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By FedEx

May 21, 2013

Mr. Robert Brackbill, Jr.
Pennsylvania Insurance Department
Bureau of Company Licensing and Financial Analysis
1345 Strawberry Square
Harrisburg, PA 17120[1]

Re: *Application for Approval to Acquire Control of OneBeacon Insurance Company and Potomac Insurance Company, 43 Pa. Bull. 1157 (Feb. 23, 2013) - Reply In Support of Petition to Intervene by Colgate-Palmolive Company*

Dear Mr. Brackbill:

This firm has been retained to represent Colgate-Palmolive Company ("Colgate") regarding Colgate's interest in the proposed acquisition of OneBeacon Insurance Company's, OneBeacon America Insurance Company's, and Potomac Insurance Company's run-off risks by Trebuchet US Holdings, Inc., a subsidiary of Bermuda-domiciled and Bermuda-incorporated Armour Group Holdings Limited (the "Proposed Acquisition"). We write in response to the letter of OneBeacon Insurance Group, Ltd. ("OBIG") and Armour Group Holdings Limited ("Armour"),[2] dated May 3, 2013 (the "May 3rd Letter"). In the May 3rd Letter, the Applicants seek to oppose Colgate's Petition to Intervene in the above-referenced matter, filed on April 24, 2013 (the "Petition to Intervene").[3] A copy of the Petition to Intervene is enclosed for your convenience.

In the Petition to Intervene, Colgate requests permission from the Insurance Department of the Commonwealth of Pennsylvania (the "Department" or "Insurance Department") to intervene in the Proposed Acquisition pursuant to the

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1 Colgate respectfully requests confidential treatment of this letter as against any entities or individuals not parties to the Proposed Acquisition and the opportunity to oppose any disclosure of this letter.

2 Armour and OBIG are referred to collectively herein as the "Applicants."

3 Capitalized terms, not otherwise defined herein, shall have the meaning ascribed to them in Colgate's Petition to Intervene.

Pennsylvania Administrative Code, 1 Pa. Code §§ 35.27 *et seq.* *See* Petition to Intervene, p. 1, 9. As set forth more fully in the Petition to Intervene, such a petition may be filed by an entity "claiming **a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought**." 1 Pa. Code § 35.28 (emphasis added). Such a right or interest will arise where a party possesses:

> (2) **An interest which may be directly affected and which is not adequately represented by existing parties**, and as to which petitioners may be bound by the action of the agency in the proceeding. **The following may have an interest: consumers, customers or other patrons served by the applicant or respondent**; holders of securities of the applicant or respondent; employees of the applicant or respondent; competitors of the applicant or respondent.

1 Pa. Code § 35.28(a)(2) (emphasis added).

Colgate's interest is precisely the sort contemplated by the Administrative Code. Colgate is a customer of the predecessors of OneBeacon America, one of the parties to the Proposed Acquisition. As set forth in the Petition to Intervene, for decades, Colgate annually purchased liability insurance policies from the predecessors of OneBeacon America, paying substantial premiums throughout. These policies have not been exhausted, and therefore OneBeacon's obligations remain active and may continue to do so for a number of years. Colgate has a direct interest in ensuring that the Proposed Acquisition is not structured in a manner that renders the acquired OneBeacon entities unable to pay present and future covered claims.

Notwithstanding the unambiguous language of the Pennsylvania Administrative Code, however, in the May 3rd Letter, Applicants argue that Colgate's Petition to Intervene should be denied because there is no right of intervention in connection with regulatory matters pending before the Department. In particular, the Applicants allege that the Pennsylvania Supreme Court has affirmed that the "sole" process available for Colgate, as a policyholder, to identify issues and concerns to the Department is through submission of a comment. *See* May 3rd Letter at p. 1. Furthermore, the Applicants claim that the right of intervention codified in the Pennsylvania Administrative Code is "inconsistent" with the regulatory review process provided under the Insurance Holding Company Act and Supreme Court precedent. *See* May 3rd Letter at p. 1. The Applicants are wrong on both counts.

As an initial matter, the two cases cited by the Applicants, *LaFarge Corp. v. Commonwealth, Insurance Department*, 557 Pa. 544, 735 A.2d 74 (Pa. 1999), and *Pennsylvania Coal Mining Association v. Insurance Department*, 471 Pa. 437, 370 A.2d 685 (Pa. 1977), do not stand for the propositions for which they are referenced and do

not support the Applicants' position that Colgate's Petition to Intervene is somehow improper and should be denied.

Contrary to the Applicants' characterization of *LaFarge*, which examined procedural due process requirements for objectors in connection with an application under the General Associations Act Amendments Act of 1990, P.L. 834 No. 198, 15 P.S. §§ 21101, *et seq.* (the "GAAAA"), that case does **not** create a *per se* rule barring intervention by interested third parties in regulatory matters before the Department.

In *LaFarge* the Supreme Court held that, based on the facts of that case, a protracted adversarial process involving sworn testimony, cross-examination, a full stenographic record and extensive delays was not required and that the procedures followed by the Department satisfied the petitioner's procedural due process rights. The Supreme Court, however, **never purported to issue any broad assertion foreclosing the right of interested parties to intervene in regulatory proceedings before the Department**. Indeed, in *LaFarge*, interested parties were permitted to interject themselves into the administrative proceedings at issue, which is precisely what Colgate seeks to do here. Furthermore, the *LaFarge* Court recognized explicitly that due process inquiries require flexibility and warrant "different procedural protections in different situations." *Id.* 735 A.2d at 78 (*citing Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972)).

