

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

In Re: : Pursuant to Sections 1401, 1402  
: and 1403 of the Insurance Holding  
Application of National Indemnity : Companies Act, Article XIV of the  
Company in Support of the Request for : Insurance Company Law of 1921, Act  
Approval to Acquire Control of : of May 17, 1921, P. L. 682, as  
AmGUARD Insurance Company, : amended, 40 P.S. §§991.1401,  
NorGUARD Insurance Company, : 991.1402 and 991.1403  
EastGUARD Insurance Company and :  
WestGUARD Insurance Company : Order No. ID-RC-12-14

DECISION AND ORDER

AND NOW, on this 22<sup>nd</sup> day of October, 2012, Michael F. Consedine, 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

1. WestGUARD Insurance Company (“WestGUARD”) is a domestic stock casualty insurance company organized under the laws of Pennsylvania with its principal place of business in Wilkes-Barre, Pennsylvania.
2. EastGUARD Insurance Company (“EastGUARD”) is a domestic stock casualty insurance company organized under the laws of Pennsylvania with its principal place of business in Wilkes-Barre, Pennsylvania. EastGUARD currently directly holds 12% of the issued and outstanding stock of WestGUARD.

3. AmGUARD Insurance Company (“AmGUARD”) is a domestic stock casualty insurance company organized under the laws of Pennsylvania with its principal place of business in Wilkes-Barre, Pennsylvania. AmGUARD currently directly holds 40% of the issued and outstanding stock of WestGUARD.
4. NorGUARD Insurance Company (“NorGUARD” and together with AmGUARD, EastGUARD and WestGUARD “The Domestic Insurers”) is a domestic stock casualty insurance company organized under the laws of Pennsylvania with its principal place of business in Wilkes-Barre, Pennsylvania. NorGUARD currently directly holds 48% of the issued and outstanding stock of WestGUARD.
5. Clal U.S. Holdings, Inc. (“Clal U.S.”) is a foreign holding company organized under the laws of Delaware with its principal place of business in Wilkes-Barre, Pennsylvania. Clal U.S. currently indirectly holds 100% of the issued and outstanding stock of The Domestic Insurers.
6. Clal Insurance Enterprises Holdings Ltd. (“Clal Enterprises”) is an alien holding company organized under the laws of Israel with its principal place of business in Tel-Aviv, Israel. Clal Enterprises currently directly holds 100% of the issued and outstanding stock of Clal U.S.
7. National Indemnity Company (“NIC”) is a foreign stock casualty insurance company organized under the laws of Nebraska with its principal place of business in Omaha, Nebraska.
8. Berkshire Hathaway Inc. (“Berkshire”) is a foreign holding company organized under the laws of Delaware with its principal place of business in Omaha, Nebraska. Berkshire currently directly holds 100% of the issued and outstanding stock of NIC.
9. Warren E. Buffett (“Mr. Buffett”) is an individual with his primary residence located in Omaha, Nebraska. Mr. Buffett currently owns approximately 37.7% of the outstanding Class A shares and 2.39% of the Class B shares of Berkshire. This represents approximately 22.23% of the economic interest and 33.98% of the aggregate voting power, given the differing economic and voting rights of Class A relative to Class B stock.
10. Mr. Buffett is the sole ultimate controlling person of NIC.

### Acquisition Filing

11. 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.
12. On August 30, 2012, 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 NIC for approval to acquire control of The Domestic Insurers.
13. The Application was filed pursuant to Section 1402 of the Insurance Holding Companies Act.

### Department Procedures

14. On September 15, 2012, the Department published notice in the *Pennsylvania Bulletin* that the Application was submitted by NIC 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”).
15. The Department received no comments regarding the Application during the Comment Period.

