

BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF IOWA

In the matter of the application for)
acquisition of control of APPLIED)
UNDERWRITERS CAPTIVE RISK)
INSURANCE COMPANY, INC.,)
CONTINENTAL INDEMNITY COMPANY,)
ILLINOIS INSURANCE COMPANY, and)
PENNSYLVANIA INSURANCE COMPANY)
by STEVEN M. MENZIES)

**FINDINGS OF FACT
CONCLUSIONS OF LAW,
AND ORDER**
(Iowa Code chapter 521A)

I. INTRODUCTION

Steven M. Menzies, a resident of the State of Nebraska, (the “Applicant”) seeks permission to acquire control of Applied Underwriters Captive Risk Insurance Company, Inc., Continental Indemnity Company, Illinois Insurance Company, and Pennsylvania Insurance Company, each Iowa domestic insurers (collectively, the “Domestic Insurers”) and direct wholly owned subsidiaries of North American Casualty Co., a Nebraska corporation (“NAC”), which in turn is a wholly owned subsidiary of AU Holding, Inc., a Delaware corporation (“AU Holding”). Pursuant to the proposed acquisition (described in more detail herein), the Applicant will acquire sole ownership of AU Holding and, indirectly, all of its insurance subsidiaries, including the Domestic Insurers.

In accordance with the provisions of Iowa Code¹ § 521A.3, Applicant has filed an Amended and Supplemented Form A Statement, dated August 30, 2019 (the “Form A Statement”),² applying for approval of his acquisition of control of the Domestic Insurers with the Commissioner of Insurance of the State of Iowa (the “Commissioner”).

Pursuant to the provisions of Iowa Code § 521A.3(4), and at the request of Applicant, a public hearing was held on Tuesday, September 17, 2019, at the Iowa Insurance Division (“Division”) for the purpose of determining whether the proposed acquisition of control of the Domestic Insurers by the Applicant complies with the statutory requirements set forth in Iowa Code § 521A.3(4)(a).

II. JURISDICTION

Notice of the public hearing conducted on September 17, 2019, was provided to the parties in accordance with Iowa Code § 17A.12. (*Trans. at 1; Exhibit 2*) The Commissioner has jurisdiction over this matter under Iowa Code §§ 17A.11, 17A.12, and 521A.3.

¹ All references to the Iowa Code herein are to the Code of 2019.

² The original Form A Statement was filed with the Division on April 3, 2019. After substantial correspondence with the Division, the Applicant amended and supplemented his Form A Statement on August 30, 2019. All references to the Form A Statement herein refer to the Amended and Supplemented Form A Statement dated August 30, 2019.

III. EVIDENCE PRESENTED

At the public hearing, the Applicant offered four exhibits as follows:

- Exhibit 1: Written affidavit of the Applicant, dated September 17, 2019.
- Exhibit 2: Written affidavit of the Domestic Insurers regarding receipt of the Form A Statement and Notice of Hearing
- Exhibit 3: Notice of Hearing
- Exhibit 4: A confidential Regulator-Only Copy of the Amended & Supplemented Form A Statement regarding the acquisition of control of the Domestic Insurers by the Applicant, dated August 30, 2019, with sub-exhibits, which is held confidential pursuant to the provisions of Iowa Code §§ 22.7(6) and 505.8(9) and Iowa Administrative Code rule 191-1.3(11)(c).³

Exhibits 1 through 4 were received into the record. (*Trans. at 14-15*)

At the conclusion of the hearing, the Commissioner held the record open to allow the Applicant to submit executed copies of certain escrow agreements critical to the proposed acquisition in place of unexecuted copies of such agreements that had been attached as appendices to the Form A Statement. (*Trans. at 47-48*) After the hearing, the Applicant offered the following additional exhibits, which the Commissioner received into the record:

- Exhibit 5: Escrow Agreement dated September 17, 2019 (the “Berkshire Escrow Agreement”) by and amount United Insurance Company, a Cayman Island Insurance Company (“UIC”), Bernard Acquisition Company, LLC, a Delaware limited liability company (“BAC”), the Applicant, AU Holding, and Wilmington Trust, National Association (“Escrow Agent”).
- Exhibit 6: Escrow Agreement dated September 19, 2019 (the “Ferenc Escrow Agreement,” and collectively with the Berkshire Escrow Agreement, the “Escrow Agreements”) by and among UIC, BAC, Sidney Ferenc (“Ferenc”), the Applicant, and the Escrow Agent.

