

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. :

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

Plaintiff, :

v. :

DOCKET NO. 4 M.D. 2009

AMERICAN NETWORK :
INSURANCE COMPANY, :

Defendant. :

**RESPONSE OF THE REHABILITATOR TO
INTERVENORS' MOTION TO COMPEL DISCOVERY**

Petitioner Robert Pratter, Acting Insurance Commissioner of the Commonwealth of Pennsylvania, in his capacity as Rehabilitator of Penn Treaty Network America Insurance Company and American Network Insurance Company (the "Rehabilitator"), hereby responds to the motion filed on September 1, 2010, by Intervenor Penn Treaty American Corporation and Eugene Woznicki (collectively "Intervenors") to compel answers to interrogatories and production of documents. As is set forth more fully below, the Rehabilitator has produced thousands of documents in response to Intervenor's discovery requests and numerous CDs of data, has made other voluminous documents available for inspection and was already in the

process of producing those additional requested documents which have relevance to the issues in this case. To the extent that not all documents have been produced already, that is due the breadth of documents sought by Intervenors, as a result of which the Rehabilitator has had to prioritize to expedite the production of those documents which Intervenors indicated were most urgent. The Rehabilitator continues to produce documents and Intervenors knew before they filed this Motion to Compel that the vast majority of the documents requested in their motion are being produced or have been produced or made available.

Moreover, during this ongoing production, and over the course of numerous communications between counsel on discovery, Intervenors, prior to August 31, 2010, never provided a list of document requests as to which they had any issue with the Rehabilitator's responses, or raised any issue as to the sufficiency of the Rehabilitator's interrogatory answers. On the afternoon of August 31, 2010, however, less than five (5) business days before this Court's discovery argument date, Intervenors presented the Rehabilitator with a copy of the instant Motion to Compel raising new issues, replete with the inaccuracies as to what has been produced and been made available and demanding agreement within less than 24 hours. Intervenors' failure to raise these issues earlier in the parties' numerous discovery communications, coupled with the insufficient time they allowed to work out these alleged disputes, cannot fairly be described as a good faith effort to resolve disputes.

The Rehabilitator responds to the numbered paragraphs of Intervenor's Motion as follows:

1. It is admitted only that the Rehabilitator has filed petitions to liquidate Penn Treaty Network American Insurance Company ("PTNA") and American Network Insurance Company ("ANIC"). It is denied that liquidation is a "draconian" measure here; rather, it is necessary to protect the companies' policyholders because the companies are insolvent to a

degree that rehabilitation is not feasible and further rehabilitation efforts would be futile and diminish the assets available to cover policyholders' claims. Not only have the Rehabilitator's actuaries concluded that both companies are hopelessly insolvent, but this same conclusion has been reached by the actuary retained by the National Organization of Life and Health Guaranty Associations ("NOLHGA"), an organization of guaranty associations whose financial interests are adversely affected by liquidation and negative surplus projections and who have no incentive to seek liquidation or overstate the companies' degree of insolvency. Moreover, despite more than nine months of work, Intervenor's actuaries to date have produced no actuarial projections to the contrary or proposed any feasible or legally permissible rehabilitation plan.

2. Denied. The Rehabilitator's burden is to show that he has reasonable cause to believe that continued rehabilitation would be futile or would substantially increase the risk of loss to policyholders. 40 P.S. §221.18(a); Koken v. Legion Insurance Co., 831 A.2d 1196, 1246 (Pa. Cmwlth. 2003), aff'd sub nom. Koken v. Villanova Insurance Co., 583 Pa. 400, 878 A.2d 51 (2005).

3. It is admitted only that Intervenor purport to so contend. It is denied that such contentions have any merit. To the contrary, both the Rehabilitator's actuaries' analyzes of the companies' financial condition and NOLHGA's independent actuarial opinion show that PTNA and ANIC are seriously insolvent to the point that rehabilitation is not feasible and Intervenor, to date, after nine months of work have produced no credible actuarial projections to the contrary and proposed no legally permissible feasible rehabilitation plan.

