

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE ACQUISITION OF)	
CONTROL OF RUTGERS ENHANCED)	
INSURANCE COMPANY BY)	HEARING OFFICER'S
HARDSCUFFLE WARRANTY)	REPORT
INVESTMENT COMPANY, LLC AND)	
NANCY LAMPTON)	

Procedural History

In accordance with N.J.S.A. 17:27A-2, by a filing dated September 12, 2018, and as amended through February 27, 2019, Hardscuffle Warranty Investment Company, LLC (“HWIC”) and Nancy Lampton (“Lampton” or “the individual applicant”) (collectively, “the applicants”), filed with the Department of Banking and Insurance (“the Department”) an application to acquire control (“the Form A filing”) of Rutgers Enhanced Insurance Company (“REIC”). REIC is a New Jersey domiciled property and casualty insurer. REIC is a wholly-owned subsidiary of American European Insurance Company (“AEIC”), a New Hampshire domiciled property and casualty insurance company. HWIC is a Kentucky domiciled limited liability company whose sole member is Hardscuffle, Inc.

This transaction is part of an agreement whereby the applicants seek to acquire control of REIC. As a result of the proposed transaction, REIC would become a direct wholly-owned subsidiary of HWIC, which is in turn wholly owned by Hardscuffle, Inc. (“Hardscuffle”) as the sole member of HWIC, which is in turn 57.99 percent owned by Lampton. No other person or entity owns more than 10 percent of Hardscuffle.

Pursuant to N.J.S.A. 17:27A-2(d), a public hearing was held on the Form A filing on March 12, 2019. 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 allowed to be submitted through the close of business on March 12, 2019. No comments were received. No other documents were required and the record was closed on March 12, 2019.

Findings of Fact

REIC was formed on January 14, 2002, and commenced business in New Jersey on April 4, 2002. It is a property and casualty insurance company authorized to write fire, ocean marine, automobile, worker's compensation, burglary and theft and glass insurance in New Jersey. It is not actively writing business and has no current policyholders.

Pursuant to the Stock Purchase Agreement dated August 6, 2018, ("the Agreement"), included as part of the Form A Filing, HWIC will acquire 1,200,000 shares of REIC's common stock, representing 100 percent of the issued and outstanding shares of REIC. The purchase price will be \$150,000 cash, plus the sum of REIC's cash on hand at the closing date and the face value of any U.S. Treasury notes owned by REIC on deposit with any insurance deposit (valued at approximately \$3.7 million plus approximately \$139,000 in statutory deposit as of December 6, 2018), plus any accumulated interest, as of the closing date. The source of the consideration will be a capital contribution from HWIC's sole member and owner, Hardscuffle. No debt will be used to finance the transaction. Together, these actions will be referred to as "the transaction."

The applicants state that while they have no plans or proposals to declare an extraordinary dividend, to liquidate REIC, to sell its assets or to merge REIC with any person or persons, it does intend to redomesticate REIC to the Commonwealth of Kentucky and change the insurer's name.

Upon a successful redomestication, the applicants state that it intends for REIC to obtain authority to write property and casualty insurance, including service contract and reimbursement/contractual liability insurance, and to expand its writings nationwide. In addition, the existing board of directors and executive officers of the insurer will tender their resignations, and the positions will be assumed by individuals currently holding similar positions with HWIC or Hardscuffle. Further, the applicants have provided a fully executed assumption reinsurance agreement whereby AEIC has assumed all liabilities related REIC's insurance operations as reviewed during the course of this Form A filing.

HWIC is a private company. Based on the consolidated financial statements filed by the applicants, HWIC had shareholders' equity of approximately \$61.9 million in 2017; \$26.2 million in 2016; and \$31.2 million in 2015. In addition, HWIC had net before-tax income of approximately \$18.3 million in 2017 and \$20.3 million in 2016. The individual applicant also filed financial information with the Department related to her financial position.¹

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

¹ Pursuant to N.J.A.C. 11:1-35, Appendix Exhibit A Item 12(b), financial statements for individuals shall be confidential and not subject to public inspection or copying pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 to -13.

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 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 and the lack of comments from interested parties upon issuance of public notice of the hearing date, 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, REIC will continue to meet the requirements to transact the business for which it is presently licensed pursuant to Title 17 of the New Jersey Statutes. REIC was formed on January 14, 2002, commenced business in New Jersey on April 4, 2002, and is currently licensed and in good standing. It currently has no policyholders. There is nothing in the record to indicate that after the proposed transaction REIC would not be able to continue to satisfy the requirements to transact the business for which it is presently licensed. However, we note that it is the intent of the acquiring parties to redomesticate the insurer to Kentucky and resume insurance operations under a new name.

