



STATE OF CONNECTICUT

INSURANCE DEPARTMENT

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In the Matter of:	X
	X
PROPOSED ACQUISITION OF CONTROL OF:	X
CONVERIUM REINSURANCE (NORTH AMERICA), INC.,	X
a Connecticut insurance company	X
by	X
NATIONAL INDEMNITY COMPANY, a Nebraska domiciled	X
insurance company	X
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Docket No. EX 06-115

DECISION AND ORDER

I. INTRODUCTION

On October 27, 2006, National Indemnity Company, a Nebraska domiciled property and casualty insurance company (“NICO” or “Applicant”), filed an Application on Form A (“Application”) with the Connecticut Insurance Department (the “Department”) pursuant to 38a-129 to 38a-140 of the Connecticut General Statutes requesting approval by the Insurance Commissioner of the State of Connecticut (“Commissioner” or “Insurance Commissioner”) for the Proposed Acquisition of control or merger (the “Proposed Acquisition” or “Merger”) of Converium Reinsurance (North America) Inc., a Connecticut domiciled insurance company (“CRNA” or “Domestic Insurer”).

The Domestic Insurer is a wholly owned subsidiary of Converium Holdings (North America) “CHNA” a Delaware corporation, which is a wholly owned subsidiary of Converium AG, a corporation organized under the laws of Switzerland.

Supplemental information was subsequently requested by the Department and provided by the Applicants. An Amended Application was filed with the Department on November 6, 2006 with the final Amended Application filed on November 9, 2006.

The Proposed Acquisition will be effected pursuant to a Stock Purchase Agreement, dated as of October 16, 2006 by and between NICO and Converium AG (“Agreement”).

On November 9, 2006, I issued a notice of hearing, in which I ordered that a public hearing concerning the application for approval of the Proposed Acquisition of Control of the Domestic Insurer be held on November 30, 2006. The hearing notice was subsequently published in *The Stamford Advocate*, once a week for two consecutive weeks during the period of November 13, 2006 to November 22, 2006, inclusive. The notice of hearing was also filed by the Department with the Office of the Secretary of State on November 9, 2006 and was published on the Department’s Internet website. In accordance with section 38a-8-48 of the Regulations of the Connecticut State Agencies, the following were designated as parties to this proceeding: the Applicants and the Domestic Insurer.

The following individuals participated in and/or testified at the public hearing on behalf of the Applicant and the Domestic Insurer:

Brian G. Snover, Esq., Vice President and General Counsel, NICO represented the Applicants.

Paul Dassenko, President and Chief Executive Officer, CRNA and Corcoran Byrne, Esq., Senior Vice President and General Counsel, CRNA represented the Domestic Insurer.

Ronald Wilson, President, Beneficial Consultants

Kathleen Monnes, Esq., Day, Berry & Howard LLP and Marcia Alazraki, Esq., Manatt, Phelps & Phillips LLP represented the Applicant. Theodore Augustinos, Esq., Edwards Angell Palmer & Dodge LLP represented the Domestic Insurer.

The following Department staff participated in the public hearing:

Beth Cook, Esq., Kathy Belfi and Joan Nakano.

Pursuant to the published hearing notice, the public was given an opportunity to speak at the hearing or to submit written comments no later than the close of business on November 24, 2006, by an Order dated November 9, 2006. No public officials or members of the public signed up to speak, spoke at the hearing, or submitted written testimony.

II. FINDINGS OF FACT

After reviewing the exhibits entered into the record of this proceeding, and based on the written and oral testimony of the witnesses, the undersigned makes the following findings of fact:

1. NICO was incorporated in Nebraska in 1940 and is a wholly owned, indirect subsidiary of Berkshire Hathaway Inc., a Delaware corporation (“Berkshire”), whose stock is traded on the New York Stock Exchange. NICO is the largest member of the Berkshire Hathaway Group of Insurance companies. The statutory and executive office of NICO is located at 3024 Harney Street, Omaha, Nebraska 68131.
2. NICO is a property and casualty insurance company conducting business on both a direct and reinsurance assumed basis. NICO underwrites special risk and commercial insurance, as well as specialized reinsurance covers for primary insurers and reinsurers. NICO is also the owner of GEICO, one of the largest auto insurers in the United States.

