cmwlth. 2005) must also be rejected because that case did not involve a rehabilitation, and the issue of a rehabilitator's power under Section 516 was not addressed. Moreover, in that liquidation, the Liquidator submitted exhibits and testimony to establish "that the Liquidator's expenses were properly stated and reasonable" and the Liquidator sought approval of a report on claims which included certain unidentified "costs associated with Insurance Department employees providing services for the Colonial estate." *Id.* at 1085-86. It is unclear from the decision what these associated costs or expenses entailed, and the decision does not state that they involved "fees" for billing out salaried Commonwealth employees. Here, the Rehabilitator has not submitted any report of claims or distribution in connection with a liquidation. Nor has he requested or received Court approval to pay his own Department $2.7 million. That a former commissioner received an Order approving payment of certain costs and expenses in a liquidation in 2005 does not entitle this Commissioner to charge these two Companies in rehabilitation fees without Court approval.

In support of the proposition that the Rehabilitator may bill the time of salaried Commonwealth employees to an insurer "whether the company in question is in rehabilitation or liquidation," the Rehabilitator cites *Phillipi v. Secretary of Banking*, 5 A.2d 430, 432 (Pa. Super. Ct. 1939). *See* Rehabilitator's Brief at 14-15. That case, however, involved a different statute and the liquidation of a mortgage pool of a closed bank by the Secretary of Banking, and not a

rehabilitation of an insurer or any other institution. Notably, the *Phillipi* court based its ruling upon the following statutory language:

> The secretary in possession of an institution as receiver . . . . shall also be entitled to reasonable fees and commissions, both as to income and as to principal, for any services performed, and all reasonable expenses incurred, by him on behalf of any estate of which the institution was fiduciary . . . .

Id. at 432. The Legislature thus provided that the secretary of banking as a receiver is entitled to reasonable fees and commissions for any services performed in addition to reasonable expenses incurred. The Legislature used different language in Article V. The conclusion is inescapable that if the Legislature had intended for the rehabilitator of an insurer to be entitled to fees for services performed, it would have said so in Article V using the same type of explicit language that it did in the statute involving the Secretary of Banking as a receiver. The money should be repaid, and the Court should prohibit such practices in the future.

D. Relief Regarding Discovery Should Be Granted.

Intervenors have requested discovery and a hearing on this Application, followed by an expedited schedule for approval, disapproval or modification of the plans of rehabilitation for the Companies. *See* Application ¶¶ 83, 80(c). Discovery and a hearing will establish that the Rehabilitator has not only been ineffective, but that he has harmed the Companies and continues to frustrate the rehabilitations. As part of that discovery, Intervenors respectfully request that their Application for Relief and to Compel filed on April 29, 2013 be granted.

E. Relief Regarding Intervenors' Professional Fees Should Be Granted.

Given the actuarial issues involved, Intervenors have requested advance authorization for Mr. Volkmar's actuarial work. As acknowledged at page four of the Policyholders' Committee's Response, Mr. Volkmar's contributions would be "helpful." Unlike with the Rehabilitator's consent to a $200,00 budget for the actuary retained by the Policyholders' Committee, he argues

at page 17 of his Brief that Intervenors should bankroll Mr. Volkmar's work without certainty regarding his professional fees will be paid. Unfortunately, due to PTAC's economic misfortunes, the Rehabilitator's suggested approach would make it difficult to have Mr. Volkmar complete this important work. For the same reason, Intervenors have requested the Court to approve their legal fees and expenses incurred in this proceeding. Intervenors' professionals would of course abide by the same transparent, justification, and approval of their costs, expenses, and fees by this Court that Intervenors have requested the Rehabilitator and his Department, Special Deputy Rehabilitator, Chief Rehabilitation Officer, and other professional and consultants comply with.

F. Relief Regarding Setting Expectations For The Rehabilitator To Retain Separate Counsel Should Be Granted.

The Rehabilitator argues that the relief sought in Intervenors' proposed order that "[t]he Court expects the Rehabilitator to refrain from using the same counsel to represent him in both the rehabilitation and the appeal" is unnecessary because "[s]ince the May 3, 2012 Order, the law firm of Cozen O'Connor has been primarily assisting the Department in the preparation of the rehabilitations." Intervenors' Proposed Order ¶ 11; Rehabilitator's Answer ¶ 57. This is incorrect. The 18+ MPRG meetings referenced in the Rehabilitator's Brief were held at DLA Piper LLP's office and attended by at least two DLA Piper lawyers. Moreover, Cozen O'Connor has also been assisting the Department and DLA Piper to prosecute its appeal, as demonstrated by Cozen O'Conner's filing of the Post-Trial Motion and working with DLA Piper LLP attorneys on, *inter alia*, objections to the text of the hearing transcripts during the appeal. Moreover, the Rehabilitator's assertion that Intervenors "raised no objection until about the week of March 18, 2013" is not accurate. *See* Appendix A hereto (letters dated December 3, 2012 and

November 13, 2012) and Appendix B hereto (January 22, 2013 letter), which objected to the Rehabilitator's using the same counsel to represent him in both the rehabilitation and the appeal.

G. The Rehabilitator's Evasive Answers To Averments Results In Admissions.

The Rehabilitator has deployed several ruses in an attempt to evade admitting factual averments of the Application. His manner of answering the Application is yet another indication of the depths to which he will sink to avoid doing his job of rehabilitating the Companies. Intervenors' factual averments that the Rehabilitator has failed to specifically deny result in admissions, not merely as a procedural requirement, but also because the factual averments are so obviously true. Just a few examples of the Rehabilitator's evasion are set forth in the table attached as Appendix C hereto.

