

**BEFORE THE COMMISSIONER OF INSURANCE  
OF THE STATE OF KANSAS**

**In the Matter of the Proposed Exemption    )**  
**of                                                            )**         **Docket No. 3764-EX**  
**Brooke Corporation                                 )**

**ORDER**

Now comes on this 9th day of November 2007, before the Commissioner of Insurance for disposition the request of Brooke Corporation, dated October 9, 2007, ("Applicant") for an Order, pursuant to K.S.A. 40-3304(e), exempting Applicant from the filing and approval requirements of K.S.A. 40-3304, as said statute may be construed to apply to the restructuring of the insurance holding company system of Brooke Capital Corporation (fka First American Capital Corporation). Such restructuring is to be accomplished through a change in the ownership of Brooke Capital Corporation, the entity that is the holding company for First Life America Corporation.

Brooke Corporation is represented by Keith E. Bouchey, President and CEO, and Carl Baranowski, Senior Counsel. Brooke Franchise Corporation is represented by Cynthia Weber Scherb, General Counsel. The Kansas Insurance Department ("KID") is represented by John W. Campbell, General Counsel. Also appearing for the KID are Kenneth G. Abitz, Director of Financial Surveillance; Dawn Palmberg, Financial Analyst; and Deletria L. Nash, Assistant General Counsel.

This Order shall become effective as a Final Order upon signature, without further notice, it being stipulated that the time to request a hearing, pursuant to K.S.A. 77-542, is waived.

**FINDINGS OF FACT**

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-103 and K.S.A. 40-3301, *et seq.*

2. Applicant has requested an exemption from the acquisition and approval requirements of the Kansas Insurance Holding Companies Act, specifically those requirements stated in K.S.A. 40-3304(e).

3. Brooke Capital Corporation, a Kansas-domiciled company, is the holding company for First Life America Corporation, a Kansas-domiciled insurance company.

4. Currently 100% of the common stock of First Life America Corporation is owned by Brooke Capital Corporation; 51.7% of the common stock of Brooke Capital Corporation is owned by Brooke Corporation. Brooke Corporation is a Kansas corporation, which also owns 100% of the common stock of Brooke Franchise Corporation. Robert D. Orr, owns 65% of Brooke Holdings, Inc., which in turn owns 47% of the common stock of Brooke Corporation. Therefore, Robert D. Orr is the ultimate owner of First Life America Corporation.

5. Under an Agreement and Plan of Merger dated August 31, 2007, between Brooke Franchise Corporation, Brooke Corporation, and Brooke Capital Corporation, Brooke Franchise Corporation will merge with and into Brooke Capital Corporation. As consideration for the merger, Brooke Corporation will receive 5,000,000 shares of Brooke Capital Corporation's common stock, with an opportunity to receive additional shares of Brooke Capital Corporation's common stock pursuant to an earn-out arrangement. The intent of the proposed merger transaction is to merge Brooke Corporation's wholly-owned subsidiary Brooke Franchise Corporation with majority-owned subsidiary Brooke Capital Corporation in exchange for additional common stock of Brooke Capital Corporation, not to alter control of First Life American Corporation.

6. Under an Exchange Agreement dated August 31, 2007 between Delta Plus Holdings, Inc., Brooke Corporation and Brooke Capital Corporation, Brooke

Capital Corporation will acquire all of the outstanding common stock of Delta Plus Holdings, Inc. Delta Plus Holdings, Inc. is a Missouri corporation which is wholly-owned by Brooke Corporation. As consideration for this exchange, Brooke Corporation will receive 500,000 shares of Brooke Capital Corporation common stock, with an opportunity to receive additional shares of Brooke Capital Corporation common stock pursuant to an earn-out arrangement. The exchange will not to alter control of First Life American Corporation. The Missouri Department of Insurance has issued its order of exemption regarding the Exchange Agreement.

