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Brackbill, Robert

From: Frantz, Jodi (Insurance)
Sent: Monday, May 27, 2013 8:31 PM
To: Brackbill, Robert; Rankin, Kimberly
Subject: FW: Donegal Group Inc--Form A Application of Gregory M. Shepard
Attachments: Donegal Group Inc. and Southern Insurance Company of Virginia Bureau ofpdf

From: Pratter, Robert L. [RPratter@duanemorris.com]
Sent: Saturday, May 25, 2013 1:57 PM
To: Frantz, Jodi (Insurance)
Subject: Donegal Group Inc--Form A Application of Gregory M. Shepard

Dear Ms. Frantz:

I am enclosing for the Pennsylvania Insurance Department's information a copy of the Virginia Bureau of Insurance Response to Mr. Shepard's Motion for Protective Order, which relates to Exhibits H-M to Mr. Shepard's Form A Application and his biographical affidavit that we have been discussing with you. We believe that the Virginia Bureau of Insurance Response sets forth many of the same reasons Donegal Group Inc. has been submitting to the Pennsylvania Insurance Department in support of its request that the Department deny Mr. Shepard's claims to confidential treatment for Exhibits H-M and his biographical affidavit.

Thank you for your continuing attention to this matter.

Robert L. Pratter
Duane Morris LLP

For more information about Duane Morris, please visit <http://www.DuaneMorris.com>

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COMMONWEALTH OF VIRGINIA

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STATE CORPORATION COMMISSION

May 23, 2013

Joel H. Peck, Clerk
State Corporation Commission
1300 East Main Street
Richmond, Virginia 23219

Re: Application of Gregory M. Shepard
Case No. INS-2013-00054

Dear Mr. Peck:

Enclosed please find the *Response of the Bureau of Insurance to the Motion of Gregory M. Shepard for the Entry of Protective Order* ("Response") filed in response to the Motion for Protective Order filed in the above reference matter. Please see that the Response is filed in connection with the above reference matter.

If you have any questions, please do not hesitate to call me at 371-9140. Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to be "JOC".

John O. Cox
Attorney

Enclosure

2013 MAY 23 A 11:46
CLERK'S OFFICE
REGISTRATION CONTROL CENTER

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

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APPLICATION OF

GREGORY M. SHEPARD

CASE NO. INS-2013-00054

For approval of acquisition of control
of or merger with a domestic insurer

RESPONSE OF THE BUREAU OF INSURANCE
TO THE MOTION OF GREGORY M. SHEPARD
FOR THE ENTRY OF A PROTECTIVE ORDER

Comes now the Bureau of Insurance ("Bureau") and pursuant to rule 5 VAC 5-20-110 of the State Corporation Commission's ("Commission") Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.*, offers the following response to the May 9, 2013, "Motion of Gregory M. Shepard for Entry of a Protective Order" ("Motion") filed by Gregory M. Shepard ("Applicant"):

(1) The Bureau objects to the Applicant's request for confidential treatment of audited financial statements that should remain part of the public record in connection with the Applicant's request. The Bureau also objects to the Applicant's request for blanket confidential treatment of the Applicant's biographical affidavit.

(2) On April 8, 2013, the Applicant requested that the Commission approve his application for Acquisition of Control of or Merger with a Domestic Insurer ("Application" or "Form A"), pursuant to § 38.2-1323 of the Code of Virginia ("Code") and 14 VAC 5-260-40 of the Commission's Rules Governing Insurance Holding Companies, 14 VAC 5-260-10 *et seq.* The Commission's review and potential approval of the Application is a public proceeding that must take into account the interests of the policyholders of the insurer and the public.

(3) Certain information in the Application was delivered under seal and, on May 9, 2013, the Applicant, by counsel, filed his Motion with respect to the information under seal.

(4) Specifically, the Applicant's Motion requests confidential treatment of two categories of information: (a) his audited financial statements, filed as Exhibits H through M to the Application, and (b) his biographical affidavit, filed as Exhibit N to the Application.