Second, it does not appear that the acquisition of REIC will substantially lessen competition in the New Jersey insurance market or tend to create a monopoly therein. N.J.S.A. 17:27A-2(d)(1)(ii) provides that in applying this competitive standard, the standard set forth in N.J.S.A. 17:27A-4.1(d) shall apply. That statute utilizes a complex formula based on the market shares of the insurers involved in the transaction. HWIC is not an insurance company. Its sole affiliate, American Life and Accident Insurance Company of Kentucky, (“ALAIC”) writes insurance life, annuity and health insurance in the Commonwealth of Kentucky and not in New Jersey. REIC is a property and casualty company in New Jersey. 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-4.1(b)(2)(d). As the applicant and its subsidiaries and REIC do not compete in New Jersey – including the fact that REIC currently has no active policyholders, 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. Thus, it does not appear that the acquisition of the REIC 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 REIC. As reported in the applicable financial statements filed by the applicants HWIC had shareholders' equity of approximately \$61.9 million in 2017; \$26.2 million in 2016; and \$31.2 million in 2015.²

Fourth, it appears that the financial conditions of the applicants are 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 filing the HWIC had substantial shareholders' equity for the most recent three-year period, indicating it has been in a sound and viable financial condition for the relevant period. In addition, HWIC had net before-tax income of approximately \$18.3 million in 2017 and \$20.3 million in 2016.³ Moreover, no debt is being used to finance the transaction. 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 REIC or sell its assets, nor to declare any extraordinary dividend, to liquidate it or merge REIC with any person or persons. The applicants intend to cause REIC to apply for redomestication to Kentucky, to change its name, and to cause it to amend and restate its articles of incorporation. Upon the completion of redomestication, the applicants intend to initially obtain the necessary authority for REIC to write property and casualty insurance, including service contract reimbursement/contractual liability insurance, on a nationwide basis. The applicants do not intend to write any business until such time as

² See fn 1.

³ See fn 1.

redomestication is completed and REIC's name has been changed. Further, the applicants state that AEIC will assume all liabilities related REIC's insurance operations prior to the closing date through an assumption reinsurance agreement, subject to review by both this Department and the New Hampshire Department.

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 REIC are such that it would not be in the interest of the policyholders and of the public to permit the acquisition of control. Upon closing, the existing board of directors and executive officers of the insurer will tender their resignations, and the positions will be assumed by individuals currently holding similar positions with HWIC or Hardscuffle and the Department has reviewed the biographical affidavits of those new directors and executive officers during the course of this Form A filing and has no concerns.

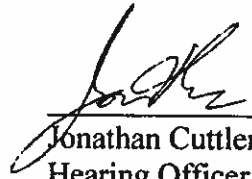
Seventh, there is nothing in the record from which it may be concluded that the acquisition is likely to be hazardous or prejudicial to the insurance buying public for the reasons set forth above.

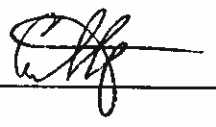
Recommendation

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.

3/13/19
Date


Jonathan Cuttler
Hearing Officer



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STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

EXHIBIT LIST

IN THE MATTER OF THE ACQUISITION OF CONTROL OF RUTGERS ENHANCED
INSURANCE COMPANY BY HARDCUFFLE WARRANTY INVESTMENT COMPANY,
LLC AND NANCY LAMPTON

- Exhibit 1.....Form A application dated September 12, 2018
- Exhibit 2.....Amendment Number One to Form A submitted December 4, 2018
- Exhibit 3.....Amendment Number Two to Form A submitted December 26, 2018
- Exhibit 4.....Amendment Number Three to Form A dated December 28, 2019
- Exhibit 5.....Amendment Number Four to Form A dated February 22, 2019
- Exhibit 6.....Amendment Number Five to Form A dated February 27, 2019
- Exhibit 7.....Waiver of 20 day notice of hearing, submitted by Gregory Mitchell,
of Frost, Brown, Todd on behalf of the Applicants,
dated March 4, 2019
- Exhibit 8.....Waiver of 20 day notice of hearing, submitted by David Weiner, on behalf
of Rutgers Enhanced Insurance Company, dated March 4, 2019
- Exhibit 9.....Affidavit of Publication of Notice of Public Hearing for notice published in
the Asbury Park Press on Tuesday, March 5, 2019
- Exhibit 10.....Affidavit of Publication of Notice of Public Hearing for notice published
in the Newark Star Ledger on Tuesday, March 5, 2019
- Exhibit 11.....Affidavit of Publication of Notice of Public Hearing for notice published
in the Courier Post on Tuesday, March 5, 2019

jc exhibits list hardscuffle Rutgers enhanced/orders