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FIRM and AFFILIATE OFFICES

ROBERT L. PRATTER  
DIRECT DIAL: 215 979 1173  
PERSONAL FAX: 215 754 4845  
E-MAIL: rlpratter@duanemorris.com

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Corporate & Financial Regulation

JUN 17 2013

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June 14, 2013

**VIA E MAIL AND FIRST CLASS MAIL**

Mr. Robert E. Brackbill, Jr.  
Chief, Company Licensing Division  
Department of Insurance  
Commonwealth of Pennsylvania  
1345 Strawberry Square  
Harrisburg PA 17102

**Re: Form A Statement Dated March 20, 2013 Regarding the Acquisition of Control of Atlantic States Insurance Company, a Pennsylvania insurance company and wholly owned subsidiary of Donegal Group Inc. ("DGI") by Gregory Mark Shepard ("Shepard") (the "Form A")**

Dear Mr. Brackbill:

By letter dated May 31, 2013, a copy of which we attach as Exhibit "A" to this letter, J. Victor Peterson, counsel to Mr. Shepard, has finally sent us unredacted copies of Mr. Shepard's financial statements (collectively the "Financial Exhibits") that were originally attached as Exhibits H-M to the Form A as filed with the Department but not provided to DGI. Mr. Peterson's letter is not clear as to whether Mr. Shepard has withdrawn his request for confidential treatment of the Financial Exhibits and the biographical affidavit attached to the Form A as Exhibit N. However, given that the Financial Exhibits and Exhibit N (collectively, the "Exhibits") continue to be absent from the Department's public website, we, on behalf of DGI, continue to object to any request for confidential treatment or limitation of DGI's, its policyholders' or the public's access to the Exhibits and continue to request that the Department place the Exhibits on the Department's public website.

When Mr. Shepard originally filed his Form A with the Department, he did not assert any request for confidentiality with respect to Exhibit N. See Letter dated March 19, 2013 from Victor Peterson, Esquire to Commissioner Michael Consedine, a copy of which we attach as Exhibit "B" to this letter. Moreover, on March 20, 2013, Mr. Shepard sent an unredacted copy of Exhibit N to DGI. Mr. Shepard's failure to request confidential treatment of Exhibit N initially and disclosing it to DGI without reservation constitute a waiver of any possible claim to confidentiality in this proceeding, and the

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Department should deny Mr. Shepard's request with respect to Exhibit N for this reason alone.

As to the Financial Exhibits themselves and Exhibit N, the Department should deny Shepard's request for confidential treatment for the following reasons:

1. 40 P.S. § 991.1402(a)(1) requires that Mr. Shepard send the Form A to DGI, including all of the information § 1402 requires. *See* § 1402(a)(1) ("such person has filed with the department and has sent to such insurer a statement containing the information required by this section"). In turn, 40 P.S. § 1402(b)(3) requires that the Form A contain "fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years." These provisions clearly required Shepard initially to deliver to DGI the Exhibits without redaction and without any limitation or confidentiality restriction.

2. The Exhibits contain essential information about Mr. Shepard's financial condition, his competency, integrity and experience and whether the proposed transaction would confer benefit on DGI or its policyholders, or be hazardous or prejudicial to the public. *See* 40 P.S. 991.1402 (f)(1)(iii)-(vii). DGI, its policyholders and the public are entitled to review Exhibits H-N and use the information therein without precondition or restraint in tendering their public comments to the Form A on these approval criteria. Otherwise, the rights of DGI, its policyholders and the public will be unconstitutionally infringed upon because they will be denied access to and the right to make comments upon Mr. Shepard's financial condition, personal and business history, competence, integrity and experience in the Form A review process as Pennsylvania law guarantees.

3. Mr. Peterson's May 6, 2013 letter asserts arguments summarized below with respect to Mr. Shepard's request for confidential treatment of the Exhibits. None of his arguments is on point or complies with Pennsylvania law:

(a). First, Mr. Peterson asserts in his May 6, 2013 letter that "Mr. Shepard possesses significant wealth, and providing the [Exhibits] to Donegal without a confidentiality and non-disclosure agreement would place him and his family at risk of identity theft, fraud, or physical harm." In fact, Mr. Shepard's purported wealth is directly relevant to his financial condition. Simply designating himself as a wealthy person does not entitle Mr. Shepard to an exemption from disclosure that persons of lesser wealth would not enjoy. DGI, its policyholders and the public are entitled to unfettered access and use of the Exhibits in order to determine if Mr. Shepard meets the applicable standards for approval of his Form A. Mr. Peterson has not offered any credible explanation of how denial of the confidentiality request would expose Mr. Shepard or his family to the risk of identity theft, fraud or physical harm. In fact, no such risk exists,

particularly because, in fact, the Financial Exhibits provide such extremely limited, unspecific information about Shepard's financial position.

