

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

In Re: : Pursuant to Section 320 of the  
: Insurance Company Law of 1921,  
Application of Arch Capital Group Ltd. : Act of May 17, 1921, P.L. 682, as  
in Support of the Request for Approval : amended, 40 P.S. §443; and Sections  
to Acquire Control of all the Issued and : 1401, 1402, and 1403 of the  
Outstanding Capital Stock of American : Insurance Holding Companies Act,  
Independent Insurance Company : Article XIV of the Insurance  
: Company Law of 1921, Act of May  
: 17, 1921, P.L. 682, as amended, 40  
: P.S. §§991.1401, 991.1402, and  
: 991.1403  
: Order No. ID-RC-01-13

DECISION AND ORDER

AND NOW, on this 28<sup>th</sup> day of February, 2001, M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania ("Commissioner"), hereby makes the following Decision and Order:

Pursuant to the Insurance Company Law and the Insurance Holding Company Act and in consideration of the documents, presentations and reports received, as well as other inquiries and studies as permitted by law, the Commissioner hereby makes the following findings of fact:

FINDINGS OF FACT

Identity of Parties

1. American Independent Insurance Company ("American Independent") is a stock casualty insurance company organized under the laws of the

Commonwealth of Pennsylvania with its principal place of business located in Plymouth Meeting, Pennsylvania.

2. American Independent Insurance Holding Company ("Parent") is an insurance holding company organized under the laws of the Commonwealth of Pennsylvania with its principal place of business located in Plymouth Meeting, Pennsylvania. Parent controls 100% of the issued and outstanding voting stock of American Independent.
3. A yet to be organized insurance holding company ("Newco") will be organized under the laws of Barbados with its principal place of business to be located in Barbados.
4. Arch Capital Group Ltd. ("Arch Capital") is a business corporation organized under the laws of Bermuda with its principal place of business located Hamilton, Bermuda. Arch Capital will hold 100% of the issued and outstanding voting stock of Newco.
5. The voting stock of Arch Capital is publicly traded on the NASDAQ National Market.

#### Acquisition Filing

6. The Insurance Holding Companies Act, Article XIV of the Insurance Company Law of 1921, Act of May 17, 1992, P.L. 682, as amended, 40 P.S. §§991.1401 et seq. ("Insurance Holding Companies Act"), provides that all changes in control of domestic insurers must be filed with the Commissioner for approval or disapproval.
7. On January 16, 2001, the Insurance Department of the Commonwealth of Pennsylvania ("Department") received an initial application (which together with all material received subsequently is collectively referenced as "Application") from Arch Capital for approval to acquire control of American Independent.
8. The Application was filed pursuant to Section 1402 of the Insurance Holding Companies Act.

#### Department Procedures

9. On January 27, 2001, the Department published notice in the Pennsylvania Bulletin that the Application was submitted by Arch Capital and such notice invited interested persons to submit comments to the Department

regarding the Application for a thirty (30) day period, ending February 26, 2001.

10. The Department received no comments regarding the Application during the thirty (30) day comment period.

#### Description of the Proposed Acquisition

11. As described in the Application, on December 31, 2000, Arch Capital and Parent signed a Reorganization Agreement ("Reorganization Agreement").
12. As described in the Application and pursuant to the Reorganization Agreement, the current holders of Parent stock will be given a combination of cash and a percentage of any funds awarded Parent as a result of a pending legal action.
13. As described in the Application, the total cash portion of the acquisition price to be paid is estimated to be \$1.25 million.
14. As described in the Application, Arch Capital anticipates deriving the cash portion of the consideration to be used in the transaction from its internal corporate funds.
15. As described in the Application, Arch Capital anticipates assigning direct ownership of Parent to Newco upon consummation of the acquisition.

