

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

In the Matter of the Proposed Acquisition of Control of)

BENCHMARK INSURANCE COMPANY)

By:)

AHP-BHC LLC and BIC HOLDINGS LLC,)

Docket No. 4771-ACQ

ORDER

Now on this 29th day of July, 2015, the above matter comes before the Commissioner of Insurance of the State of Kansas (the “Commissioner”) upon the filing of a pre-acquisition notice pursuant to K.S.A. 40-3304 and K.A.R. 40-1-28 in the form of a “Form A” Statement Regarding the Acquisition of Control of a Domestic Insurer (“Form A Statement”) by AHP-BHC LLC (“AHP-BHC”) and BIC Holdings LLC (“BIC Holdings”) (collectively, the “Applicants”). The Form A Statement relates to the proposed acquisition of control of Benchmark Insurance Company (“Benchmark”), a Kansas domestic insurance company, through the transfer of all of the issued and outstanding stock of Benchmark’s parent corporation, Benchmark Holding Company (“BHC”), to BIC Holdings. Following the transfer of all of BHC’s stock to BIC Holdings, BHC’s historic shareholders will own 63.6% of the equity of BIC Holdings, and AHP-BHC will own the remaining 36.4% of the equity of BIC Holdings.

The Applicants are represented by Steve E. Isaacs of Schiff Hardin LLP. Benchmark is represented by Heidi A. Carpenter of Fafinski Mark and Johnson, P.A. The Kansas Insurance Department (“KID”) is represented by its General Counsel, Diane Minear and its Director of Financial Surveillance, Kenneth G. Abitz.

Pursuant to the authority granted to the Commissioner pursuant to K.S.A. 40-3301 and 40-3304(d)(1) and in accordance with the Kansas Administrative Procedures Act, K.S.A. 77-501, *et seq.*, the Commissioner hereby asserts the following declarations of public interest and policy, findings of fact, conclusions of law and orders:

DECLARATION OF PUBLIC INTEREST AND POLICY

The Commissioner finds and declares that it is consistent with the public interest and the interest of policyholders to permit insurers to:

- (a) engage in activities which would enable them to make better use of management skills and facilities;
- (b) diversify into new lines of business through acquisition or organization of subsidiaries;
- (c) have free access to capital markets which could provide funds for insurers to use in diversification programs;
- (d) implement sound tax planning conclusions; and
- (e) serve the changing needs of the public and adapt to changing conditions of the social, economic and political environment, so that insurers are able to compete effectively and to meet the growing public demand for institutions capable of providing a comprehensive range of financial services.

The Commissioner further finds and declares that the policies and purposes in K.S.A. 40-33-1, *et seq.*, promote the public interest by:

- (a) facilitating the achievement of the objectives enumerated in K.S.A. 40-3301 and set out above;
- (b) requiring disclosure of pertinent information relating to changes in control of an insurer;

- (c) requiring disclosure by an insurer of material transactions and relationships between the insurer and its affiliates, including certain dividends paid by the insurer; and
- (d) providing standards governing material transactions between the insurer and its affiliates.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The findings of fact and conclusions stated herein are based upon the statements made by the Applicants in the Form A Statement and accompanying documents made under oath and filed with KID by the Applicants pursuant to K.S.A. 40-3304(b) and K.A.R. 40-1-28.

1. Significant documents have been reviewed by representatives of the Financial Surveillance and Legal Divisions of the KID, and the Commissioner has had the benefit of their technical expertise and advice.

2. The purpose of the filing of the Form A Statement is to seek authority from KID for the proposed acquisition of control of Benchmark by the Applicants. The terms and conditions of the proposed acquisition are more fully set forth in the Form A Statement filed with the Commissioner pursuant to the Kansas Insurance Holding Companies Act, K.S.A. 40-3301, *et seq.*

3. The Form A Statement filed with the KID by the Applicants included a Form A Statement Regarding the Acquisition of Control of a Domestic Insurer dated July 23, 2015, requesting approval of the acquisition of control of Benchmark.

4. The Applicants submitted various Exhibits to the Form A Statement, including, without limitation, the Investment and Exchange Agreement, organizational charts and financial statements.