The final exhibits were submitted to the Commissioner on September 20, 2019, at which time the record was closed.

In addition, the Applicant called two witnesses at the public hearing, the Applicant himself and Mr. Jamie Sahara, who spoke on behalf of UIC and BAC. (*Trans. at 15-16, 45-46*) The Applicant is the Chairman, President, and Chief Executive Officer of each Domestic Insurer. (*Trans. at 16*) Mr. Sahara is the Chairman of UIC. (*Trans. at 46*)

³ A redacted Public Copy of the Form A Statement was previously provided to the Division and was posted on the Division’s website prior to the hearing.

According to the Form A Statement and the Applicant's affidavit, the Domestic Insurers are direct wholly-owned subsidiaries of NAC, which itself is a wholly-owned subsidiary of AU Holding. AU Holding also owns all the shares of Applied Underwriters, Inc., a Nebraska corporation ("AUI"). AUI and its subsidiaries provide non-insurance business services to the Domestic Insurers and the other insurers owned by NAC and AU Holding.⁴ AU Holding is currently owned 81% by Berkshire, 11.5% by the Applicant, and 7.5% by Ferenc.⁵ (*Exhibit 1; Exhibit 4*)

The Applicant testified that he assisted with the preparation of the Form A Statement and was personally familiar with the application and the proposed transaction. He affirmed that the Form A Statement submitted in this matter is complete, accurate, and up-to-date. He also confirmed that the Form A Statement does not contain any misleading statements or omit any material facts, and that there had been no material changes to the facts, statements, and representations in the Form A Statement since its most recent amendment and supplement. The Applicant indicated that there were no contracts that are part of the proposed transaction of which the Division and Commissioner have not been made aware. (*Trans. at 18, 31, 35*)

The Applicant seeks permission to acquire control of the Domestic Insurers through a number of transactions, the purpose of which is for the Applicant to acquire sole ownership of AU Holding and all its insurance subsidiaries, including the Domestic Insurers, and for UIC to acquire, through its subsidiary, BAC, ownership of AUI and all its non-insurance business services subsidiaries. (*Exhibit 1; Exhibit 4*) Specifically, on January 31, 2019, Berkshire and UIC entered into a Stock Purchase Agreement (the "Berkshire SPA") pursuant to which UIC agreed to purchase from Berkshire, by no later than September 30, 2019 and subject to all required regulatory approvals, the 263,250 shares of AU Holding held by Berkshire (the "Berkshire Shares") for a purchase price of \$737.1 million. On January 30, 2019, UIC also entered into a Stock Purchase Agreement with Ferenc (the "Ferenc SPA," and collectively with the Berkshire SPA, the "Purchase Agreements") pursuant to which UIC agreed to purchase from Ferenc the 24,375 shares of AU Holding held by Ferenc (the "Ferenc Shares") simultaneously with the closing of the Berkshire SPA no later than September 30, 2019. The purchase price under the Ferenc SPA will be determined in accordance with Section IV thereof.⁶ (*Trans. at 19–20; Exhibit 1; Exhibit 4*)

Subsequently on April 1, 2019, UIC assigned its interest in the Purchase Agreements to its subsidiary, BAC, pursuant to two assignment agreements. On the same day, pursuant to an Assignment Agreement between BAC, the Applicant, AUI, and NAC (the "Menzies Assignment"), BAC assigned all of its right, title, and interest in the Purchase Agreements—and consequently, the right to acquire the Berkshire Shares and the Ferenc Shares—to the Applicant. In exchange for the right to acquire the Berkshire Shares and the Ferenc Shares, the Applicant

⁴ In addition to the Domestic Insurers, AU Holding, through NAC, also indirectly owns 100% of the equity interests of Texas Insurance Company, a Texas insurance company, and California Insurance Company, a California insurance company.

⁵ The Commissioner notes that, under Iowa Code § 521A.1(3), the Applicant currently controls the Domestic Insurers together with Berkshire.