7. As a result of the transactions contemplated by the Merger Agreement and the Exchange Agreement described above, Brooke Corporation will increase its percentage holdings of the common stock of Brooke Capital Corporation from 52% to at least 81% and, depending on subsequent earnings, to as much as 85%. In numbers of shares, Brooke Corporation's holding of the common stock of Brooke Capital Corporation will increase from 1,838,967 shares to between 7,338,967 and 9,838,967 shares as a result of these transactions.

8. Following the merger of Brooke Franchise Corporation with and into Brooke Capital Corporation, Robert D. Orr will continue to be the ultimate controlling person of First Life America Corporation.

### **CONCLUSIONS OF LAW**

9. K.S.A. 40-3304(a) provides, in part, as follows:

(a) No person other than the issuer shall . . . enter into any agreement to exchange securities, or, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, . . . at the time . . . any such agreement is entered into, . . . such person has filed with the commissioner of insurance and has sent to such insurer, a statement containing the information required by this section and such . . . agreement . . . has been approved by the

commissioner of insurance in the manner hereinafter prescribed.

10. K.S.A. 40-3304(e) provides

(e) The provisions of this section shall not apply to:

Any offer, request, invitation, agreement or acquisition which the commissioner of insurance by order shall exempt therefrom as: (1) Not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer; . . .

11. Based upon the information enumerated in the Findings of Fact contained in paragraphs two through eight above, and the representations made on behalf of Applicant, the restructuring of the holding company system whereby the exchange of common voting stock of Brooke Capital Corporation to Brooke Corporation is not made for the purpose of and will not have the effect of changing or influencing the control of First Life America Corporation, a Kansas-domiciled insurer.

**IT IS THEREFORE, BY THE COMMISSIONER OF INSURANCE, ORDERED**

**THAT:**

1. Brooke Corporation shall be exempt from the application of the formal filing and approval requirements of K.S.A 40-3304 as it may be deemed to apply to the change of the ownership of Brooke Capital Corporation, the holding company for First Life America Corporation, which will result in Brooke Corporation owning between 81.3% and 85.4% of the common stock of Brooke Capital Corporation, provided the reorganization is effected within thirty (30) days of the date of this Order. If the proposed transaction is not effected within thirty (30) days this Order is considered null and void.

2. Brooke Corporation shall comply with all of the provisions and requirements of K.S.A. 40-3301, *et seq.*, in the future.

3. The Commissioner of Insurance retains jurisdiction over this matter to issue any and all further Orders deemed appropriate or to take such further action as necessary to dispose of this matter.

**Notice of Right to Hearing or Appeal**

Brooke Corporation has been informed that it is entitled to a hearing pursuant to K.S.A. § 77-537, the Kansas Administrative Procedure Act and that if Applicant desires a hearing, they must file a written request for a hearing with:

John W. Campbell, General Counsel  
Kansas Insurance Department  
420 S.W. 9th Street  
Topeka, Kansas 66612.

The Applicant hereby waives this right and stipulates that no hearing is requested and further agrees that this Order shall become effective as a Final Order upon the signing of this Order.

**IT IS SO ORDERED THIS \_\_9th\_\_ DAY OF NOVEMBER 2007 IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**



\_\_\_\_\_/s/ Sandy Praeger\_\_\_\_\_  
Sandy Praeger  
Commissioner of Insurance

By: \_\_\_\_/s/ John W. Campbell\_\_\_\_\_  
John W. Campbell  
General Counsel

Submitted and approved by:

/s/ Deletria L. Nash \_\_\_\_\_  
Deletria L. Nash  
Assistant General Counsel

**Certificate of Service**

I hereby certify that a true and correct copy of the above order was forwarded via first class mail, postage prepaid, on this   9th   day of   November  , 2007 to:

Keith E Bouchey  
President/CEO  
Brooke Corporation  
8500 College Blvd.  
Overland Park, KS 66210

Cynthia Weber Scherb  
Brooke Franchise Corporation  
General Counsel  
10950 Grandview Drive, Suite 600  
Overland Park, KS 66210

/s/ Deletria L. Nash \_\_\_\_\_  
Deletria L. Nash  
Assistant General Counsel