#### Quasi-Reorganization

16. Section 320 of the Insurance Company Law of 1921, Act of May 17, 1921, P.L. 682, as amended, 40 P.S. §443, provides that unless otherwise provided by law, regulation or order of the Insurance Commissioner, each insurance company, association and exchange shall adhere to the annual or quarterly statement instructions and accounting practices and procedures manuals prescribed by the National Association of Insurance Commissioners.
17. As described in the Application, Arch Capital is requesting the Department's approval of a permitted accounting practice allowing American Independent to recapitalize and restate its surplus ("Restatement") as of the date of the acquisition by eliminating its deficit in earned surplus by a corresponding reduction in paid-in surplus.

18. As described in the Application, Arch Capital has stated that this recapitalization will allow American Independent's performance to reflect its true operations while under the control of Arch Capital without the distortion of American Independent's performance under its prior ownership.
19. As described in the Application, the total surplus as regards policyholders of American Independent will remain unchanged following the Restatement.
20. As described in the Application, no adjustments to assets or liabilities of American Independent will be made as a result of the Restatement.

#### Standards for Review

21. Section 1402(f)(1) of the Insurance Holding Companies Act establishes the standards for approval of an application for a change in control of a domestic insurer.
22. The application for a change in control must be approved unless the Commissioner finds any one of certain enumerated conditions to be present.

#### Licensing Requirements

23. When analyzing an application for change in control under Section 1402 of the Insurance Holding Companies Act, the Commissioner reviews the requirements for continued licensure of the domestic insurer being acquired.
24. The lines of insurance for which an insurance company may be incorporated and become licensed to write are set out in Section 202 of the Insurance Company Law (40 P.S. §382).
25. The minimum paid up capital stock and paid in surplus required of a stock insurer for each line of insurance is set out in Section 206 of the Insurance Company Law (40 P.S. §386).
26. In accordance with Section 206 of the Insurance Company Law (40 P.S. §386), American Independent is required to maintain a minimum paid up capital stock of \$850,000 to write the lines of insurance for which it is presently licensed.

27. In accordance with Section 206 of the Insurance Company Law (40 P.S. §386), American Independent is required to maintain a minimum paid in surplus of \$425,000 to write the lines of insurance for which it is presently licensed.
28. Upon completion of the transaction, American Independent will have paid up capital in an amount that will satisfy the statutory minimum required of a casualty insurance company licensed to write the lines of authority currently held by American Independent.
29. Upon completion of the transaction, American Independent will have paid in surplus in an amount that will satisfy the statutory minimum required of a casualty insurance company licensed to write the lines of authority currently held by American Independent.

Competitive Impact

30. The acquisition of control of the American Independent is subject to review and analysis under Section 1403 of the Insurance Holding Companies Act to determine whether the effect of the acquisition of control would be to substantially lessen competition or tend to create a monopoly in the Commonwealth.
31. The acquisition of control of the American Independent will not lessen competition or tend to create a monopoly in the Commonwealth because the market share of Arch Capital, as stated in the Application, does not exceed the market share levels established in Section 1403.

Financial Condition of Arch Capital

32. When analyzing an application for an acquisition of control under Section 1402 of the Insurance Holding Companies Act, the Department reviews the financial condition of the acquiring persons.
33. Arch Capital reported September 30, 2000, GAAP account balances of:

Assets:	\$ 277,011,000
Liabilities:	\$ 8,585,000
Shareholder's Equity:	\$ 268,426,000
34. The financial condition of Arch Capital would not pose any impediments to the change in control nor jeopardize the financial condition of the

American Independent.

Plans for the Acquired Insurer

35. When analyzing an application for an acquisition of control under Section 1402 of the Insurance Holding Companies Act, the Department reviews the plans or proposals which the acquiring party has for the insurer.
36. As provided in the Application, Arch Capital has disclosed that it intends to make no changes to the business plan of the American Independent.

