

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

In Re:	:	Pursuant to Sections 1401, 1402, and
	:	1403 of the Insurance Holding
Application of Protective Underwriting	:	Companies Act, Article XIV of the
Services, Inc. in Support of the Request for	:	Insurance Company Law of 1921,
Approval to Acquire Control of all the	:	Act of May 17, 1921, P.L. 682,
Issued and Outstanding Capital Stock of	:	as <u>amended</u> , 40 P.S. §§991.1401,
American Independent Insurance Company	:	991.1402, and 991.1403
	:	
	:	
	:	Order No. ID-RC-04-21

DECISION AND ORDER

AND NOW, on this 12th day of November, 2004, M. Diane Koken, 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 Involved Persons

Acquiring Persons

1. Protective Underwriting Services, Inc. (“Protective”) is a business corporation organized pursuant to the laws of the state of Delaware with its principal place of business located in New York, New York.
2. Inverness Partners II LP (“Inverness Partners”) is a limited partnership organized pursuant to the laws of the state of Delaware with its principal place of business located in New York, New York.

3. Executive Capital Partners II LP (“Executive Capital”) is a limited partnership organized pursuant to the laws of the state of Delaware with its principal place of business located in New York, New York.
4. James Carl Comis III (“Comis”) is an individual whose principal place of business is located in New York, New York.
5. William McComb Dunwoody (“Dunwoody”) is an individual whose principal place of business is located in Houston, Texas.
6. Robert Noel Sheehy, Jr. (“Sheehy”) is an individual whose principal place of business is located in New York, New York.
7. Comis, Dunwoody, and Sheehy (collectively referred to as “Inverness Principals”) are the only ultimate controlling persons of Protective.

Domestic Insurer

8. American Independent Insurance Company (“AIIC”) is a stock casualty insurance company organized pursuant to the laws of the Commonwealth of Pennsylvania with its principal place of business located in Conshohocken, Pennsylvania.
9. American Independent Insurance Holding Company (“AIHC”) a business corporation organized pursuant to the laws of the Commonwealth of Pennsylvania with its principal place of business located in Conshohocken, Pennsylvania. AIIC is a direct subsidiary of AIHC.
10. Arch Capital Group, Ltd. (“Arch”) is a business corporation organized pursuant to the laws of Bermuda with its principal place of business located in Hamilton, Bermuda. AIHC is an indirect subsidiary of Arch.

Acquisition Filing

11. 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 a domestic insurer must be filed with the Commissioner for approval or disapproval.
12. On August 26, 2004, the Pennsylvania Insurance Department (“Department”) received an initial application (which together with all material received subsequently is collectively referenced as “Application”) from Protective for approval to acquire control of AIIC.

13. The Application was filed pursuant to Section 1402 of the Insurance Holding Companies Act.

Department Procedures

14. On September 18, 2004, the Department published notice in the *Pennsylvania Bulletin* that the Application was submitted by Protective and such notice invited interested persons to submit comments to the Department regarding the Application for a thirty-day period, ending October 18, 2004.
15. The Department received no comments regarding the Application during the thirty-day period.

Description of the Proposed Acquisition

16. As described in the Application, on May 13, 2004, Protective and Arch (among others) executed a Stock Purchase Agreement, as amended, under which Protective would acquire control of AIIC (“Stock Purchase Agreement”).
17. As described in the Application and pursuant to the Stock Purchase Agreement, Protective would accomplish the acquisition through the purchase of all the issued and outstanding common stock of AIHC.
18. As described in the Application and pursuant to the Stock Purchase Agreement, the purchase price for the AIHC common stock shall consist of approximately \$45,000,000 to be drawn from existing resources.

Standards for Review

19. Section 1402(f)(1) of the Insurance Holding Companies Act (40 P.S. §991.1402(f)(1)) establishes the standards for approval of an application for a change in control of a domestic insurer.
20. 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

21. When analyzing an application for change in control under Section 1402 of the Insurance Holding Companies Act (40 P.S. §991.1402), the Commissioner reviews the requirements for continued licensure of the domestic insurer being acquired.
22. The line or 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 of 1921, May 17, P.L. 682 as amended (“Insurance

Company Law”) (40 P.S. §382).

23. Section 206 of the Insurance Company Law (40 P.S. §386) sets out the minimum amount of paid up capital stock and paid in surplus required of a stock insurance company for each class of insurance for which it is incorporated.
24. In accordance with Section 206 of the Insurance Company Law (40 P.S. §386), AIIC is required to maintain paid up capital stock of \$850,000 to maintain licensure.
25. In accordance with Section 206 of the Insurance Company Law (40 P.S. §386), AIIC is required to maintain paid in surplus of \$425,000 to maintain licensure.
26. Upon completion of the transaction, AIIC would have paid up capital in an amount that would satisfy the statutory minimum required of a stock casualty insurance company licensed to write in Pennsylvania.
27. Upon completion of the transaction, AIIC would have paid in surplus in an amount that would satisfy the statutory minimum required of a stock casualty insurance company licensed to write in Pennsylvania.

Competitive Impact

28. The acquisition of control of AIIC 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.
29. The acquisition of control of AIIC would not lessen competition or tend to create a monopoly in the Commonwealth because the market share of the AIIC, as stated in the Application, does not exceed the market share levels established in Section 1403.

Financial Condition of Protective

30. When analyzing an application for an acquisition of control under Section 1402 of the Insurance Holding Companies Act (40 P.S. §991.1402), the Department reviews the financial condition of the acquiring person(s).
31. The Department has reviewed the financial statements submitted by Inverness Partners and Executive Capital as of December 31, 2003.
32. The Department has reviewed the financial statements submitted by Comis and Dunwoody as of August 25, 2004.

33. The Department has reviewed the financial statements submitted by Sheehy as of August 23, 2004.
34. The financial condition of Inverness Partners, Executive Capital, Comis, Dunwoody, and Sheehy would not pose any impediments to the change in control nor jeopardize the financial condition of AIIC.

Plans for the Acquired Insurer

35. When analyzing an application for an acquisition of control under Section 1402 of the Insurance Holding Companies Act (40 P.S. §991.1402), the Department reviews the plans or proposals that the acquiring party has for the insurer.
36. As provided in the Application, Protective does not have any plans to liquidate AIIC, 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 that would be unfair and unreasonable to the policyholders of AIIC and not in the public interest.

Management

37. When analyzing an application for an acquisition of control under Section 1402 of the Insurance Holding Companies Act (40 P.S. §991.1402), the Department reviews the competence, experience, and integrity of the persons who would control the operations of the acquired insurer.
38. Biographical affidavits for all directors and executive officers of Protective 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 AIIC 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 (40 P.S. §991.1402), the Commissioner has jurisdiction to review and approve the change in control of AIIC.
2. Under Section 1402 of the Insurance Holding Companies Act (40 P.S. §991.1402), 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 insurer 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.
3. Under Section 1402 of the Insurance Holding Companies Act (40 P.S. §991.1402), the Commissioner has not found that any of the above conditions are present with respect to the change in control of AIIC.
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.

