McGuireWoods LLP
625 Liberty Avenue, 23rd Floor
Pittsburgh, PA 15222-3142
Phone: 412.667.6000
Fax: 412.667.6050
www.mcguirewoods.com

Paul K. Stockman
Direct: 412.667.7945

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McGUIREWOODS

pstockman@mcguirewoods.com
Direct Fax: 412.667.7975

May 18, 2013

Via Federal Express and Electronic Mail

Mr. Robert Brackbill
Chief, Company Licensing Division
Commonwealth of Pennsylvania
Insurance Department
1345 Strawberry Square
Harrisburg, Pennsylvania 17120

Steven L. Yerger
Company Licensing Division
Commonwealth of Pennsylvania
Insurance Department
1345 Strawberry Square
Harrisburg, Pennsylvania 17120

Re: Application for Approval to Acquire Control of OneBeacon Insurance Company and Potomac Insurance Company, 43 Pa. Bull. 1157 (Feb. 23, 2013)

Dear Mr. Brackbill:

The Pennsylvania Manufacturers' Association, Associated Industries of Massachusetts, Crosby Valve, LLC, Invensys, Inc., ITT Corporation, Meritor, Inc., PolyOne Corporation, The Procter & Gamble Co., Rockwell Automation, Inc., 3M Company, and the William Powell Company (collectively, "Petitioners") submit this brief response to the letter dated May 3, 2013, which was submitted by counsel for OneBeacon Insurance Group, Ltd. ("OBIC") and Armour Group Holdings Limited ("Armour Group") (collectively, the "Insurers") in response to the Petition to Intervene (the "Petition") filed by Petitioners on April 23, 2013. Additionally, although Belden Inc. and 3M Company have separate counsel, they have indicated that they join in the requests made herein

The Insurers argue in their May 3 letter that Petitioners have no legal right to intervene in this proceeding, and are not entitled to (i) participate in the development of the administrative record on which the Insurance Department will review the propriety and legality of the proposed sale of OBIG's operating subsidiaries to Armour Group, or (ii) even have access to the voluminous supporting materials that the Insurers have submitted to the Department with their Form A application, which have been unilaterally labeled as "confidential," "proprietary," and "trade secret" information to avoid disclosure. The Insurers do not deny that Petitioners are legitimate stakeholders in this proceeding with a compelling interest in protecting the security of

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their legacy insurance policies, which provide an ongoing and crucial source of protection against escalating long-tail claim liabilities. The Insurers also do not deny that Petitioners' interests as policyholders of OBIG's operating subsidiaries "may be directly affected" by the proposed sale of those subsidiaries to Armour Group, and that Petitioners' interests are "not adequately represented by existing parties" to this proceeding. 1 Pa. Code § 35.28(a)(2). Nevertheless, the Insurers claim that Petitioners are not entitled to review the Insurers' secret filings or participate as parties to this proceeding, but instead are limited to filing written comments addressing an administrative record that they have not been permitted to review. The Insurers purport to find authority for this abnegation of due process in *LaFarge Corp. v. Commonwealth*, 557 Pa. 544, 735 A.2d 74 (1999), but *LaFarge* does not support the Insurers' position that an administrative proceeding addressing a Form A application can be conducted in secret. In fact, in *LaFarge*, the policyholders were granted status as intervenors to participate in the administrative process (as the Commonwealth Court's opinion in the case made clear). *See LaFarge Corp. v. Commonwealth*, 690 A.2d 826, 831 (Pa. Commw. Ct. 1997). Thus, *LaFarge* is not authority for denying this Petition.

Rather, *LaFarge* held only that the General Associations Act Amendments of 1990, 15 P.S. §§ 21101-404 ("GAA") – which established distinct procedures applicable to the reorganization and division of an insurance company – did not implicitly incorporate the separate, and more stringent, procedural due process requirements set forth in the Administrative Agency Law, 2 Pa. C.S. §§ 101-754 ("AAL"), and its implementing regulations, *see* 1 Pa. Code, Part II, including the requirement of adversarial evidentiary hearings. Because the GAA set forth its own specific procedures for determining whether a proposed reorganization or division should be approved, including notice and an opportunity for a public, non-evidentiary hearing, the court found no basis for concluding that those procedures should be displaced by the separate requirements of the AAL. *LaFarge*, 557 Pa. at 552-53. The GAA has no relevance to a change of control proceeding such as this one, and it is misleading for the Insurers to rely on a case construing due process requirements in the context of the specific procedures set forth in that statute.

