

BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF IOWA

)	
In the matter of application of)	
ACE AMERICAN INSURANCE)	
COMPANY (NAIC # 22667) and)	FINDINGS OF FACT,
ACE LIMITED for approval of)	CONCLUSIONS OF LAW
a plan to acquire control of)	AND ORDER
AGRI GENERAL INSURANCE)	(Iowa of Code chapter 521A)
COMPANY (NAIC # 42757))	
)	

I. INTRODUCTION

ACE American Insurance Company ("ACE American"), a Pennsylvania corporation, wishes to acquire control of Agri General Insurance Company ("Agri General"). ACE American is a wholly-owned indirect subsidiary of ACE Limited ("ACE Limited"), a company organized under the laws of Switzerland whose common shares are registered under the U.S. Securities Exchange Act of 1934 and listed on the New York Stock Exchange (ticker symbol: ACE). ACE Limited is the "ultimate controlling person," as defined in Section 191-45.2(3) of the Iowa Administrative Code, of ACE American. ACE American and ACE Limited are thus collectively referred to in this Order as the "Applicant."

Agri General is an Iowa domestic insurance company, which is a wholly-owned direct subsidiary of Rain and Hail Insurance Services, Inc. ("RHIS"), an Iowa corporation. Applicant wishes to acquire control of Agri General, and has filed an application with the Iowa Insurance Commissioner ("Commissioner") for permission to do so.

Pursuant to Iowa Code section 521A.3(4)(b) (2009), and at the Applicant's request, a public hearing was held Monday, November 15, 2010 at the Iowa Insurance Division ("Division") for the purpose of determining whether Applicant's proposed acquisition of control of Agri General complies with the statutory requirements set forth in Iowa Code section 521A.3(4)(a) (2009).

II. JURISDICTION

The Commissioner has jurisdiction over this matter under Iowa Code section 521A.3 (2009).

III. EVIDENCE PRESENTED

In support of the application, Applicant submitted a "Statement Regarding the Acquisition of Control of a Domestic Insurer" with attached exhibits ("Form A") containing detail relating to Applicant's operations. Applicant also submitted the testimony of James English, Executive Vice-President and Director of ACE American. Mr. English testified to the purpose and in support of the proposed acquisition. At the close of the hearing, the Commissioner formally closed the administrative record.

All evidence was admitted without objection and is part of the record considered by the Commissioner in issuing the following findings, conclusions, and order.

No one appeared at the hearing to oppose Applicant's request, or otherwise offer evidence, contradict, or question Applicant's submission of evidence.

IV. FINDINGS OF FACT

The statutory requirements for the Applicant's acquisition plan are relatively straightforward. Iowa Code section 521A.3(4)(a) (2009) requires a showing by Applicant that the facts and circumstances supporting its application for acquisition of control of Insurer meet five standards.

Briefly, these standards relate to (1) Applicant's post-acquisition ability to retain an Iowa license and continue writing existing lines of insurance, (2) the effect of acquisition on insurance competition in Iowa, (3) the effect of Applicant's financial condition on Agri General and its policyholders, (4) the effect of Applicant's anticipated changes to Agri General's operations on Agri General's policyholders and the public interest, and (5) the effect those persons that Applicant chooses to lead Agri General in the future will have on the interests of Agri General policyholders and the public. Each requirement is discussed in greater detail below.

If Applicant establishes that its application for acquisition of control meets these requirements, section 521A.3(4)(a) (2009) requires that the Commissioner approve the application.

Applying these standards to the evidence presented by the record, when viewed as a whole, the Commissioner finds the following facts:

1. After a change of control, Agri General will be able to satisfy Iowa licensure requirements and thus continue writing the line or lines of insurance for which it is presently licensed.

Iowa Code section 521A.3(4)(a)(1) (2009) requires an applicant to demonstrate to the Commissioner that, after a 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.

Agri General is a licensee in good standing with the Division. *Trans.* at 39. Mr. English testified that, after the acquisition, the Applicant's intention is to maintain Agri General's operation as separate and distinct with respect to business of marketing, selling, underwriting, and servicing crop insurance. *Trans.* at 28. There is no current plan to redomesticate Agri General out of Iowa, or to move Agri General's headquarters out of Iowa, or to move RHIS's employees who perform services for Agri General out of Iowa. *Id.*

There are no immediate plans to change the line of business currently written by Agri General. *Id.* Current corporate operations and corporate management of Agri General and RHIS are based in Johnston, Iowa. *Trans.* at 35. All of Agri General's and RHIS's farm owners multi peril insurance business nationwide and the crop insurance business in the states of Iowa, Missouri, Illinois, Indiana, Michigan, and Ohio are also serviced from the Johnston, Iowa location. *Id.* Also, there are presently no plans to merge or consolidate Agri General. *Trans.* at 30. The acquisition should have little or no effect on policyholders. *Trans.* at 28.