3. Berkshire is a holding company owning subsidiaries engaged in a number of diverse business activities. In addition to NICO and GEICO, Berkshire owns General Re, one of the four largest reinsurers in the world, and U.S. Investment Corporation, the parent corporation of United States Liability Insurance Company and Mount Vernon Fire Insurance Company, each Pennsylvania domiciled property and casualty insurance companies and U.S. Underwriters Insurance Company, a North Dakota domiciled property and casualty insurance company.
4. NICO and the Reinsurance Division of Berkshire have substantial experience in the acquisition and/or reinsurance of discontinued lines of business of insurers and reinsurers in run-off. Examples of this experience are the acquisitions of Republic Insurance Company and Unione Italiana Reinsurance Company of America, Inc., which were acquired in 2000 and, pursuant to the terms and conditions of the pertinent reinsurance contracts, the assumption of the financial and claims administration responsibilities for certain run-off liabilities of the Brandywine Companies and Commercial Union Insurance Company.
5. In accordance with the Agreement, the Applicant will purchase one hundred percent of the issued and outstanding shares of the common stock of CHNA. Because CHNA owns all of the outstanding shares of CRNA, the net result will be the acquisition of CRNA by the Applicant.
6. The Applicant will acquire control of CRNA for a cash price of \$95 million for all outstanding shares of CHNA plus subject to CHNA's ongoing obligations in connection with 7 1/8% \$200,000,000 Senior Notes due 2023.

7. The applicant has not guaranteed, nor has it offered to guarantee, CHNA's performance in respect to the indebtedness.
8. The consideration will be provided from available funds.
9. The nature and amount of the consideration to be paid in connection with the proposed Merger was determined by arm's length negotiation between the respective representatives of the Applicant and Converium AG.
10. Following the Merger, CHNA will become a direct wholly owned subsidiary of NICO. CRNA will remain as a direct wholly owned subsidiary of CHNA.
11. Following the Merger, it is expected both CHNA and CRNA will undergo a name change, although the new name has yet to be determined.
12. After the Merger, the following will be members of the board of directors of CRNA:

Paul Dassenko

Corcoran Byrne

Mary Rauscher

Forrest N. Krutter

John D. Arendt

J. Michael Gottschalk

Brian G. Snover
13. After the Merger, the following will be officers of CRNA:

Paul Dassenko, President and CEO

Corcoran Byrne, SVP and General Counsel

Barbara Contreras, SVP and CFO

Mary Rauscher, SVP and Chief Administrative Officer

Joanne Spalla, SVP and Senior Reserving Officer

Raymond Dowling, SVP and Chief Reinsurance Officer

Jeff Jarman, SVP and Senior Claims Officer

Mark Millard, Assistant Secretary

14. The biographical affidavits of the new members of the boards of directors and officers of CRNA which include each individual's educational background, professional credentials, and employment history, are included in the record and the files of the Insurance Department.
15. Since August 31, 2004, CRNA has been in run-off. It is anticipated that after the Merger, the orderly run-off of CRNA's liabilities will be continued consistent with its contractual obligations.
16. Following the Merger, the Applicant does not intend any material changes in the operation, corporate structure or management of CRNA.
17. There are no current plans or projections for CRNA to underwrite any new business.
18. CRNA has 73 employees and it is anticipated that substantially all of the current employees will remain following the Merger.

19. Following the Merger, it is expected that CRNA will continue to operate from its current office location at One Canterbury Green, Stamford, CT 06901.
20. Books and records will be maintained in Connecticut.
21. During the 12 calendar months preceding the filing of the application, neither the Applicants, nor any person controlling, controlled by or under common control with, the Applicants nor any of the executive officers or directors of the Applicants has effected transactions in any voting securities of CHNA or CRNA.
22. Neither the Applicants, nor its affiliates, nor any person listed as a director or executive officer of the Applicants, nor anyone based upon interviews or at the suggestion of such acquiring party made any recommendations to purchase any voting securities of CHNA or CRNA during the 12 calendar months preceding the filing of the Application.
23. There are no contracts, arrangements, understandings or agreements with broker-dealers as to the solicitation to any voting security of CHNA or CRNA in which the Applicants, any affiliates of the Applicants, or any person listed as a director or executive officer of the Applicants is involved.
24. Berkshire filed on October 31, 2006 the Notification and Request Form for Certain Mergers and Acquisitions as required by the Hart-Scott-Rodino Anti-Trust Improvements Act of 1976 with the Federal Trade Commission ("FTC") and the Department of Justice ("DOJ"). Effective December 4, 2006 at 11:59 p.m., the 30-day waiting period expired. There is no written communication from or to the FTC or DOJ relating to this expiration nor is any expected.

III. DISCUSSION

Section 38a-132(b) of the Connecticut General Statutes specifically requires the approval of the proposed acquisition of control of the Domestic Insurer unless it is determined that:

- (A) After the change of control, the Domestic Insurer would not be able to satisfy the requirements for the issuance of licenses to write the lines of business for which they are presently licensed;
- (B) The effect of the merger or other acquisition of control would be to substantially lessen competition of insurance in this state or tend to create a monopoly in Connecticut;
- (C) The financial condition of the acquiring party is such as might jeopardize the financial stability of the Domestic Insurer or prejudice the interests of its policyholders;
- (D) The plans or proposals which the acquiring party has to liquidate the Domestic Insurer, sell its assets or consolidate or merge it with any person, or make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the Domestic Insurer and not in the public interest;
- (E) The competence, experience and integrity of those persons who would control the operations of the Domestic Insurer are such that it would not be in the interest of the policyholders of the Domestic Insurers and of the public to permit the merger or other acquisition of control; or
- (F) The acquisition of control of the Domestic Insurer is likely to be hazardous or prejudicial to those buying insurance.