(b) Mr. Peterson's letter also erroneously attempts to justify withholding the Exhibits based on the specious argument that the "Form A seeks to rebut the presumption of control." Mr. Shepard filed the Form A to obtain the Department's approval of his proposed acquisition of an additional 962,636 DGI Class B Shares that would make him a control person pursuant to the provisions of 40 P.S. § 991.1402(a)(1). The Form A is not a rebuttal filing governed by 40 P.S. § 991.1402(a)(5). However, assuming for the moment that the section applied, its provisions with respect to confidentiality have no application to the Form A. The only materials that may be entitled to confidentiality in a rebuttal filing under § 1402(a)(5) are those specified by 40 P.S. § 991.1407, consisting of examinations or investigations under § 1406 (examinations), investigations under §§ 1406(a) (supervisory colleges) or 1406(b) (group-wide supervision for international insurance groups), or information reported pursuant to §§ 1402(b)(11.1) and (11.2), 1404 and 1405. None of these sections governs or relates to a Form A filing and approval process. Moreover, § 1407(a)(4) makes clear that any confidentiality sought pursuant to § 1407 belongs solely to the insurer. *See* § 1407(a)(4) ("made public by the department . . . without the prior written consent of the insurer"). Furthermore, under Mr. Shepard's argument, the entire Form A would be shrouded in secrecy if §§ 1402(a)(5) and 1407 applied. Surely, that is incorrect and the Department should reject Mr. Shepard's argument.

(c) Mr. Peterson's reliance on 31 Pa. Code § 25.12(c) as grounds for confidential treatment of the Exhibits is also misplaced because Mr. Shepard, a natural person, is the filer. Mr. Shepard cannot, on the one hand, file the Form A seeking approval of his acquisition of Class B Shares, and, simultaneously on the other hand, contend that he is the "ultimate controlling person" of himself and thus shield the Exhibits from the eyes of the public, DGI and its policyholders. Simply stating what Shepard is contending reveals the flaws in this argument. Quite to the contrary, Shepard chose to make his Tender Offer and file the Form A as a natural person. The Exhibits contain financial and biographical information about Shepard that the public, policyholders and DGI have a constitutional and statutory right to review in order to submit comments to the Department relating to the standard for review of Mr. Shepard's Form A. *See* 40 P.S. 991.1402 (f)(1)(iii)-(vii).

(d) The last argument Mr. Peterson raises concerning the exception to disclosure under the Pennsylvania Right to Know Law ("RTKL") is also irrelevant. The disclosure and exemption provisions of the RTKL are superseded by and do not affect disclosure or rights of access provisions in other statutes such

Mr. Robert E. Brackbill, Jr.  
June 14, 2013  
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as § 1402 of the Pennsylvania Insurance Company Law. See 65 P.S. § 67.306; cf. *Jones v. Office of Open Records*, 993 A.2d 339 (Pa. Cmwlth 2010).

As the person seeking confidential treatment, Mr. Shepard has the burden to prove his entitlement to that special status, including the offer of credible proof of the harm he would suffer from disclosure. He has failed to do so. The Exhibits are the best source for initially gaining knowledge about Mr. Shepard's personal history and financial condition. As a matter of law, common sense and simple fairness, the Exhibits should be treated as a part of the Form A in the public domain without any privilege of confidentiality.

Respectfully submitted,



Robert L. Pratter

RLP/lmb

cc: J. Victor Peterson, Esq.  
Stephen J. Johnson, Deputy Insurance Commissioner  
Jodi Frantz, Esq.

# LATHROP & GAGE<sup>LLP</sup>

VIC PETERSON  
DIRECT LINE: 312.920.3337  
EMAIL: VPETERSON@LATHROPGAGE.COM  
WWW.LATHROPGAGE.COM

155 N. WACKER, SUITE 3050  
CHICAGO, ILLINOIS 60606  
PHONE: 312.920.3300  
FAX: 312.920.3301

**RECEIVED**  
Corporate & Financial Regulation

March 19, 2013

MAR 20 2013

VIA FEDERAL EXPRESS

**Pennsylvania**  
**Insurance Department**

Mr. Michael F. Consedine  
Commissioner of Insurance  
Commonwealth of Pennsylvania Insurance Department (the "Insurance Department")  
1345 Strawberry Square  
Harrisburg, PA 17120

Re: Form A

Pennsylvania-regulated entities: Atlantic States Insurance Company ("Atlantic States"), NAIC Code No. 22586; Donegal Group Inc. ("DGI"); and Donegal Mutual Insurance Company ("Donegal Mutual")

Transaction: Tender offer dated March 20, 2013, by Gregory M. Shepard, an individual ("Mr. Shepard"), for 962,636 Class B Shares of DGI, which owns 100% of Atlantic States

Dear Mr. Consedine,

Please find enclosed herewith a Statement Regarding the Acquisition of Control of a Domestic Insurance Company on Form A filed hereby on behalf of Mr. Shepard in connection with Mr. Shepard's contemplated acquisition of control of Atlantic States, a Pennsylvania property and casualty insurance company. Also enclosed are Mr. Shepard's Biographical Affidavit (on NAIC Form 11) and an attachment thereto.