There is likewise no merit to the Insurers' assertion that section 1402 of the Insurance Holding Companies Act, 40 P.S. § 991.1402 – which ***does*** apply to the Insurers' Form A application – "provides procedures identical to those approved by the Supreme Court in *LaFarge*." May 3 Letter at 2. The procedural protections that were followed by the Department and ultimately approved in *LaFarge* included (a) prior notice to the public of the proposed reorganization or division, (b) public hearings held on three different dates, at which objecting parties (not merely the insurance company applicant) were afforded the opportunity to make oral presentations, (c) receipt by the Department of "reports and evaluations prepared by the financial and actuarial experts of the objecting parties," which presupposes that the objectors had access to the applicant's submissions, and (d) a requirement that the insurer submit supplemental information in response to the materials submitted and arguments made by the objecting parties. *LaFarge*, 557 Pa. at 548, 553. No such procedural protections appear in section 1402 of the Insurance Holding Companies Act, which instead addresses the required contents of a Form A

application for change of control and the substantive criteria governing the Department's determination whether to approve the application.

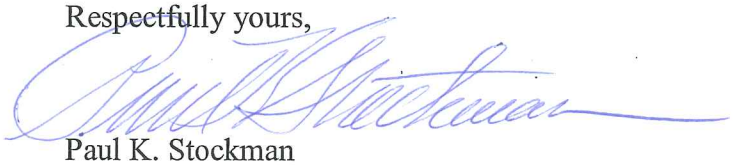
Because section 1402 does not incorporate its own specific due process requirements for change of control determinations, the general rules of administrative practice and procedure are fully applicable here, as the Department's own implementing regulations confirm. *See* 30 Pa. Code § 56.1 ("1 Pa. Code Part II (relating to general rules of administrative practice and procedure) is applicable to the activities of and proceedings before the Insurance Department"). Those procedures plainly contemplate and allow intervention by interested stakeholders, and the standards for intervention are readily satisfied by Petitioners. *See* 1 Pa. Code § 35.27-.32 (petitions for intervention). The same rules of practice and procedure expressly permit intervenors to participate in hearings on contested applications (*id.* § 35.125(b)), to present and cross-examine witnesses, *id.* §§ 35.126-.127, and to review the entire contested application (including all exhibits), which are considered part of the formal administrative record, *id.* § 35.125. The Insurers' argument that these due process requirements – which are essential elements of informed, open and reasoned decisionmaking – can be arbitrarily scuttled at will, and replaced with a secret review proceeding in which the Insurers' submissions and representations to this Department are immunized from scrutiny by policyholders and their financial experts, is without legal foundation, and violates basic notions of due process and fundamental fairness.

The glaring infirmities in the Insurers' unilateral approach to agency decisionmaking cannot be cured by the Department's recent decision to re-open and extend the comment period for the Proposed Transaction until July 9, 2013. The opportunity to comment on a Proposed Transaction cannot be a meaningful one if the Petitioners are deprived of access to the financial and other materials submitted in support of the Form A application, and are left to speculate as to their contents. As long as the Insurers insist on designating virtually the entire administrative record, including the exhibits to their Form A application, as confidential, Petitioners must be afforded the right to intervene in this proceeding and to review with their financial experts the submissions and representations made by the Insurers to this Department, including those relating to the Acquired Companies' reserves and capital structure, estimated liabilities, actuarial projections, and the financial resources and experiences of Armour Group and its principals. Petitioners also must be afforded the right to present documentary and testimonial evidence at an administrative hearing. With the security of thousands of legacy policies sold to hundreds of OneBeacon policyholders at stake in this Proposed Transaction, an agency determination based on a one-sided administrative record accessible only to the Insurers is plainly inappropriate.

For all of the foregoing reasons, as well as the reasons set forth in their Petition to Intervene, Petitioners should be granted leave to intervene in this proceeding and access to the entire administrative record, including all submissions and exhibits filed by the Insurers in support of their Form A application. Petitioners also request that the Department hold a hearing

on the Proposed Transaction, and that they be afforded the right to present oral and documentary evidence, as well as cross-examine any witnesses put forward by the Insurers.

Respectfully yours,



Paul K. Stockman

cc (via first class mail):
Stuart Wrenn
James R. Potts, Esq.
Steven B. Davis, Esq.
Maureen A. Phillips, Esq.
Constance B. Foster, Esq.
cc (via electronic mail):
Dean A. Bierkan, Esq.
Basil A. DiSipio, Esq.
William F. Greaney, Esq.
Charles Fischette, Esq.
Robert J. Gilbert, Esq.
Fannie I. Minot, Esq.
Douglas L. Skor, Esq.
Patrick J. Boley, Esq.
Paul A. Rose, Esq.
Robert C. Mitchell, Esq.