A. The ability of the Domestic Insurers to satisfy the requirements for the issuance of licenses to write the line or lines of business for which they are presently licensed following the proposed acquisition of control.

The Domestic Insurer is a domestic insurance company currently licensed pursuant to section 38a-41 of the Connecticut General Statutes. Section 38a-72 of the Connecticut General Statutes requires that a domestic stock property and casualty reinsurance company must have a minimum of \$2,000,000 in capital and \$2,000,000 in paid-in surplus in the aggregate. The Domestic Insurer currently satisfies the requirements for the issuance of a license to write the lines of business for which it is licensed.

As noted in the findings of fact, following consummation of the Merger, the Applicant has no plans or proposals to liquidate the Domestic Insurer, to sell its assets, merge, or consolidate the Domestic Insurer with any other person or entity. There are no plans for the Domestic Insurer to enter into any material contract, agreement, arrangement or transaction of any kind with any person or entity. In addition to the criteria set forth in section 38a-72 of the Connecticut General Statutes, the Department considers the location of the company's books, records and assets, and the management of the company when evaluating an insurer's ability to operate pursuant to 38a-41 of the Connecticut General Statutes. The Domestic Insurer will continue to operate at its Connecticut location where the books and records will be maintained.

The Applicant also submitted evidence that the information contained in the biographical affidavits for the directors and officers of Applicant proposed for the Domestic Insurer attest to the competence, experience and integrity of the individuals

who will be responsible for the governance and operation of the Domestic Insurer, and should insure the safe and expert operation of the Domestic Insurer following the Proposed Acquisition.

Accordingly, it is the conclusion of the Insurance Department that the evidence contained in the record supports a finding that the Applicant will be able to satisfy the requirements for the issuance of the necessary license of an insurer for which it is presently licensed following the proposed acquisition of control of the Domestic Insurer.

B. Whether the effect of the Proposed Acquisition would be to substantially lessen competition of insurance in this state or tend to create a monopoly herein.

CRNA does not currently transact direct insurance business in Connecticut. On October 31, 2006, Applicants filed an application with the Federal Trade Commission (“FTC”) and the Antitrust Division of the Department of Justice (“DOJ”), as required by the Hart-Scott-Rodino Antitrust Improvement Act (“Act”), 15 U.S.C. §18. Under the Act and implementing regulations, 16 C.F. R. Part 801 et seq., proposed acquisitions of stock or assets having a market value in excess of \$15 million by a company having annual net sales or total assets of \$100 million or more must, with certain exceptions, be reported to the DOJ and the FTC. Accordingly, the proposed acquisition of Domestic Insurers by the Applicants may not be consummated unless the waiting periods prescribed by the Act have either been shortened by the enforcement agencies or expired without government action. Early termination of the 30-day waiting period was granted by the Federal Trade Commission on November 17, 2006. Therefore, an inference is drawn that there was no finding that the proposed acquisition by Applicants of Insurer would substantially lessen competition or create a monopoly.

C. Whether the financial condition of the Applicant is such as might jeopardize the financial stability of the Domestic Insurer or prejudice the interests of their policyholders.

Based on the written testimony and the evidence contained in the record, there is no evidence that would indicate the financial condition of the Applicant might jeopardize the financial condition of the Domestic Insurer, or prejudice the interest of the policyholders.

D. Whether the plans or proposals which the Applicant has to liquidate the Domestic Insurer, sell their assets or consolidate or merge them with any person, or to make any other material change in their business or corporate structure or management, are unfair and unreasonable to policyholders of the Domestic Insurer and not in the public interest.

The record reveals that the Applicant has no current plans or proposals to liquidate the Domestic Insurers, to sell their assets, or consolidate or merge them with any other entity.

Accordingly, the record supports the conclusion that there are no plans or proposals for the Domestic Insurer that are unfair and unreasonable to policyholders of the Domestic Insurer or not in the public interest.

E. Whether the competence, experience and integrity of those persons who would control the operation of the Domestic Insurer are such that it would not be in the interest of the policyholders of the Domestic Insurer and of the public to permit the Proposed Acquisition or other acquisition of control.

