

“What keeps you up at night?”

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Pennsylvania Rehabilitator of Penn Treaty seeks to cut off all commission payments to producers

By Michael F. Consedine

In an unusual step, Pennsylvania Insurance Commissioner, Joel Ario, acting in his capacity as Rehabilitator of Penn Treaty Network America Insurance Company ("Penn Treaty"), filed an Application on June 3, 2009 with the Pennsylvania Commonwealth Court seeking to cut off payment of all commissions to Penn Treaty agents, including earned commissions.

In support of his Application, the Rehabilitator claims that agent commissions represent the most significant creditor liability of the estate (in 2008, Penn Treaty incurred approximately \$29 million in agent commissions) and that ongoing payment of these agent commissions might jeopardize a successful rehabilitation. The Rehabilitator also expressed concerns that continued payment of commission during rehabilitation constitutes an unfair and unlawful preference over policyholders and other creditors.

The Application does not distinguish between earned and unearned commission, but simply seeks to extinguish all of Penn Treaty's commission obligations. Prior Pennsylvania precedent holds that earned commissions ("sales commission on insurance coverage actually provided by insurer") are not assets of an insurance estate but of the agent.

See *Pa. Ass'n of Life Underwriters, et al., v. Foster*, 645 A.2d 907 (Pa. Cmwlth. 1994), *aff'd* 542 Pa. 544, 668 A.2d 1113 (1995). In his Application, the Rehabilitator attempts to avoid the *Foster* case by refusing to pay earned commissions still being held by the insurer.

We expect that agent and agent associations will contest the Rehabilitator's Application because of its financial impact not only in Penn Treaty but in future receiverships, in particular, life insurance company rehabilitations where policies remain in force and premiums continue to be paid.

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Interested parties should feel free to contact Connie Foster, Paul Hummer, Michael Consedine, Jim Gkonos or any member of the Firm's Insurance Practice Group for additional information regarding this matter.

This Alert was written by Michael F. Consedine, Vice Chair of the firm's Insurance Practice Group. Michael can be reached at 717.257.7502 or mconsedine@saul.com. This publication has been prepared by the Insurance Practice Group for information purposes only.

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