In *Piehl v. City of Philadelphia*, 930 A.2d 607, 615 (Pa. Cmwlth. 2007), this Court rejected the Attorney General's "ruse" of responding to a factual averment by denying it as a conclusion of law, and ruled that the failure to meet a factual averment with a specific denial "results in an admission" under Rule 1029(b). As set forth below and in Appendices C and D, the Rehabilitator has deployed several ruses: 1) lumping together answers to multiple paragraphs of the Application in an effort to conceal his failure to specifically deny averments; 2) refusing to admit averments in response to which the Rehabilitator has not even pled a general (let alone specific) denial; 3) making up and then denying or admitting different averments than the ones that Intervenors alleged while failing to plead any response to the actual averments of the Application; and 4) otherwise responding with general averments that are unresponsive to the actual averments of the Application. Just as in *Piehl*, the failure to specifically deny averments results in admissions. *See also First Wis. Trust Co. v. Strausser*, 439 Pa. Super. 192, 200, 653 A.2d 688, 692 (1995) (general denials resulted in admissions under Rule 1029(b)); 6 Standard Pa. Practice 2d § 30:15 (2009) ("In all instances, the averments in a reply must be sufficient to

reassure the court that those averments are not merely a subterfuge"); *id.* § 30:16 ("A general denial or a demand for proof, except as otherwise provided, have the effect of an admission.").[5]

The Rehabilitator has lumped together answers to multiple paragraphs of the Application. *See* Answer ¶¶ 4-6, 8-12, 15-17, 19-23, 24-29, 30-31, 34-35, 36-37, 39-44, and 75-78. This violates the pleading requirements in Rules 1022, that "[e]very pleading shall be divided into paragraphs numbered consecutively" and 1029(a), to specifically refer each answer to the corresponding paragraph of the preceding pleading. The purpose of these Rules is to enable an adversary and the court to determine whether a party has responded to the averments contained in a specific paragraph. A comparison of the factual averments in the Application and the Rehabilitator's answers that are lumped together shows an absence of specific denials to Intervenors' averments in at least the following paragraphs: 4, 5, 6, 8, 9, 10, 11, 15, 16, 17, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30,[6] 31, 34, 35, 36, 39, 40, 41 (factual first sentence), 42, 43, 44, 75, 76, and 77. Accordingly, by operation of Rules 1022, 1029(a), and 1029(b), the averments of these paragraphs are admitted.

The Rehabilitator has refused to admit certain averments of the Application to which he has failed to even make a general (let alone specific) denial. *See* Answer ¶¶ 3, 4, 5, 6, 13, 15, 16,

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[5] Under the Rules of Procedure, made applicable by Pa.R.A.P. 106, a responsive pleading must "admit or deny each averment of fact in the preceding pleading or any part thereof to which it is responsive." Pa.R.C.P. 1029(a). "Admissions and denials in a responsive pleading shall refer specifically to the paragraph in which the averment admitted or denied is set forth." *Id.* "Averments in a pleading to which a responsive pleading is required are admitted when not denied specifically or by necessary implication. A general denial or a demand for proof...shall have the effect of an admission." Pa.R.C.P. 1029(b).

[6] The Rehabilitator contends he lacks sufficient information to determine the "extent of time and expense incurred by third parties when commenting on the Proposed Plans"; however, he did not aver that he performed a reasonable investigation and he must know the truth of the allegations that Intervenors went to tremendous time and expense to submit comments (some of which included expensive actuarial analyses) to the Proposed Plans. *See* Note to Pa.R.C.P. 1029(c).

17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 36, 38, 39, 40, 41 (factual first sentence), 42, 43, 44, 46, 48, 51, 52, 60, 68, 75, 76, and 77. Accordingly, he is deemed to have admitted the averments in these paragraphs. Nor does Rule 1029 contain an exception to admitting facts relating to procedural matters, matters of public record, or matters testified about in a hearing. The failure to specifically deny factual averments in paragraphs 4, 5, 6, 15, 16, 17, 24, 25, 26, 27, 28, and 29 of the Application while responding with a statement to the effect that "[t]he procedural history of this proceeding is reflected in the record, which speaks for itself" results in admissions. *See* Pa.R.C.P. 1029(b).

The Rehabilitator has sought to dodge averments by denying or admitting different allegations than actually alleged in the Application. Examples of the Rehabilitator's evasion are contained in the table attached as Appendix D hereto. A comparison of the averments made in paragraphs 2, 7, 35, 38, 45, 49, 53, 65, and 74 of the Application with the Rehabilitator's answers shows that he has failed to specifically deny and denied different or fewer than all allegations actually averred in the Application. A comparison of the averments made in paragraphs 18, 63, 64, 69, 79, and 81 of the Application with the Rehabilitator's answers shows that the Rehabilitator has failed to specifically deny and has simply made up and then admitted or denied different allegations than actually averred in the Application. Accordingly, the averments made in paragraphs 2, 7, 8, 9, 10, 11, 14, 18, 34, 35, 38, 45, 49, 53, 63, 64, 65, 74, 79, and 81 of the Application are deemed admitted. *See* Pa.R.C.P. 1029(b).

Finally, the Rehabilitator has responded to the factual averments in paragraphs 4, 5, 6, 58, 61, and 63 of the Application with a general averment disclaiming relevance. Rule 1029 requires an admission or denial of facts known to a party. A general statement disclaiming relevancy is

neither a specific denial nor any other permissible pleading exception. As a result, the factual averments in these paragraphs are deemed admitted. *See* Pa.R.C.P. 1029(b).

II. CONCLUSION

Accordingly, Intervenors request that the Application be granted.

Respectfully submitted,

/s/ Benjamin M. Schmidt

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Dated: June 17, 2014

Appendix A

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December 3, 2012

Via Electronic Mail (yelucas@pa.gov)

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Re: PTNA/ANIC Rehabilitations

Dear Yen:

May I please have a response to my letter to you of November 13, a copy of which is attached? We are quite surprised that the letter has been ignored.

