

JUL 23 2021

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE)	FINDINGS OF FACT, CONCLUSIONS
ACQUISITION OF CONTROL OF)	OF LAW AND ORDER
ABILITY INSURANCE COMPANY BY)	
MOUNT LOGAN CAPITAL INC.)	
)	CAUSE NO.: C-2700

On November 10, 2020, a Form A Statement Regarding the Acquisition of Control of Ability Insurance Company (“Form A”) was filed by Mount Logan Capital Inc. (Applicant”) with the Nebraska Department of Insurance (“Department”) seeking approval to acquire control of Ability Insurance Company (“AIC”), a Nebraska domestic insurer. The Form A was filed pursuant to the Insurance Holding Company System Act, Neb. Rev. Stat. §§ 44-2120 to 44-2153. The filing was subsequently supplemented multiple times, with the final supplement being received by the Department on or about June 14, 2021. A Notice of Public Hearing was issued on June 21, 2021.

On July 23, 2021, a public hearing was held before the Department. Eric Dunning, the Director of the Department, presided over the hearing. Angela Ickler, a registered professional court reporter, was present and recorded the hearing.

Applicant was present and represented by Ann Frohman of Frohman Law Office LLC. Applicant presented testimony in favor of the acquisition through Matthias Ederer, Co-President, of Mount Logan Capital Inc. Exhibits were offered by Applicant and received into the record without objection. Applicant provided AIC with timely notice of the hearing as required pursuant to Neb. Rev. Stat. § 44-2127(2).

The Department was present and represented by Justin Schrader, Chief Financial

Examiner, and Thomas Green II, Legal Counsel. Exhibits were offered by the Department and received into the record without objection. The Department supports the acquisition, contingent upon the imposition of certain additional solvency protection measures on Applicant and AIC. The proposed solvency protection measures were submitted as evidence into the record as part of the testimony of Matthias Ederer and the affidavit of Justin Schrader.

AIC was not present at the hearing and did not offer any written testimony or exhibits.

On the basis of the testimony and evidence submitted at the hearing, the hearing officer finds and concludes as follows:

FINDINGS OF FACT

1. On or about November 10, 2020, the Department received a Form A application from the Applicant for approval to acquire control of AIC through a stock purchase agreement entered into with Advantage Capital Holdings LLC (“ACAP”), a Delaware corporation and the present controlling party of AIC. The Form A and subsequent amendments were filed pursuant to the Insurance Holding Company System Act, Neb. Rev. Stat. §§ 44-2120 to 44-2153 (the “Act”), specifically § 44-2126. The stock purchase agreement will result in Applicant gaining control of AIC as control is defined in the Act.

2. AIC is a domestic insurer organized under and governed by the laws of the State of Nebraska. AIC obtained its Certificate of Authority to transact the business of life and health insurance in this state on June 10, 1968. AIC is currently a stock-based life and health insurance company and a wholly owned subsidiary of ACAP, a Delaware corporation.

3. The Applicant, Mount Logan Capital Inc., is a publicly listed, Canada based entity that primarily operates as an asset manager. EJV Capital LLC (“EJV”) recently acquired 14.3% of the voting securities of Mount Logan Capital Inc. as a portfolio investment. EJV has previously

requested a Disclaimer of Affiliation with respect to its ownership interest in the Applicant; the Department subsequently granted that request contingent on both EJV and its owner: (a) not attempting to exercise control of the Applicant; and (b) not acquiring, collectively, more than a 20% ownership interest in the Applicant.

4. On or about November 5, 2020, Applicant and ACAP executed a Stock Purchase Agreement (“SPA”) for the capital stock of AIC. The SPA provides for Applicant to acquire, at closing, all of the issued and outstanding shares of capital stock in AIC from ACAP. The closing on the transaction is to take place, unless the Applicant and ACAP should mutually agree otherwise, no later than the third business day after satisfaction or waiver of various conditions. Those conditions include receipt of all required regulatory approvals, including approval of the Director of the Department.

5. As consideration for the transaction and pursuant to the SPA, Applicant shall pay ACAP an amount equal to \$5 million in cash or equivalent traded equity in Applicant along with a \$15 million, ten year, fully amortizing fixed rate note.

6. There is no prior demutualization at issue for the parties in this transaction.

7. Applicant has no current plans to cause AIC to pay any extraordinary dividends, to liquidate AIC, to sell the assets of AIC, or to merge AIC with any person. Applicant does not intend to make any other material change to AIC’s business, corporate structure or management that would be unfair or unreasonable to AIC’s policyholders or contrary to the public interest.

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

9. The Department’s Chief Financial Examiner also reviewed all documents related to the Form A application. He oversaw and coordinated the review of the aforementioned

documents by other Department examination division staff.