The record includes the biographical affidavits of those individuals who will serve as members of the board and as officers of the Applicants and the Domestic Insurer

following the change of control. The biographical affidavits disclose each individual's educational background, professional credentials and their employment history. In addition, the Applicant has represented, and the biographical affidavits confirm, that during the last ten years none of the proposed directors or officers of the Applicants and Domestic Insurer have been convicted in a criminal proceeding (excluding minor traffic violations) or have been convicted or otherwise penalized for violating any federal or state law regulating the business of insurance securities or banking, (or in the case of an alien person, such equivalent provision as applicable). During the last ten years, none of the proposed directors or officers of the Applicants have been the subject of any proceeding under the Federal Bankruptcy Code, (or in the case of an alien person, such equivalent provision as applicable) or have been affiliated with a business or organization which has been subject to such proceeding.

Furthermore, no proposed director or officer of the Applicants or Domestic Insurer has had a revocation, suspension or disciplinary sanction imposed against him or her by a governmental agency. None of the filed biographical affidavits contain any information that reflects negatively on the integrity of these individuals. The competence, experience, and integrity of those persons who would control the operations of the Domestic Insurer after the Proposed Acquisition is such that it would be in the interest of policyholders of the Domestic Insurer, and in the public interest to permit the Proposed Acquisition.

F. Whether the acquisition is likely to be hazardous or prejudicial to those buying insurance.

Based on the financial strength of the Applicant, the affirmation that the current plans of the Applicant for the Domestic Insurer will provide a strong and stable financial

environment for the Domestic Insurer, it is hereby concluded that the proposed acquisition of control of the Domestic Insurer is not likely to be hazardous to those buying insurance.

Accordingly, assuming compliance with all of Connecticut's insurance statutes and regulations, it is reasonable to conclude that the proposed acquisition of control of the Domestic Insurer is not likely to be hazardous to those buying insurance.

IV. RECOMMENDATION

Accordingly, based on the foregoing findings of fact and discussion, the written testimony and exhibits submitted, the record of the November 30, 2006 public hearing, and the recommendation of the Insurance Department staff, I conclude that the Applicants have satisfied the statutory criteria as provided in section 38a-132(b) of the Connecticut General Statutes. Accordingly, I find that pursuant to the relevant section 38a-132(b) of the Connecticut General Statutes that after the proposed acquisition of control (a) the Domestic Insurers will be able to meet the requirements for licensing in this state; (b) the effect of the acquisition of control will not be to substantially lessen competition in this state or tend to create a monopoly therein; (c) the financial condition of the Applicants is not such as might jeopardize the financial stability of the Domestic Insurer, or prejudice the interest of their policyholders; (d) the plans or proposals for the Domestic Insurer are not unfair and unreasonable to their policyholders, and are in the public interest; (e) the competence, experience and integrity of the management of the Applicants is such that it would be in the interest of policyholders of the Domestic Insurer, and of the public to permit the proposed acquisition of control; and (f) the acquisition of control of the Domestic Insurer is not likely to be hazardous or prejudicial to those buying insurance.

Accordingly, I order the following:

1. The Form A Application of the Applicants in which they seek approval to acquire control of the Domestic Insurer is hereby approved.
2. The Applicants shall provide the Insurance Department with written confirmation of the consummation of the acquisition of control by the end of the month the acquisition of control takes place.
3. Within fifteen (15) days following the end of the month in which the proposed acquisition is consummated, the Domestic Insurer shall file an amended Insurance Holding Company System Annual Registration Statement pursuant to section 38a-138-10 of the Regulations of Connecticut State Agencies.
4. For a period of two (2) years, the Domestic Insurer shall file semiannually with the Insurance Department, commencing six months from consummation of the transaction, a report under oath of its business operations in Connecticut, including but not limited to, the status of the integration with the Applicants, changes to the business of the Domestic Insurer; employment levels; changes in officers of CRNA; any changes in the statutory location in Connecticut; and, notice of any statutory compliance or regulatory actions taken by other state regulatory authorities against the Applicant and CRNA.
5. The Applicants shall provide the Department with the names and titles of those individuals who will be responsible for filing transactions for prior approval pursuant to Conn. Gen. Stats. 38a-135 and 38a-136.
6. If the proposed transaction is not consummated within three (3) months of the date of this Order and the Applicants intend to consummate the proposed transaction, the Applicants shall submit to the Commissioner a statement, which

shall include (1) the reason for the Applicants' inability to consummate the proposed transaction; (2) any material changes in the information contained in the Form A Application; and (3) the current financial statements of the Applicants and the Domestic Insurers.

7. The Applicants shall pay expenses incurred by the Insurance Commissioner in connection with the Insurance Department's review of the captioned transaction pursuant to sections 38a-132(a)(3) and 38a-132(c) of the Connecticut General Statutes.

Dated at Hartford, Connecticut, this 7th day of December, 2006



Susan F. Cogswell
Insurance Commissioner