Agri General will be expected to enter into two existing interaffiliate agreements with ACE American. *Trans.* at 31. The first is an intercompany allocation agreement, which is required by SSAP 62R, because multiple ACE entities are cedents under certain reinsurance agreements. *Id.* The second is a tax allocation agreement by and among ACE affiliated entities. *Trans.* at 32. Under the agreement, each party agrees to contribute its fair and equitable share to the federal income taxes payable by the affiliated group. *Id.* In addition, a number of Form D filings are anticipated in 2011 after the closing of the acquisition. *Id.* Other service agreements between ACE American, other ACE entities and Agri General will likely be put into place to perform functions on behalf of Agri General. *Trans.* at 33.

The Commissioner finds that Applicant's ability to satisfy Iowa licensure requirements and its ability to continue writing existing lines of insurance for which it is presently licensed will be unimpaired after a change of control.

2. Applicant's acquisition of control of Agri General will not substantially lessen insurance industry competition within Iowa.

Iowa Code section 521A.3(4)(a)(2) (2009) requires an applicant to demonstrate to the Commissioner that the effect of acquiring control will not substantially lessen competition in insurance in Iowa.

Mr. English affirmed, as part of his testimony, that the proposed transaction will not substantially lessen competition in Iowa. *Trans.* at 36. The reasons include: approximately 95 percent of Agri General's business is multiperil crop insurance ("MPCI"). MPCI is strictly regulated by the United States Department of Agriculture's Risk Management Agency ("RMA"), which selects the insured participants and sets the policy forms, rates, guidelines for underwriting and claims, and all other aspects of the business. *Id.* As result, of the strict regulation, price competition does not exist in the MPCI line. *Id.* Currently, Agri General, as well as ACE Property and Casualty Insurance Company ("ACE P&C") and Indemnity Insurance Company of North America ("IINA"), both affiliates of ACE American, are policy issuing companies ("PIC"), together with certain other insurers that are not affiliated with any ACE entity under the Standard Reinsurance Agreement ("SRA"), between ACE P&C and the Federal Crop Insurance Corporation ("FCIC"). *Trans.* at 37. Agri General and the PIC affiliates of ACE American, ACE P&C, and IINA share a single-distribution channel. *Trans.* at 38. Insureds and their local agents will continue to purchase MPCI through Rain and Hail LLC ("RHLLC") as they do today. *Id.*

The Commissioner finds that Applicant's acquisition of control of Agri General will not substantially lessen competition in insurance in Iowa.

3. Applicant's financial condition will not jeopardize the financial stability of Agri General, or prejudice the interests of its policyholders.

Iowa Code section 521A.3(4)(a)(3) (2009) 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.

Mr. English testified, at the time of the merger, all of the issued and outstanding shares of common stock of RHIS, other than shares owned by RHIS itself, ACE American, or any other subsidiary of RHIS or ACE American or any dissenting shares, as defined in the merger agreement, will be converted into the right to receive the per share merger consideration. *Trans.* at 14-15.

The per share merger consideration will be payable in cash and will consist of two components. *Id.* at 15. First, the per share closing payment consideration payable upon the surrender of the stock certificates at or after the effective time of the merger; and, second, the per share contingent consideration, if any, payable on December 28, 2011, to the extent such amount is determined prior to the close of business on such date and to the extent such amount is determined after December 28, 2010, payable on the date of such determination. *Id.* The total consideration is anticipated to be approximately \$1.1 billion.

Following the closing, Agri General's policyholder surplus will be over \$750 million, which is in excess of the \$5 million minimum capital and surplus requirement, and Agri General's risk based capital will be more than 1500 percent of the authorized control level. *Trans.* at 40.

Mr. English testified that ACE American will not need to take dividends from Agri General to service the debt from the proposed transaction. *Trans.* at 26. Mr. English also testified that Agri General will request permission to pay a dividend to ACE American during the first full year after the acquisition. *Id.* Additionally, the five year pro forma financial statements filed with the Division did not contemplate the payment of a dividend. Upon inquiry by the Division, Mr. English was not able to quantify the anticipated dividend until after the closing of the acquisition. *Trans.* at 46.

