

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

In Re:	:	Pursuant to Sections 1401, 1402, and
	:	1403 of the Insurance Holding
Application of United National Group,	:	Companies Act, Article XIV of the
Ltd., U.N. Holdings II, Inc. and United	:	Insurance Company Law of 1921,
National Insurance Company in Support of	:	Act of May 17, 1921, P.L. 682,
the Request for Approval to Acquire	:	<u>as amended</u> , 40 P.S. §§991.1401,
Control of all the Issued and Outstanding	:	991.1402, and 991.1403
Capital Stock of Penn-America Insurance	:	
Company and Penn-Star Insurance	:	
Company	:	
	:	
	:	
	:	Order No. ID-RC-05-01

DECISION AND ORDER

AND NOW, on this 21st day of January, 2005, 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. United National Group, Ltd. (“United National Group”) is a holding company organized pursuant to the laws of the Cayman Islands with its principal place of business located in Grand Cayman, Cayman Islands.
2. U.N. Holdings II, Inc. (“U.N. Holdings II”) is a business corporation organized pursuant to the laws of the state of Delaware with its principal place of business

located in Bala Cynwyd, Pennsylvania. U.N. Holdings II is a subsidiary of United National Group.

3. Cheltenham Acquisition Corp., (“Merger Subsidiary”) is a business corporation organization pursuant to the laws of the Commonwealth of Pennsylvania with its principal place of business located in Bala Cynwyd, Pennsylvania. Merger Subsidiary is a subsidiary of U.N. Holdings II.
4. United National Insurance Company (“UNIC”) is a stock casualty insurance company organized pursuant to the laws of the Commonwealth of Pennsylvania with its principal place of business located in Bala Cynwyd, Pennsylvania. UNIC is a subsidiary of U.N. Holdings II.
5. Fox Paine Capital Fund II International, L.P., (“Fund II”) a Cayman exempted limited partnership organized pursuant to the laws of the Cayman Islands with its principal place of business located in Grand Cayman, Cayman Islands. Fund II indirectly controls United National Group.
6. Fox Paine International GP, Ltd. (“Fox Paine”) is a business corporation organized pursuant to the laws of the Cayman Islands with its principal place of business located in Grand Cayman, Cayman Islands. Fox Paine is the ultimate general partner of Fund II.
7. No person controls Fox Paine. Fox Paine is the sole ultimate controlling person of United National Group.

Domestic Insurers

8. Penn-America Insurance Company (“Penn-America”) is a stock property insurance company organized pursuant to the laws of the Commonwealth of Pennsylvania with its principal place of business located in Hatboro, Pennsylvania.
9. Penn-Star Insurance Company (“Penn-Star”) is a stock casualty insurance company organized pursuant to the laws of the Commonwealth of Pennsylvania with its principal place of business located in Hatboro, Pennsylvania. Penn-Star is a direct, wholly-owned subsidiary of Penn-America.
10. Penn-America Group, Inc. (“PNG”) is a business corporation organized pursuant to the laws of Commonwealth of Pennsylvania with its principal place of business located in Hatboro, Pennsylvania. Penn-America is a wholly-owned subsidiary of PNG.
11. Penn Independent Corporation (“PIC”) is a business corporation organized pursuant to the laws of Commonwealth of Pennsylvania with its principal place of

business located in Hatboro, Pennsylvania. PIC indirectly owns 31% of the voting securities of PNG.

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 insurer must be filed with the Commissioner for approval or disapproval.
13. On November 2, 2004, the Pennsylvania Insurance Department (“Department”) received an initial application (which together with all material received subsequently is collectively referenced as “Application”) from United National Group, U.N. Holdings II, and UNIC (collectively referred to as “Applicants”) for approval to acquire control of Penn-America and Penn-Star (collectively referred to as “Domestic Insurers”).
14. The Application was filed pursuant to Section 1402 of the Insurance Holding Companies Act.

Department Procedures

15. On November 13, 2004, the Department published notice in the *Pennsylvania Bulletin* that the Application was submitted by Applicants and such notice invited interested persons to submit comments to the Department regarding the Application for a thirty-day period, ending December 13, 2004.
16. The Department received no comments regarding the Application during the thirty-day period.

Description of the Proposed Acquisition

17. As described in the Application, on October 14, 2004, Applicants, PIC and certain shareholders of PIC executed a stock purchase agreement (“PIC Stock Purchase Agreement”) under which UNIC would acquire all the issued and outstanding common stock of PIC (“PIC Common Stock”).
18. As described in the Application and pursuant to the PIC Stock Purchase Agreement, the consideration paid by UNIC for the acquisition of PIC Common Stock would be paid from available funds of UNIC.
19. As described in the Application, on October 14, 2004, Applicants and certain PNG equity holders executed two separate stock purchase agreements and one letter agreement pursuant to which reasonable best efforts would be used to enter into a stock purchase agreement (collectively referred to as “PNG Stock Purchase