The attached agenda establishes that Commissioner Consedine reported on Penn Treaty at the NAIC meeting on Friday, November 30? May we please know what was discussed at that NAIC meeting during this week's RAC meeting? We would very much appreciate it if the Commissioner would share with us any notes or documents relating to his presentation. If not, please ensure that he retains all such documents.[1]

We reiterate our request that the appeals be withdrawn for the good of the rehabilitation effort. Although the Court's opinion may have embarrassed the Department, that is an improper reason to take an appeal (and on this record, the Court's opinion could have been a lot worse, as we will undoubtedly argue). Commissioner Consedine acts as a fiduciary for the policyholders, creditors, etc. An appeal not only prevents a proper rehabilitation, but the tremendous cost to the estates of both sides' attorneys' fees relating to the appeals further diminishes the assets available to pay policyholders. The decisions made since the Court's orders were issued in May have resulted in delay and greatly increased costs. The appeals exacerbate this concern.

Any discussions with other regulators, including any efforts to obtain amicus support, in an effort to bolster the appeals interfere with the ordered rehabilitations. Do you see the problem this presents

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1 As you know, we have requested that no documents or electronic files of any nature relating to the rehabilitations of PTNA and ANIC be discarded. Please let me know immediately if you will not comply with that request.

with regard to a rehabilitation effort? Forgive the repetition, but in light of the hearing testimony regarding discarded documents I will reiterate our request that you please ensure that all documents relating thereto are not discarded.

May we know at this point whether the Commissioner is currently of the position that the Milliman projections on which Commissioner Ario relied to seek the liquidation petitions are still reliable to support liquidation? In other words, does Commissioner Consedine argue on appeal that the Court should have accepted the Milliman projections?

We expect the Commissioner's efforts to be fully directed toward rehabilitation, as the Commissioner, you, Mr. Cantilo and Mr. Buchholz have assured us. You and your team have clearly stated since the appeals were filed that Commissioner Consedine will comply with the October 31, 2012 order extending the filing date for the rehabilitation plans to the end of April, as you requested and as we consented.[2] If you do not intend to comply with that order, please let me know immediately. If I do not hear from you to the contrary by the close of business on December 5, 2012, we will assume that the Commissioner intends to stand by his agreement, comply with the Court's order he proposed extending the deadline for the filing of the rehabilitation, and file thorough plans by April 30, 2013.

Thank you.

Very truly yours,

Douglas Y. Christian

DYC:lc
Enclosures

cc: Mr. Eugene J. Woznicki
Carl M. Buchholz, Esquire

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2 The order proposed by the Commissioner and entered by the court after your appeals were filed states in part: ("1. The Court's Orders of January 6, 2009 and May 3, 2012, remain in effect. 2. The deadline set forth in paragraph 3 of the May 3, 2012 Order is extended through and including April 30, 2013.")

Mr. Buchholz sought and was given our approval to the requested extension as late as October 24, 2012, the date the proposed order was sent to Judge Leavitt. The notice of appeal was filed less than 48 hours later. Given the time it takes to carefully draft a notice of appeal and jurisdictional statement, we are concerned that the decision to appeal had already been made but not communicated to us when the extension was requested. We respectfully request and expect more forthright dealings in the future.

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November 13, 2012

Via E-Mail (yelucas@pa.gov)

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Re: PTNA/ANIC Rehabilitations

Dear Yen:

In the past you have invited me to communicate with you directly, so I will take advantage of that opportunity on behalf of my clients, the Intervenors. I am copying Mr. Buchholz, whom I understand to be the Rehabilitator's current lead outside counsel in terms of the rehabilitations of Penn Treaty and ANIC. Please share this letter with Commissioner Consedine.

This letter identifies certain of the Intervenors' concerns about the manner in which the Rehabilitator has handled rehabilitation efforts since the Court's Orders of May 3, 2012 and states certain positions of the Intervenors. We do not wish to signal a change in our willingness to collaborate in a professional manner, as such collaboration was both ordered by the Court and is extremely important, but we do have serious concerns about the current state of affairs.

We can further discuss these if you are so inclined, in an effort to get the rehabilitations on the right track, but I want to list some of our more serious concerns here.

Your team's background, attitude and actions appear to be inconsistent with the concept of an approach that will save these companies. Here are several examples:

- The Commissioner's recently filed notice of appeal establishes that he continues to disagree with almost all—if not all—of the Court's rulings regarding what can be done in a rehabilitation and even the desirability of a continued rehabilitation. The clear import of this surprising and very public position is that the companies should not be rehabilitated (because that would be futile) and that instead they must be liquidated. **The potentially crippling impact of this course of action on any rehabilitation approach is admittedly significant, and for that reason we request that the Commissioner withdraw the appeal.** Mr.

Cantilo and other members of your team have often stated that it will be necessary to persuade other regulators to assist in the rehabilitation process. In fact, the maximization of the chances of persuading regulators to do the right thing in the rehabilitations was the primary stated reason supporting the Rehabilitator's decision to ignore the Court's acceptance of Mr. Volkmar and hire a new set of actuaries. You said on many occasions that persuasion of other insurance commissioners was important and that a new set of actuaries would be instrumental in that approach. But it now appears that all along the main goal was to seek reversal of the Court's decision. What is the message when these regulators ask whether the Commissioner wants liquidation or rehabilitation? He is now publicly asking for liquidation, although privately he asserts that he does really want to rehabilitate the companies. Do you see the problem here?

The same lawyer who filed and therefore fully subscribes to the reasoning behind the appeal is now the lawyer who is the main legal advisor to the rehabilitation effort. This is disconcerting. We were told after the filing of the appeal that it will not damper the enthusiasm with which the rehabilitations are pursued. Frankly, we haven't seen much enthusiasm, and we find it difficult to believe that this type of schizophrenic approach will produce the effort needed to fix these companies. Time will tell, but we are most concerned. In fact, it appears that your new lead counsel, an excellent lawyer with an equally excellent reputation, was hired not to bring his little if any long term care insurance and rehabilitation experience to the table in the rehabilitation efforts but instead to maximize your chances of prevailing on appeal before the Supreme Court. Please put aside any inconveniences or discomfort the Commissioner may have as a result of the Court's decision and do what you have acknowledged is in the best interests of the policyholders: the meaningful pursuit of rehabilitations rather than liquidations.

