

JUL 02 2014

FILED

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

STATE OF NEBRASKA	)	CAUSE NO.: C-2096
DEPARTMENT OF INSURANCE,	)	
	)	
PETITIONER,	)	
	)	TERMINATION OF
vs.	)	SUPERVISION
	)	
ABILITY INSURANCE COMPANY,	)	
	)	
RESPONDENT.	)	
	)	

On December 12, 2012, an Order of Supervision and List of Requirements to Abate Supervision, Cause No.: C-1992, attached hereto as Exhibit "A", known as the "Supervision Order", was filed by the Nebraska Department of Insurance (Department) against Ability Insurance Company (Ability).

The Department has closely monitored Ability's financial condition and Ability's work to complete the items on the list of requirements to abate supervision since the Supervision Order was issued and throughout the change in ownership related to the Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer, known as the Form A filing, Cause No.: C-1984, attached hereto as Exhibit "B", to date. Given the extensive monitoring, regular discussions with Ability's owners and management, and Department oversight, IT IS HEREBY ORDERED that the Supervision Order filed December 12, 2012, be terminated as Ability has met all requirements to abate supervision as required in said Supervision Order.

Dated this 2 day of July, 2014.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE

  
\_\_\_\_\_  
BRUCE R. RAMGE  
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Termination of Supervision was served upon Kenneth King, UA Capital LLC c/o Advantage Capital Holding, LLC, 48 Wheeler Ave., Pleasantville, NY 10570 on this 2 day of July, 2014, by electronic mail and by U.S. Mail, postage prepaid.

Brandt J. Course

DEC 12 2012

FILED

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

STATE OF NEBRASKA	)	
DEPARTMENT OF INSURANCE,	)	ORDER OF SUPERVISION AND
	)	LIST OF REQUIREMENTS TO
PETITIONER,	)	ABATE SUPERVISION
	)	
VS.	)	
	)	
ABILITY INSURANCE COMPANY,	)	CAUSE NO.: C-1992
	)	
RESPONDENT.	)	

The duly appointed and qualified Director of Insurance for the State of Nebraska, Bruce R. Ramage (“Director”), acting under the authority of Neb. Rev. Stat. §§ 44-4801 through 44-4862 (Reissue 2010), and, being fully advised in the premises, hereby finds, orders and concludes as follows:

FINDINGS OF FACT

1. Ability Insurance Company (“AIC”) is a Nebraska domestic life and health insurance company with its home office located at 222 South 15th Street, Suite 1202 South, Omaha, NE 68102.

2. Neb. Rev. Stat. § 44-4809(2) of the Insurers Supervision, Rehabilitation, Liquidation Act provides that the Director may issue an order of supervision in the event an insurer is in a condition which renders the continuance of its business hazardous to the public or to its insureds.

3. Based upon examination of financial statements filed by AIC, including those filed with the Department dated September 30, 2011 and September 30, 2012, the Director has reasonable cause to believe that AIC is in such a condition as to render the continuance of its



business hazardous to its policyholders and the general public as defined in the Nebraska Insurance Regulations, specifically, 210 Neb. Admin. Code 55 §§ 004.05 and 004.06.

4. Pursuant to 210 Neb. Admin. Code 55 § 004.05, a hazardous condition may be deemed to exist when an insurer's operating loss in the last twelve-month period is greater than fifty percent (50%) of the insurer's remaining surplus as regards policyholders in excess of the minimum required.

5. AIC's policyholder surplus as of September 30, 2011 was \$49,461,289. AIC's policyholder surplus as of September 30, 2012 was \$28,132,561, which indicates an operating loss over this twelve month period of \$21,328,728. AIC's remaining surplus as regards policyholders in excess of the minimum required is \$27,132,561. AIC's operating loss in the last twelve-month period is seventy-nine percent (79%) of the insurer's remaining surplus as regards policyholders in excess of the minimum required. This exceeds the limits established in 210 Neb. Admin. Code 55 § 004.05 and constitutes a hazardous financial condition.

6. Pursuant to 210 Neb. Admin. Code 55 § 004.06, a hazardous condition may be deemed to exist when an insurer's operating loss in the last twelve-month period, excluding net capital gains, is greater than twenty percent (20%) of the insurer's remaining surplus as regards policyholders in excess of the minimum required.

7. AIC's operating loss in the last twelve-month period, excluding net capital gains, is \$20,922,261. AIC's remaining surplus as regards policyholders in excess of the minimum required is \$27,132,561. AIC's operating loss in the last twelve-month period, excluding net capital gains, is seventy-seven percent (77%) of its remaining surplus as regards policyholders in excess of the minimum required. This exceeds the limits established in 210 Neb. Admin. Code 55 § 004.06 and constitutes a hazardous financial condition.

