

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

In Re:	:	Pursuant to Sections 1401, 1402
	:	and 1403 of the Insurance Holding
Application of Evergreen Parent, L.P.	:	Companies Act, Article XIV of the
and Evergreen Parent GP, LLC in	:	Insurance Company Law of 1921, Act
Support of the Request for Approval to	:	of May 17, 1921, P. L. 682, <u>as</u>
Acquire Control of ARI Insurance	:	<u>amended</u> , 40 P.S. §§991.1401,
Company	:	991.1402 and 991.1403
	:	:
	:	Order No. ID-RC-18-18

DECISION AND ORDER

AND NOW, on this 21st day of November, 2018, Jessica K. Altman, Insurance Commissioner of the Commonwealth of Pennsylvania (“Commissioner”), hereby makes the following Decision and Order:

Pursuant to the Insurance Holding Companies 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

Identity of PA Domestic Insurer

1. ARI Insurance Company (“ARI”) is a domestic stock property insurance company organized pursuant to the laws of Pennsylvania with its principal place of business in Newtown, Pennsylvania.

2. AmTrust Financial Services, Inc. (“AmTrust”) is a publicly traded corporation organized under the laws of Delaware with its principal place of business in New York, New York. AmTrust currently indirectly holds 100% of the issued and outstanding stock of ARI.

3. George Karfunkel (“Mr. Karfunkel”) is an individual with his primary business address in New York, New York. Mr. Karfunkel currently directly holds approximately 16.5% of the issued and outstanding stock of AmTrust.
4. Leah Karfunkel (“Ms. Karfunkel”) is an individual with her primary business address in New York, New York. Ms. Karfunkel currently directly holds approximately 11.3% of the issued and outstanding stock of AmTrust.
5. Barry Zyskind (“Mr. Zyskind”) is an individual with his primary business address in New York, New York. Mr. Zyskind currently directly holds approximately 15% of the issued and outstanding stock of AmTrust.
6. Mr. Karfunkel, Ms. Karfunkel and Mr. Zyskind (collectively referenced hereinafter as the “Karfunkel-Zyskind Family”) are currently the ultimate controlling persons of ARI.

Identity of Applicant

7. Evergreen Merger Sub, Inc. (“Merger Sub”) is a newly-formed corporation organized under the laws of Delaware with its principal place of business in New York, New York.
8. Evergreen Parent, L.P. (“EP Limited”) is a newly-formed limited partnership organized under the laws of Delaware with its principal place of business in New York, New York. EP Limited currently holds 100% of the issued and outstanding stock of Merger Sub.
9. Evergreen Parent GP, LLC (“EP General”) is a newly-formed general partnership organized under the laws of Delaware with its principal place of business in New York, New York. EP General is currently the general partner of EP Limited.
10. The Karfunkel-Zyskind Family currently control 50% of the voting and economic interests of EP General.
11. Trident Pine Acquisition, L.P. (“Trident Pine”) is a limited partnership organized under the laws of Delaware with its principal place of business in Greenwich, Connecticut. Trident Pine currently controls 50% of the voting and economic interests of EP General.
12. James Carey (“Mr. Carey”) is an individual with his primary business address in Greenwich, Connecticut. Mr. Carey currently indirectly controls 20% of Trident Pine.
13. Charles Davis (“Mr. Davis”) is an individual with his primary business address in Greenwich, Connecticut. Mr. Davis currently indirectly controls 20% of Trident Pine.

14. Stephen Friedman (“Mr. Friedman”) is an individual with his primary business address in Greenwich, Connecticut. Mr. Friedman currently indirectly controls 20% of Trident Pine.
15. David Wermuth (“Mr. Wermuth”) is an individual with his primary business address in Greenwich, Connecticut. Mr. Wermuth currently indirectly controls 20% of Trident Pine.
16. Nicolas Zerbib (“Mr. Zerbib”) is an individual with his primary business address in Greenwich, Connecticut. Mr. Zerbib currently indirectly controls 20% of Trident Pine.

Acquisition Filing

17. The Insurance Holding Companies Act, Article XIV of the Insurance Company Law of 1921, Act of May 17, 1922, 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.
18. On May 10, 2018, the Insurance Department of the Commonwealth of Pennsylvania (“Department”) received an application (which together with all material received subsequently is hereinafter referenced as “Application”) from EP Limited and EP General (collectively referenced hereinafter as the “Applicants”) for approval to acquire control of ARI.
19. The Application was filed pursuant to Section 1402 of the Insurance Holding Companies Act.

Department Procedures

20. On May 26, 2018, the Department published notice in the *Pennsylvania Bulletin* that the Application was submitted by the Applicants and such notice invited interested persons to submit comments to the Department regarding the Application for thirty days following the date of the publication (“Comment Period”).
21. The Department has received one formal comment regarding the Application (“Public Comment”), albeit outside the Comment Period.
22. The Public Comment was provided by a minority shareholder of AmTrust who asserted that they would be disadvantaged by the transaction.
23. The Applicants provided a response to the Public Comment.

