

BEFORE THE DEPUTY INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

In Re:	:	Pursuant to Sections 1401, 1402,
	:	and 1403 of the Insurance
Application of Eastern Atlantic	:	Holding Companies Act, Article
Insurance Company in Support of the	:	XIV of the Insurance Company
Request for Approval to Merge Builders	:	Law of 1921, Act of May 17, 1921,
Direct Insurance Company with and into	:	P.L. 682, <u>as amended</u> , 40 P.S.
Eastern Atlantic Insurance Company	:	§§991.1401, 991.1402, and
with Eastern Atlantic Insurance	:	991.1403; Sections 1921 through
Company Being the Survivor in a	:	1929 of the 1988 Business
Transaction Exempt from the	:	Corporation Law, Act of
Requirements of 40 P.S. §991.1402	:	December 21, 1988, P.L. 1444, No.
	:	177, <u>as amended</u> , 15 Pa. C.S.
	:	§§1921-1929; Sections 205 and 207
	:	of the GAA Amendments Act of
	:	1990, Act of December 19, 1990,
	:	P.L. 834, No. 198, <u>as amended</u> , 15
	:	P.S. §§21205 and 21207.
	:	
	:	Order No. ID-RC-03-40

DECISION AND ORDER

AND NOW, on this 22nd day of October, 2003, Stephen J. Johnson, Deputy Insurance Commissioner of the Commonwealth of Pennsylvania (“Deputy Commissioner”), hereby makes the following Decision and Order:

Pursuant to the Insurance Holding Companies Act, the 1988 Business Corporation Law and the GAA Amendments Act of 1990, and in consideration of the documents, presentations and reports received, as well as other inquiries and studies as permitted by law, the Deputy Commissioner hereby makes the following findings of fact:

## FINDINGS OF FACT

### Identity of Entities

1. Eastern Atlantic Insurance Company (“EAIC”) is a domestic stock casualty insurance company organized under the laws of the Commonwealth of Pennsylvania with its principal place of business in Harrisburg, Pennsylvania.
2. Builders Direct Insurance Company (“BDIC”) is a domestic stock casualty insurance company organized under the laws of the Commonwealth of Pennsylvania with its principal place of business in Harrisburg, Pennsylvania.
3. George A. Parmer (“Parmer”) is an individual with his principal place of business in Harrisburg, Pennsylvania. Parmer is an ultimate controlling person of both EAIC and BDIC.

### Filing of the Application

4. 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. (“Insurance Holding Companies Act”), provides that all mergers or other acquisitions of control of domestic insurers must be filed with the Department for approval or disapproval.
5. Section 1402 (g) of the Insurance Holding Companies Act provides for exemption from the requirements of Section 1402:
  - a) if the merger does not have the effect of changing or influencing the control of a domestic insurer, or
  - b) if the transaction is otherwise not comprehended within the purposes of Section 1402.
6. The 1988 Business Corporation Law, Act of December 21, 1988, P.L. 1444, as amended, Sections 1921 through 1929, 15 Pa.C.S. §§1921 through 1929 (“1988 BCL”), and the GAA Amendments Act of 1990, P.L. 834, No. 198, as amended, 15 P.S. §§21205 and 21207 (“GAA Amendments Act”), provide that all plans of merger of domestic insurers must be filed with the Department for approval or disapproval.
7. On August 28, 2003, 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 EAIC requesting approval to merge BDIC with and into EAIC with EAIC

being the survivor.

8. The Application was filed with the Department pursuant to Section 1402(g) of the Insurance Holding Companies Act and Section 205 of the GAA Amendments Act.

#### Notice and Filing of Comments

9. On September 13, 2003, the Department published notice in the Pennsylvania Bulletin that the Application had been submitted by EAIC and such notice invited interested persons to submit comments to the Department regarding the Application for a 30-day period, ending October 13, 2003.
10. During the 30-day public comment period, the Department received no comments regarding the Application.