- There is little experience with long term care insurance among the senior members of your team, including your lead actuary. In spite of this, and having recognized that Messrs. Woznicki and Hunt bring significant experience to the table, you are attempting to limit the hours they spend on this matter to an artificially low number. When you agreed to their involvement you did not place unreasonable limitations on their hours. Are there equally low limitations on the deputy rehabilitator's hours or those of any other member of the Rehabilitator's team (or for that matter the great number of Rehabilitator representatives involved in the RAC meetings)? We are in the process of working this issue out with Mr. Cantilo, and I am confident this issue will be resolved.

- The deputy rehabilitator has evidenced early undue pessimism that either company can be saved and a reluctance to be guided by the ruling of the Court that offers several options, especially the important component of benefit reduction. We question whether he will aggressively pursue the rehabilitation efforts.

- The fact that the deputy rehabilitator relies to a great extent in his personal business on revenue from other regulators raises serious concerns regarding whether he will do what needs to be done with other regulators to move these companies back in the right direction. Difficult and potentially aggressive positions may have to be taken with other insurance regulators. This—and of course the pursuit of the appeal that sends precisely the wrong message— establishes the importance of sharing the approach to other regulators with us before the deputy rehabilitator engages these regulators who are in many instances his clients or potential clients.

- The hiring of a new actuarial firm and the development of a new model, against our wishes because of the acceptance by the Court of Mr. Volkmar's approach and the inevitable delay (not to mention cost) of bringing a new actuarial firm on board to serve as the main actuary, have resulted in the inability of the Rehabilitator to file a plan until *one year* after the date of the Orders denying the petitions and more than *four years* after the initial rehabilitation Orders. This could and should have been avoided. Under these circumstances, we had no choice but to not object to your most recent request for an extension, but our forbearance was based on your clear statements that thorough plans would be filed by the extended date. The immediately subsequent filing of an appeal (a fact that was for whatever reason not disclosed to us when our position on the extension was requested or granted) causes us to wonder whether the whole purpose here was to drag this out as long as possible without doing anything meaningful in terms of rehabilitation to increase your chances on appeal.

We have additional concerns about the actuarial approach employed here regarding PWC, including:

- There appears to be a lack of direction regarding the actuaries. Although we know there are lists of tasks, there has been no indication of general guidance. What are we asking them to do, and how do we expect to use what they do? There needs to be general guidance before specific tasks are performed. At the very least, there needs to be a proper prioritization of actuarial tasks. There needs to be a written gameplan.

- We seem to be running into the same issue Milliman was confronted with. PWC actuary Larry Rubin sat in a meeting and heard the deputy rehabilitator state that no one thinks that either company can be rehabilitated. Who knows the extent to which that point was made in private conversations. The actuaries should not be working toward the same pessimistic conclusion the doomed the original effort to rehabilitate. Everyone should be giving this a fair chance.

- There appears to be a lack of depth regarding long term care insurance.

- There is a lack of transparency regarding communications with the actuaries. There must be complete openness regarding such communications. We ask for all copies of emails, letters and notes regarding such communications.

- It is very important to include Karl Volkmar in all actuarial communications, but that is not happening.

We are concerned about the memorialization of the RAC meetings and the actuarial meetings. The documents that are produced do not accurately reflect what was discussed or who raised the points. We reiterate our request that no notes or any other documents created in those meetings or for that matter in any other aspect of the rehabilitation be destroyed or discarded. As for the discussions in the meetings, while we agree to their confidentiality, we do not mean to imply that any such discussions may not be referenced in future court proceedings relating to this matter, if any are required. We understand the need for confidentiality, but we do not intend to give your team a free pass so that it can proceed as it wishes and then not have to answer for the manner in which it improperly pursued rehabilitation or ignored the Court's Orders. We think these meetings can be

important, but only if they are not merely an effort to appease the Intervenors or the Court and are instead a true collaborative effort.

We are concerned about the lack of legal analysis (if only by reference to the clear guidance provided by the Court) that should be undertaken by the rehabilitation team on important issues rather than reliance on assumptions based on "the way things usually work." Assumptions are not enough here; nor is reliance on the way things usually work. We need a systematic approach to the legal issues raised in this matter, and the analyses must be shared and discussed.

This matter must be pursued with alacrity and zeal. Unfortunately, we have seen little of either, and the most recent appeal helps us understand what the Commissioner's priorities are. Please help us get this approach on the right track. The pendency of the appeal during this upcoming period of dealing with the regulators in the rehabilitation process is terribly counterproductive. The Commissioner should do what is in the best interests of a successful rehabilitation by withdrawing the appeal. Thank you for your attention to these serious concerns.

Very truly yours,

Douglas Y. Christian

DYC:lc

cc: Mr. Eugene Woznicki
Carl M. Buchholz, Esquire

NAIC National Association of Insurance Commissioners

2012 Fall National Meeting
Washington, DC

SENIOR ISSUES (B) TASK FORCE
Friday, November 30, 2012
8:00 – 9:30 a.m.
Gaylord Convention Center—Potomac D—Level 2

ROLL CALL

Scott J. Kipper, Chair	Nevada	John M. Huff	Missouri
Kevin M. McCarty, Vice Chair	Florida	Monica J. Lindeen	Montana
Jim L. Ridling	Alabama	Bruce R. Ramge	Nebraska
Germaine L. Marks	Arizona	Roger A. Sevigny	New Hampshire
Jay Bradford	Arkansas	Kenneth E. Kobylowski	New Jersey
Dave Jones	California	Wayne Goodwin	North Carolina
Jim Riesberg	Colorado	Adam Hamm	North Dakota
Thomas B. Leonardi	Connecticut	Mary Taylor	Ohio
Karen Weldin Stewart	Delaware	John D. Doak	Oklahoma
William P. White	District of Columbia	Louis D. Savage	Oregon
Gordon I. Ito	Hawaii	Michael F. Consedine	Pennsylvania
William W. Deal	Idaho	Merle D. Scheiber	South Dakota
Andrew Boron	Illinois	Julie Mix McPeak	Tennessee
Stephen W. Robertson	Indiana	Eleanor Kitzman	Texas
Sandy Praeger	Kansas	Neal T. Gooch	Utah
Sharon P. Clark	Kentucky	Jacqueline K. Cunningham	Virginia
Eric A. Cioppa	Maine	Ted Nickel	Wisconsin
Mike Rothman	Minnesota		