4. Denied. Intervenor are entitled only to discovery which is reasonably necessary to defend against the liquidation petitions. 40 P.S. §221.18(a). The issues to be determined by the Court on these liquidation petitions are the financial condition of the companies, the feasibility of possible rehabilitation alternatives, and the effect of further rehabilitation efforts.

Intervenors are not entitled to extensive and endless inquiry into documents and subjects which have little or no relevance those issues. Intervenors' characterizations of events in these rehabilitation proceedings in footnote 1 of their motion, moreover, are grossly inaccurate or at a minimum misleading, as Intervenors' counsel knows from the documents, interrogatory answers and depositions in this matter. As documents produced to Intervenors long before this Motion demonstrate, the Rehabilitator continued pursuing PTNA rate filings in 15 states after August 1, 2009, resulting in substantial additional rate increases which the Rehabilitator has implemented. As noted above, the petitions to liquidate are supported not only by Milliman's projections but by the independent projections by the actuary retained by NOLHGA, and the Rehabilitator has not only produced enormous amounts of Milliman data and documents, but has permitted Intervenors' actuaries to communicate with and obtain what they feel what they need directly from Milliman. Finally, the conclusion that it would be necessary to liquidate PTNA was not reached in September 2009; it was reached by the end of July 2009 as the Rehabilitator received updated information concerning PTNA's financial condition. Delays in formal decisions and announcements until September were due to evaluation of whether ANIC's financial condition was capable of rehabilitation and whether, in light of ANIC's condition, any PTNA policies could be transferred to ANIC.

5. Denied. The Rehabilitator has produced thousands of documents and numerous other CDs of data. There has been no refusal to produce relevant documents or information. All the relevant information sought in Intervenors' discovery requests other than attorney documents has been produced or made available for inspection or is in the process of being produced, which productions were under way before Intervenors sent their draft Motion on August 31, 2010.

6. It is admitted only that the Rehabilitator served the written responses to Intervenors' interrogatories and document requests which are attached as Exhibits A and B. It is

denied that the responses are incomplete or that Exhibits A and B are the Rehabilitators' only responses to those discovery requests. To the contrary, Intervenors' Motion neglects to attach numerous additional responses which the Rehabilitator has provided which demonstrate the extent and completeness of the Rehabilitator's document production.¹

7. Denied. Interrogatories numbers 1 through 4 and the Rehabilitator's answers thereto are writings and speak for themselves. Contrary to Intervenors' mischaracterization and in stark contrast to Intervenors' own failure to provide substantive answers, the Rehabilitator's answers provide responsive factual information. These answers are more than adequate responses to written discovery where, as here, all additional detail which Intervenors seek has been or is being made available through production of documents and depositions. Seeking further written responses in addition to the relevant documents and depositions which Intervenors are obtaining and taking is an attempt to cause unnecessary expense, especially in light of the fact that those interrogatories are peripheral to the primary issues in this case, the financial condition of PTNA and ANIC and whether any plan or method of rehabilitation is feasible or has any reasonable prospect of succeeding.

8. Denied. Interrogatory No. 5 and the Rehabilitator's answer to Interrogatory No. 5 are writings and speak for themselves. The Rehabilitator's answer is more than sufficient. The Rehabilitator has identified all PTNA and ANIC employees and the outside actuarial firm which works on the rate increases. Intervenors already have the names of lead Milliman actuaries involved in rate increase efforts. To require a listing of every individual at an outside consultant who may have worked on the over 40 separate rate increase filings pursued by the Rehabilitator is unreasonable and an attempt to cause unnecessary expense.

¹ The Rehabilitator is in the process of preparing a privilege log and will provide a privilege log consistent with the extent and form in which both parties agree to provide privilege logs. No privilege log whatsoever has been produced by Intervenors.

9. Denied. Interrogatory No. 10 and the Rehabilitator's answer to Interrogatory No. 10 are writings that speak for themselves. Contrary to Intervenors' contentions, the Rehabilitator has fully answered this Interrogatory. Where the statements which are the subject of the interrogatory are factual, the Rehabilitator identified witnesses with knowledge and is producing documents. Intervenors are obtaining any information they reasonably need on these subjects through the documents which the Rehabilitator has produced or made available and is producing and through the depositions they are taking of the identified fact witnesses. Intervenors' request for additional written discovery responses is an unreasonable attempt to cause unnecessary expense.