#### The Transaction

11. EAIC and BDIC executed an Agreement and Plan of Merger dated as of August 28, 2003 (“Merger Agreement”), which provides for BDIC to merge with and into EAIC, with EAIC being the surviving corporation.
12. As described in the Application, the Merger Agreement was adopted by written consent of the shareholder(s) of EAIC and BDIC on August 28, 2003, and approved by the Board of Directors of EAIC and BDIC on August 28, 2003.
13. As described in the Application, EAIC shall acquire all of the assets of BDIC and assume all of the debts and other liabilities of BDIC.
14. As described in the Application, the members of the board of directors and the officers of EAIC prior to the merger shall be the members of the board of directors and the officers of EAIC after the merger.
15. As described in the Application, each share of BDIC common stock issued and outstanding immediately prior to the effective date of the merger shall cease to exist and shall be converted into 421.50 shares of EAIC common stock.
16. As described in the Application, Parmer will remain an ultimate controlling person of EAIC after the stock conversion described above.
17. 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 merger of EAIC and BDIC.
2. Under Section 1402(g) of the Insurance Holding Companies Act, the Department shall exempt a merger from the requirements of Section 1402 if the merger does not have the effect of changing or influencing the control of a domestic insurer.
3. Pursuant to Section 1402(g) of the Insurance Holding Companies Act, the Deputy Commissioner concludes that the proposed merger does not change the ultimate controlling person of the parties to the merger and, therefore, is exempt from the requirements of the Insurance Holding Companies Act.
4. The Deputy Commissioner concludes that the preparation of the Plan of Merger, pertaining to the terms and conditions, satisfies the requirements of Section 1922 of the 1988 BCL.
5. Pursuant to Section 1924 of the 1988 BCL, the Deputy Commissioner concludes that the Merger Agreement has been adopted and consented to by the shareholder(s) of EAIC and BDIC on August 28, 2003, and by the Board of Directors of EAIC and BDIC on August 28, 2003.
6. The Deputy Commissioner concludes that the provision of Section 1925 of the 1988 BCL does not apply as EAIC and BDIC are both Pennsylvania domestic business corporations.
7. The Deputy Commissioner concludes that the Articles of Merger will satisfy the requirements of Section 1926 of the 1988 BCL.
8. The Deputy Commissioner concludes that the Merger Agreement will be effective upon proper filing of Articles of Merger with the Department of State, pursuant to Sections 1927 and 1928 of the 1988 BCL.
9. The Deputy Commissioner concludes that, if the proposed merger is consummated, all the rights, privileges, immunities, powers and purposes of BDIC will be conveyed to the surviving entity, as a matter of law, pursuant to Section 1929 of the 1988 BCL.
10. Pursuant to Section 205(b) of the GAA Amendments Act, the Deputy Commissioner, believes this merger is in accordance with law and is not injurious to the interests of the policyholders and creditors.

11. The Application satisfies the requirements of the Insurance Holding Companies Act, the 1988 BCL and the GAA Amendments Act.
12. 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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	:	P.S. §§21205 and 21207.
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ORDER

Upon consideration of the foregoing, the Deputy Insurance Commissioner of the Commonwealth of Pennsylvania (“Deputy Commissioner”) hereby approves the application of Eastern Atlantic Insurance Company in support of the request for approval to merger Builders Direct Insurance Company with and into Eastern Atlantic Insurance Company with Eastern Atlantic Insurance Company being the survivor subject to the following conditions:

1. A copy of the Articles of Merger shall be filed with the Deputy Commissioner not later than ten (10) days after their filing with the Pennsylvania Department of State.

2. This transaction may be recorded as effective for accounting purposes on the first day of the calendar quarter in which the transaction is consummated.

This Order is effective immediately.

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STEPHEN J. JOHNSON  
Deputy Insurance Commissioner  
Commonwealth of Pennsylvania