⁶ As of the date of this Order, the purchase price under the Ferenc SPA has not been determined. UIC and BAC made an offer of \$54.9 million for the Ferenc Shares; the offer was rejected by Ferenc. Pursuant to the Ferenc SPA, an independent valuation is being undertaken by KPMG, LLC as to the fair market value of AU Holding and, accordingly, the Ferenc Shares. KPMG's valuation will be binding on the parties and is expected to be determined prior to the September 30, 2019 drop-dead date. (*Trans. at 20; Exhibit 1*) The Applicant testified that if the valuation is not finalized by September 30, 2019, the proposed transactions will not close. (*Trans. at 43–44*)

agreed to cause AU Holding to transfer to BAC all of the issued and outstanding shares of AUI (the “AUI Shares”). BAC will pay the cash purchase price under the Purchase Agreements at the closing of the proposed transactions. The closing of the Purchase Agreements and Menzies Assignment will occur through the Escrow Agreements, so that neither UIC nor BAC will at any time hold the Berkshire Shares or the Ferenc Shares. (*Trans. at 20–22; Exhibit 1; Exhibit 4*)

As no monies are being paid by the Applicant, the Applicant testified that he does not require financing for the proposed transactions. The Applicant further noted that the nature and amount of consideration to be paid in each transaction were determined through arm’s length negotiations between the unaffiliated parties. In particular, the Applicant, UIC, and BAC agreed through arm’s length negotiations that the value of the Applicant’s pre-transaction holdings in AU Holding is essentially equal to the value of AU Holding’s interest in NAC and its insurance subsidiaries, including the Domestic Insurers, and accordingly, that the transfer of the AUI Shares from AU Holding to BAC at the closing of the proposed transactions would be sufficient consideration for BAC’s assignment of the Purchase Agreements—and thus the Berkshire Shares and the Ferenc Shares—to the Applicant. Upon the consummation of the proposed transactions, the Domestic Insurers will be indirectly wholly-owned by the Applicant. (*Trans. at 22–23; Exhibit 4*)

The Applicant testified regarding both his financial wherewithal after the acquisition of the Domestic Insurers and the financial stability of the Domestic Insurers. The Applicant stated that he has substantial personal net worth, including holdings that could be quickly liquidated to provide up to \$50 million in additional financial support for the Domestic Insurers should the need arise. The Applicant noted that the Domestic insurers currently are adequately capitalized well in excess of the minimum capital and surplus requirement under Iowa law. In addition, the Domestic Insurers’ financial condition currently has an A rating from AM Best. (*Trans. at 25–28, 34*)

Given the above and the financial statements provided with the Form A Statement, the Applicant testified that he is financially sound and that his acquisition of the Domestic Insurers will neither jeopardize their financial position nor prejudice the interests of its policyholders. (*Trans. at 27–28*) In addition, the Applicant testified that, after the consummation of the proposed acquisition, the Domestic Insurers will continue to satisfy the requirements for issuance of licenses to write the lines of insurance for which they are presently licensed. (*Trans. at 25–27*) However, the Applicant did note that the Domestic Insurers will no longer have a presence in Iowa after the completion of the proposed transactions.⁷ (*Trans. at 29*)

The Applicant further testified that the proposed acquisition will not substantially lessen competition in insurance in Iowa. The Applicant stated that the combined market shares for 2018 in Iowa across the workers compensation lines of business currently offered by the AU Holding insurers, including the Domestic Insurers, was approximately 0.28%. The Applicant noted that he also owns another insurance company outside of AU Holding—Constitution Insurance Company, a New York insurance company—but that company does not write any business in Iowa. (*Trans. at 24, 27; Exhibit 1*)

⁷ The Domestic Insurers’ are headquartered in Omaha, Nebraska, but currently meet Iowa’s presence requirements through their majority owner, Berkshire, which has significant business operations located in Iowa.

