

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE ACQUISITION OF )  
CONTROL OF ALLEGHENY CASUALTY )  
COMPANY BY FRANCIS L. MITTERHOFF, )  
ROBERT LOUIS KERSNICK, JR., JAMES )  
DAVID PORTMAN, AND DAVID SMITH )  
)

HEARING OFFICER'S  
REPORT

Procedural History

In accordance with N.J.S.A. 17:27A-2, by a filing dated November 25, 2019, as supplemented through November 24, 2020, Francis L. Mitterhoff (“Mitterhoff”), Robert Louis Kersnick, Jr. (“Kersnick”), James David Portman (“Portman”), and David Smith (“Smith”) (together “the applicants”), filed with the Department of Banking and Insurance (“the Department”) an application to acquire control (“the Form A filing”) of Allegheny Casualty Company (“ACC”). ACC is New Jersey-domiciled property and casualty insurance company specializing in a variety of surety bonds, including bail. ACC is a wholly owned subsidiary of Chestnut Group, Inc. (“Chestnut”), which is a wholly owned subsidiary of IAT Insurance Group, Inc. (“IAT”). Chestnut is the owner of 100 percent of ACC’s authorized, issued, and outstanding capital stock. IAT ultimately owns all of ACC’s authorized, issued and outstanding capital stock through IAT’s 100 percent ownership of Chestnut. AIA Holdings, Inc. (“AIA”) is a Delaware-domiciled corporation that owns and operates bail bond agencies across the country. AIA’s subsidiary agencies are appointed agencies of various insurance carriers including ACC. AIA’s capital stock is currently owned by IAT, Mitterhoff, Kersnick, Portman, and Mark Francis (“Francis”).

This transaction is part of an agreement whereby Mitterhoff, Kersnick, Portman and Smith (“the Acquiring Parties”) propose to acquire ACC by way of merger, subject to meeting several conditions. Control will be acquired through a series of transactions leading to the merger of AIAH Acquisition Sub, Inc. (“Merger Sub”), a newly formed wholly owned merger subsidiary of Chestnut, with and into AIA, the surviving company.

Pursuant to N.J.S.A. 17:27A-2(d), a public hearing was held on the Form A filing on November 24, 2020. Pursuant to N.J.A.C. 11:1-35.6(g), the public hearing was conducted based on the documents filed. The hearing panel and Department staff determined that the documents filed in connection with the proposed acquisition satisfied the requirements of N.J.S.A. 17:27A-2(b). Public comments were accepted through the close of business on November 24, 2020. No comments were received. No other documents were required and the record was closed on November 24, 2020.

#### Findings of Fact

ACC was incorporated in Pennsylvania on April 15, 1936 and was re-domesticated in New Jersey on November 30, 2015.

Chestnut, Merger Sub, IAT, AIA, Mitterhoff, Kersnick, Portman, and Smith (collectively with the foregoing parties, “the Parties”) have entered into an Agreement and Plan of Merger dated July 12, 2019 (the “Merger Agreement”), included as part of the Form A filing, pursuant to which Chestnut will acquire AIA by way of AIA merging with Merger Sub (“the Merger”), with AIA being the surviving entity. The Parties’ obligations to consummate the Merger and related transactions are subject to the satisfaction of several conditions precedent, which include, among other things (a) the Commissioner of the New Jersey Department of Banking and Insurance’s review and approval of this Form A Application for Change in Control, (b) the redemption of all

of Francis' shares, and a portion of IAT's and Mitterhoff's shares, of AIA's capital stock ("the Stock Redemptions"), (c) the issuance of shares of AIA's capital stock to Portman, Kersnick and Smith ("the Stock Grants"), and (d) the Chestnut Recapitalization. AIA is currently owned by IAT Insurance Group, Inc. (53.33%), Mitterhoff (26.67%), Francis (5.00%), Portman (5.00%), and Kersnick (10.00%).

Subsequent to these transactions, the Acquiring Parties and IAT would each own a percentage of Chestnut as follows: Mitterhoff will hold 10.17% of the issued and outstanding common stock and 1.69% of the issued and outstanding preferred stock; Kersnick will hold 15.00% of the issued and outstanding common stock; Portman will hold 10.00% of the issued and outstanding common stock; and Smith will hold 20.00% of the issued and outstanding common stock. The remaining issued and outstanding common stock of Chestnut will be owned by IAT reflecting 44.83% ownership of Chestnut. Additionally, IAT will hold all remaining issued and outstanding preferred stock of Chestnut (98.31%). Accordingly, through Chestnut's 100% ownership of ACC, each of the Acquiring Parties would hold a corresponding percentage ultimate ownership interest in ACC.

