

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

In Re: : Pursuant to Sections 1401, 1402
: and 1403 of the Insurance Holding
Application of Onex Corporation in : Companies Act, Article XIV of the
Support of the Request for Approval to : Insurance Company Law of 1921, Act
Acquire Control of Magellan Behavioral : of May 17, 1921, P. L. 682, as
Health of Pennsylvania, Inc. : amended, 40 P.S. §§991.1401,
: 991.1402 and 991.1403; Chapter
: 25 of Title 31 of the Pennsylvania
: Code, 31 Pa. Code §§25.1-.23.
:
: Order No. ID-RC-03-42

DECISION AND ORDER

AND NOW, on this ___26th___ day of November, 2003, M. Diane Koken, 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 Involved Persons

Acquiring Persons

1. Onex Corporation (“Onex”) is a Canadian business entity with its principal place of business in Toronto, Ontario.
2. The stock of Onex is publicly traded on the Toronto Stock Exchange.
3. Gerald W. Schwartz (“Schwartz”) is an individual with his principal place of business in Toronto, Ontario. Schwartz controls 10% or more of the voting securities of Onex.

Domestic Insurer

4. Magellan Behavioral Health of Pennsylvania, Inc. (“Magellan PPO”) is a risk assuming preferred provider organization that is not a licensed insurer (“RANLI PPO”) organized under the laws of the Commonwealth of Pennsylvania with its principal place of business in Newtown, Pennsylvania.
5. Magellan Health Services, Inc. (“Magellan Holdings”) is an business corporation organized under the laws of the state of Delaware with its principal place of business in Columbia, Maryland. Magellan PPO is an indirect wholly-owned subsidiary of Magellan Holdings.

Background

6. Magellan Holdings and certain of its subsidiaries each filed with the United States Bankruptcy Court for the Southern District of New York (“Bankruptcy Court”) a voluntary petition for relief under chapter 11 of the Bankruptcy Code on March 11, 2003 (“Commencement Date”) (Magellan Holdings and filing subsidiaries collectively referenced as “Debtors”). These chapter 11 cases were consolidated for procedural purposes.
7. On the Commencement Date, the Debtors filed a plan of reorganization (including any and all amendments, the “Plan”). One of the conditions of the confirmation and consummation of the Plan was that the Debtors realize not less than \$50 million in proceeds from an equity or debt investment.
8. The Debtors solicited bids from their primary creditor constituencies as well as third party investors.
9. After evaluating the proposal of each interested party, a bid from Onex was selected and the Debtors and Onex entered into an Equity Commitment Letter, which was approved by the Bankruptcy Court on July 14, 2003.
10. On August 18, 2003, the Debtors filed its final Plan.
11. On October 8, 2003, the Bankruptcy Court confirmed the Plan.

Acquisition Filing

12. 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 all changes in control of a domestic RANLI PPO must be filed with the Commissioner for approval or disapproval.

13. On September 18, 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 Onex for approval to acquire control of Magellan PPO.
14. The Application was filed pursuant to Section 1402 of the Insurance Holding Companies Act.

Department Procedures

15. On October 4, 2003, the Department published notice in the Pennsylvania Bulletin that the Application was received and such notice invited interested persons to submit comments to the Department regarding the Application for 30 days following the date of the publication (“Comment Period”).
16. The Department received no comments from interested persons during the Comment Period.

Description of the Proposed Acquisition

17. As described in the Application, neither Onex nor any person controlling, controlled by or under common control with Onex currently holds any voting securities or securities which may be converted into voting securities of Magellan Holdings.
18. As described in the Application, Onex will acquire 24.6% of the equity interest in Magellan Holdings by making an equity investment in Magellan Holdings through the purchase of a separate class of common stock of Magellan Holdings (the “MVS Securities”).
19. As described in the Application, all holders of Magellan Holdings’ senior subordinated notes and general unsecured claims shall have the right to elect cash or to purchase common stock of Magellan Holdings (the “New Common Stock”).
20. As described in the Application, the MVS Securities will be identical to the New Common Stock except that the MVS Securities shall have (i) 50 percent of the voting rights, in the aggregate, pertaining to all of Magellan Holding’s common stock and (ii) the right to elect certain directors.
21. As described in the Application, Onex will be appointing four (4) of the nine (9) initial board of directors of Magellan Holdings.
22. As described in the Application, on or after the effective date of the Plan, Onex as the holder of the MVS Securities, will elect four (4) directors and shall have a 50% voting interest in the election of two (2) directors.

Standards for Review

23. Section 1402(f)(1) of the Insurance Holding Companies Act (40 P.S. §991.1402(f)(1)) establishes the standards for approval of an application for a change in control of a domestic RANLI PPO.
24. The application for a change in control must be approved unless the Commissioner finds any one of certain enumerated conditions to be present.