Description of the Proposed Acquisition

24. On March 1, 2018, AmTrust, EP Limited and Merger Sub entered into an Agreement and Plan of Merger (the “Merger Agreement”).
25. As described in the Application and pursuant to the Merger Agreement, EP Limited intends to cause Merger Sub to merge with and into AmTrust, with AmTrust as the surviving corporation (the “Merger”).
26. As a result of the Merger, AmTrust will become a direct wholly-owned subsidiary of EP Limited and ARI will become an indirect wholly-owned subsidiary of EP Limited.
27. The outstanding shares of common stock, par value \$0.01 per share (the “Common Stock”), of AmTrust (other than the shares of Common Stock currently owned or controlled by members of the Karfunkel-Zyskind Family and their affiliates and certain related parties (the “Rollover Parties”)), will be cancelled and converted into the rights to receive \$14.75 per share in cash (the “Merger Consideration”).
28. On March 1, 2018, the Rollover Parties entered into a Rollover Agreement with EP Limited whereby the Rollover Parties would exchange their Common Stock for limited partnership interests of equivalent value in EP Limited.
29. The Merger Consideration is being funded by equity commitment from Trident Pine, the Karfunkel-Zyskind Family, Enstar Group Limited (“Enstar”) and MH JV Holdings, L.P. (“Madison Dearborn”), which will all receive corresponding limited partnership interests in EP Limited.
30. The limited partners of Trident Pine, which are Trident VII Professionals Fund, L.P., Trident VII, L.P., Trident VII DE Parallel Fund, L.P., and Trident VII Parallel Fund, L.P. (collectively referred as “Trident VII Funds”) entered into an equity commitment letter with Trident Pine to fund, in the aggregate, \$800 million to allow Trident Pine to satisfy its obligations under the Trident Pine equity commitment letter. Through authorized syndication of its equity commitment to co-investors, Enstar and Madison Dearborn, the equity commitment of Trident Pine and the corresponding equity commitment of the Trident VII Funds will be reduced from \$800 million to approximately \$567 million.
31. As described in the Application, the capital structure of EP General will consist solely of common units. Holders of Class A and common units in EP Limited will be issued an equivalent number of common units in EP General.
32. As a result of the Merger, Trident Pine will own 17.6% membership interest of EP General and Messrs. Carey, Davis, Friedman, Wermuth and Zerbib will each individually become an ultimate controlling person of ARI.

33. As a result of the Merger, Trident Pine will hold a controlling interest in both EP General and EP Limited by virtue of its rights under the Amended and Restated Limited Liability Company Agreement to designate two (2) out of six (6) members to the EP General Board of Managers.

Standards for Review

34. 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.
35. An application for a change in control must be approved unless the Department finds any one of certain enumerated conditions to be present.

Licensing Requirements

36. 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.
37. Specifically, the Department reviews whether the domestic insurer would 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 after the acquisition.
38. 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).
39. 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).
40. In accordance with Section 206 of the Insurance Company Law (40 P.S. §386), ARI is required to maintain a minimum paid up capital stock of \$2,350,000 and a minimum paid in surplus of \$1,175,000 to write the lines of insurance for which it is presently licensed.
41. Upon completion of the Merger, ARI will have the statutory minimum paid up capital stock and paid in surplus to satisfy the requirements to write the lines of insurance for which it is presently licensed.

Competitive Impact

42. The acquisition of control of a Pennsylvania domiciled insurer is subject to review and analysis under Section 1402(f)(1)(ii) of the Insurance Holding Companies Act to

determine whether the effect of the acquisition of control of Domestic Insurers would be to substantially lessen competition in this Commonwealth or tend to create a monopoly therein, as per 40 P.S. §991.1402(f)(1)(ii) (the “competitive standard”).

43. The acquisition of control of ARI will not lessen competition or tend to create a monopoly in the Commonwealth because the market shares of the insurance company subsidiaries of AmTrust and Trident Pine licensed to transact the business of insurance in Pennsylvania, as stated in the Application, do not exceed the market share levels established in Section 1403 of the Insurance Holding Companies Act.

Financial Condition of Applicant

44. 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 person(s).
45. The Department has reviewed the financial information submitted by the Trident VII Funds, Mr. Carey, Mr. Davis, Mr. Friedman, Mr. Wermuth and Mr. Zerbib.
46. The financial condition of the Trident VII Funds, Mr. Carey, Mr. Davis, Mr. Friedman, Mr. Wermuth and Mr. Zerbib would not pose any impediments to the change in control nor jeopardize the financial condition of ARI.