Atlantic States is a wholly owned subsidiary of DGI, a Delaware corporation, whose principal offices are located in Marietta, Pennsylvania. On March 20, 2013, Mr. Shepard will file with the U.S. Securities and Exchange Commission a Tender Offer Statement on Schedule TO and the related Offer to Purchase, copies of which are also enclosed. As set forth in such documents, Mr. Shepard is offering to purchase 962,636 shares of Class B common stock of DGI for \$30.00 per share in cash (the "Tender Offer").

March 19, 2013

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Because the trading volume of the Class B common stock of DGI is historically very low, there is no efficient means to acquire a large number of shares of such stock other than through a tender offer.

If the Tender Offer is successful, Mr. Shepard would own shares of Class A and Class B common stock representing an aggregate of 22.7% of the voting power of DGI's outstanding stock. By contrast, Donegal Mutual, a Pennsylvania property and casualty insurance company, owns shares of Class A and Class B common stock representing an aggregate of 65.9% of the voting power of DGI's outstanding stock.

Given the overwhelming control of DGI by Donegal Mutual through its ownership of shares with almost 2/3 of the voting power of DGI's outstanding stock, there is no way that Mr. Shepard could in fact control DGI. Even if the Tender Offer is successful, Mr. Shepard would still have a minority percentage of the voting power of DGI's outstanding stock, and would be represented on Boards of Directors of DGI and Donegal Mutual by a minority of the directors in each case.

40 P.S. 991.1402(a)(1) and 31 P.A.C. 25.16(a) require Mr. Shepard to file the Form A with, and to receive approval from, the Insurance Department before consummating the acquisition pursuant to the Tender Offer. Mr. Shepard hereby respectfully requests such approval.

Exhibits H – M to the Form A are Mr. Shepard's personal financial statements, which are contained in the enclosed envelope. Pursuant to 31 P.A.C. 25.12(c), Mr. Shepard respectfully requests that the Insurance Department give these documents confidential treatment, because they are his personal financial statements. Please direct any inquiries regarding the issue of confidential treatment of such materials to me.

If the Insurance Department requires further information, please do not hesitate to contact me.

Sincerely yours,

LATHROP & GAGE LLP



By: J. Victor Peterson, Esq.

# LATHROP & GAGE<sub>LLP</sub>

VIC PETERSON  
DIRECT LINE: 312.920.3337  
EMAIL: VPETERSON@LATHROPGAGE.COM  
WWW.LATHROPGAGE.COM

155 N. WACKER, SUITE 3050  
CHICAGO, ILLINOIS 60606  
PHONE: 312.920.3300  
FAX: 312.920.3301

May 31, 2013

## VIA FEDERAL EXPRESS

Robert L. Pratter  
Duane Morris LLP  
30 South 17<sup>th</sup> Street  
Philadelphia, PA 19103-4196

Re: Gregory Shepard's Financial Statements

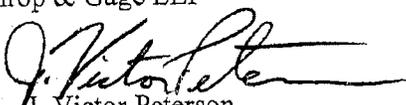
Dear Mr. Pratter,

On behalf of our client Gregory Shepard, we are hereby delivering to Donegal Group Inc. ("Donegal") unredacted copies of all of Mr. Shepard's audited financial statements, which he has submitted as exhibits to his Form A filings with the insurance regulators in the six relevant states.

Mr. Shepard trusts and expects that Donegal and its representatives will use the information in his financial statements responsibly for its intended purpose of enabling Donegal to provide comments to the insurance regulators in the six relevant states in connection with their review of his Form A filings, and not for any other purpose.

Very truly yours,

Lathrop & Gage LLP

By: 

J. Victor Peterson

## Attachments

Cc: Pennsylvania Department of Insurance (via email, without attachments)  
Iowa Division of Insurance (via email, without attachments)  
Wisconsin Office of the Commissioner of Insurance (via email, without attachments)  
Michigan Department of Insurance and Financial Services (via email, without attachments)  
Maryland Insurance Administration (via email, without attachments)  
Virginia Bureau of Insurance (via email, without attachments)

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