Licensing Requirements

25. When analyzing an application for change in control under Section 1402 of the Insurance Holding Companies Act (40 P.S. §991.1402), the Commissioner reviews the requirements for continued licensure of the domestic RANLI PPO being acquired.
26. Section 630 of the Insurance Company Law (40 P.S. §764a) provides the Commissioner shall determine that a preferred provider organization which assumes financial risk has adequate working capital.
27. Section 152.9 of Title 31 of the Pennsylvania Code requires a RANLI PPO to maintain assets in excess of liabilities by at least the minimum capital and surplus required of a stock casualty insurer with accident and health powers under Section 206 of the Insurance Company Law (40 P.S. §386).
28. Under Section 206 of the Insurance Company Law (40 P.S. §386), Magellan PPO is required to maintain a minimum capital and surplus of \$1,125,000 to maintain licensure as a RANLI PPO.
29. Upon completion of the transaction, Magellan will have capital and surplus in an amount that will satisfy the statutory minimum required of a RANLI PPO.

Competitive Impact

30. The acquisition of control of Magellan PPO is subject to review and analysis under Section 1403 of the Insurance Holding Companies Act (40 P.S. §991.1403), 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.
31. The acquisition of control of the Magellan PPO will not lessen competition or tend to create a monopoly in the Commonwealth because neither Schwartz nor any company controlled by Schwartz, including Onex, is engaged in the business of insurance in the Commonwealth.

Financial Condition of Applicant

32. When analyzing an application for an acquisition of control under Section 1402 of the Insurance Holding Companies Act (40 P.S. §991.1402), the Department reviews the financial condition of the acquiring person(s).
33. The Department has reviewed the financial statements submitted by Schwartz as of March 31, 2002.
34. The Department has reviewed financial statements submitted by Onex as of March 31, 2003.
35. As of March 31, 2003, Onex reported:

Assets of \$18,185 million
Liabilities of \$11,054 million
Shareholders' equity of \$7,131 million
36. The financial condition of Schwartz and Onex will not pose any impediments to the change in control nor jeopardize the financial condition of Magellan PPO.

Plans for the Acquired Insurer

37. When analyzing an application for an acquisition of control under Section 1402 of the Insurance Holding Companies Act (40 P.S. §991.1402), the Department reviews the plans or proposals which the acquiring party has for the insurer.
38. As provided in the Application, neither Onex nor Schwartz intend to liquidate Magellan PPO, sell its assets or consolidate or merge it with any person or to make any other material change in its business or corporate structure.
39. As provided in the Application, neither Onex nor Schwartz anticipate any reduction in Pennsylvania employment as a result of the acquisition.

Management

40. When analyzing an application for an acquisition of control under Section 1402 of the Insurance Holding Companies Act (40 P.S. §991.1402), the Department reviews the competence, experience and integrity of the persons who will control the operations of the acquired insurers.
41. Biographical affidavits for all directors and executive officers of Onex in addition to those new intended directors and executive officers of both Magellan Holdings and Magellan PPO were reviewed by the Department.

42. The Department is satisfied that the persons who would control the operations of Magellan PPO have such competence, experience and integrity that the interests of policyholders and the public would not be jeopardized.
43. 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 (40 P.S. §991.1402), the Department has jurisdiction to review and approve the change in control of Magellan PPO.
2. Under Section 1402 of the Insurance Holding Companies Act (40 P.S. §991.1402), the Department must approve an application for a change in control unless the Department has found that:
 - a) The RANLI PPO 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 RANLI PPO or prejudice the interests of its policyholders;
 - d) Any plans to liquidate the RANLI PPO, 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 RANLI PPO are such that it would not be in the interest of policyholders and the general 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 (40 P.S. §991.1402), the Commissioner has not found that any of the above conditions are present with respect to the change in control of Magellan PPO.
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 (“Commissioner”) hereby makes the following Order:

The application of Onex Corporation (“Onex”) in support of the request for approval to acquire control of Magellan Behavioral Health of Pennsylvania, Inc. (“Magellan PPO”) as set forth in the Application, is hereby approved, subject to this Order and the following conditions:

1. All necessary regulatory filings and approvals are obtained prior to consummation of the Plan of Reorganization.
2. Applicants shall provide 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.
3. Onex shall provide notice to the Department of any reductions in the number of staff who were employees of Magellan PPO located in Pennsylvania on the closing date occurring within a rolling twelve month period and affecting more than twenty percent (20%) of such staff; such notice shall be provided sixty (60) days prior to any such reduction, or as soon as practical. This condition shall expire on January 1, 2008. Any

such notice provided to the Department shall be maintained on a confidential basis by 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.

M. DIANE KOKEN
Insurance Commissioner