10. The Chief Financial Examiner worked closely with the Applicant to fully analyze the transaction. The Chief Financial Examiner is of the opinion that in light of the complexity of the proposed transaction, the present financial status of AIC and the Applicant's lack of operating experience in the U.S. insurance industry, certain additional solvency measures should be imposed on AIC and the Applicant and the Applicant has agreed to the same. Unless and until such time as modified by the Director, AIC shall not, without prior approval of the Director:

a. Market or write any new insurance business. For purposes of this restriction, renewal of existing contracts shall not be considered "new insurance business."

b. Enter into any new reinsurance agreements or amend existing reinsurance agreements. Notwithstanding the foregoing, AIC shall be allowed to renew any expiring reinsurance agreements under the same terms and conditions as those contained in the reinsurance contract immediately prior to renewal.

c. Enter into any new agreements, contracts or transactions with any affiliates or related parties (e.g., BC Partners Advisors LP, EJP Capital, LLC, etc.).

d. Pay or declare the payment of any ordinary dividend (similar to the requirement for notice and approvals of extraordinary dividends and distributions pursuant to Neb. Rev. Stat. § 44-2134(1)).

e. Deviate from the business plan and all amendments or supplements made thereto that were submitted to the Department by the Applicant as part of the Form A application process.

f. Enter into any investment agreements, or make any investments, that fail to comply with the with the investment guidelines mutually agreed to by the Applicant and the Department as memorialized in an email dated June 23, 2021 from Justin Schrader to various representatives of the Applicant and subsequently agreed to by Peter Sack on behalf of the Applicant, via email, on June 24, 2021.

11. The Department's Chief Financial Examiner is of the opinion that the transaction as structured, with the imposition of the additional solvency measures, will not jeopardize the financial stability of AIC or prejudice the interests of AIC's policyholders. He is of the further opinion that the Applicant's proposed transaction and operational plans are not unfair or unreasonable to AIC's policyholders or prejudicial to the public.

12. The Applicant is committed to informing all policyholders of their acquisition of AIC promptly upon completing the transaction and in any event within approximately forty-five days (45) following the effective date of the acquisition.

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 following conclusions are made as to the requirements of Neb. Rev. Stat. § 44-2127(1):

a. After the change of control, AIC 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;

b. The acquisition of control would not substantially lessen competition in insurance in this state or tend to create a monopoly therein;

c. The financial condition of any of the Applicant, including any equity and financing commitments obtained from third parties, will not jeopardize the financial stability of the insurer or prejudice the interest of policyholders of the insurer;

d. The Applicant has no current plans or proposals to liquidate AIC, to sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure of management which would be unfair and unreasonable to policyholders of the insurer and not in the public interest;

e. The competence, experience, and integrity of those persons who would control the operation of AIC is sufficient to reasonably assure that permitting the acquisition of control would not adversely affect the interest of policyholders of the insurer and of the public;

f. The requirements of Neb. Rev. Stat. § 44-6115 are not applicable to this Form A application; and

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

ORDER

IT IS THEREFORE ORDERED that Applicant's Form A application to acquire Ability Insurance Company be approved, subject to the following conditions:

1. AIC shall not, without the prior approval of the Director:

a. Market or write any new insurance business. For purposes of this restriction, renewal of existing contracts shall not be considered "new insurance business."

b. Enter into any new reinsurance agreements or amend existing reinsurance agreements. Notwithstanding the foregoing, AIC shall be allowed to renew any expiring reinsurance agreements under the same terms and conditions as those contained in the reinsurance contract immediately prior to renewal.

c. Enter into any new agreements, contracts or transactions with any affiliates or related parties (e.g., BC Partners Advisors LP, EJP Capital LLC, etc.).

d. Pay or declare the payment of any ordinary dividend (similar to the requirement for notice and approvals of extraordinary dividends and distributions pursuant to Neb. Rev. Stat. § 44-2134(1)).

e. Deviate from the business plan and all amendments and supplements made thereto that were submitted to the Department by the Applicant as part of the Form A application process.

f. Enter into any investment agreements, or make any investments, that fail to comply

with the investment guidelines mutually agreed to by the Applicant and the Department as memorialized in an email dated June 23, 2021 from Justin Schrader to various representatives of the Applicant and subsequently agreed to by Peter Sack on behalf of the Applicant, via email, on June 24, 2021.

2. The Applicant and AIC shall ensure that the directors, officers, employees and investors in AIC understand and comply with the laws, regulations and bulletins of Nebraska, including all regulatory standards.

3. 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 23rd day of July, 2021.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


ERIC DUNNING
Director of Insurance

Prepared by:
Thomas C. Green II, #21001
Legal Counsel
Nebraska Department of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order was sent to Ann M. Frohman, Esq., Frohman Law Office, LLC, 1350 Aldrich Rd., Lincoln, Nebraska 68508 by U.S. Mail, postage prepaid, on this 23rd day of July, 2021.

Shelby Stone