

018

Duane Morris®

FIRM and AFFILIATE OFFICES

RECEIVED
Corporate & Financial Regulation

APR 11 2013

Pennsylvania
Insurance Department

NEW YORK
LONDON
SINGAPORE
PHILADELPHIA
CHICAGO
WASHINGTON, DC
SAN FRANCISCO
PALO ALTO
SAN DIEGO
BOSTON
HOUSTON
LOS ANGELES
HANOI
HO CHI MINH CITY
ATLANTA
BALTIMORE
WILMINGTON
MIAMI
PITTSBURGH
NEWARK
LAS VEGAS
CHERRY HILL
BOCA RATON
LAKE TAHOE

MEXICO CITY
ALLIANCE WITH
MIRANDA & ESTAVILLO

Robert L. Pratter
DIRECT DIAL: 215 979 1173
PERSONAL FAX: 215 754 4845
E-MAIL: rlpratter@duanemorris.com

www.duanemorris.com

April 9, 2013

Via E-Mail, Original to Follow by U.S. Mail

Jodi Frantz, Esquire
Commonwealth of Pennsylvania Insurance Department
1321 Strawberry Square
Harrisburg PA 17120

Re: Form A Statement Regarding the Acquisition of Control of Atlantic States Insurance Company, a Pennsylvania insurance company and wholly owned subsidiary of Donegal Group Inc., by Gregory M. Shepard (the "Form A Filing")

Dear Ms. Frantz:

We write to you as counsel to Atlantic States Insurance Company ("Atlantic States") and its parent corporation, Donegal Group Inc. ("DGI") with respect to the Form A Filing. As set forth below, based on our initial review of the Form A Filing, which is ongoing, we believe that the Form A Filing does not meet the requirements of applicable Pennsylvania law (40 P.S. Section 991.1401 et seq.) and the regulations adopted thereunder by the Pennsylvania Insurance Department (31 Pa. Code Chapter 25).

40 P.S. Section 991.1402 (a)(1) requires, among other things, that Mr. Shepard file the Form A Filing ". . . with the Department **and has sent to such insurer a statement containing the information required by this section** and such offer, request, invitation, agreement or acquisition has been approved by the Department in the manner hereinafter prescribed." (Emphasis added). Mr. Shepard is in clear violation of this statutory provision.

40 P.S. Section 991.1402(b)(3) specifies that the Form A Filing contain ". . . fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years . . . and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement."

We have attached for your information a true and correct copy of the relevant portion of the Form A Filing that Mr. Shepard sent to DGI. (Attachment "A"). As you will see, Mr. Shepard omitted Exhibits "H-M" referred to as "Mr. Shepard's financial statements" from the

DUANE MORRIS LLP

30 SOUTH 17TH STREET PHILADELPHIA, PA 19103-4196

PHONE: +1 215 979 1000 FAX: +1 215 979 1020

04

Jodi Frantz, Esquire
April 9, 2013
Page 2

Form A Filing sent to DGI. As stated above, 40 P.S. Section 991.1402(a)(1) expressly requires that Mr. Shepard send DGI and Atlantic States the **complete** Form A Filing and all exhibits, including Mr. Shepard's financial statements. The omission of this information seriously and adversely limits DGI's and Atlantic States' ability to review the Form A Filing and to protect the interests of the policyholders of Atlantic States. The self-selective information that Mr. Shepard sent to DGI does not comply with this requirement and, therefore, his Form A Filing is incomplete and defective on its face.

Attachment "A" further states that "Mr. Shepard's financial statements will be provided to DGI upon its entry into an appropriate confidentiality and non-disclosure agreement." Moreover, counsel to Mr. Shepard in his letter dated March 19, 2013 to Commissioner Consedine purported to request confidential treatment from public inspection of Exhibits "H-M" pursuant to 31 Pa. Code Section 25.12(c). These attempts to shield Mr. Shepard's earnings and financial condition from DGI and Atlantic States and the policyholders of Atlantic States fail for the following reasons:

- First, as previously stated, Pennsylvania law requires that the insurer in question receive the **complete** Form A Filing, not just the portions that Mr. Shepard selectively chooses to give it. Mr. Shepard does not have the unilateral right to withhold these documents from DGI and Atlantic States.
- Second, a request for confidentiality pursuant to 31 Pa. Code Section 25.12 relates only to what must be available for "public inspection". Regulation 25.12 does not provide a basis for withholding or conditioning information that DGI and Atlantic States as the subjects of the Form A Filing have the express legal right to receive as part of the Form A Filing, review, have an opportunity to comment upon and contest in the Form A Filing review process.
- Third, the provision in 31 Pa. Code Section 25.12(c) that allows the Department (as opposed to Mr. Shepard unilaterally) to grant confidentiality concerning public disclosure of the personal financial statements of non-publicly held ultimate controlling persons does not apply to Mr. Shepard or this Form A Filing. To the contrary, this provision addresses the situation where a corporate or other entity is the filer and the ultimate controlling person of the filer wishes to request confidential treatment from public inspection of his or her personal financial statements. Mr. Shepard is the filer and he cannot utilize the provisions of Section 25.12(c) to shield from scrutiny his very own financial statements in deprivation of the constitutional and statutory rights of DGI and Atlantic States as the subjects of the Form A Filing.
- Fourth, 31 Pa. Code Section 25.12(c) requires that a request for confidentiality from public inspection "state the basis upon which the assertion of confidentiality is premised." The request from Mr. Shepard's counsel ignores this requirement.

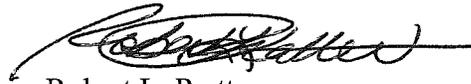
Jodi Frantz, Esquire
April 9, 2013
Page 3

The standards set forth for approval of the Form A Filing include, among other things, that the Department not find that “the financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interests of its policyholders.” 40 P.S. Section 991.1402(f)(1)(iii). As the entities entitled to review the Form A Filing and participate as parties in its consideration by the Department, DGI and Atlantic States have the statutory and constitutional rights to receive Exhibits “H-M” without pre-condition so that they have the fair opportunity to review Mr. Shepard’s financial condition and address the requirements of 40 P.S. Section 991.1402(f)(1)(iii) and the other requirements of 40 P.S. Section 991.1401 et seq. in their comments and at a public hearing. So, too, Atlantic States policyholders, the stockholders of DGI and the public have the same constitutional and statutory rights and the request for confidentiality with respect to the public should also be denied.

In conclusion, for the reasons set forth in this letter, DGI and Atlantic States request that the Department immediately order Mr. Shepard to send true and correct copies of Exhibits “H-M” to them. DGI and Atlantic States further request that Mr. Shepard’s request for confidentiality from public disclosure of these exhibits also be denied.

DGI and Atlantic States hereby also respectfully reserve the opportunity to submit additional comments and take such other and further action as provided by law to protect their interests and the interests of Atlantic States policyholders and the insurance buying public. Among other things, DGI and Atlantic States believe the Form A Filing contains numerous erroneous and misleading statements and fails to meet the standards for approval of the filing. DGI and Atlantic States will advise the Department of these deficiencies in the Form A Filing under separate cover.

Sincerely,



Robert L. Pratter

RLP/lmb
Enclosures

cc: Stephen J. Johnson, Deputy Insurance Commissioner
Robert E. Brackbill, Jr.
J. Victor Peterson, Esq.

ATTACHMENT "A"

EXHIBITS H – M

Omitted.

Mr. Shepard's financial statements will be provided to DGI upon its entry into an appropriate confidentiality and non-disclosure agreement.