AGENDA

1. Consider Adoption of Interim Conference Call Minutes—*Commissioner Scott J. Kipper (NV)* *Attachment One*
2. Consider Adoption of 2013 Proposed Charges—*Commissioner Scott J. Kipper (NV)* *Attachment Two*
3. Review Public Hearing on Long-Term Care Insurance—*Commissioner Scott J. Kipper (NV)*
4. Receive Update on Penn Treaty—*Commissioner Michael F. Consedine (PA)*
5. Receive Update from the Long-Term Care Shopper's Guide (B) Subgroup—*Julia Phillips (MN)*
6. Discuss and Consider Adoption of the Medigap PPACA (B) Subgroup Recommendations *Attachment Three*
   —*Commissioner Scott J. Kipper (NV) and Michelle Robleto (FL)*
7. Receive Update from the Long-Term Care Rate Stability (B) Subgroup—*John Rink (NE)*
8. Hear Update on the LTC Partnership Program and LTC Awareness Campaign—*Hunter McKay (U.S. Department of Health and Human Services—HHS)*
9. Hear Update from the Centers for Medicare and Medicaid Services (CMS)—*Derrick Claggett (CMS)*
10. Any Other Matters Brought Before the Task Force—*Commissioner Scott J. Kipper (NV)*
11. Adjournment

Appendix B

Ballard Spahr LLP

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January 22, 2013

Via E-mail

Carl Buchholz, Esquire
DLA Piper LLP
One Liberty Place
1650 Market Street
Philadelphia, PA 19103-7300

Re: Rehabilitations of PTNA and ANIC

Dear Carl:

The Intervenors have extraordinarily serious concerns about recent developments. We have previously corresponded about some of those concerns, and will do so here, but we have never received a written response. If your client or you have adopted a "put nothing in writing" approach, we would ask you to reconsider. Neither you nor your client is entitled to ignore these matters or to "hide the ball" from us.

You called me last week to inform me of the shock resignation of Chief Rehabilitation Officer Bob Robinson. You told me you did not know why he was moving on and suggested that it was being done in the ordinary course of affairs. We simply do not accept that. Given the impact of the resignation at this time of this important member of the rehabilitation team, and the temporal proximity of the resignation to the almost equally surprising PWC actuarial developments, we would like to know what prompted the resignation and what efforts are being made to reverse this course of action.

When on Thursday afternoon I reiterated Mr. Woznicki's desire to meet with Commissioner Consedine to discuss this issue, you refused the meeting. When I then suggested that there were several additional matters relating to the rehabilitation for discussion at the meeting and in response to your inquiry identified a few of them, you took it upon yourself to act as the gatekeeper, stating: "no, we're not going to let you do that." This is yet another example of how the approach to this collaborative effort has changed—for the worse—since this Spring and Summer when the Commissioner, Yen, and Amy expressed their strong preference for an open and collaborative approach. Now that the appeal has been filed, the collaborative spirit has degenerated into the specter of a faux rehabilitation, replete with misrepresentations, ignored letters, refused meetings and discussions, and other indicia of failure to comply with the Court's orders.

Please pass along to the Commissioner this letter with a request for a timely response. We request a written response by the close of business on Friday.

1. We reiterate our request for a meeting with the Commissioner. You made a point during your meeting with Judge Leavitt several months ago that the Commissioner had met with the Intervenors when they requested such meetings. We again request a meeting, and given the many issues to discuss, we have no idea why we are being refused. Please provide some dates for such a meeting or explain in writing why there will be no such meeting.

2. We would like to discuss recent developments with Bob Robinson, in the presence of appropriate rehabilitation counsel, and anyone else he would like to involve, regarding the reasons and need for, and effect of, his resignation as well as the issues surrounding PWC's refusal to submit actuarial opinions (except in very limited circumstances).

3. You and your firm represent the Commissioner in the appeal in which you argue that the liquidation orders should have been entered. The proffered argument is that a rehabilitation is futile and should not continue. As such, it is a conflict for you to have anything to do with the rehabilitation effort. We request that the Commissioner confine the efforts of you and your firm to matters that do not relate to the rehabilitation effort. This includes presence at the RAC meetings and any other discussions involving rehabilitation strategies. We also think it is appropriate that communications regarding rehabilitation matters be handled by someone other than the lawyer whose primary function is to quash the rehabilitation by way of the appeal. We are not seeking disqualification of your firm from the handling of the appeal, but you and the Commissioner must agree that the person and firm spearheading the appellate effort should have nothing to do with the discussions, strategy, recommendations, and decisions relating to the course of the rehabilitation. Divided loyalty to a cause has no place here, especially given the lack of any real rehabilitative effort over the last four years and the nature of the Court's opinion denying the liquidation orders.

What is required is a genuine effort, but in so many respects we are not seeing progress. We certainly hope that the collaborative spirit exhibited by all prior to the filing of the appeal, expected by the Court and so important to the pursuit of a creative and successful rehabilitation, can return in short order. We have been patient, but our concerns over your client's and his representatives' actions suggest that we are quickly approaching the point at which we must proceed on a different path to ensure that proper rehabilitations are meaningfully pursued and that the Orders of the Court are respected.