(5) The Bureau has reviewed the Motion as well as the information for which confidential treatment has been requested and hereby objects to the entry of the Protective Order as requested.

(6) As an initial matter, the Bureau notes that review of the Application is a public proceeding, initiated by the Applicant, that must consider the interests of policyholders and the public. Concealing information from the public, as the Applicant suggests, may prevent interested persons from assessing the proposed acquisition. Additionally, treating the information as confidential could raise issues of transparency both in the review and any approval of the Application by the Commission.

(7) The Applicant filed the Form A with full awareness that its approval requires a public proceeding. The Form A instructions provide that it is a public document and that confidential treatment for any part of the Form A shall not be granted if its omission would make the document misleading, incomplete, unclear, or confusing.¹

(8) As part of the Motion, the Applicant does not provide any sufficient or concrete grounds in support of confidentiality. Rather, the Applicant simply speculates that such personal information "might" be used for undefined "improper purposes".

¹ To be sure, confidential treatment is not automatic even if omission would not make Form A misleading, incomplete, unclear or confusing. The burden remains on the Applicant to show why confidential treatment outweighs public disclosure and that the information is not otherwise publicly available.

(9) The Bureau contends that the Applicant's biographical affidavit and the audited financial statements should be part of the public record rather than kept confidential.

Section 38.2-1324 of the Code requires that an application for control of a domestic insurer made pursuant to § 38.2-1323 of the Code contain, among other things, the applicant's principal occupation, all offices and positions held during the past five years, and any conviction of crimes during the past ten years. In addition, § 38.2-1324 of the Code requires that the application contain fully audited financial information of each acquiring person for up to five years.

(10) The Bureau objects to the entry of the Protective Order as requested on the grounds that it will make the Form A incomplete because it will not contain the information required by § 38.2-1324 of the Code.

(11) Additionally, pursuant to § 38.2-1326 of the Code, a Form A application shall be approved unless the Commission makes one of six findings enumerated in § 38.2-1326 of the Code. The absence of the information for which confidential treatment has been requested would obscure from the public the information that would be used in making, or not making, two out of the six findings: 1) that the Applicant's financial condition would jeopardize the financial stability of the insurer; and 2) that the Applicant's competence, experience, and integrity are such that to permit the acquisition would be adverse to the interests of policyholders and the general public.

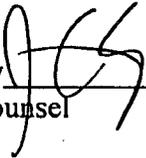
(12) The Bureau recommends that the Motion be partially granted with respect to Exhibit N, the biographical affidavit, and the Applicant be ordered to file a redacted copy of Exhibit N to be made part of the public record. The Bureau recommends that the Applicant be allowed to redact personal identifying information such as the Applicant's social security number and home address. The Bureau further recommends that Exhibits H through M, the Applicant's

audited financial statements, be made part of the public record because their exclusion would make the Form A incomplete.

WHEREFORE, the Bureau respectfully requests that the Commission grant the Motion with respect to Exhibit N, order the Applicant to file a redacted copy of Exhibit N to be made part of the public record, and deny the Motion with respect to Exhibits H through M.

Respectfully submitted,

Bureau of Insurance
State Corporation Commission

By  _____
Counsel

John O. Cox, Attorney
Office of General Counsel
State Corporation Commission
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Richmond, Virginia 23218
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Telephone: (804) 371-9671
Fax: (804) 371-9240

Dated: May 23, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of May, 2013, a true copy of the foregoing "Response of the Bureau of Insurance to Motion for Protective Order" was mailed, by first class mail postage prepaid, to: J. Victor Peterson, Esquire, and Eric M. Fogel, Esquire, Lathrop & Gage, LLP, 155 North Wacker Drive, Suite 3050, Chicago, Illinois 60606-1787; Phillip R. "Duke" de Haas, Esquire, and Heather Hays-Lockerman, Esquire, Troutman Sanders LLP, 1001 Haxall Point, P.O. Box 1122, Richmond, Virginia 23218; and Tennille J. Checkovich, McGuire Woods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030.