Applicant states it will not use dividends from Agri General to service the debt associated with the proposed acquisition; however, Applicant also states that it plans for Agri General to pay a dividend within 12 months of acquisition.

The Commissioner finds that the Applicant's failure to note the anticipated dividends in the pro forma financial statements filed and its inability to quantify the anticipated dividend at the public hearing demonstrate that regulatory parameters must be established regarding the payment of dividends to ensure that there will be no adverse financial impact on Agri General, and that the interests of Agri General's policyholders will not be prejudiced by Applicant's financial condition.

4. **Applicant's proposed post-acquisition changes in Agri General's business, corporate structure, and management are not unfair or unreasonable to Agri General's policyholders and are not contrary to the public interest.**

Iowa Code section 521A.3(4)(a)(4) (2009) requires an applicant to demonstrate to the Commissioner that the applicant's plans or proposals for material changes to the acquired domestic insurer's business, corporate structure or management are not unfair or unreasonable to its policyholders and are not contrary to the public interest.

Mr. English testified that prior to the proposed transaction; RHIS owned 100 percent of the outstanding shares of common stock of Agri General. *Id.* at 13. ACE American currently owns approximately 20.2 percent of the issued and outstanding common stock of RHIS, but in connection with its acquisition of that ownership interest, ACE American disclaimed control of RHIS and Agri General. *Id.* With the merger, ACE American intends to acquire 100 percent of the indirect control of Agri General through the merger of Raha Iowa Acquisition Corp. ("Merger Sub") with and into RHIS pursuant to the merger agreement. *Id.* After consummation of the merger, ACE American will be the 100 percent direct owner of RHIS and thus the 100 percent indirect owner of Agri General. *Id.*

Post acquisition, Mr. English also testified that Agri General will benefit from Applicant's financial strength and financial flexibility while retaining its distinct identity and operations as the core of Applicant's agricultural business unit. *Id.* at 23.

The Commissioner finds that Applicant's proposed post-acquisition changes in Agri General's business, corporate structure, and management are not contrary to the public interest.

5. **The competence, experience, and integrity of those individuals who will control Agri General after acquisition are sufficient to indicate that Agri General policyholder interests and the public interest will not be jeopardized by Applicant's acquisition of control of Agri General.**

Iowa Code section 521A.3(4)(a)(5) (2009) requires an applicant to demonstrate to the Commissioner that the competence, experience, and integrity of those the applicant selects to control the acquired domestic insurer are sufficient to indicate that policyholders' and the public's interest will not be jeopardized by acquisition.

Mr. English stated that after the acquisition, the Applicant expects to maintain the operations and management of Agri General and RHIS essentially as they currently operate. *Trans.* at 35. The Applicant intends to maintain the current executive officers and directors of Agri General in their respective positions, except for certain planned retirements. *Trans.* at 28. Applicant intends to cause approximately six additional directors to be appointed for Agri General following the closing. *Trans.* at 29.

Management biographies, which are part of the record of this proceeding, confirm that the directors and executive officers of the Applicant who would control Agri General are seasoned and experienced individuals in the financial services industries with proven records of competence, service, and integrity.

The Commissioner finds that the competence, experience, and integrity of those individuals who will control Agri General after acquisition, are sufficient to indicate that the public interest will not be jeopardized by Applicant's acquisition of control of Agri General.

V. CONCLUSION 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 section 521A.3(4)(a) (2009) requires the Commissioner to approve an application for acquisition of control if, after a public hearing, the applicant demonstrates all five criteria listed within that section to the Commissioner.

After a careful review of all evidence submitted, the Commissioner concludes, upon substantial evidence, that Applicant has demonstrated to the Commissioner all five requirements set forth in, and required by, section 521A.3(4)(a) (2009). Applicant's proposed acquisition of control of Agri General should be approved.

ORDER

IT IS THEREFORE ORDERED that:

The application of ACE American Insurance Company and ACE Limited for approval of a plan to acquire control of Agri General Insurance Company is **APPROVED on the condition that no dividend shall be paid by Agri General for a period of three years following the date of acquisition without the prior written approval of the Commissioner.**

This Order shall be considered final agency action for the purposes of Iowa Code chapter 17A (2009). Any action challenging the Order shall comply with the requirements of Iowa Code chapter 17A (2009).

Any application for rehearing shall comply with the requirements of Iowa Code chapter 17A (2009).

DATED this 10th day of December, 2010.

A handwritten signature in black ink, reading "Susan E. Voss". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

SUSAN VOSS

Iowa Insurance Commissioner

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