10. Denied. Interrogatory No. 12 and the Rehabilitator's answer to Interrogatory No. 12 are writings which speak for themselves. The Rehabilitator has already provided an adequate answer and is producing responsive documents from the PTNA/ANIC rehabilitation files. To the extent it seeks more, this interrogatory is utterly irrelevant to the issues here. What efforts have been made by the Insurance Commissioner or the Insurance Department in their regulatory capacity or by third parties such as NOLHGA to make sure that adequate guaranty association coverage is available to long-term care insurers' policyholders proves nothing about PTNA's or ANIC's financial condition or whether their negative surplus is low enough that they are capable of being returned to solvency. Any suggestion that there is anything remotely improper in seeking decent and reasonable protection for policyholders of insolvent long-term care insurers is bizarre and nonsensical.

11. Denied. Request No. 2 is a writing which speaks for itself. There is simply no failure to produce the requested documents. The Rehabilitator produced the focus group documents setting forth the findings and procedure in June 2010 and Intervenors gave no

indication until very recently that they wanted any further documents on this issue. The Rehabilitator is in fact producing the other such documents.

12. Denied. Request No. 3 is a writing which speaks for itself. This request is utterly irrelevant. The Pennsylvania Life and Health Guaranty Association is not a party to this case and is not even a part of the Pennsylvania Insurance Department. Its annual reports going back ten years prove nothing about PTNA's or ANIC's financial condition or whether they are capable of being rehabilitated. Whether or not the Pennsylvania Life and Health Guaranty Association seeks rate increases is irrelevant to the liquidation petitions -- it is a choice of the guaranty association which has no bearing on PTNA's or ANIC's financial condition or whether they are capable of being rehabilitated. At a minimum, to the extent that any discovery on this irrelevant issue is permitted at all, because it is not reasonably necessary to determine whether rehabilitation is feasible, any such discovery must under an agreement by Intervenor and an Order of the Court that no attorney fees or costs will be sought or allowed to Intervenor for any time spent or expenditures made concerning this subject.

13. Denied. Requests No. 4 and 44 are writings which speak for themselves. Contrary to Intervenor's contentions, the Rehabilitator has produced and is producing enormous quantities of its experts' data and documents, including all documents and data which Intervenor's actuaries have contended they need. Indeed, the Rehabilitator, in the spirit of cooperation and to facilitate obtaining the most accurate information and determinations as to the companies' financial condition, has allowed open communication between its actuaries and Intervenor's actuaries with Intervenor's actuaries asking questions to Milliman actuaries and obtaining documents directly from Milliman. Attached hereto as Exhibit A are various emails evidencing examples of these communications and productions. The Rehabilitator is also already producing all expert documents and drafts in his possession other than communications

with counsel. The extent of the Rehabilitator's production is in sharp contrast to Intervenors' utter failure to produce any documents concerning their actuaries' studies. Moreover, delays in producing Milliman file documents have been caused by Intervenors' own failure to respond to inquiries concerning the scope of documents they are seeking. Because Milliman's files concerning these companies cover a period of approximately eight years, they are voluminous. When counsel for the Rehabilitator has asked about the scope and quantity of documents sought (see, e.g., Exhibit B hereto), counsel for Intervenors has simply ignored the inquiry.

14. Denied. Request No. 6 is a writing which speaks for itself. Intervenors' assertion that the Rehabilitator has limited Intervenors to chronologies of rate increase efforts is completely false. As is demonstrated by Exhibit B, the Rehabilitator has offered to make all underlying documents available for inspection; Intervenors, however, have never sought to inspect these documents. The only request for additional documents responsive to Request 6 consisted of a request for a small number of specific documents less than 24 hours before a deposition. (See Exhibit C hereto). Notwithstanding the short notice, the Rehabilitator complied and produced the requested documents at or before the start of the deposition.