5. Benchmark is a Kansas corporation headquartered in Wayzata, Minnesota, and having a registered address in Topeka, Kansas. BHC, a Minnesota corporation, currently owns 100% of the issued and outstanding shares of stock of Benchmark. BIC Holdings will obtain 100% ownership of Benchmark through its purchase of all the outstanding shares of capital stock of BHC. The historic shareholders of BHC will continue to own, indirectly, 63.6% of the equity interest in Benchmark, and AHP-BHC will acquire, indirectly, 36.4% of the equity interest in Benchmark.

6. On March 16, 2015, BHC, Trean Corporation, the holders of all of the outstanding stock of each of BHC and Trean Corporation, Andrew M. O'Brien, AHP-BHC, AHP-TH LLC, BIC Holdings and Trean Holdings LLC executed an Investment and Exchange Agreement (the "Agreement"). The Agreement provides for the transaction to close following, among other things, the receipt of proper regulatory approvals, including approval by the KID. AHP-BHC's total purchase price for its interest in BIC Holdings is approximately \$28.5 million. Upon execution of the Agreement, Andrew M. O'Brien, as trustee of the Andrew M. O'Brien Premarital Trust, will continue to be the ultimate controlling person of Benchmark.

7. The staff of the KID have inspected and reviewed the contents of the Form A Statement and Exhibits attached thereto to the extent necessary and found that the filing of the Form A Statement and Exhibits are in compliance with the provisions of Kansas Insurance Holding Company Act, K.S.A. 40-3301, *et seq.* and K.A.R. 40-1-28. Also, staff have found the Form A Statement and Exhibits have provided the information required under Kansas statutes to enable the Commissioner to render a decision.

8. Evidence shows that after the change of control, Benchmark would 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.

9. Evidence shows that the financial condition of the Applicants does not jeopardize the financial stability of Benchmark or prejudice the interest of its policyholders.

10. Evidence shows that the Applicants have no current plans or proposals to liquidate Benchmark, sell its assets or consolidate or merge Benchmark with any person, or to make any other material change in Benchmark's current active business operations or corporate structure or management.

11. Evidence shows that the competence, experience and integrity of those persons who would control the operation of Benchmark are such that it would be in the interest of policyholders of the insurer and of the public to permit the acquisition of control.

12. Evidence shows that the acquisition is not likely to be hazardous or prejudicial to the insurance-buying public.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:

1. The application by the Applicants to acquire control of Benchmark in the manner set forth in the Form A Statement and Exhibits attached thereto is hereby approved pursuant to K.S.A. 40-3304, provided that the acquisition is effected within sixty (60) days of the date of this Order.

2. The Commissioner retains jurisdiction over the subject matter of this proceeding and over the parties for the purpose of entering such further order or orders as may be deemed proper.

NOTICE OF RIGHTS

This Final Order is effective upon service. Pursuant to K.S.A. 77-529, Applicants may petition the Commissioner for reconsideration of this Final Order within fifteen (15) days after service of the Final Order. A petition for reconsideration must state the specific grounds upon which relief is requested. Additionally, a party to this agency proceeding may seek judicial review of this Final Order by filing a petition in the District Court, pursuant to K.S.A. 77-601, *et seq.* Reconsideration of this Final Order is not a prerequisite for judicial review. A petition for judicial review is not timely unless filed within thirty (30) days following the service of this Final Order, unless Applicants petition the Commissioner for reconsideration, in which case a petition for judicial review is not timely unless filed within thirty (30) days following service of an order rendered upon reconsideration, or an order denying the request for reconsideration. In the event Applicants file a petition for judicial review, the agency officer to be served on behalf of the Department is:

Diane Minear, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

IT IS SO ORDERED THIS 29th DAY OF JULY 2015, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



/s/ Ken Selzer
Ken Selzer, CPA
Commissioner of Insurance
BY:

/s/ Diane Minear
Diane Minear
General Counsel

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Order was forwarded via first class mail, postage prepaid on the 29th day of July, 2015 to:

Andrew M. O'Brien
BIC Holdings LLC
100 Lake Street West
Wayzata, MN 55391

/s/ Diane Minear _____
Diane Minear
General Counsel