

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

In Re: : Pursuant to Sections 1401, 1402, and  
: 1403 of the Insurance Holding  
Application of First American Title : Companies Act, Article XIV of the  
Insurance Company in Support of the : Insurance Company Law of 1921,  
Request for Approval to Acquire Control : Act of May 17, 1921, P.L. 682,  
of all the Issued and Outstanding Common : as amended, 40 P.S. §§991.1401,  
Stock of T.A. Title Insurance Company : 991.1402, and 991.1403  
: :  
: :  
: :  
: Order No. ID-RC-04-12

DECISION AND ORDER

AND NOW, on this 16<sup>th</sup> day of July, 2004, 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 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

1. T.A. Title Insurance Company (“T.A. Title”) is a domestic stock title insurance company organized pursuant to the laws of the Commonwealth of Pennsylvania with its principal place of business located in Media, Pennsylvania.
2. T.A. Holdings, Inc. (“T.A. Holdings”) a business corporation organized pursuant to the laws of the Commonwealth of Pennsylvania with its principal place of business located in Media, Pennsylvania. T.A. Title is a direct wholly-owned subsidiary of T.A. Holdings.

3. The current holders of the voting stock of T.A. Holdings (collectively referred to as “Current Shareholders”) are:
  - a) J. William Cotter, Jr. (“Mr. Cotter”): 55.5%
  - b) T.A. Holdings’ Employee Stock Ownership Plan: 38.7%
  - c) Other shareholders: 5.8%
4. Mr. Cotter is the trustee for the T.A. Holdings’ Employee Stock Ownership Plan and is the sole ultimate controlling person of T.A. Title.
5. First American Title Insurance Company (“First American Title”) is an admitted foreign stock title insurance company organized pursuant to the laws of the state of California with its principal place of business located in Santa Ana, California.
6. The First American Corporation (“First American Corp.”) is a general business corporation organized pursuant to the laws of the state of California with its principal place of business located in Santa Ana, California. First American Title is a wholly-owned subsidiary of First American Corp.
7. Firefly Acquisition Corp. (“Merger Sub”) is a newly formed business corporation organized pursuant to the laws of the Commonwealth of Pennsylvania with its principal place of business located in Santa Ana, California. Merger Sub is a wholly-owned subsidiary of First American Corp.
8. First American Corp. is a publicly traded company on the New York Stock Exchange. No person is an ultimate controlling person of First American Corp.

Acquisition Filing

9. On May 13, 2004, First American Title, T.A. Holdings, Merger Sub, and Mr. Cotter executed an Agreement and Plan of Merger (“Agreement”) whereby First American Title would acquire control of T.A. Title.
10. 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 domestic insurers must be filed with the Commissioner for approval or disapproval.
11. On May 28, 2004, the Pennsylvania Insurance Department (“Department”) received an initial application (which together with all material received subsequently is collectively referenced as “Application”) from First American Title for approval to acquire control of T.A. Title.

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

Department Procedures

13. On June 12, 2004, the Department published notice in the *Pennsylvania Bulletin* that the Application was submitted by First American Title and such notice invited interested persons to submit comments to the Department regarding the Application for a thirty-day period, ending July 12, 2004.
14. The Department received no comments regarding the Application during the thirty-day comment period.

Description of the Proposed Acquisition

15. As described in the Application, Merger Sub would be merged with and into T.A. Holdings. Each share of T.A. Holdings' common stock not held by First American Corp., any of First American Corp.'s wholly-owned subsidiaries, or held in treasury by T.A. Holdings, would be converted into the right to receive cash or stock of First American Corp.
16. As described in the Application, T.A. Holdings would survive the merger as a wholly-owned subsidiary of First American Corp.
17. As described in the Application, First American Corp. would cause T.A. Holdings to be liquidated following the merger and 100% of the issued and outstanding common stock of T.A. Title owned by T.A. Holdings would be contributed to First American Title.
18. As described in the Application, T.A. Title would become a wholly-owned subsidiary of First American Title.
19. As described in the Application and pursuant to the Agreement, the aggregate consideration to be paid by First American Corp. is \$14,000,000 ("Merger Consideration") in the form of cash and common stock of First American Corp.
20. As described in the Application, First American Corp. would pay the cash portion of Merger Consideration from its available cash and would issue shares of common stock for the stock portion of the Merger Consideration. No amount of Merger Consideration would be borrowed.
21. As described in the Application, the Current Shareholders of T.A. Holdings voted to approve the Agreement at a meeting held on June 22, 2004.

