

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

In Re: : Pursuant to Sections 1401, 1402  
: and 1403 of the Insurance Holding  
Application of Delaware Life Insurance : 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  
Lackawanna Casualty Company, : amended, 40 P.S. §§991.1401,  
Lackawanna American Insurance : 991.1402 and 991.1403  
Company and Lackawanna National :  
Insurance Company : Order No. ID-RC-19-02

**DECISION AND ORDER**

AND NOW, on this 29<sup>th</sup> day of March, 2019, Jessica K. Altman, 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**

Identity of PA Domestic Insurers

1. Lackawanna American Insurance Company (“LAIC”) is a domestic stock casualty insurance company organized pursuant to the laws of Pennsylvania with its principal place of business in Wilkes-Barre, Pennsylvania.
2. Lackawanna National Insurance Company (“LNIC”) is a domestic stock casualty insurance company organized pursuant to the laws of Pennsylvania with its principal place of business in Wilkes-Barre, Pennsylvania.

3. Lackawanna Casualty Company (“LCC”) is a domestic stock casualty insurance company organized pursuant to the laws of Pennsylvania with its principal place of business in Wilkes-Barre, Pennsylvania. LCC currently directly holds 100% of the issued and outstanding class A stock of LAIC and LNIC, which represents 95.9% of the voting interests of each of LAIC and LNIC.
4. Pagnotti Enterprises, Inc. (“PEI”) is a business corporation organized pursuant to the laws of Delaware with its principal place of business in Wilkes-Barre, Pennsylvania. PEI currently directly holds 100% of the issued and outstanding class A stock of LCC, which represents 91.1% of the voting interests of LCC.
5. Brynfan Associates, L.P. (“Brynfan”) is a limited partnership organized pursuant to the laws of Florida with its principal place of business in Wilkes-Barre, Pennsylvania. Brynfan currently directly holds 100% of the issued and outstanding class B stock of LCC, LAIC and LNIC, which represents 8.9%, 4.1% and 4.1%, respectively, of the voting interests of LCC, LAIC and LNIC.

#### Identity of Applicant

6. Delaware Life Insurance Company (“DLIC”) is a foreign stock life insurance company organized pursuant to the laws of Delaware with its principal place of business in Waltham, Massachusetts.
7. Group One Thousand One, LLC (“GOTO”) is a limited liability company organized pursuant to the laws of Delaware with its principal place of business in Indianapolis, Indiana. GOTO currently directly holds 100% of the issued and outstanding stock of DLIC.
8. Mark R. Walter (“Mr. Walter”) is an individual with his primary business address in Chicago, Illinois. Mr. Walter currently indirectly holds the controlling membership interest in GOTO.

#### **Acquisition Filing**

9. 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.
10. On December 31, 2018, 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 DLIC for

approval to acquire control of LCC, LAIC and LNIC.

11. The Application was filed pursuant to Section 1402 of the Insurance Holding Companies Act.

#### **Department Procedures**

12. On January 12, 2019, the Department published notice in the *Pennsylvania Bulletin* that the Application was submitted by DLIC 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”).
13. The Department received no comments regarding the Application during the Comment Period.

#### **Description of the Proposed Acquisition**

14. As described in the Application, on November 9, 2018, PEI, Brynfan and DLIC entered into a Stock Purchase Agreement (“the Agreement”).
15. As described in the Application and pursuant to the Agreement, DLIC intends to purchase 100% of the issued and outstanding class A common stock of LCC from PEI and 100% of the issued and outstanding class B common stock of LCC, LAIC and LNIC from Brynfan (“the Acquisition”).
16. As described in the Application, the source of funds would be from cash on hand.
17. As described in the Application and subsequent to the Acquisition, DLIC would directly control 100% of the issued and outstanding class A and B stock of LCC and 100% of the issued and outstanding class B stock of LAIC and LNIC, and would indirectly control 100% of the issued and outstanding class A stock of LAIC and LNIC.
18. As described in the Application, Mr. Walter would become the sole ultimate controlling person of LCC, LAIC and LNIC as a result of the Acquisition.

#### **Standards for Review**

19. 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.

20. An application for a change in control must be approved unless the Department finds any one of certain enumerated conditions to be present.

#### 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), LCC is required to maintain a minimum paid up capital stock of \$1,000,000 to write the classes of insurance for which it is presently licensed and LAIC and LNIC are each required to maintain a minimum paid up capital stock of \$750,000 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), LCC is required to maintain a minimum paid in surplus of \$500,000 to write the classes of insurance for which it is presently licensed and LAIC and LNIC are each required to maintain a minimum paid in surplus of \$375,000 to write the classes of insurance for which each is presently licensed.
26. Upon completion of the transaction, each of LCC, LAIC and LNIC will have paid up capital stock 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 company.
27. Upon completion of the transaction, each of LCC, LAIC and LNIC 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 company.