Following the above-mentioned issuance and redemption of certain AIA common stock shares, ownership in AIA will be as follows: IAT (35.94%), Mitterhoff (19.06%), Kersnick (15.00%), Portman (10.00%), and Smith (20.00%). Smith currently does not own any shares of AIA stock and does not have any ownership interest in IAT. As part of the Stock Grants transactions, Smith will be granted 95 shares of AIA common stock as incentive compensation. Subsequent to these transactions, Mitterhoff will transfer 42.22 shares of his AIA common stock to IAT in exchange for 312.37 shares of IAT's voting common stock of Chestnut. Mitterhoff and IAT will then be the sole owners of Chestnut. Mitterhoff and IAT will approve the amendment

and restatement of Chestnut Certificate of Incorporation to effect a recapitalization of Chestnut in a manner so that all preexisting shares of Chestnut voting common stock will be converted into shares of newly authorized class of Chestnut preferred stock carrying an 8% mandatory and cumulative dividend, and other protective rights.

Following these conditions, Merger Sub will merge with and into AIA, with AIA being the surviving entity, and a wholly-owned subsidiary of Chestnut. As consideration for the merger, the shareholders of AIA (IAT, Mitterhoff, Kersnick, Portman, and Smith), prior to the effective date of merger, will surrender their AIA common stock shares for 14,736.72 shares (conversion rate) of newly issued common stock of Chestnut.

The applicants stated that they have no plans to declare an extraordinary dividend, liquidate ACC sell its assets, or to merge it with any person or persons or to make any other material change in its business operations, corporate structure, or management. All existing management staff at ACC are expected to remain with ACC, bringing with them their vast knowledge and expertise in the bail bonds business.

As a consideration for the merger, the shareholders of AIA (IAT, Mitterhoff, Kersnick, Portman, and Smith), prior to the effective date of merger, will surrender their AIA common stock shares for 14,736.72 shares (conversion rate) of newly issued common stock of Chestnut. The valuation of the transaction assumes a value of \$4.0 million valuation for AIA and a \$24.00 million valuation for ACC. The ACC valuation represents a \$347,973 or 1.5% premium over the statutory basis capital and surplus of ACC as of December 31, 2018. These amounts were determined through negotiations between the parties. No third parties were involved in the valuation or negotiation. There are no loans involved in this transaction.

Based on the consolidated financial statements filed by the applicant, ACC's total adjusted capital at December 31, 2018 was \$23,652,027. Additionally, the individual applicants filed certain financial information.<sup>1</sup>

### Analysis

N.J.S.A. 17:27A-2(d)(1) provides that the Commissioner shall approve an acquisition of control of a domestic insurer unless he or she finds that one or more of the seven disqualifying factors set forth therein exist. The statute provides in pertinent part:

(1) The Commissioner shall approve any merger or other acquisition of control ... unless, after a public departmental hearing thereon, he [or she] finds that:

(i) After the change of control the domestic insurer ... would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(ii) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this State or tend to create a monopoly therein ... [applying the competitive standard as set forth in the statute];

(iii) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

(iv) The financial condition of any acquiring party is such that (a) the acquiring party has not been financially solvent on a generally accepted accounting principles basis, or if an insurer, on a statutory accounting basis, for the most recent three fiscal years immediately prior to the date of the proposed acquisition (or for the whole of such lesser period as such acquiring party and any predecessors thereof shall have been in existence); (b) the acquiring party has not generated net before-tax profits from its normal business operations for the latest two fiscal years immediately prior to the date of acquisition (or for the whole of such lesser period as such acquiring party and any predecessors thereof shall have been

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<sup>1</sup> Pursuant to N.J.A.C. 11:1-35, Appendix Exhibit A Item 12(b), financial statements for individuals shall not be public and shall not be considered a public record for the purposes of the "Right-to-Know" law, (now known as the Open Public Records Act) N.J.S.A. 47:1A-1 to -13.

in existence); or (c) the acquisition debt of the acquiring party exceeds 50 percent of the purchase price of the insurer;

(v) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(vi) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(vii) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

Upon a thorough review of the documents submitted into evidence, the hearing panel and Department staff have determined that none of the seven disqualifying factors set forth above should result if the proposed acquisition is effectuated. Each of these conditions is discussed below.

First, after the acquisition, ACC will continue to meet the requirements to transact the business for which it presently licensed pursuant to Title 17 of the New Jersey Statutes. ACC was incorporated in Pennsylvania on April 15, 1936 and was re-domesticated in New Jersey on November 30, 2015. There is nothing in the record to indicate that after the proposed acquisition ACC would not be able to continue to satisfy the requirements to transact the business for which it is presently licensed, and the Commissioner will similarly have the ability to review any subsequent sale of ACC pursuant to N.J.S.A. 17:27A-2.