The Applicant testified that he has no plans to liquidate the Domestic Insurers or make any material changes to the Domestic Insurers' business. The Domestic Insurers will maintain their separate corporate existences. (*Trans. at 28–29; Exhibit 1*) In addition, the Applicant stated that the current directors and officers of the Domestic Insurers will continue and remain the same after the completion of the proposed transactions. (*Trans. at 24, 36–37; Exhibit 4*) The Applicant noted that given such officers and directors' years of service with the Domestic Insurers, he believes such individuals have the competence, experience, and integrity such that the interests of the policyholders and the public will not be jeopardized. (*Exhibit 1*) The Applicant has noted that he plans to continue operating the Domestic Insurers essentially as they are currently operated. (*Exhibit 1; Exhibit 4*)

Currently, the Domestic Insurers have service agreements in place with AUI and its subsidiaries to provide a significant amount of the Domestic Insurers' operations. At the closing of the proposed transactions, the underwriting, actuarial, and accounting operations of AUI and its subsidiaries, including the employees conducting such operations, will transfer to AU Holding and the Domestic Insurers. The service agreements will otherwise remain in place, and AUI and its subsidiaries—which will at that time be controlled by UIC and BAC—will continue to provide claims management, medical networks, and sales operations to the Domestic Insurers. Both the Applicant and Mr. Sahara testified that they intend for the service agreements to otherwise continue as they are currently in effect and have not proposed or agreed to any post-closing changes to the agreements. (*Trans. at 23–24, 32–34, 35–39, 47*)

IV. FINDINGS OF FACT

The statutory requirements that the Applicant's acquisition plan must meet are relatively straightforward. Iowa Code § 521A.3(4)(a) provides that the Commissioner is to approve an application for acquisition of control if, after a public hearing on such acquisition, the applicant has demonstrated to the Commissioner all of the following:

1. That after the change of control the domestic insurer will be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;
2. That the effect of the acquisition of control will not substantially lessen competition in insurance in the State of Iowa;
3. That the financial condition of any acquiring party will not jeopardize the financial stability of the insurer, or prejudice the interests of its policyholders;
4. That the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are not unfair or unreasonable to policyholders of the insurer and are not contrary to the public interest;
5. That the competence, experience, and integrity of those persons who would control the operation of the insurer are sufficient to indicate that the interests of the policyholders of the insurer and of the public will not be jeopardized by the acquisition of control; and
6. That the acquisition of control is not likely to be hazardous or prejudicial to the insurance-buying public.

Based upon the evidence in the record viewed as a whole, the Commissioner finds as follows:

1. After the change of control, the Domestic Insurers will be able to satisfy Iowa licensure requirements and continue writing the line or lines of insurance for which they are presently licensed.

Iowa Code § 521A.3(4)(a)(1) requires an applicant to demonstrate to the Commissioner that, after the change of control, the acquired domestic insurer will be able to satisfy the requirements for issuing a license to write the line or lines of insurance for which it is presently licensed.

The Applicant testified that after the consummation of the proposed transaction, the Domestic Insurers will each continue to satisfy the requirements for issuance of a license to write the lines of insurance for which they are presently licensed. The Applicant further testified that post-acquisition the Domestic Insurers will continue to satisfy all capital and surplus requirements for licensure under Iowa law. (*Trans. at 25–26*) In particular, the Commissioner notes that the Applicant intends to continue the business operations of the Domestic Insurers as currently conducted in a manner consistent with sound business practices, including maintaining a conservative ratio of premium writings to surplus. (*Exhibit 1, Exhibit 4*) This is supported by the testimony of the Applicant that the Domestic Insurers' current senior leadership teams will continue to manage the Domestic Insurers' businesses upon the completion of the proposed transaction. (*Trans. at 24, 36–37*) The Applicant's testimony gains further support from the evidence regarding the financial strength of the Domestic Insurers and the financial resources of the Applicant and the evidence that the proposed acquisition will not jeopardize the financial position of the Domestic Insurer. (*Trans. at 26–27, 34; Exhibit 4*)

The Applicant did confirm that the Domestic Insurers will no longer have a presence in Iowa upon the completion of the proposed transactions. However, the Applicant has agreed to re-domesticate the Domestic Insurers in another jurisdiction within a reasonable time after the closing of the proposed transactions. (*Trans. at 29*)

The Commissioner finds that the Domestic Insurers' ability to satisfy Iowa licensure requirements and their ability to continue writing existing lines of insurance for which they are licensed will be unimpaired after the change of control.

2. The effect of Applicant's acquisition of control of the Domestic Insurers will not substantially lessen competition in insurance in Iowa.

