

**[J-84A-2022, J-84B-2022, J-84C-2022, J-84D-2022] [MO: Mundy, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

IN RE: AMERICAN NETWORK : No. 58 MAP 2021
INSURANCE COMPANY (IN :
LIQUIDATION) : Appeal from the Commonwealth
: Court Order dated July 9, 2021 at
: No. 1 ANI 2009.

APPEAL OF: MIKE HUMPHREYS, :
ACTING INSURANCE COMMISSIONER : SUBMITTED: October 18, 2022
OF THE COMMONWEALTH OF :
PENNSYLVANIA :

IN RE: PENN TREATY NETWORK : No. 59 MAP 2021
AMERICA INSURANCE COMPANY (IN :
LIQUIDATION) : Appeal from the Order of
: Commonwealth Court at No. 1 PEN
: 2009 dated July 9, 2021.

APPEAL OF: MIKE HUMPHREYS, :
ACTING INSURANCE COMMISSIONER : SUBMITTED: October 18, 2022
OF THE COMMONWEALTH OF :
PENNSYLVANIA :

IN RE: AMERICAN NETWORK : No. 7 MAP 2022
INSURANCE COMPANY (IN :
LIQUIDATION) : Appeal from the Commonwealth
: Court Order dated December 22,
: 2021 at No. 1 ANI 2009.

APPEAL OF: MIKE HUMPHREYS, :
ACTING INSURANCE COMMISSIONER : SUBMITTED: October 18, 2022
OF THE COMMONWEALTH OF :
PENNSYLVANIA :

IN RE: PENN TREATY NETWORK : No. 8 MAP 2022
AMERICA INSURANCE COMPANY (IN :
LIQUIDATION) : Appeal from the Order of
: Commonwealth Court at No. 1 PEN
: 2009 dated December 22, 2021.

APPEAL OF: MIKE HUMPHREYS, ACTING :
INSURANCE COMMISSIONER OF THE : SUBMITTED: October 18, 2022
COMMONWEALTH OF PENNSYLVANIA :

CONCURRING OPINION

JUSTICE WECHT

DECIDED: October 19, 2022

I join the Majority in adopting the Commonwealth Court panel’s reasoning with respect to the merits of this appeal, and I agree that “[t]here is simply no statutory authority for [the Liquidator’s] well-intentioned proposal.”¹ I also believe that the Majority’s resolution of the jurisdictional question before us reaches the correct result. The July 9, 2021 order was a final order, which means that the appeals at 58 & 59 MAP 2021—filed in the time between the panel’s decision and the *en banc* court’s decision—are appeals properly before this Court.² I write separately to express misgivings concerning the adoption of an “exceptions” procedure below.

As the Majority recounts, the parties assert that they reached an agreement with the Commonwealth Court to institute an exceptions procedure, although they provide no evidence in the record thereof.³ Even had they done so, however, I have found no authority that would support the use of such a process in this type of case. Understandably, the focus of the parties’ briefs is upon the merits question, and neither party contests the legitimacy of the exceptions procedure here. We thus lack developed advocacy regarding this aspect of the appeal. I find it notable, however, that while the *en banc* panel of the Commonwealth Court recognized that the scheme paralleled “the procedure followed in tax appeals,” it cited no authority for the use of exceptions in

¹ Maj. Op. at 13 (quoting *In Re: Penn Treaty Network Am. Ins. Co. (in Liquidation)*; *In Re: Am. Network Ins. Co. (in Liquidation)*, 259 A.3d 1028, 1050 (Pa. Cmwlth. 2021)).

² See *id.* at 8-13.

³ *Id.* at 11.

insurance liquidation cases.⁴ The court's lone citation for this proposition was to a tax appeal case.⁵

The difference between a tax appeal and the instant case is that, while the Pennsylvania Rules of Appellate Procedure expressly contemplate an exceptions procedure for the former, they do not do so for the latter. Pa.R.A.P. 1571(i) enables parties appearing before the Board of Finance and Revenue to "file exceptions to an initial determination by the court within 30 days after the entry of the order to which exception is taken." The Rule also dictates that the timely filing of exceptions will have the effect of an order granting reconsideration, which extends the time period for filing a notice of appeal.⁶ I find no provision that empowers parties in an insurance liquidation action to do the same. In the absence of such authority, I am inclined to believe that the proper course would have been for the Commonwealth Court to dispose of this appeal without resort to exceptions. The Liquidator could have achieved the same result she sought via *en banc* review of the panel's decision by instead filing an application for reargument; if denied, the Liquidator could have filed her appeal to this Court.⁷

My skepticism concerning this *ad hoc* adoption of an exceptions procedure leads me as well to note a potential infirmity in the Commonwealth Court's order of July 20, 2021, which set the deadline for filing exceptions as August 23, 2021. Trial courts may

⁴ *In Re: Penn Treaty Network Am. Ins. Co. (in Liquidation); In Re: Am. Network Ins. Co. (in Liquidation)*, 268 A.3d 1154, 1159 n.6 (Pa. Cmwlth. 2021) (*en banc*).

⁵ *See id.* (citing *Myers v. Commonwealth*, 260 A.3d 349, 354 n.6 (Pa. Cmwlth. 2021)).

⁶ *See* Pa.R.A.P. 1571(i); *see also* Pa.R.A.P. 1701(b).

⁷ *See* Pa.R.A.P. 3723 (Application for Reargument *En Banc*); 42 Pa.C.S. § 723(a) (Appeals from Commonwealth Court).

promulgate their own local rules, and are vested “with the full authority . . . to make rules of practice for the proper disposition of cases before them.”⁸ But they may not do so in ways that contravene our Rules of Appellate Procedure or that have the effect of expanding their own jurisdiction. Here, a panel of the Commonwealth Court issued an opinion and order on July 9, 2021. Even assuming that the agreement of the parties and the court successfully had infused the proceeding below with the exceptions procedure followed by the Board of Finance and Revenue, the relevant provision affords to aggrieved parties a filing deadline of “[thirty] days after the entry of the order to which exception is taken.”⁹ By virtue of the July 20 scheduling order, the Liquidator had forty-five days within which to file.

Perhaps, for reasons not apparent from the record or the parties’ submissions, an exceptions framework suits insurance liquidation cases. If that is the case, the Commonwealth Court should share its knowledge and recommendations with the Appellate Court Procedural Rules Committee, so that rules for future such cases can develop in the mold of Pa.R.A.P. 1571.

Justice Dougherty joins this concurring opinion.

⁸ *Appeal of Borough of Churchill*, 575 A.2d 550, 554 (Pa. 1990).

⁹ See Pa.R.A.P. 1571(i).