Very truly yours,

Douglas Y. Christian

DYC:dez

cc: Amy Griffith Daubert, Esquire
Mr. Eugene Woznicki
James R. Potts, Esquire
Yen T. Lucas, Esquire

Appendix C

Para.	Summary of Averments	Unresponsive Answers
¶ 8	The PA DOI has routinely granted premium rate increase requests over the past several years to companies that issued LTCI policies.	"Denied that Paragraphs 8-12 fully explain the relationship between SHIP and the Rehabilitator, in his capacity as the Commissioner. Further denied that the Commissioner exercises any operational control over SHIP, or possesses the authority to compel that insurer to seek rate increases."
¶ 9	With regard to SHIP, owned by a Trust created by the PA DOI to manage LTCI policies, the PA DOI granted premium rate increases of 20% in 2009, 25% in 2010, 14-25% in 2011, and 20% in 2012.	
¶ 24	After seeking several extensions of the date by which he was to file the plans of rehabilitation, the Rehabilitator stated that he did not need any more time after April 30, 2013 to file the required plans.	"The procedural history of this proceeding is reflected in the record, which speaks for itself. It is denied that Paragraphs 24-29 fully or completely provide the foundation for or reasoning of the Proposed Plans."
¶ 25	On April 30, 2013, the Rehabilitator filed his proposed plans of rehabilitation.	
¶ 26	In the Proposed Plans, the Special Deputy Rehabilitator represented under oath to the Court and the public that he "considered a variety of potential rehabilitation plan structures, and explored them in detail" and that the Proposed Plans offered the "best possibility for success." Proposed Plans at 1.	
¶ 27	The Special Deputy Rehabilitator also stated in the Proposed Plans that as much as 30-70% of the projected deficit might be eliminated with an initial round of benefit reductions. *Id.*	
¶ 28	The Rehabilitator sought approval of the Proposed Plans in their entirety.	
¶ 29	The Rehabilitator posted the Proposed Plans on the Companies' website, and he sent them to, *inter alia*, policyholders with explanatory documents, and comments were invited.	
¶ 32	After having represented to the Court and the public that the Plan he filed offered "the best possibility for success," the Rehabilitator has now changed his mind and does not want the Court to approve the Proposed Plans in their entirety.	"It is denied that the Rehabilitator arbitrarily 'changed his mind' with regard to the Proposed Plans, as Paragraph 32 suggests."
¶ 34	The relief requested in the Application is based on ... the Rehabilitator's refusal to pursue on a timely basis any meaningful actions designed to actually rehabilitate the Companies and his refusal to file and support a plan in the more than five years he has served as the Rehabilitator.	"Denied that the Rehabilitator has acted improperly by engaging in discussions with NOLHGA or the other members of the MPRG...."
¶ 35	Although the Rehabilitator argues in his appeal that he should not have had to talk with the Intervenors (who believe that the Companies can and should be rehabilitated) in fashioning a plan, he has willingly worked on a possible plan with NOLHGA and other entities that wish to have the Companies liquidated as soon as possible, some of whom have provided amicus support for his appeal by which he wishes to have the Companies liquidated.	

¶ 46	Almost $40 million has been paid out of the estates of the Companies since the rehabilitation Orders were entered.	"The Rehabilitator incorporates his response to paragraphs 39-44 as though fully set forth herein."
¶ 48	That approximate $40 million expenditure is approximately $40 million more than the amount of revenue sought by way of premium rate increases in the last four plus years.	
¶ 49	In the many years since the rehabilitation Orders were entered, there has been no public reporting by the Rehabilitator of the huge expenditures of this so-called rehabilitation effort, nor has there been any effective oversight of such expenditures.	"It is denied that the Rehabilitator is under any obligation to report publicly the expenditures made in connection with the rehabilitation...."

Appendix D

Para.	Summary of Averments	Examples of Evasion by Admitting or Denying Different Allegations
¶ 2	On January 6, 2009, at his own request, the Rehabilitator was ordered to rehabilitate the Companies.	The Rehabilitator denied that the rehabilitation orders were entered "solely" at his request – the denial of a different allegation than averred.
¶ 7	Year in and year out, premium rate increases are routinely sought and to varying degrees approved nationally with regard to other LTCI companies. An indication of the extent of such reported premium rate increases may be gleaned from http://www.insurance.ca.gov/0100-consumers/0060-information-guides/0050-health/ltc-rate-history-guide/index.cfm. ("The LTC rate history report is reported by the company and displays rate history for nationwide and/or California LTC policy forms for active companies (current LTC writers) and inactive (currently not writing LTC policies in California) companies.") *See also* Formal Comments of Broadbill Partners, LP to the Proposed Rehabilitation Plan filed on August 30, 2013; Comments of Intervenors Eugene J. Woznicki and Penn Treaty American Corporation to the Proposed Plans of Rehabilitation, filed on August 30, 2013, Exhibit A (Affidavit of William W. Hunt, Jr. regarding survey of LTCI premium rate increases).	The Rehabilitator "[d]enied that premium rate increase are 'routinely sought' and obtained by long-term care insurers" – a false denial of a different allegation – and then attempted to substantiate that denial by reference to the Companies' experience during the late 1990's and early 2000's, notwithstanding that Application ¶ 7 referred to the experience of "other LTCI companies" and is not limited to the late 1990's and early 2000's. The Rehabilitator did not deny that the extent of such reported premium rate increases may be gleaned from the cited website and Formal Comments.
¶ 8	The PA DOI has routinely granted premium rate increase requests over the past several years to companies that issued LTCI policies.	In his lumped together Answer ¶¶ 8-12, the Rehabilitator stated, *inter alia*: "[d]enied that Paragraphs 8-12 fully explain the relationship between [SHIP] and the Rehabilitator, in his capacity as [the Commissioner]. It is further denied that the Commissioner exercises any operational control over SHIP, or possesses the authority to compel that insurer to seek rate increases." This denial is unresponsive to Application ¶ 8. The Rehabilitator did not deny the averment that the PA DOI has routinely granted premium rate increase requests over the past several years to companies that issued LTCI policies.
¶ 9	For example, with regard to the Senior Health Insurance Company of Pennsylvania ("SHIP"), http://www.shipltc.com/, owned by a Trust created by the PA DOI to manage LTCI	In his lumped together Answer ¶¶ 8-12, the Rehabilitator did not deny the averment that the PA DOI granted SHIP premium rate increases of 20% in 2009, 25% in 2010, 14-25% in 2011, and 20% in

