

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE ACQUISITION OF)	
CONTROL OF INTERNATIONAL FIDELITY)	
INSURANCE COMPANY AND ALLEGHENY)	HEARING OFFICER'S
CASUALTY COMPANY BY CHARLES)	REPORT
KIRKLAND KELLOGG)	

Procedural History

In accordance with N.J.S.A. 17:27A-2, by a filing dated January 30, 2020, as supplemented through November 24, 2020, Charles Kirkland Kellogg (“the applicant”) filed with the Department of Banking and Insurance (“the Department”) an application to acquire control (“the Form A filing”) of International Fidelity Insurance Company (“IFIC”) and Allegheny Casualty Company (“ACC”) (collectively as “the insurers”). Both IFIC and ACC are New Jersey-domiciled property and casualty insurance companies. Both companies specialize in a variety of surety bonds, including bail.

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

IFIC was incorporated on December 27, 1904 and commenced business in New Jersey on January 5, 1905. ACC was incorporated in Pennsylvania on April 15, 1936 and was re-domesticated in New Jersey on November 30, 2015.

Peter Kellogg has entered into an agreement on December 2, 2019 with Charles Kirkland Kellogg, his son, for Charles Kirkland Kellogg to purchase all of the issued and outstanding Class A voting preferred shares (100,005 shares at par value of \$1.00 per share) (“the Shares”) of Goose Creek Capital, Inc. (“GCC”) from Peter Kellogg for a purchase price to be determined by appraisal of the fair market value of the Shares on or about the date of closing (“the Evaluation”). As a result of the contemplated sale of the Shares to Charles Kirkland Kellogg, Charles Kirkland Kellogg will obtain control of both IFIC and ACC by exercising voting control over GCC, which in turn has ultimate control of IFIC, and control of ACC via indirect ownership of 44.83% of the outstanding common stock of ACC. At present, the purchase price for the Shares is estimated to be \$670,000. The Agreement and share transfer arrangements are being entered for estate planning purposes.

Peter Kellogg, a private United States Citizen, is the ultimate controlling person of IFIC through ownership in GCC. Peter Kellogg wholly owns GCC, a corporation organized under the laws of the State of Wyoming, which in turn is the 100% owner of IAT Reinsurance Company, Ltd. (“IAT Reinsurance”), a Cayman Islands domiciled reinsurance company. IAT Reinsurance is the 100% owner of IAT Insurance Group, Inc. (“IAT”), a North Carolina corporation, which in turn is the 100% owner of Harco National Insurance Company (“Harco”), a stock insurer organized under the laws of the State of Illinois. Harco wholly-owns Transguard Insurance Company of America, Inc. (“Transguard”), an Illinois domiciled insurer, which is the 100% owner of IFIC

Surety Group, Inc., a corporation organized under the laws of the State of New Jersey, which is the beneficial and record owner of 100% of IFIC's authorized, issued and outstanding capital stock.

Charles Kirkland Kellogg proposes to purchase all of the issued and outstanding Class A voting preferred shares of GCC from Peter Kellogg, resulting in a change of control of both IFIC and ACC by exercising voting control over GCC. Currently, IAT is the record owner of 3,138,322.15 shares of issued and outstanding common stock of The Chestnut Group, Inc., a corporation organized under the laws of the State of Delaware (which owns 100% of ACC), which constitutes 44.83% ownership of the outstanding common stock of The Chestnut Group, Inc. Further IAT Insurance Group, Inc. owns 20,644.44 shares of issued and outstanding preferred stock of The Chestnut Group, Inc., which constitutes 98.31% ownership of the outstanding preferred stock of The Chestnut Group, Inc. As such, while Peter Kellogg, through his ownership of GCC, Inc. is not the sole beneficial owner of ACC, he exercises control as defined under the Holding Company Systems Act¹.

The applicant has no plans to cause either IFIC or ACC to declare an extraordinary dividend, to liquidate either such insurer, to sell either IFIC or ACC's assets, to merge ACC or

¹ Pursuant to N.J.S.A. 17:27A-1 "control" is defined as the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10% or more of the voting securities of any other person, provided that no such presumption of control shall of itself relieve any person so presumed to have control from any requirement of P.L.1970, c.22 (C.17:27A-1 et seq.). This presumption may be rebutted by a showing made in the manner provided by subsection j. of section 3 of P.L.1970, c.22 (C.17:27A-3) that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and an opportunity to be heard, and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

IFIC with any person or persons, or to make any other material change in ACC or IFIC's business operations, corporate structure or management.

The applicant's source of funding for the acquisition is his personal wealth. The consideration will be paid in cash and no borrowing will be requested to consummate the transaction. There are no loans involved in this transaction.

Charles Kirkland Kellogg included personal financial information in the filing.²

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

² 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.

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 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, IFIC and ACC will continue to meet the requirements to transact the business for which they presently licensed pursuant to Title 17 of the New Jersey Statutes. IFIC was incorporated on December 27, 1904 and commenced business in New Jersey on January 5, 1905. 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 IFIC and ACC would not be able to continue to satisfy the requirements to

transact the business for which they are 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 IFIC and 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. IFIC and ACC are 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 this is a transfer from one individual to another, not a merger of the companies, there would be no increase post-acquisition in the market share of the involved insurers in the New Jersey insurance market. There will be the same number of insurers in the market after the transaction as there were prior to the transaction. 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 IFIC and 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 applicant will jeopardize the financial condition of ACC and IFIC. According to the financial information filed by Charles Kirkland Kellogg, it does not appear that the financial condition of the insurers will be jeopardized.³

³ 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.

Fourth, it appears that the financial condition of the applicant is such that he has 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 applicant's financial condition for the most recent three-year period, indicate that he has been in a sound and viable financial condition for the relevant period. The applicant's source of funding for the acquisition is his personal wealth. Finally, no debt or loans will be utilized to fund the acquisition on IFIC and ACC. Consideration will be paid from available funds on hand of the applicant. Accordingly, the requirement that the acquisition debt may not exceed 50 percent of the purchase price is satisfied.

Fifth, the applicant does not propose to liquidate IFIC or ACC or sell any of their assets. As set forth above, the applicant does not intend to change IFIC's or ACC's business operations, corporate structure, or management. The applicant also stated that they have filed a Form A in California, where ACC is commercially domiciled. North Carolina is the regulating state in this matter. North Carolina approved this Form A on April 29, 2020.

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 IFIC and 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 IFIC and ACC are expected to remain and continue to contribute their experience. In addition, the person who will control IFIC and ACC has 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.

12/15/2020
Date

s/ Lynn Certo
Lynn Certo
Hearing Officer

LC IFIC and ACC by Kellogg HO Rpt Form A/orders

Exhibits List

IN THE MATTER OF THE ACQUISITION OF CONTROL OF ALLEGHENY CASUALTY COMPANY and INTERNATIONAL FIDELITY INSURANCE COMPANY by CHARLES KIRKLAND KELLOGG

Exhibit 1 – Form A application dated January 30, 2020

Exhibit 2 – Email in connection with market share information dated June 2, 2020

Exhibit 2 – Waiver of 20–day notice of hearing submitted by Cynthia Borrelli, Esq., for the Applicant

Exhibit 3 – Waiver of 20–day notice of hearing submitted by Cynthia Borrelli, Esq., for Allegheny Casualty Company and International Fidelity Insurance Company

Exhibit 4 – Affidavit of Publication of Notice of Hearing in The Record, reflecting publication on November 17, 2020

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

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