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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN MATEO – UNLIMITED JURISDICTION

11 INSURANCE COMMISSIONER OF THE
12 STATE OF CALIFORNIA,

13 Applicant,

14 v.

15 CALIFORNIA INSURANCE COMPANY, a
16 California corporation,

17 Respondent.

Case No. **19CIV06531**

**VERIFIED EX PARTE APPLICATION FOR
ORDER APPOINTING INSURANCE
COMMISSIONER AS CONSERVATOR;
POINTS AND AUTHORITIES IN SUPPORT
THEREOF**

[Ins. Code, § 1011]

Date: November 4, 2019

Time: 2:00 p.m.

Dept.:

1 Applicant Insurance Commissioner of the State of California (the "Commissioner"), hereby
2 respectfully requests that he be appointed Conservator in the above-captioned proceeding pursuant to
3 California Insurance Code section 1011 et seq.¹ This Application is based upon the following:

4 1. Commissioner is the duly elected Insurance Commissioner of the State of California.
5 For the protection of the State's policyholders and the public, the Commissioner is entitled to a court
6 order vesting title in the Commissioner to the assets of an insurer that has, among other things,
7 transferred or merged its business without the consent of the Commissioner, as set forth in section
8 1011, subdivision (c).

9 2. Respondent, California Insurance Company ("CIC" or "Respondent"), is now and at all
10 times mentioned herein has been, a corporation duly organized and existing under and by virtue of the
11 laws of the State of California and domiciled therein, with its principal office in Foster City,
12 California. Respondent is a wholly owned subsidiary of North American Casualty Company, which is
13 a wholly owned subsidiary of AU Holding Company, Inc. Pursuant to a Certificate of Authority
14 issued by the Commissioner, Respondent is authorized in California to transact the following classes
15 of insurance: fire, marine, workers' compensation, surety, disability, plate glass, liability, burglary,
16 common carrier liability, boiler and machinery, burglary, credit, sprinkler, team and vehicle,
17 automobile, aircraft and miscellaneous. Respondent primarily sells workers' compensation policies.
18 CIC's principal office is located at 950 Tower Lane, 14th Floor, Foster City, California 94404.

19 3. Commissioner is statutorily tasked with the responsibility of reviewing applications for
20 transactions that affect any licensed domestic insurer for purposes of determining, before permitting a
21 transaction, whether the proposed transaction is fair and reasonable to the insurer's policyholders, and
22 does not prejudice the interests of the policyholders or the public. These responsibilities include the
23 review and approval by the Commissioner of any proposed transaction to acquire control of the
24 insurer, including the purchase of the insurer or any agreement to merge with or otherwise to acquire
25 control of a domestic insurer. (Ins. Code, § 1215.2.)
26
27

28 ¹ All further statutory references will be to the California Insurance Code unless stated otherwise.

1 4. Any attempt by a person to acquire control of an insurer without first obtaining
2 approval of the Commissioner risks and jeopardizes the interests of its policyholders and the
3 California public, and is a direct violation of the Insurance Code. (Ins. Code, § 1215.2.) As explained
4 below, Respondent CIC is in the midst of an attempt to merge with a newly formed New Mexico
5 entity, thereby transferring control of CIC without obtaining the Commissioner's approval as required
6 by law. The Commissioner has filed this application to prevent this illegal transfer and to protect the
7 interest of California policyholders and the public, upon which CIC reported \$57,791,169 in written
8 premiums in California in the first half of 2019. (Quarterly Statement of California Insurance
9 Company, Schedule T, June 30, 2019.) If CIC is permitted to consummate this illegal transfer, CIC
10 policyholders in California will be left holding policies of a non-admitted insurer.

11 5. On April 9, 2019, Steven M. Menzies, Founder and President of North American
12 Casualty's parent company, AU Holding Company, Inc., filed a Form A application with the
13 California Department of Insurance ("CDI") pursuant to section 1215.2 seeking approval to allow
14 Menzies to acquire full control of AU Holding Company, Inc. and CIC. According to the documents
15 submitted, the terms of purchase required that the transaction close no later than September 30, 2019.
16 Due to material deficiencies in the application submitted, however, the application was withdrawn on
17 April 26, 2019.

18 6. On June 12, 2019, Menzies submitted a second Form A application. Again due to
19 material deficiencies, the CDI deemed the second application incomplete. The CDI requested
20 additional information to cure the deficiencies, but the application remained materially deficient.² On
21 August 23, 2019, the CDI returned the application as incomplete.

22 7. On September 6, 2019, a few weeks before the deadline for the sale to close, Menzies
23 submitted a third Form A application. The CDI subsequently notified Menzies in writing that
24 Department review could not be completed before the September 30, 2019 closing deadline.³

25 8. On October 2, 2019, CIC informed the CDI that the terms of the purchase had been

26 ² Insurance Code section 1215.8 prevents the Commissioner from divulging further information
27 related to Menzies's Form A process.