15. Denied. Request No. 7 is a writing and speaks for itself. The Rehabilitator has produced documents responsive to this request and was already in the process of producing all other responsive documents prior to the instant Motion.

16. Denied. Request No. 9 is a writing which speaks for itself. The Rehabilitator has already produced voluminous quantities of responsive documents including all rehabilitation meeting documents up to the date the liquidation petitions were filed and the notes of the Chief Rehabilitation Officer. The Rehabilitator was already, prior to this Motion to Compel, in the process of producing all rehabilitation meeting documents after the dates of the petitions to liquidate and any other responsive documents other than attorney notes.

17. Denied. Request No. 17 is a writing which speaks for itself. Contrary to Intervenors' assertions, the Rehabilitator, in December 2009 identified and provided all documents which E&Y obtained from Milliman and used in its report attached to the liquidation petitions. (See Exhibit D hereto). The Rehabilitator has subsequently produced or is producing all other responsive documents in his possession.

18. Denied. Request No. 32 and Exhibit C to Intervenors' Motion to Compel are writings which speak for themselves. The Rehabilitator has already produced voluminous responsive documents and is producing all other responsive documents other than documents prepared by or for counsel.

19. Denied. Request No. 35 and Exhibit C to Intervenors' Motion to Compel are writings which speak for themselves. The Rehabilitator has produced voluminous responsive documents and is producing all other documents responsive to this request as revised by Intervenors on August 11, 2010 in Exhibit C other than emails directed to or sent by counsel. Moreover, Intervenors delayed matters by failing to respond to the Rehabilitator's objections to the vagueness of the original request until August 11, 2010, a month and a half after Intervenors received the Rehabilitator's written document responses.

20. Denied. Request No. 36 is a writing which speaks for itself. Intervenors' claim that the Rehabilitator has "refused to produce even a single document responsive to this request" is patently false. Exhibit C attached hereto evidences production of documents concerning communications with state regulators and the Rehabilitator has produced or made available numerous other responsive documents and is in process of producing all other responsive documents other than communications between the rehabilitation team and counsel.

21. Denied. Request No. 43 is a writing which speaks for itself. Inspection of every expenditure in the day to day management and functioning of companies in rehabilitation is not

relevant to the primary issues here, the companies' projected future claims and the consequent magnitude of their insolvency. To the extent that Intervenors wish to spend time and money examining such details, it must be permitted only under an agreement by Intervenors and an Order of the Court that no attorney fees or costs will be sought or allowed for time and expense investigating or pursuing this subject.

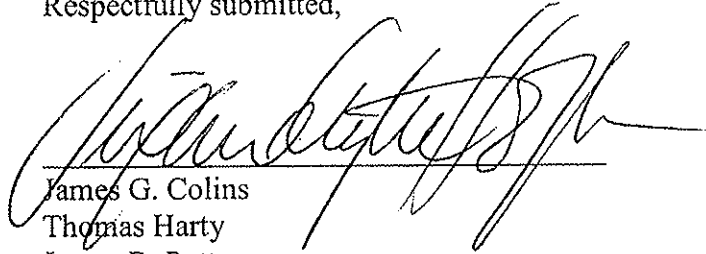
22. Denied. Requests Nos. 45 through 47 are writings which speak for themselves. The Rehabilitator has produced voluminous responsive documents and is producing all other investment reports and documents concerning investment decisions or cash flow projections other than communications directed to or from counsel.

23. Denied. As set forth in paragraph 1, the petitions for liquidation are necessary as a result of the companies' severe insolvency which is demonstrated by both the Rehabilitator's actuaries' projections and by independent actuarial opinion. Moreover, as is demonstrated above, the Rehabilitator has provided and continues to provide all discovery reasonably necessary for Intervenors to defend against the liquidation petitions.

24. It is admitted only that counsel for Intervenors provided a draft of this Motion to Compel to counsel for the Rehabilitator on August 31, 2010 and demanded a response in less than 24 hours. It is denied that such behavior constitutes a good faith attempt to resolve discovery disputes.

25. For the reasons set forth above, Intervenor's Motion to Compel is without merit and should be denied.

Respectfully submitted,



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