### Standards for Review

22. 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.
23. 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

24. When analyzing an application for a change in control under Section 1402 of the Insurance Holding Companies Act, the Department reviews the requirements for continued licensure of the domestic insurer being acquired.
25. In accordance with Section 705 of the Insurance Company Law (40 P.S. §910-5), T.A. Title is required to maintain paid up capital stock of \$500,000 to maintain licensure.
26. In accordance with Section 705 of the Insurance Company Law (40 P.S. §910-5), T.A. Title is required to maintain paid in surplus of \$250,000 to maintain licensure.
27. Upon completion of the transaction, T.A. Title would have paid up capital and paid in surplus in an amount that would satisfy the statutory minimum required of a title insurance company licensed to write in Pennsylvania.

### Competitive Impact

28. The acquisition of control of T.A. Title is subject to review and analysis under certain specified provisions of Section 1403 of the Insurance Holding Companies Act 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 (“Competitive Standard”). The applicable portions of Section 1403 for the Competitive Standard analysis are 1403(c)(2) (informational requirements) and 1403(d)(2) (standards for analysis).
29. Section 1403(d)(2) of the Insurance Holding Companies Act provides tests for violation of the Competitive Standard.
30. For the purpose of this Competitive Standard analysis, the market share of First American Title is 20.59% and the market share of T.A. Title is 2.86%.
31. As described in the Application, the proposed acquisition would demonstrate prima facie evidence of violation of the Competitive Standard pursuant to Section 1403(d)(2) of the Holding Companies Act.



Liabilities: \$ 782,748,135  
Shareholder's Equity: \$ 713,067,199

40. The financial condition of First American Title would not pose any impediments to the change in control nor jeopardize the financial condition of T.A. Title.

Plans for the Acquired Insurer

41. 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 that the acquiring party has for the insurer.
42. As provided in the Application, First American Title has disclosed that it intends to maintain the current business activities of T.A. Title.

Management

43. 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.
44. Biographical affidavits for all directors and executive officers of First American Title were provided as part of the Application and the Department reviewed all affidavits that were submitted.
45. The Department is satisfied that the persons who would control the operations of T.A. Title have such competence, experience, and integrity that the interests of policyholders and the public would not be jeopardized.
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 Commissioner has jurisdiction to review and approve the change in control of T.A. Title.
2. Under Section 1402 of the Insurance Holding Companies Act, the standards of Section 1403 apply in determining if the effect of the acquisition would be to substantially lessen competition in insurance in this Commonwealth or tend to create a monopoly therein.
3. Because the market share of First American Title is 20.59% and the market share of T.A. Title is 2.86%, the proposed transaction constitutes a prima facie violation of the Competitive Standard.
4. The information contained in the Application, as well as other inquiries and studies as permitted by law, was sufficient to overcome the prima facie violation of the Competitive Standard.
5. Under Section 1402 of the Insurance Holding Companies Act, the Commissioner 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 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 insurer 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.
- 6. 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 T.A. Title.
- 7. 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.

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

In Re:	:	Pursuant to Sections 1401, 1402, and
	:	1403 of the Insurance Holding
Application of First American Title	:	Companies Act, Article XIV of the
Insurance Company in Support of the	:	Insurance Company Law of 1921,
Request for Approval to Acquire Control	:	Act of May 17, 1921, P.L. 682,
of all the Issued and Outstanding Common	:	<u>as amended</u> , 40 P.S. §§991.1401,
Stock of T.A. Title Insurance Company	:	991.1402, and 991.1403
	:	
	:	
	:	Order No. ID-RC-04-12

ORDER

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

The acquisition of control by First American Title Insurance Company of all the issued and outstanding shares of common stock of T.A. Title Insurance Company is hereby approved, subject to this Order and the following condition:

First American Title Insurance Company shall make copies of the closing documents available to the Insurance Department within five (5) days of consummation of the subject transaction.

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

\_\_\_\_\_  
M. DIANE KOKEN  
Insurance Commissioner  
Commonwealth of Pennsylvania