### Description of the Proposed Acquisition

16. As described in the Application, NIC has entered into a stock purchase agreement (“the Agreement”) with Clal Enterprises.
17. As described in the Application and pursuant to the Agreement, NIC intends to purchase 100% of the issued and outstanding shares of Clal U.S. from Clal Enterprises (“the Acquisition”).
18. As described in the Application, NIC would fund the entire purchase price from cash on hand.
19. As described in the Application, Mr. Buffett would become the sole ultimate controlling person of The Domestic Insurers as a result of the Acquisition.

### Standards for Review

20. 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.

### Licensing Requirements

21. 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.
22. The classes 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).
23. The minimum paid up capital stock and paid in surplus required of a stock insurer for each class of insurance is set out in Section 206 of the Insurance Company Law (40 P.S. §386).
24. In accordance with Section 206 of the Insurance Company Law (40 P.S. §386), each of The Domestic Insurers is required to maintain a minimum paid up capital stock of \$2,350,000 to write the classes of insurance for which each is presently licensed.
25. In accordance with Section 206 of the Insurance Company Law (40 P.S. §386), each of The Domestic Insurers is required to maintain a minimum paid in surplus of \$1,175,000 to write the classes of insurance for which each is presently licensed.
26. Upon completion of the transaction, each of The Domestic Insurers will have paid up capital in an amount that will satisfy the minimum required of a casualty insurance company licensed to write the classes of authority currently held by each of The Domestic Insurers.
27. Upon completion of the transaction, each of The Domestic Insurers will have paid in surplus in an amount that will satisfy the minimum required of a casualty insurance company licensed to write the classes of authority currently held by each of The Domestic Insurers.

### Competitive Impact

28. The acquisition of control of The Domestic Insurers 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 the Domestic Insurers will not lessen competition or tend to create a monopoly in the Commonwealth because the market share of The Domestic Insurers does not exceed the market share levels established in Section 1403.

### Financial Condition of Applicant

30. 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).
31. The Department has reviewed the annual financial statement submitted by NIC as of December 31, 2011.
32. As of December 31, 2011, NIC reported:  
  
Assets of \$115,452,570,996  
Liabilities of \$45,297,143,421  
Paid-in capital of \$26,806,657,926  
Surplus as regards policyholders of \$70,155,427,575
33. The financial condition of NIC would not pose any impediments to the change in control nor jeopardize the financial condition of The Domestic Insurers.

### Plans for the Acquired Insurer

34. 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.
35. As stated in the Application, NIC has no future plans or proposals to liquidate The Domestic Insurers, to sell its assets, to merge or consolidate it with any person or persons, or to make any other material change in its business operations or corporate structure.

### Management

36. 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.
37. Biographical affidavits for all directors and executive officers of NIC were reviewed by the Department.
38. The Department is satisfied that the persons who would control the operations of The Domestic Insurers have such competence, experience and integrity that the interests of policyholders and the public would not be jeopardized.
39. 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 The Domestic Insurers.
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 write 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 party 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 any other material change in its business or corporate structure or management, are unfair and unreasonable and fail to confer benefit on 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 of the 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 The Domestic Insurers.
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.

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

In Re: : Pursuant to Sections 1401, 1402  
: and 1403 of the Insurance Holding  
Application of National Indemnity : Companies Act, Article XIV of the  
Company in Support of the Request for : Insurance Company Law of 1921, Act  
Approval to Acquire Control of : of May 17, 1921, P. L. 682, as  
AmGUARD Insurance Company, : amended, 40 P.S. §§991.1401,  
NorGUARD Insurance Company, : 991.1402 and 991.1403  
EastGUARD Insurance Company and :  
WestGUARD Insurance Company : Order No. ID-RC-12-14

ORDER

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

The application of National Indemnity Company (“NIC”) in support of the request for approval to acquire control of AmGUARD Insurance Company, NorGUARD Insurance Company, EastGUARD Insurance Company and WestGUARD Insurance Company as set forth in the application, is hereby approved, subject to this Order and the following condition:

NIC 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.

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.

\_\_\_\_\_  
Michael F. Consedine  
Insurance Commissioner  
Commonwealth of Pennsylvania