Plans for the Acquired Insurer

47. 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.
48. In particular, the Department reviewed 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, to determine whether it is:
 - a. Unfair or unreasonable;
 - b. Fails to confer a benefit upon policyholders; or
 - c. Not in the public interest.
49. As stated in the Application, the Applicants have no future plans or proposals to liquidate ARI, to sell its assets, to merge or consolidate it with any person or persons or to change its corporate structure.

50. As stated in the Application, the current Board of Directors of AmTrust will be increased by two directors, which will be appointed by Trident Pine following the Merger.
51. There is no basis in the record from which it may be concluded that the plans or proposals which the acquiring party has for the insurer are unfair or unreasonable or fails to confer a benefit upon policyholders or are not in the public interest.

Management

52. 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 insurer.
53. Biographical affidavits for the board of managers of EP General were reviewed by the Department.
54. Biographical affidavits for the proposed new directors of AmTrust were reviewed by the Department.
55. Biographical affidavits for the new ultimate controlling persons of ARI were reviewed by the Department.
56. The Department is satisfied that the persons who would control the operations of ARI have such competence, experience and integrity that the interests of policyholders and the public would not be jeopardized.

Hazardous or Prejudicial to Insurance Buying Public

57. When analyzing an application for an acquisition of control involving a domestic insurer under Section 1402 of the Insurance Holding Companies Act, the Department evaluates whether the merger, consolidation or other acquisition of control is likely to be hazardous or prejudicial to the insurance buying public.
58. There is insufficient evidence in the record from which it may be concluded that the acquisition will likely be hazardous or prejudicial to the insurance buying public.

Compliance with the Pennsylvania Laws

59. When analyzing an application for an acquisition of control involving a domestic insurer under Section 1402 of the Insurance Holding Companies Act, the Department reviews the transaction to determine whether the merger, consolidation or other acquisition of control is not in compliance with the laws of this Commonwealth,

including Article VIII-A.

60. The Department has evaluated the transaction as set forth by the Application as to whether it is in compliance with the laws of Pennsylvania.
61. 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 Department has jurisdiction to review and approve the change in control of ARI.
2. Under Section 1402 of the Insurance Holding Companies Act, the Department 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 they are 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; or,
 - f) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.
 - 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.

3. 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 ARI.
4. 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.

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Acquire Control of ARI Insurance	:	<u>amended</u> , 40 P.S. §§991.1401,
Company	:	991.1402 and 991.1403
	:	:
	:	Order No. ID-RC-18-18

ORDER

Upon consideration of the foregoing, the Insurance Commissioner of the Commonwealth of Pennsylvania (“Commissioner”) hereby makes the following Order:


The application of Evergreen Parent, L.P. and Evergreen Parent GP, LLC (collectively referenced as the “Applicants”) in support of the request for approval to acquire control of ARI Insurance Company (“ARI”) as set forth in the application, is hereby approved, subject to this Order and the following conditions:

1. The Applicants shall provide to the Department a list of closing documents within five (5) days after consummation of the subject transaction and shall maintain the listed documents and make them available to the Department for a period of not less than five (5) years from the date of consummation.
2. For a period of two (2) years after the effective date of the subject transaction, AmTrust shall provide written notice to the Department of any planned or proposed reductions in staff that would affect more than ten percent (10%) of the employees of AmTrust principally located in Pennsylvania as of, or within six (6) months prior to, the effective date of the subject transaction. For purposes of this condition, as of any date, the ten percent (10%) threshold shall be determined based upon a rolling twelve (12) month period. Such notice, which shall specify the reasons for the reduction in force and include information regarding planned or proposed severance pay and relocation opportunity arrangements, shall be filed with the Department as least ninety (90) days prior to any such planned or proposed reductions.

3. For a period of two (2) years after the effective date of the subject transaction, AmTrust shall not close or cease actively doing business from Newtown, Pennsylvania, without application to and the prior written approval of the Department.
4. For three (3) years following the effective date of the acquisition, ARI will be prohibited from declaring or paying any dividends, returns of capital or any other type of distributions to the Applicants, without the prior approval of the Commissioner, unless said distribution has been approved by the Department as a transaction between affiliates filed under the Insurance Holding Companies Act, Article XIV of the Insurance Company Law of 1921, Act of May 17, 1921, P.L. 682, as amended, 40 P.S. §§991.1401 et seq.
5. For a period of three (3) years after the effective date of the subject transaction, ARI shall not voluntarily withdraw any certificate of authority to engage in the insurance business in the Commonwealth of Pennsylvania without the prior written approval of the Department.
6. For a period of three (3) years after the effective date of the subject transaction, ARI shall not attempt to redomesticate to another jurisdiction without the prior written approval of the Department.

This Order is effective immediately and valid for one (1) year, provided no material changes are made to the transaction prior to consummation. This one-year limitation does not apply to any conditions prescribed by the Department in the Order.





Jessica K. Altman
Insurance Commissioner
Commonwealth of Pennsylvania