## CONCLUSIONS OF LAW

1. The State of Nebraska Department of Insurance has jurisdiction over the subject matter and over AIC.
2. Grounds exist for placing AIC under supervision pursuant to Neb. Rev. Stat. § 44-4809(2)(a)(i) (Reissue 2010).

## ORDER OF SUPERVISION

NOW, THEREFORE, it is hereby ordered by the Director that:

1. AIC is immediately placed under an Order of Supervision pursuant to Neb. Rev. Stat. § 44-4809(2)(a)(i) (Reissue 2010).
2. James G. Nixon, Chief Examiner of the Nebraska Department of Insurance, is appointed Supervisor. The Supervisor may appoint one or more Deputy Supervisors in overseeing the operations of AIC.
3. AIC shall pay all costs incurred by the Supervisor and any Deputy Supervisors in overseeing the operations of AIC.
4. During the period of supervision, AIC shall not, without prior written approval of the Director or Supervisor:
  - a) Write any new business, enter into any new reinsurance contracts, treaties, or agreements or make amendments to any existing reinsurance contracts, treaties, or agreements, or enter into any commutations, terminations, novations, or similar transactions;
  - b) Make any payments, dividends, or other distributions to or engage in any transactions with any affiliate of AIC. Transactions under existing affiliated agreements do not need approval; however, any modification to such agreement or execution of new affiliated agreements requires prior approval by the Director or Supervisor;
  - c) Accept any non-cash capital contributions from any affiliate;
  - d) Make any withdrawal of monies from its bank accounts nor make any disbursement, payment or transfer of assets in an amount or by a series of related transactions exceeding \$100,000;

- e) Make any new investment of its funds, unless such investment is in a fixed income security that has a National Association of Insurance Commissioners Securities Valuation Office designation of 1 or 2;
- f) Sell any investment prior to maturity;
- g) Incur any debt, obligation or liability for borrowed money;
- h) Loan monies to any person or entity (whether or not affiliated);
- i) Pledge or assign any of its assets;
- j) Grant any salary increase or pay any bonus, commission, stock, stock option, directors' fees, or other non-salary compensation to any officer, director, or employee of AIC, or make any changes to the terms of any written group remuneration, consulting, deferred compensation or bonus plan covering officers, employees, or directors of AIC;
- k) Make any additions to AIC's board of directors or appoint any individual as a chief executive officer, chief operations officer, chief financial officer, chief actuarial officer, general counsel or chief claims officer (or equivalent positions) ("Key Officers") of AIC. AIC shall notify the Department of the resignation or termination of any Key Officer within five days of such resignation or termination;
- l) Establish statutory security deposits, in addition to deposits existing on the date hereof, with any insurance regulatory authority;
- m) Waive, or take any action, or fail to take any action, that may be deemed to constitute a waiver of any rights to satisfaction of obligations owed to AIC by any affiliate of AIC; or
- n) Move, transfer, or change the current funds withheld arrangement and assets supporting it.

5. During the period of supervision, AIC shall engage an independent actuary, subject to prior approval of the Department, to conduct actuarial assessment of the reserves as of December 31, 2012, and, as the Department deems necessary, in its sole discretion, each year thereafter. Such report of actuary and all underlying workpapers shall be filed by AIC with the Department by March 1.

6. During the period of supervision, AIC shall make the following reports to the Department:

- a) A monthly summary statutory financial information report on the results of operations and the financial position of AIC, which shall be filed no later than the

15th day of the month following the month subject to the report, in a form approved by the Department;

- b) Monthly confirmations of all transactional activity of AIC funds withheld and custody agreements must be submitted directly by the bank to the Department no later than the 15th day of the month following the month end;
- c) Any final reports or evaluations, including supporting workpapers, prepared by AIC or its consultants regarding the operations of AIC, including but not limited to its existing or projected financial condition;
- d) Within thirty (30) days of the date of this Agreement, AIC shall file, in a form acceptable to the Director, financial projections for a two-year period. The projections shall include the year-end Risk Based Capital ratio, balance sheet, income statement and statement of cash flow, all on a statutory basis. The financial statement projections shall be revised annually and filed with the Department not later than March 31 of each successive year;
- e) A report in which the actual results during the prior year are compared to the financial projections for that year as submitted to the Department in Paragraph 2(e), and material variances are explained. Such report shall be filed with the Department not later than March 31 of each year;
- f) A monthly written report summarizing all communication and filings made with other regulatory agencies;
- g) All notices of regulatory action or litigation filed against AIC or its affiliates;
- h) Any additional reports that the Department reasonably determines are necessary to ascertain the financial condition of AIC, to be submitted within five (5) business days of request by the Department, or such time period as the Department and AIC may agree; and

7. Nothing in this order shall preclude the Director from taking further immediate action as deemed in the best interest of AIC's policyholders and the public including commencement of further legal proceedings if and as necessary.