- Agreements”), whereby UNIC would acquire approximately 400,800 shares of PNG common stock (“PNG Common Stock”).
20. As described in the Application and pursuant to the PNG Stock Purchase Agreements, the consideration paid by UNIC for the acquisition of PNG Common Stock would be paid from available funds of UNIC.
 21. As described in the Application, on October 14, 2004, Merger Subsidiary, PNG, and Applicants executed an Agreement and Plan of Merger (“Merger Agreement”) under which Merger Subsidiary would merge with and into PNG, with PNG being the survivor (“Merger”).
 22. As described in the Application and pursuant to the Merger Agreement, each share of common stock of PNG indirectly held by UNIC as a result of the PIC Stock Purchase Agreement would be unaffected by the Merger.
 23. As described in the Application and pursuant to the Merger Agreement, the PNG Common Stock held by UNIC as a result of the PNG Stock Purchase Agreement would be unaffected by the Merger.
 24. As described in the Application and pursuant to the Merger Agreement, each share of Merger Subsidiary common stock held by U.N. Holdings II would be converted into and become one share of common stock of PNG.
 25. As described in the Application and pursuant to the Merger Agreement, certain shares of common stock of PNG outstanding immediately prior to the Merger would be converted into the right to receive an amount of Class A common stock of United National Group equal to an exchange ratio set forth in the Merger Agreement and an amount of cash (“Merger Consideration”).
 26. As described in the Application, Merger Consideration paid by U.N. Holdings II would be paid from intercompany borrowing and available funds.
 27. As described in the Application, the transactions contemplated by the PIC Stock Purchase Agreement, PNG Stock Purchase Agreements, and the Merger Agreement would be completed simultaneously.
 28. As described in the Application, following the completion of the transactions pursuant to the PIC Stock Purchase Agreement, PNG Stock Purchase Agreement, and the Merger Agreement, the ownership structure of Domestic Insurers would be UNIC indirectly controlling 33% of Domestic Insurers and U.N. Holdings, II indirectly controlling 67% of Domestic Insurers.

Standards for Review

29. 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 insurer.
30. 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

31. 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 insurers being acquired.
32. The line or lines 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 of 1921, May 17, P.L. 682 as amended (“Insurance Company Law”) (40 P.S. §382).
33. Section 206 of the Insurance Company Law (40 P.S. §386) sets out the minimum amount of paid up capital stock and paid in surplus required of a stock insurance company for each class of insurance for which it is incorporated.
34. In accordance with Section 206 of the Insurance Company Law (40 P.S. §386), Penn-America is required to maintain paid up capital stock of \$1,800,000 and Penn-Star is required to maintain paid up capital stock of \$1,800,000 to maintain licensure.
35. In accordance with Section 206 of the Insurance Company Law (40 P.S. §386), Penn-America is required to maintain paid in surplus of \$900,000 and Penn-Star is required to maintain paid in surplus of \$900,000 to maintain licensure.
36. Upon completion of the transaction, Domestic Insurers would have paid up capital in an amount that would satisfy the statutory minimum required of a stock insurance company licensed to write in Pennsylvania.
37. Upon completion of the transaction, Domestic Insurers would have paid in surplus in an amount that would satisfy the statutory minimum required of a stock insurance company licensed to write in Pennsylvania.

Competitive Impact

- 38. The acquisition of control of Domestic Insurers is subject to review and analysis under 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.
- 39. The acquisition of control of Domestic Insurers would not lessen competition or tend to create a monopoly in the Commonwealth because the market share of the Domestic Insurers, as stated in the Application, does not exceed the market share levels established in Section 1403.

Financial Condition of Applicants

- 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 financial condition of the acquiring person(s).
- 41. United National Group reported December 31, 2003, GAAP account balances of:

Assets:	\$	2,848,761,000
Liabilities:	\$	2,467,969,000
Shareholders' Equity:	\$	380,792,000

- 42. The Department has reviewed the financial statements submitted by Fund II as of December 31, 2003.
- 43. The financial condition of Applicants and Fund II would not pose any impediments to the change in control nor jeopardize the financial condition of Domestic Insurers.

Plans for the Acquired Insurers

- 44. 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 that the acquiring party has for the insurer.
- 45. As provided in the Application, Applicants do not have any plans to liquidate Domestic Insurers, sell Domestic Insurers' assets, or consolidate or merge Domestic Insurers with any person, or to make any other material change in Domestic Insurers business or corporate structure or management that would be unfair and unreasonable to the policyholders of Domestic Insurers and not in the public interest.

Management

46. 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 would control the operations of the acquired insurer.
47. Biographical affidavits for all directors and executive officers of Applicants were provided as part of the Application and the Department reviewed all affidavits that were submitted.
48. The Department is satisfied that the persons who would control the operations of Domestic Insurers have such competence, experience, and integrity that the interests of policyholders and the public would not be jeopardized.
49. 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 Commissioner has jurisdiction to review and approve the change in control of Domestic Insurers.
2. Under Section 1402 of the Insurance Holding Companies Act (40 P.S. §991.1402), the Commissioner must approve an application for a change in control unless the Department has found that:
 - a) The insurers 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 (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 Domestic Insurers.
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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Capital Stock of Penn-America Insurance	:	
Company and Penn-Star Insurance	:	
Company	:	
	:	
	:	
	:	Order No. ID-RC-05-01

ORDER

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

The acquisition by United National Group, Ltd., U.N. Holdings II, Inc. and United National Insurance Company (collectively referred to as “Applicants”) of control of all the issued and outstanding capital stock of Penn-America Insurance Company and Penn-Star Insurance Company is hereby approved, subject to this Order and the following condition:

Applicants shall make copies of the closing documents available to the Insurance Department within five (5) days after 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