Management

37. When analyzing an application for an acquisition of control under Section 1402 of the Insurance Holding Companies Act, the Department reviews the competence, experience and integrity of the persons who will control the operations of the acquired insurers.
38. Biographical affidavits for all directors and executive officers of Arch Capital were provided as part of the Application and the Department reviewed all affidavits that were submitted.
39. The Department is satisfied that the persons who would control the operations of the American Independent have such competence, experience and integrity that the interests of policyholders and the public would not be jeopardized.
40. If any of the above Findings of Fact are determined to be Conclusions of Law, they shall be incorporated in the Conclusions of Law as if fully set forth therein.

CONCLUSIONS OF LAW

1. Under Section 1402 of the Insurance Holding Companies Act, the Commissioner has jurisdiction to review and approve the change in control of the American Independent.
2. Under Section 320 of the Insurance Company Law, the Commissioner has jurisdiction to review and approve a request for a permitted accounting

practice different from those specified in the annual or quarterly statement instructions and accounting practices and procedures manuals prescribed by the National Association of Insurance Commissioners.

3. Restatement as of the date of the acquisition shall not result in the unassigned funds (surplus) account, as reported on line 35 of American Independent's Annual Statement as of December 31, 2000, being greater \$0 and the gross paid-in and contributed surplus account, as reported on line 33 of American Independent's Annual Statement as of December 31, 2000, being less than the minimum required by 40 P.S. §386 (\$425,000) immediately following the Restatement as of the date of the acquisition.
4. Under Section 1402 of the Insurance Holding Companies Act, the Commissioner must approve an application for a change in control unless the Department has found that:
  - a) The insurer will not be able to satisfy the requirements for the issuance of a license to operate the line or lines of business for which it is presently licensed;
  - b) The change in control will substantially lessen competition in insurance in this Commonwealth or tend to create a monopoly therein;
  - c) The financial condition of the acquiring company is such as might jeopardize the financial stability of the insurer or prejudice the interests of its policyholders;
  - d) Any plans to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make material changes in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurers and not in the public interest;
  - e) 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 and the general public to permit the acquisition of control;
  - f) The acquisition is likely to be hazardous or prejudicial to the insurance buying public; or,

- g) The acquisition of control is not in compliance with the laws of this Commonwealth, including Article VIII-A, Insurance Company Mutual-to-Stock Conversion Act.
- 5. Under Section 1402 of the Insurance Holding Companies Act, the Commissioner has not found that any of the above conditions are present with respect to the change in control of American Independent.
- 6. If any of the above Conclusions of Law are determined to be Findings of Fact, they shall be incorporated in the Findings of Fact as if fully set forth therein.

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

In Re: : Pursuant to Sections 1401, 1402,  
: and 1403 of the Insurance  
Application of Arch Capital Group Ltd. in : Holding Companies Act, Article  
Support of the Request for Approval to : XIV of the Insurance Company  
Acquire Control of all the Issued and : Law of 1921, Act of May 17, 1921,  
Outstanding Capital Stock of American : P.L. 682, as amended, 40 P.S.  
Independent Insurance Company : §§991.1401, 991.1402, and 991.1403  
:  
: Order No. ID-RC-01-13

ORDER

Upon consideration of the foregoing, the Insurance Commissioner of the Commonwealth of Pennsylvania hereby makes the following Order:

The acquisition of control by Arch Capital Group Ltd. of all the issued and outstanding shares of common stock of American Independent Insurance Company ("American Independent") is hereby approved, subject to this Order and the following conditions:

1. Arch Capital Group Ltd. shall provide copies of the closing documents to the Insurance Department within five (5) days of consummation of the subject transaction.
2. Restatement as of the date of the acquisition shall not result in the unassigned funds (surplus account, as reported on line 26C of American Independent's Annual Statement as of December 31, 2000, being greater than \$0 and the gross paid-in and contributed surplus account, as reported on line 26B of American Independent's Annual Statement as of December 31, 2000, being less than minimum required by 40 P.S. §386 immediately following the Restatement as of the date of the acquisition.

This Order is effective immediately.

  
  
M. DIANE KOKEN  
Insurance Commissioner  
Commonwealth of Pennsylvania