8. Nothing in this order shall preclude AIC from requesting a hearing on this Order pursuant to Neb. Rev. Stat. § 44-4809(6)(a) (Reissue 2010). However, the request for a hearing shall not stay the effect of this order as expressly provided by law.

LIST OF REQUIREMENTS TO ABATE SUPERVISION AND NOTICE OF HEARING

The Director hereby notifies AIC that it shall convene and conduct a hearing in no less than sixty days to determine whether AIC has complied with the following conditions as set forth in this Order. Those conditions are as follows:

1. AIC has undergone an independent actuarial review, by an actuary engaged by the Nebraska Department of Insurance, of its new GPV system (Alpha) with updated assumptions and claim reserves based on new Milliman claims cost tables;
2. All reserves of AIC have been adjusted to recommended levels;
3. AIC is no longer in a condition which renders the continuance of its business hazardous to the public or to its insureds; and
4. AIC's Risk Based Capital calculation is at or above the 350% of Authorized Control Level.

Should the Director find after hearing that AIC has failed to comply with any of the requirement set out above or has committed acts or is in the status or condition prohibited by Chapter 44 of the Nebraska Revised Statutes, he may enter an Order applying the remedies and sanctions authorized by that Chapter or take such other action as he deems appropriate which is authorized by law.

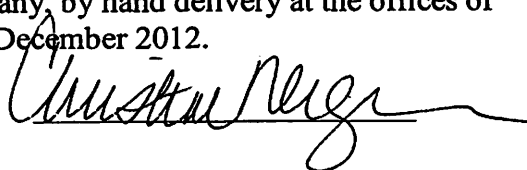
Dated and effective this 12th day of December 2012.



Bruce Ronge  
Director of Insurance  
Nebraska Department of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order of Supervision and List of Requirements to Abate Supervision and Notice of Hearing was served upon Frederick John Yosua, Jr., President, COB, COO, Ability Insurance Company, by hand delivery at the offices of the Nebraska Department of Insurance on this 12th day of December 2012.





JAN 31 2013

**FILED**

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

IN THE MATTER OF THE ) ORDER APPROVING ACQUISITION  
ACQUISITION OF CONTROL OF )  
ABILITY INSURANCE COMPANY )  
) CAUSE NO.: C-1984

On January 23, 2013, Advantage Capital Holdings, LLC (“Applicant”), filed an application (“Form A”) seeking approval to acquire control of Ability Insurance Company (“Ability”), a Nebraska domestic insurer. The application was filed pursuant to the Insurance Holding Company System Act, *Neb. Rev. Stat.* §§ 44-2120 to 44-2153 (Cum. Supp. 2012). The filing was subsequently supplemented on January 28, 2013. A Notice of Public Hearing was issued on January 25, 2013.

On January 30, 2013, a public hearing was held at the Nebraska Department of Insurance (“Department”). Director of the Nebraska Department of Insurance, Bruce R. Ramage presided over the hearing. Tracy Gruhn, a licensed Notary Public, was present and recorded the hearing. Christine Neighbors, Deputy Director and General Counsel, James Nixon, Chief Examiner, and Anna Maria Elliott, Reinsurance Specialist and Examination Supervisor, represented the Department.

Applicant was present and represented by Lawrence F. Harr, Lamson, Dugan and Murray LLP. Applicant presented testimony in favor of the acquisition through Kenneth King (“King”), President of Applicant. Exhibits were offered by Applicant and by the Department, and received into the record. Applicant and Ability waived notice of hearing. Other attendees at the hearing were Yvette Ostolaza of Weil Gotshal & Manges LLP, Christopher Williams of Oak Hill Capital Partners, and Justin Schrader, Assistant



Chief Examiner for the Department. No testimony or documentary evidence was offered in opposition to the proposed acquisition.

On the basis of the filings, correspondence and information provided to the Department, the Director approves the application and finds, concludes, and recommends as follows:

#### FINDINGS OF FACT

1. On January 23, 2013, the Department received a verified Form A from the Applicant for approval to acquire control of Ability through a Stock Purchase Agreement (“SPA”). The application and subsequent amendments were filed pursuant to the Insurance Holding Company System Act, *Neb. Rev. Stat.* §§ 44-2120 to 44-2153, specifically §44-2126. The transaction will result in Applicant gaining control of Ability as control is defined in the Act.

2. Ability is a domestic insurer organized under and governed by the laws of the State of Nebraska. Ability obtained its Certificate of Authority to transact the business of life and health insurance in this state on October 6, 1967. Ability is currently a wholly-owned subsidiary of Ability Resources Holdings, Inc., a Delaware corporation, (“Seller”) and an indirect subsidiary of Ability Reinsurance Holdings, Ltd., a Bermuda corporation. Ability is currently subject to an Order of Supervision issued by the Director of Insurance in Cause No.: C-1992 on December 12, 2012.