28 ³ Section 1215.2, subdivision (d), provides the Commissioner with 60 days to approve or deny a
Form A application.

1 amended so that the closing date for the transaction was now extended to October 10.

2 9. Unbeknownst to CDI, Menzies created a new company in New Mexico on or before
3 October 8, 2019. The new company—California Insurance Company, Inc. II (“CIC II”)—is not
4 admitted or licensed to transact the business of insurance in California.

5 10. CDI first learned that Menzies had filed an application to merge California-based CIC
6 into New Mexico-domesticated CIC II on October 7, 2019, after receiving a call from the Office of the
7 Superintendent of Insurance for the State of New Mexico. At no point did Menzies notify the
8 Commissioner or file a Form A application to merge the two companies, as required under California
9 law. Attached hereto as **Exhibit A** is a true and correct copy of the Order Establishing Proceeding,
10 Appointing Hearing Officer and Providing Notice of Hearing, which the CDI received on October 8,
11 2019.

12 11. The effect of the unapproved and therefore illegal merger, if recognized, would be to
13 terminate CIC’s authority to transact business in California and in turn create immediate harm to CIC
14 policyholders in the State. The merger would extinguish CIC’s California Certificate of Authority by
15 operation of law, and the surviving entity will not be qualified to transact insurance in California. (See
16 Ins. Code, § 701 [“every certificate of authority shall be for an indefinite term and shall expire with the
17 expiration or termination of a corporate existence of the holder thereof”].) Further, it is unlawful for
18 the new, “nonadmitted insurer” to transact insurance in the State. (Ins. Code, § at § 700.) CIC II is a
19 “nonadmitted insurer” in California; thus, it is not entitled to transact insurance business in the State.
20 (Ins. Code, § 1760.1, subd. (h).) Therefore, if CIC is permitted to consummate the illegal merger, CIC
21 policyholders in California will be left holding policies of a non-admitted insurer. Since CIC could
22 not legally service those policies, policyholders, including employees with serious work-related
23 injuries and other claimants entitled to vital and necessary insurance benefits, may not have recourse
24 to benefits. At minimum, claims handling and process delays would ensue.

25 12. The New Mexico Superintendent of Insurance approved the Form A application
26 authorizing the merger of CIC into CIC II under New Mexico law on October 9, 2019, just one day
27 after receiving the application to do so, and just one day before a revised deadline to close the sale of
28

1 CIC's parent company. Attached hereto as **Exhibit B** is a true and correct copy of the Order
2 Approving Merger issued by the New Mexico Superintendent of Insurance.

3 13. The Commissioner is informed by the California Secretary of State that to date neither
4 Menzies nor Respondent has yet filed a certificate of merger with the California Secretary of State, so
5 the merger has not yet been effected pursuant to California law. The merger would become effective
6 immediately upon the filing in California of a certificate of merger. (Corp. Code, § 1108, subd. (d).)

7 14. The lack of authority to transact business in California would place CIC's current
8 policyholders, beneficiaries, and the California public in immediate jeopardy unless the Commissioner
9 promptly acts to protect them.

10 15. Pursuant to section 1215.2, subdivision (a), "a person shall not enter into an
11 agreement to merge with or otherwise to acquire control of a domestic insurer, unless, at the time
12 copies of the offer, purchase, request, or invitation are first published, sent, or given to security holders
13 or the agreement or transaction is entered into, as the case may be, the person has filed with the
14 commissioner" specified information required pursuant to section 1215.2, subdivision (a), "and any
15 additional information as the commissioner may by rule or regulation prescribe as necessary or
16 appropriate in the public interest or the protection of policyholders or shareholders." (Emphasis
17 added.)

18 16. Section 1215.2, subdivision (d), specifically provides in part: "The purchases,
19 exchanges, mergers, or other acquisitions of control referred to in subdivision (a) may not be made
20 until the commissioner approves the purchases, exchanges, mergers, or other acquisitions of control."
21 Menzies attempted to merge CIC into and with CIC II without obtaining the prior approval of the
22 California Insurance Commissioner in direct violation of section 1215.2.

23 17. CIC has established a pattern of flouting California regulatory processes designed to
24 protect California policyholders from unfair and deceptive practices. For example, the Commissioner
25 must approve workers' compensation insurance products sold in California under Insurance Code
26 section 11658.⁴ In 2005, CIC sought and received approval to sell insurance policies at a guaranteed

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28 ⁴ All further statutory references will be to the California Insurance Code unless stated
otherwise.