Iowa Code § 521A.3(4)(a)(2) requires an applicant to demonstrate to the Commissioner that the effect of the acquisition of control will not substantially lessen competition in insurance in Iowa.

The Domestic Insurers and the other AU Holding insurers collectively wrote only 0.28% of the direct written premiums for the workers compensation line in the Iowa market in 2018. In addition to AU Holding and its insurers after the consummation of the proposed transactions, the Applicant also owns 100% of the equity interests of Constitution Insurance Company, a New York insurance company. However, Constitution Insurance Company does not write any business in the State of Iowa, and as such there will be no increase in the Applicant's and his affiliates' market share in Iowa. (*Exhibit 1*) In addition, the Commissioner notes that Berkshire's Iowa market share for workers compensation lines will most likely decrease with its divestiture of AU Holding and its

insurance subsidiaries,⁸ which may indeed have the effect of increasing competition in insurance in Iowa.

Given that the acquisition will have minimal impact on Iowa market shares, the Commissioner finds that the Applicant's acquisition of control of the Domestic Insurers will not substantially lessen competition in insurance in Iowa.

3. The Applicant's financial condition will not jeopardize the financial stability of the Domestic Insurers or prejudice the interests of their policyholders.

Iowa Code § 521A.3(4)(a)(3) requires an applicant to demonstrate to the Commissioner that the applicant's financial condition will not jeopardize the financial stability of the acquired domestic insurer, or prejudice the interest of its policyholders.

Pursuant to the Menzies Assignment, UIC and BAC remain responsible for the purchase price of the Berkshire Shares and Ferenc Shares under the Purchase Agreements. The Applicant's consideration for the Berkshire and Ferenc Shares under the Menzies Assignment is to cause AU Holding to transfer all of the AUI Shares to BAC. As the Applicant is not paying any money for the acquisition of the Domestic Insurers, the Applicant does not require any financing for the proposed transactions. (*Trans. at 22*)

The Applicant shared a copy of his personal financial statement with the Division. The Applicant has substantial net worth, including approximately \$50 million in equity outside of AU Holding and the Domestic Insurers that could be quickly liquidated if additional resources for the Domestic Insurers were necessary. (*Trans. at 34; Exhibit 4*)

Given the facts in the record, the Commissioner finds neither the acquisition itself nor the Applicant's post-acquisition plans will create a material adverse financial impact on the Domestic Insurers. There being no evidence of a material adverse financial impact on the Domestic Insurers, the Commissioner further finds that the interests of the Domestic Insurers' policyholders will not be prejudiced by the Applicant's financial position.

4. The Applicant's proposed post-acquisition changes in the Domestic Insurer's business or corporate structure or management are not unfair or unreasonable to the Domestic Insurers' policyholders and are not contrary to the public interest.

Iowa Code § 521A.3(4)(a)(4) requires an applicant to demonstrate to the Commissioner that the applicant's plans or proposals to liquidate the domestic insurer, sell its assets or consolidate or merge it with any person, or to make any other material change to the acquired domestic insurer's business or corporate structure or management, are not unfair or unreasonable to its policyholders and are not contrary to the public interest.

⁸ In addition to AU Holding and its insurance subsidiaries, the Commissioner notes that Berkshire is the ultimate controlling parent of Berkshire Hathaway Homestate Companies, biBERK, and Berkshire Hathaway GUARD Insurance Companies, each of which, through their insurance subsidiaries, writes workers compensation direct premiums in Iowa.

The facts in the record indicate that the Applicant has no present plans to liquidate, consolidate, or merge the Domestic Insurers, or to sell their assets.⁹ (*Trans. at 28–29*) The Domestic Insurers will maintain their separate corporate existence. No material changes in the Domestic Insurers’ directors, senior management, or operations are currently planned, other than to bring certain operations currently being conducted by AUI and its subsidiaries, such as underwriting, actuarial, and accounting services, over to the Domestic Insurers, including the employees that perform such services. (*Trans. at 23–24, 36; Exhibit 4*) No changes to the existing service agreements with AUI and its subsidiaries are currently contemplated, and the Applicant anticipates that the fees under those agreements will be similar to what they have been in the past. In the event that the service agreements with AUI are no longer feasible for the Domestic Insurers, the Applicant is open to engaging a different third-party service provider or to internalizing those functions again. (*Trans. at 38–39*) The Applicant has also caused the Domestic Insurers and AUI to amend their service agreements prior to the consummation of the proposed transactions to require that notice be provided to the Division in the event such agreements are terminated. (*Exhibit 4*)

On the basis of the foregoing evidence, the Commissioner finds that the Applicant’s proposed post-acquisition business plans and transactions are not unfair or unreasonable to its policyholders and are not contrary to the public interest.