#### Competitive Impact

28. The acquisition of control of a Pennsylvania domiciled insurer is subject to review and analysis under Section 1402(f)(1)(ii) of the Insurance Holding Companies Act to determine whether the effect of the acquisition of control would be to substantially lessen competition in this Commonwealth or tend to create a monopoly therein, as per

40 P.S. §991.1402(f)(1)(ii) (the “competitive standard”).

29. The acquisition of control of LCC, LAIC and LNIC will not lessen competition or tend to create a monopoly in the Commonwealth because the market shares of DLIC and its insurance company affiliates licensed to transact the business of insurance in Pennsylvania and the market shares of LCC, LAIC and LNIC, as stated in the Application, do not exceed the market share levels established in Section 1403 of the Insurance Holding Companies Act.

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 financial information submitted by DLIC and Mr. Walter.
32. The financial condition of DLIC and Mr. Walter would not pose any impediments to the change in control nor jeopardize the financial condition of LCC, LAIC and LNIC.

Plans for the Acquired Insurer

33. 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.
34. In particular, the Department reviewed the plans or proposals which the acquiring party has 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, to determine whether it is:
  - a. Unfair or unreasonable;
  - b. Fails to confer a benefit upon policyholders; or
  - c. Not in the public interest.
35. As stated in the Application, DLIC has no future plans or proposals to liquidate LCC, LAIC and LNIC, to sell their assets, to merge or consolidate them with any person or persons or to change their corporate structure.

36. As stated in the Application, LCC, LAIC and LNIC will each have their board of directors and executive officers replaced by representatives of DLIC.
37. There is no basis in the record from which it may be concluded that the plans or proposals which the acquiring party has for the insurer are unfair or unreasonable or fails to confer a benefit upon policyholders or are not in the public interest.

#### Management

38. 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.
39. Biographical affidavits for all of the officers and directors of DLIC and for Mr. Walter were reviewed by the Department.
40. Biographical affidavits for the proposed officers and directors of LCC, LAIC and LNIC were reviewed by the Department.
41. The Department is satisfied that the persons who would control the operations of LCC, LAIC and LNIC have such competence, experience and integrity that the interests of policyholders and the public would not be jeopardized.

#### Hazardous or Prejudicial to Insurance Buying Public

42. When analyzing an application for an acquisition of control involving a domestic insurer under Section 1402 of the Insurance Holding Companies Act, the Department evaluates whether the merger, consolidation or other acquisition of control is likely to be hazardous or prejudicial to the insurance buying public.
43. There is insufficient evidence in the record from which it may be concluded that the acquisition will likely be hazardous or prejudicial to the insurance buying public.

#### Compliance with the Pennsylvania Laws

44. When analyzing an application for an acquisition of control involving a domestic insurer under Section 1402 of the Insurance Holding Companies Act, the Department reviews the transaction to determine whether the merger, consolidation or other acquisition of control is not in compliance with the laws of this Commonwealth, including Article VIII-A.
45. The Department has evaluated the transaction as set forth by the Application as to whether it is in compliance with the laws of Pennsylvania.

46. 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 LCC, LAIC and LNIC.
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 operate the line or lines of business for which they are 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 company 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 material changes in its business or corporate structure or management are unfair and unreasonable to 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 the general public to permit the acquisition of control;
  - f) The acquisition is likely to be hazardous or prejudicial to the insurance buying public; or,
  - 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 LCC, LAIC and LNIC.

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.



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Insurance Company : Order No. ID-RC-19-02

**ORDER**

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

The application of Delaware Life Insurance Company (“DLIC”) in support of the request for approval to acquire control of Lackawanna Casualty Company (“LCC”), Lackawanna American Insurance Company (“LAIC”) and Lackawanna National Insurance Company (“LNIC”) as set forth in the application, is hereby approved, subject to this Order and the following conditions:


1. DLIC 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.
2. For a period of two (2) years after the effective date of the subject transaction, DLIC shall provide written notice to the Department of any planned or proposed reductions in staff that would affect more than ten percent (10%) of the employees of LCC, LAIC and LNIC principally located in Pennsylvania as of, or within six (6) months prior to, the effective date of the subject transaction. For purposes of this condition, as of any date, the ten percent (10%) threshold shall be determined based upon a rolling twelve (12) month period. Such notice, which shall specify the reasons for the reduction in force and include information regarding planned or proposed severance pay and relocation

opportunity arrangements, shall be filed with the Department as least ninety (90) days prior to any such planned or proposed reductions.

3. For a period of two (2) years after the effective date of the subject transaction, LCC, LAIC and LNIC shall not close or cease actively doing business from Wilkes-Barre, Pennsylvania, without application to and the prior written approval of the Department.
4. For a period of three (3) years after the effective date of the subject transaction, LCC, LAIC and LNIC shall not voluntarily withdraw any certificate of authority to engage in the insurance business in the Commonwealth of Pennsylvania without the prior written approval of the Department.
5. For a period of three (3) years after the effective date of the subject transaction, LCC, LAIC and LNIC shall not attempt to redomesticate to another jurisdiction without the prior written approval of the Department.

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.



  
Jessica K. Altman  
Insurance Commissioner  
Commonwealth of Pennsylvania