Second, it does not appear that the acquisition of ACC will substantially lessen competition in the New Jersey insurance market or tend to create a monopoly therein. N.J.S.A. 17:27A-2d(1)(ii) provides that in applying this competitive standard, the standard set forth in N.J.S.A.

17:27A-4.1d shall apply. That statute utilizes a complex formula based on the market shares of the insurers involved in the transaction. ACC is a New Jersey-domiciled property and casualty insurance companies. The statute by its terms does not apply if, as an immediate result of the acquisition, there would be no increase in the overall market share of the involved insurers after the acquisition. See N.J.S.A. 17:27A-4.1b(2)(d). As the applicants are individuals, there would be no increase post-acquisition in the market share of the involved insurers in the New Jersey insurance market. Accordingly, the acquisition will not violate the competitive standard set forth in N.J.S.A. 17:27A-4.1 because it does not appear that the acquisition of ACC will substantially lessen competition in New Jersey or tend to create a monopoly therein.

Third, it does not appear that the financial condition of the applicants will jeopardize the financial condition of ACC. According to the financial information filed by the individual applicants, it does not appear that the financial condition of the insurers will be jeopardized.<sup>2</sup>

Fourth, it appears that the financial condition of the applicants is such that they have been solvent on a basis of generally accepted accounting principles for the three-year period immediately prior to the date of the proposed acquisition. As set forth above, based upon the filings relative to the applicants' financial condition for the most recent three-year period, indicate that they have been in a sound and viable financial condition for the relevant period. Finally, no debt or loans will be utilized to fund the acquisition ACC. As consideration for the Merger, the shareholders of AIA immediately prior to the effective date of the Merger (i.e., IAT, Mitterhoff, Kersnick, Portman and Smith) will surrender each share of their common stock of AIA for 14,736.72 shares of newly-issued common stock of Chestnut. As a result of the Merger

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<sup>2</sup> Pursuant to N.J.A.C. 11:1-35, Appendix Exhibit A Item 12(b), financial statements for individuals shall not be public and shall not be considered a public record for the purposes of the "Right-to-Know" law, (now known as the Open Public Records Act) N.J.S.A. 47:1A-1 to -13.

transaction, Chestnut's ultimate ownership will be allocated among IAT and the Acquiring Parties. Accordingly, the requirement that the acquisition debt may not exceed 50 percent of the purchase price is satisfied.

Fifth, the applicants do not propose to liquidate ACC or sell its assets. As set forth above, the applicants do not intend to change ACC's business operations, corporate structure, or management. They have filed a Form A in California where ACC is commercially domiciled. In this matter, New Jersey is the regulating state.

Sixth, there is nothing in the record from which it may be concluded that the competence, experience, and integrity of the persons who will control the operations of ACC are such that it would not be in the interest of the policyholders and of the public to permit the acquisition of control. The staff of ACC is expected to remain and continue to contribute their experience. In addition, the persons who will control ACC have had substantial experience in the business of insurance services.

Seventh, there is nothing in the record from which it may be concluded that the acquisition is likely to be hazardous or prejudicial to the insurance buying public for the reasons set forth above.

#### Recommendation

Based on the foregoing analysis, the hearing panel and Department staff recommend that the proposed acquisition be approved.



Upon a thorough review of the foregoing, I concur with the findings, analysis and recommendations of the hearing panel and Department staff. I therefore recommend that the proposed acquisition be approved.

12/10/2020  
Date

s/ Lynn Certo  
Lynn Certo  
Hearing Officer

LC AIA by Mitterhoff Rpt Form A/orders

## Exhibits List

### IN THE MATTER OF THE ACQUISITION OF CONTROL OF ALLEGHENY CASUALTY COMPANY by MITTERHOFF ET AL.

Exhibit 1 – Form A application dated November 15, 2019

Exhibit 2 – Amendment to Form A application, April 1, 2020

Exhibit 3 – Waiver of 20–day notice of hearing submitted by Cynthia Borrelli, Esq., for the Applicant

Exhibit 4 – Waiver of 20–day notice of hearing submitted by Cynthia Borrelli, Esq., for Allegheny Casualty Company

Exhibit 5 – Affidavit of Publication of Notice of Hearing in The Record, reflecting publication on November 17, 2020

Exhibit 6 – Affidavit of Publication of Notice of Hearing in Courier Post, reflecting publication on November 17, 2020

Exhibit 7 – Affidavit of Publication of Notice of Hearing in Star Ledger, reflecting publication on November 17, 2020