	policies, the PA DOI granted premium rate increases of 20% in 2009, 25% in 2010, 14-25% in 2011, and 20% in 2012. *See* http://www.insurance.ca.gov/0100-consumers/0060-information-guides/0050-health/ltc-rate-history-guide/index.cfm (follow hyper link entitled "Long-Term Care Rate History Report – Inactive Companies, then follow hyper link to Senior Health Ins Co of Pa).	2012 as set forth at the cited website.
¶ 10	The Rehabilitator exercises oversight and control of SHIP, as stated on its website: "Conseco Senior Health Insurance Company was domiciled in Pennsylvania when it was established. SHIP is a rename of Conseco Senior Health Insurance Company. It is the insurance company that you have used. SHIP is a Pennsylvania corporation. The Pennsylvania Department of Insurance, therefore, continues to have oversight and control of the company as it is domiciled there." http://www.shipltc.com/trust-questions.php.	In Answer ¶¶ 8-12, the Rehabilitator did not deny that: (1) the Rehabilitator has oversight over SHIP; or (2) that SHIP's website states the quoted information. Moreover, his evasive answer is belied by: (1) the "Plan to Transfer Conseco Senior Health Insurance Company to Independent Trust" dated August 11, 2008, that states: "Trust and [SHIP] to be overseen by well-respected Trustees, under the supervision of the [PA DOI]." Answer, Exhibit A at 5; and (2) Commissioner Ario's testimony that the PA DOI created a trust to carry the LTC business originally written by several Conseco, Inc. companies and "Commissioner Ario 'worked hard' to get the rate increases needed to make the SHIP trust work." Opinion at 114, n.4.
¶ 11	SHIP correctly points out that premium rate increases are for the protection of all policyholders: "This is especially important when Senior Health Insurance Company of Pennsylvania, based on its claims experience, must raise rates, subject to regulatory approval, to protect policyholders." http://www.shipltc.com/common-questions/.	In Answer ¶¶ 8-12, the Rehabilitator did not deny that SHIP's website states the quoted information or the correctness thereof.
¶ 14	While premium rate increases were routinely sought and granted by the Rehabilitator's Department 'to protect policyholders' in SHIP, the Rehabilitator stubbornly refuses to take action to have the same 'protections' apply to the Companies' policyholders.	In Answer ¶¶ 8-12, the Rehabilitator did not deny that: (1) SHIP routinely sought and was granted premium rate increases by the PA DOI; or (2) he stubbornly refuses to take action to have the same protections apply for the Companies' policyholders.
¶ 18	As the Court clearly stated, insurance regulators, 'who are a necessary part of a workout,' have 'statutory obligations to approve actuarially justified rate increases.' Opinion at 10, 141. That certain regulators are refusing to do so 'presents a serious indictment of the existing system of rate regulation of long-term care insurance.' *Id.* at 4.	The Rehabilitator stated, without any denial: "Admitted that regulatory approval of rate-increase requests is not guaranteed on the basis of actuarial justification alone...." This contrived response is unresponsive as it admitted a different allegation than averred.
¶ 34	In Application ¶ 34, Intervenors averred, *inter alia*, the Rehabilitator's "refusal to pursue on a timely basis any meaningful actions designed to	In his lumped together Answer ¶¶ 34-35, the Rehabilitator stated: "Denied that the Rehabilitator has acted improperly by engaging in discussions

	actually rehabilitate the Companies and his refusal to file and support a plan in the more than five years he has served as the Rehabilitator."	with NOLGHA or the other members of the MPRG...." He did not deny that he has refused to: (1) pursue on a timely basis any meaningful actions designed to actually rehabilitate the Companies; or (2) file and support a plan in the more than five years he has served as the Rehabilitator.
¶ 35	Although the Rehabilitator argues in his appeal that he should not have had to talk with the Intervenors (who believe that the Companies can and should be rehabilitated) in fashioning a plan, he has willingly worked on a possible plan with NOLHGA and other entities that wish to have the Companies liquidated as soon as possible, some of whom have provided amicus support for his appeal by which he wishes to have the Companies liquidated.[FN3] [FN3] "[NOLHGA's] desire to have the Companies liquidated as soon as possible has been established in its amicus brief in support of the Rehabilitator's appeal as well as statements made in open court. *See* September 24, 2013 transcript of proceedings at 42.	In Answer ¶¶ 34-35, the Rehabilitator made up and denied a different allegation and failed to respond to the actual averments of Application ¶ 35.
¶ 38	Six attorneys from DLA Piper have been enrolled by the Rehabilitator to represent him in these proceedings (Mr. Buchholz, Ms. Risk, Mr. Schwab, Mr. Poedtke, Mr. Heller, and Mr. Brown). These attorneys together with the seven attorneys from Cozen O'Connor (Judge Colins, Mr. Harty, Mr. Potts, Ms. Meloni, Ms. Hogben, Mr. Fiebach, and Ms. Davies) and at least four attorneys from the Pennsylvania Insurance Department (Ms. Lucas, Mr. Buckman, Ms. Daubert, and Mr. Gurgiulo) bring the total number of attorneys who have represented the Rehabilitator in these proceedings to at least seventeen. In sharp contrast to the Rehabilitator's aggressive deployment of lawyers, almost without exception only one Ballard lawyer has attended meetings, conferences, and other discussions in order to minimize legal fees in this matter.	In Answer ¶ 38, the Rehabilitator stated: "[a]dmitted only that the Rehabilitator has retained the outside counsel identified in this paragraph, for various reasons, in various capacities, and with varying roles and degrees of involvement in these proceedings. It is denied that the Rehabilitator's reliance on counsel within the Department constitutes 'enroll[ment]' of attorneys or is in any way out of the ordinary or improper." The Rehabilitator's limited admission and unresponsive denial failed to address numerous remaining facts averred in Application ¶ 38.
¶ 45	"While NOLHGA has apparently paid its own way for now, it is not out of the question that it will present a bill to either or both of these companies if it succeeds in getting either or both liquidated."	In his Answer ¶ 45, the Rehabilitator stated, *inter alia*: "[i]t is denied that any reason exists for PTAC to believe that NOLHGA will 'present a bill to' the Companies." However, he has not denied the actual averments in Application ¶ 45.
¶ 49	"In the many years since the rehabilitation Orders were entered, there has been no public reporting by the Rehabilitator of the huge	In his Answer ¶ 49, the Rehabilitator stated: "[i]t is denied that the Rehabilitator is under any obligation to report publicly the expenditures made