5. The competence, experience and integrity of those persons who will control the operation of the Domestic Insurers are sufficient to indicate that the interests of the Domestic Insurers’ policyholders and the public will not be jeopardized by the Applicant’s acquisition of control of the Domestic Insurers.

Iowa Code § 521A.3(4)(a)(5) requires an applicant to demonstrate to the Commissioner that the competence, experience and integrity of those the applicant selects to control the operations of the acquired domestic insurer are sufficient to indicate that policyholders’ interests and the public interest will not be jeopardized by the acquisition.

To that end, the Commissioner must review detailed information of the person or persons who would be in control of the insurer in the event the application is approved. This analysis focuses not on intermediate control but on ultimate control of the insurer. An “ultimate controlling person” is broadly defined in Iowa Administrative Code rule 191-45.2(3) as one who is not controlled by any other person. An ultimate controlling person may include, but is not limited to, an individual or business enterprise. In addition, Iowa Code § 521A.1(3) defines “control” as

the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract *other than a commercial contract for goods or nonmanagement services*, or otherwise, unless the power is solely the result of an official position with or a corporate office held by that person.¹⁰

⁹ As noted above, the Domestic Insurers will re-domesticate in another jurisdiction after the closing of the proposed transactions. It is anticipated that the re-domestication will not require the liquidation, consolidation, or merger of the Domestic Insurers or the sale of their assets.

¹⁰ Emphasis added.

While a person may control a Domestic Insurer indirectly by contract, such contract must give such person or entity power over the management and direction of the Domestic Insurer in order for such person to be deemed to control the Domestic Insurer.

With respect to this analysis, the proposed acquisition is deceptively straightforward. The Domestic Insurers are currently indirect, wholly owned subsidiaries of AU Holding. Once the proposed transactions are completed, AU Holding will be solely owned by the Applicant, Mr. Menzies. Due to the structure of the proposed transactions, as set forth in the Escrow Agreements, at no time will UIC, BAC, or any of their affiliates own or hold any equity in AU Holding or the Domestic Insurers. (*Trans. at 31; Exhibit 4; Exhibit 5; Exhibit 6*) As such, upon consummation of the proposed transaction, the Domestic Insurers will be ultimately controlled solely by the Applicant.

As noted above, after the consummation of the proposed transactions, the Domestic Insurers will continue to be serviced in some respects by their former affiliate, AUI, and its subsidiaries. However, after review of the services to be rendered by AUI and its subsidiaries, the Commissioner finds that such service contracts have no impact on the analysis of the control of the Domestic Insurers. Although AUI and its non-insurance subsidiaries will continue to provide claims management, medical networks, and sales services to the Domestic Insurers, such non-management services do not amount to contractual control of the Domestic Insurers under Iowa law. (*Trans. at 35–37*) Accordingly, none of AUI, BAC, UIC, or BAC's or UIC's respective owners will have control of the Domestic Insurers after the completion of the proposed acquisition under Iowa law.

Facts in the record indicate that the ultimate controlling person, the Applicant, and the other directors and officers of AU Holding and the Domestic Insurers post-closing are experienced and competent based upon their current experience in the insurance industry. Biographical affidavits for each director and executive officer of AU Holding and the Domestic Insurers were submitted to the Division. (*Exhibit 4*) Each such individual is currently a director and/or officer of AU Holding and the Domestic Insurers, and as such the Division is familiar with such individuals. (*Trans. at 24, 36–37*)

The Commissioner finds that the competence, experience, and integrity of those individuals and entities that would control the operation of the Domestic Insurers after the acquisition are sufficient to indicate that the interests of the Domestic Insurers' policyholders and of the public will not be jeopardized by the Applicant's proposed acquisition of control of the Domestic Insurers.

