

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

In Re:	:	Pursuant to Sections 1401, 1402, and
	:	1403 of the Insurance Holding
Application of Medco Health Solutions,	:	Companies Act, Article XIV of the
Inc. in Support of the Request for Approval	:	Insurance Company Law of 1921,
to Acquire Ultimate Control of Medco	:	Act of May 17, 1921, P.L. 682,
Containment Life Insurance Company	:	<u>as amended</u> , 40 P.S. §§991.1401,
	:	991.1402, and 991.1403
	:	
	:	Order No. ID-RC-03-29

DECISION AND ORDER

AND NOW, on this   17th   day of July, 2003, M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania (“Commissioner”), hereby makes the following Decision and Order:

Pursuant to the Insurance Company Law and the Insurance Holding Company 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. Medco Containment Life Insurance Company (“Medco Life”) is a stock life insurance company organized under the laws of the Commonwealth of Pennsylvania with its principal place of business located in Franklin Lakes, New Jersey.
2. Medco Health Solutions, Inc. (“Medco Health Solutions”) is an insurance holding company organized under the laws of the state of Delaware, with its principal place of business to be located in Franklin Lakes, New Jersey. Medco Health Solutions directly holds 100% of the issued and outstanding voting stock of

Medco Life.

3. Merck & Co., Inc. (“Merck”) is a business corporation organized under the laws of the state of New Jersey with its principal place of business located in Franklin Lakes, New Jersey. Merck directly holds 100% of the issued and outstanding voting stock of Medco Health Solutions.
4. Merck is a publicly traded corporation listed on the New York Stock Exchange (“NYSE”).
5. No entity holds 10% or greater of the issued and outstanding voting stock of Merck.
6. Merck is the sole ultimate controlling person of Medco Life.

#### Acquisition Filing

7. The Insurance Holding Companies Act, Article XIV of the Insurance Company Law of 1921, Act of May 17, 1992, P.L. 682, as amended, 40 P.S. §§991.1401 et seq. (“Insurance Holding Companies Act”), provides that any transaction involving the control of a domestic insurer must be filed with the Commissioner for approval or disapproval.
8. On May 9, 2003, the Insurance Department of the Commonwealth of Pennsylvania (“Department”) received an initial application (which together with all material received subsequently is collectively referenced as “Application”) from Medco Health Solutions for approval to become the sole ultimate controlling person of Medco Life.
9. The Application was filed pursuant to Section 1402 of the Insurance Holding Companies Act.

#### Department Procedures

10. On May 31, 2003, the Department published notice in the *Pennsylvania Bulletin* that the Application was submitted by Medco Health Solutions and such notice invited interested persons to submit comments to the Department regarding the Application for a thirty (30) day period, ending June 30, 2003.
11. The Department received no comments regarding the Application during the thirty (30) day comment period.

### Description of the Proposed Acquisition

12. As described in the Application, Merck intends to distribute all of the issued and outstanding voting stock of Medco Health Solutions to the current shareholders of Merck, on the basis of one share of Medco Health Solutions for each share of Merck held (the “Distribution”).
13. As described in the Application, prior to the Distribution Medco Health Solutions would pay a two billion dollar dividend to Merck (the “Dividend”).
14. As described in the Application, Medco Health Solutions would fund the Dividend by obtaining a loan pledging the capital stock of Medco Health Solutions and all of its subsidiaries as security for the loan.
15. As described in the Application, the pledge document would provide that the pledge of Medco Life cannot be exercised without prior regulatory approval.

### Standards for Review

16. 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.
17. The application for a change in ultimate control must be approved unless the Commissioner finds any one of certain enumerated conditions to be present.

### Licensing Requirements

18. When analyzing an application for change in ultimate control under Section 1402 of the Insurance Holding Companies Act, the Commissioner reviews the requirements for continued licensure of the domestic insurer being acquired.
19. 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).
20. 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).
21. In accordance with Section 206 of the Insurance Company Law (40 P.S. §386), Medco Life is required to maintain a minimum paid up capital stock of \$1,100,000 to write the classes of insurance for which it is presently licensed.
22. In accordance with Section 206 of the Insurance Company Law (40 P.S. §386), Medco Life is required to maintain a minimum paid in surplus of \$550,000 to

write the classes of insurance for which it is presently licensed.

23. Upon completion of the transaction, Medco Life will have paid up capital in an amount that will satisfy the statutory minimum required of a life insurance company licensed to write the classes of authority currently held by Medco Life.
24. Upon completion of the transaction, Medco Life will have paid in surplus in an amount that will satisfy the statutory minimum required of a life insurance company licensed to write the classes of authority currently held by Medco Life.

#### Competitive Impact

25. The acquisition of ultimate control of Medco Life is subject to review and analysis under Section 1403 of the Insurance Holding Companies Act to determine whether the effect of the acquisition of ultimate control would be to substantially lessen competition or tend to create a monopoly in the Commonwealth.
26. The acquisition of ultimate control of Medco Life will not lessen competition or tend to create a monopoly in the Commonwealth because the increase in market share of Medco Health Solutions, as stated in the Application, would not exceed the market share levels established in Section 1403.

#### Financial Condition of Medco Health Solutions

27. When analyzing an application for an acquisition of ultimate control under Section 1402 of the Insurance Holding Companies Act, the Department reviews the financial condition of the acquiring persons.
28. Medco Health Solutions reported March 29, 2003, GAAP account balances of:

Assets:	\$ 10,217,700,000
Liabilities:	\$ 3,480,100,000
Shareholder's Equity:	\$ 6,737,600,000
29. The financial condition of Medco Health Solutions would not pose any impediments to the change in control nor jeopardize the financial condition of the Domestic Insurers.

#### Plans for the Acquired Insurer

30. When analyzing an application for a change in ultimate 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.

31. As provided in the Application, Medco Health Solutions has disclosed that it intends to make no significant changes to the business plan of Medco Life.

Management

32. When analyzing an application for a change in ultimate 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 insurers.
33. Biographical affidavits for all directors and executive officers of Medco Health Solutions were provided as part of the Application and the Department reviewed all affidavits that were submitted.
34. The Department is satisfied that the persons who would control the operations of Medco Life have such competence, experience and integrity that the interests of policyholders and the public would not be jeopardized.
35. 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 Commissioner has jurisdiction to review and approve the change in ultimate control of Medco Life.
2. Under Section 1402 of the Insurance Holding Companies Act, the Commissioner must approve an application for a change in ultimate 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 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 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 ultimate control of Medco Life.
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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ORDER

Upon consideration of the foregoing, the Insurance Commissioner of the Commonwealth of Pennsylvania hereby makes the following Order:

The acquisition of ultimate control by Medco Health Solutions, Inc. of all the issued and outstanding shares of voting stock of Medco Containment Life Insurance Company is hereby approved, subject to this Order.

This Order is effective immediately and valid for one year, provided no material changes are made to the transaction prior to consummation.

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M. DIANE KOKEN  
Insurance Commissioner  
Commonwealth of Pennsylvania