	expenditures of this so-called rehabilitation effort, nor has there been any effective oversight of such expenditures."	in connection with the rehabilitation of the Companies...." He has not denied, however, that in the many years since January 6, 2009, there has been no public reporting or oversight of his huge expenditures in his "rehabilitation effort."
¶ 53	"The Special Deputy Rehabilitator and his firm rely on and presumably would like to maximize income from the very state regulators he should be—but is not—approaching for premium rate increases for the Companies."	In his Answer ¶ 53, the Rehabilitator stated: "[i]t is denied that the Special Deputy has any interest in this matter other than the successful rehabilitation of the Companies. It is specifically denied that the Special Deputy has in any way acted contrary to his duties and obligations to the Rehabilitator, and that the Special Deputy has abused his discretion." The Rehabilitator has not denied that Mr. Cantilo and his firm rely on and would like to maximize income from the very state regulators that should be approached for premium rate increases for the Companies.
¶ 65	The documents and communications sought are relevant to enforcement of the rehabilitation Orders because any discussion with the NAIC or other regulators in an effort to support the appeal is diametric and harmful to the concept of a proper rehabilitation as well as the January 6, 2009 Rehabilitation Orders and the clear ruling of the Court on May 3, 2012.	In his Answer ¶ 65, the Rehabilitator stated: "Denied. The requested communications are irrelevant to the current rehabilitation efforts. The Special Deputy is developing amended plans that are on track to be filed by August 8, 2014. PTAC will have the ability to object or comment on those plans once they are filed." He has not denied that any discussion with the NAIC or other regulators to support the appeal (which seeks liquidation of the Companies) is harmful to the concept of a proper rehabilitation.
¶ 69	Recognizing the importance of Mr. Volkmar's contributions, the Rehabilitator agreed that his analysis would be paid for by the Rehabilitator and be considered in the preparation of the Proposed Plans. Although he paid Mr. Volkmar for his analyses—including many corrections of PwC's misguided approaches—until April 30, 2013, he has refused to pay Mr. Volkmar to complete the gross premium analysis. As the Rehabilitator initially wished to and agreed to pay (until April 30) to have Mr. Volkmar complete this analysis, there is no reason for the Rehabilitator to stop this analysis dead in its tracks. Mr. Volkmar has many hundreds of hours of experience in this matter already (much of it paid by the estates without objection), and the Court has recognized his expertise and contributions. It is in everyone's best interests to have Mr. Volkmar complete his analysis. The expected cost of completion—some $200,000—pales by comparison to the exorbitant costs	In his Answer ¶ 69, the Rehabilitator admitted and denied certain facts as he rephrased them. However, he did not address any of the following facts: (1) the Rehabilitator recognized the importance of Mr. Volkmar's contributions; (2) the Rehabilitator agreed that his analysis would be paid for by the Rehabilitator and be considered in the preparation of the Proposed Plans; (3) the Rehabilitator paid Mr. Volkmar for his analyses—including many corrections of PwC's misguided approaches—until April 30, 2013; (4) there is no reason for the Rehabilitator stop the completion of Mr. Volkmar's gross premium analysis dead in its tracks; (5) Mr. Volkmar has many hundreds of hours of experience in this matter already (much of it paid by the estates without objection), and the Court has recognized his expertise and contributions; (6) it is in everyone's best interests to have Mr. Volkmar complete his analysis; or (7) he expected cost of completion—some $200,000—pales by comparison to the exorbitant costs charged

	charged by PwC.	by PwC.
¶ 74	"Although the Rehabilitator has clearly acknowledged the importance of conserving the Companies' assets, he has done nothing but spend them."	In his Answer ¶ 74, the Rehabilitator stated: "Denied that the Rehabilitator has improperly expended assets of the Companies' estates." Intervenors, however, did not use the term "proper" or "improper" in Application ¶ 74, which states the straightforward fact that the Rehabilitator has done nothing but spend the Companies' assets. The Rehabilitator does not deny that fact.
¶ 81	A successful rehabilitation is in the interest of the public, including taxpayers, and the Companies and their policyholders, employees, insurance agents, shareholders, and creditors. These constituencies deserve a legitimate rehabilitation effort led by a rehabilitation team that actually does its job in a manner that is thorough, unbiased and free from conflict.	In his Answer ¶ 81, the Rehabilitator stated: "[a]dmitted that a successful rehabilitation is in the interest of policyholders and the public. It is denied that the Rehabilitator's team has failed to conduct these rehabilitations in a reasonable manner. To the contrary, the Rehabilitator has undertaken concrete steps to prepare amended plans outlining a path to a potentially viable form of rehabilitation." His admission did not fully encapsulate the averments of Application ¶ 81, and his denial denied different allegations.

CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2014, I caused a true and correct copy of the foregoing Intervenors' Reply To The Rehabilitator's Response To Application For Multiple Forms Of Relief to be served via e-mail and first-class U.S. Mail on the counsel listed below:

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