6. The Applicant's acquisition of control of the Domestic Insurers, as conditioned below, is not likely to be hazardous or prejudicial to the insurance-buying public.

Iowa Code § 521A.3(4)(a)(6) requires an applicant to demonstrate to the Commissioner that the acquisition of control of the domestic insurer is not likely to be hazardous or prejudicial to the insurance-buying public.

Based upon a thorough review of the record in this proceeding, including Exhibits I through VI, and the testimonies of the Applicant and Mr. Sahara, the Commissioner finds that the Applicant's acquisition of control of the Domestic Insurers, as conditioned below, is not likely to be hazardous

or prejudicial to the insurance-buying public of the State of Iowa. The Form A Statement submitted by Applicant, the exhibits thereto, the testimonies of the Applicant and Mr. Sahara, and the other exhibits entered into the record of this proceeding collectively demonstrate that the criteria set forth in Iowa Code § 521A.3(4)(a)(1)–(5) are established. When viewed as a whole, the record indicates that there are no other factors which might make the proposed transactions hazardous or prejudicial to the insurance-buying public. Accordingly, the requirements of Iowa Code § 521A.3(4)(a)(6) have likewise been established.

The Commissioner finds that the Applicant's acquisition of control of the Domestic Insurers, as conditioned below, is not likely to be hazardous or prejudicial to the insurance-buying public.

V. CONCLUSIONS OF LAW

The legislature has vested discretion in the Commissioner not only to hold hearings and make factual findings, but also to interpret and apply the law.

Iowa Code § 521A.3(4)(a) requires the Commissioner to approve an application for acquisition of control if, after a public hearing, the applicant demonstrates all six criteria listed within that section to the Commissioner.

After a careful review of all evidence submitted, the Commissioner concludes, upon substantial evidence, that the Applicant has demonstrated to the Commissioner all six requirements set forth in, and required by, Iowa Code § 521A.3(4)(a). The Applicant's proposed acquisition of control of the Domestic Insurers, as conditioned below, should be approved.

ORDER

IT IS ORDERED that:

The application of Steven A. Menzies for approval of the acquisition of control of Applied Underwriters Captive Risk Insurance Company, Inc., Continental Indemnity Company, Illinois Insurance Company, and Pennsylvania Insurance Company, each an Iowa domestic insurer, is **APPROVED** subject to the following conditions:

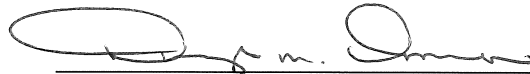
1. No person or entity other than Berkshire, Ferenc, and the Applicant will be a shareholder of AU Holding at any time before, during, or immediately after the consummation of the proposed transactions.
2. The Ferenc SPA will close simultaneously with the Berkshire SPA. In the event that the Ferenc SPA does not close simultaneously with the Berkshire SPA, Ferenc will consent or otherwise agree in writing to the transfer of the AUI Shares to BAC.
3. No later than 365 days after the closing of the proposed transactions, the Applicant will cause the Domestic Insurers to re-domesticate in another jurisdiction.

4. For so long as the Domestic Insurers continue to engage AUI, BAC, United, or their affiliates to provide certain services, the Domestic Insurers shall provide notice to the Division of any changes to the fee structure of the service agreements with such AUI affiliates for the period that they remain domiciled in Iowa.
5. The Applicant must receive all required approvals from any other state or federal regulators for the proposed transactions, including but not limited to the California Department of Insurance and the Texas Department of Insurance.
6. Either before or within a reasonable time after the closing of the proposed transactions, the Applicant shall cause the Domestic Insurers to amend the existing service agreements with AUI and its subsidiaries to remove the services that will no longer be performed by AUI and its subsidiaries and that are moving to the Domestic Insurers.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A. Any action challenging the Order shall comply with the requirements of Iowa Code Chapter 17A.

Any application for rehearing shall comply with the requirements of Iowa Code Chapter 17A.

DATED this 26th day of September, 2019.



DOUG OMMEN
Commissioner of Insurance

Copies to:

Mark Dickinson and Tom Sullivan, Nyemaster Goode PC
Jeffrey Silver, Secretary and General Counsel, Applied Underwriters Captive Risk Insurance Company, Inc., Continental Indemnity Company, Illinois Insurance Company, and Pennsylvania Insurance Company