3. Applicant is a Delaware corporation formed on July 31, 2012 to serve as an insurance holding company for Ability following acquisition. Applicant is comprised of a management team that is responsible for the operations and activities of Advantage

Life Reinsurance Company, SPC, (“Advantage”). Applicant is owned 90.2% by Advantage Capital Partners LLC, and 9.8% by Advantage. Advantage Capital Partners LLC is 100% owned by King. Therefore, King will be the Ultimate Controlling Person of Ability. King, as the proposed President of Ability upon acquisition, will be responsible for managing the operational and regulatory activities, originating new business and developing investment strategy for Ability. King has over 25 years of experience in the capital and reinsurance markets, where his experience includes operating aspects of reinsurance including underwriting specialized insurance lines, financial management, investments, regulatory and rating compliance, risk management and new business development. King became managing principal of UA Capital LLC, in 2008. UA Capital LLC focuses on developing new investment and insurance products and raising capital for insurers.

In addition to King, Ian Kirkpatrick, with 40 years’ experience in the insurance industry in the areas of risk management services, alternative risk transfer, life insurance and annuities, and founder of Crusader International Group, will serve as a proposed company director, and Shane Osborn, a Nebraska resident and licensed insurance producer, will serve as a board director, Treasurer of Ability, and chair of Ability’s board investment committee.

4. While the SPA final version was submitted with the Form A, the parties executed the SPA on January 29, 2013. In consideration for the proposed acquisition, the Applicant and Seller have agreed that consideration for the purchase of the shares issued and outstanding consists of the execution of the mutual covenants, conditions,

representations and warranties of the Applicant, Seller and Insurer set forth in the SPA, including enter into the Commutation Agreement, Guaranteed Morbidity Reinsurance Agreement, Administrative Services Termination Agreement, and the new Administrative Services Agreement.

5. As a condition of acquisition, Ability will sell the LifeCare Convertible Note it holds as a result of a loan made in 2011. The note is not rated by the Securities Valuation Office of the NAIC and is held by Ability as a non-admitted asset. As part of the acquisition, Seller will pay Ability \$3.75M for the note.

6. Applicant has no current plans to (1) declare an extraordinary dividend; (2) to liquidate Ability; (3) to sell or merge it with any person or persons; or (4) to make any other material change in Ability's current active business operations.

7. Applicant has filed all the documents and information required by law and requested by the Department.

8. Closing of the acquisition will occur as soon as possible.

#### CONCLUSIONS OF LAW

1. The Department and Director have jurisdiction over the subject matter of this proceeding.

2. On the basis of the materials filed, correspondence received and evidence presented at the hearing, the Director concludes as follows:

a. After the acquisition, Ability will satisfy the requirements for a Certificate of Authority to conduct business of insurance in the State of Nebraska and write the lines of insurance for which it is presently licensed.

b. The effect of the acquisition will not substantially lessen the competition in insurance in the State of Nebraska nor tend to create a monopoly therein nor violate the laws of the State of Nebraska.

c. The financial condition of Applicant is such that it would not jeopardize the financial stability of Ability or prejudice the interest of the policyholders of Ability.

d. The Applicant has no plans or proposals to liquidate Ability, to sell the assets of Ability without the approval of the Department, to consolidate or merge Ability with any person or persons without approval of the Department, or to make any other material change in the business operations or corporate structures of management which would be unfair and unreasonable to policyholders of Ability and not in the public interest.

e. The competence, experience and integrity of those persons who would control the operation of Ability are such that it would be in the interest of the policyholders of Ability and the public to allow the acquisition.

f. Applicant is not subject to the provisions of *Neb. Rev. Stat. §44-6115* under the Demutualization Act; and

g. The acquisition is not likely to be hazardous or prejudicial to the public.

ORDER

IT IS THEREFORE ORDERED that Applicant is approved to acquire control of Ability.

Within fifteen (15) days after closing, Applicant shall file with the Department an Insurance Holding Company System Registration Statement, and any other filings required, in accordance with *Neb. Rev. Stat. §44-2132, et seq.*

Dated this 31 day of January, 2013.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE

  
BRUCE RAMGE  
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order was sent to Kenneth King, UA Capital LLC c/o Advantage Capital Holdings, LLC, 48 Wheeler Ave., Pleasantville, NY 10570 and to Lawrence F. Harr, Lamson, Dugan and Murray, LLP, 10306 Regency Parkway Drive, Omaha, NE 68114 by electronic mail and by U.S. Mail, postage prepaid, on this 31 day of January, 2013.

  
Mary A. Larkin