Thus, the holding in *LaFarge* must be limited to the analysis of the scenario at issue therein – one which is starkly different than the proceedings here. In particular, the procedures undertaken by the Department in *LaFarge* were extensive and exhaustive, consisting of:

- independent expert reports solicited by the Department on solvency and the financial viability of the transaction;
- consideration by the Department of additional reports submitted by financial and actuarial experts retained by the objecting parties to the transaction;
- five separate solicitations by the Department for public input;
- the receipt and consideration of "thousands of pages" of written comments from dozens of interested persons;
- granting to every party that expressed a desire to speak the opportunity to make an oral presentation before the Commissioner of the Department;
- three public information hearings;

- supplemental requests for information by the Department to the applicant in response to concerns raised through the information solicitation process; and
- the production of "massive materials" which the Department exhaustively analyzed in a 65-page decision containing 350 findings of fact.

LaFarge, 735 A.2d at 78.

Moreover, unlike the instant matter involving the Applicants' request for approval of the Proposed Acquisition, the Department in *LaFarge* was required to hold hearings under the GAAAA. *See id.* at 75. Here, a hearing is not automatically required if the parties (the Applicants) do not request one, although a hearing may be held if the Department, in its discretion, determines that such a hearing is warranted. *See* Insurance Holding Company Act, 40 Pa. Stat. § 991.1402(f)(2).[4]

Here, Colgate's intervention is necessary to provide it with procedural due process protections. Notably, the confidential treatment sought for many of the schedules, exhibits, and documents supporting the Form A Application effectively has deprived Colgate (and other policyholders with legacy claims) of the opportunity to assess the solvency and financial viability of the Proposed Acquisition in order to ensure that it does not impair rights and entitlements under existing insurance policies, especially in connection with coverage for long-tail claims. Without the opportunity to intervene and investigate the details of the Proposed Acquisition, Colgate's rights under the Insurance Policies are likely to be impaired. *See* Colgate's Petition to Intervene, ¶¶ 13, 25, 31-33.

Indeed, in *Pennsylvania Coal Mining Association*, the other case cited by the Applicants, the Court recognized that the root requirement of due process is that an individual be provided an opportunity for a hearing before he is deprived of an interest or impaired of a right. 370 A.2d at 692. There, however, the court found that a "full hearing" was not necessary because, among other things, the rights of the parties seeking intervention were sufficiently protected by a statutory provision allowing them to recover any excess rate paid in the event that the insurance company's proposed rate increases were later determined to be too high. *Id.* at 694. In contrast, here, if the Proposed Acquisition is approved and consummated, but leaves the Acquired Companies (as defined in Form A) with insufficient capital and funds to satisfy various long-tail claims under applicable insurance policies, policyholders with legacy claims could be left with no recourse and may be forced to attempt to absorb such losses, which could be significant, on their own. This is precisely the type of right or interest that should be protected by due process.

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[4] For the reasons initially set forth in its Petition to Intervene, Colgate respectfully reiterates its request for a hearing.

Contrary to the Applicants' contentions in the May 3rd Letter, the Supreme Court, in *LaFarge* and *Pennsylvania Coal Mining Association*, did not hold or even imply that comment submission is the "sole" mechanism through which interested third-parties can participate in regulatory proceedings before the Department.

Moreover, *LaFarge* and *Pennsylvania Coal Mining Association* do not support the Applicants' argument that the right of intervention pursuant to the Pennsylvania Administrative Code is inconsistent with the regulatory process under the Insurance Holding Company Act and, therefore, the right to intervene is foreclosed in regulatory matters before the Department. Indeed, the right of third parties to petition to intervene in Department proceedings, pursuant to 1 Pa. Code § 35.28(a)(2), has been recognized explicitly by the Pennsylvania Supreme Court. *See*, *e.g.*, *Pa. Dental Ass'n v. Commonwealth, Ins. Dep't*, 512 Pa. 217, 228-29, 516 A.2d 647, 652-53 (Pa. 1987) (recognizing that dental association had a right to petition to intervene in connection with application for rate increase pending before Insurance Department, but refusing to consider merits of dental association's appeal of denial of its petition to intervene where appeal was untimely). Thus, there is nothing inconsistent about allowing Colgate, a policyholder, to intervene in regulatory proceedings concerning the Proposed Acquisition, which directly affects Colgate's coverage of legacy claims under its Insurance Policies. *See* Petition to Intervene, ¶¶ 23-27(discussing Colgate's statutory right to intervention pursuant to the Pennsylvania Administrative Code); *see also Commonwealth v. Keystone Mut. Cas. Co.*, 366 Pa. 149, 76 A.2d 867 (Pa. 1950) (recognizing that policyholders are interested parties in proceedings affecting insurance companies, and therefore, should be permitted to intervene to protect their interest).

Accordingly, the Applicants' arguments should be rejected in their entirety. For the reasons set forth above, as well as the reasons set forth in the Petition to Intervene, which are incorporated herein by reference, we once again respectfully ask the Insurance Department to grant Colgate's Petition to Intervene.

Respectfully submitted,

Pamela D. Hans /DSG

Pamela D. Hans

DSG/PH
Enclosure

cc: Steven B. Davis, Esq. (w/o encl.)
Constance B. Foster, Esq. (w/o encl.)
Paul M. Hummer, Esq. (w/o encl.)