1 cost—policies with guaranteed monthly premiums, no matter the employer’s experience with
2 employee claims. CIC then wrote unfiled contract amendments, frequently marketed to
3 unsophisticated employers, replacing the original guaranteed cost policies with an unapproved and
4 illegal scheme that appeared to offer premium cost savings, but actually required employers to
5 reimburse CIC for certain payouts for years to come. These new, three-year-minimum agreements
6 imposed significant penalties for early cancellation. Had CIC sought requisite approval, the
7 Commissioner could have prevented the sale of these illegal policies. The Commissioner
8 subsequently found them void. (See *Matter of Shasta Linen Supply, Inc.* (June 22, 2016) Cal.
9 Insurance Commissioner, No. AHB-WCA-14-31; see also *Nielsen Contracting, Inc. v. Applied*
10 *Underwriters, Inc.* (2018) 22 Cal.App.5th 1096, 1113-1116 & *Luxor Cabs, Inc. v. Applied*
11 *Underwriters Captive Risk Assurance Co. et al.* (2018) 30 Cal.App.5th 970, 986 “[o]bviously,
12 allowing an insurer to circumvent the comprehensive regulatory structure applicable to the issuance of
13 workers’ compensation insurance in this state simply by amending its approved policy forms through a
14 side agreement with a subsidiary is contrary to the public policy underlying California’s workers’
15 compensation law and cannot be countenanced.”].)

16 18. Menzies’s attempt to merge CIC into and with CIC II without having filed and obtained
17 written approval of the Commissioner to merge CIC into a New Mexico domestic insurer is ground for
18 conservation of an insurer pursuant to section 1011. That section states in part:

19 The superior court of the county in which the principal office of a person described in
20 section 1010 is located, upon the filing by the commissioner of the verified application
21 showing any of the conditions in this subdivision exist . . . **shall** issue its order vesting title
22 to all of the assets of the person, wheresoever situated, in the commissioner or his or her
23 successor in office, in his or her official capacity, and direct the commissioner forthwith to
24 take possession of its books, records, property, real and personal, and assets and to
25 conduct, as conservator, the business of the person, or such thereof as to the commissioner
26 may seem appropriate, and enjoining the person and its officers, directors, agents,
27 servants, and employees from the transaction of its business or disposition of its property
28 until any of the following further order of the court:

...
(c) That the person, without first obtaining the consent in writing of the commissioner, **has transferred, or attempted to transfer, substantially its entire property or business or, without consent, has entered into any transaction the effect of which to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person., has entered into any transaction the effect of which to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person.** (Emphasis added.)

1 19. In accordance with section 1011, the Commissioner files this ex parte application for an
2 order appointing him as conservator of CIC. The Commissioner has determined that actions have
3 been taken to merge CIC into CIC II in violation of California law and that such an illegal merger will
4 be, and is, hazardous to its policyholders, creditors and the public, and such condition is a ground for
5 conservation under section 1011, subdivision (c). The Commissioner therefore seeks this Court's
6 order to conserve CIC and take possession of CIC's property and business so that he can act promptly
7 as conservator to avoid the completion of CIC's merger into an unlicensed foreign insurer that is not
8 subject to the authority or control of the Commissioner.

9 20. In obtaining an ex parte order pursuant to section 1011, the Commissioner need only
10 show that he has determined and found that one of the conditions enumerated exists. (*Financial*
11 *Indemnity Co. v. Superior Court* (1955) 45 Cal.2d 395, 402; *Rhode Island Ins. Co. v. Downey* (1949)
12 95 Cal.App.2d 220, 230-231; *Caminetti v. Imperial Mut. Life Ins. Co.* (1943) 59 Cal. App. 2d 476,
13 487-488 ["In obtaining his original ex parte order, the commissioner is not required to show to the
14 court that the company was in fact in a hazardous condition, but only that he, as a state officer,
15 invested by legislative authority with the power, has so 'determined' and 'found'."]) The
16 Commissioner has determined that the grounds for conservation in section 1011(c) exists.

17 21. The Commissioner brings this Application ex parte and without notice because
18 immediate and substantial harm could result from giving notice to CIC before conservation is effected.
19 Because a California corporation's merger with a corporation in another state becomes effective upon
20 the filing in California of a certificate of merger, CIC could attempt to evade California jurisdiction,
21 and transfer assets to New Mexico simply by filing a certificate of merger in California. (Corp. Code,
22 § 1108, subd. (d).)

23 22. In situations like this, courts may grant section 1011 orders ex parte. (See, e.g.,
24 *Hesperia Land Dev. Co. v. Superior Court* (1960) 184 Cal.App.2d 865, 872-873; *Rhode Island Ins.*
25 *Co. v. Downey, supra*, 95 Cal.App.2d at pp. 230-231; *Caminetti, supra*, 59 Cal.App.2d at pp. 487-
26 488.) Here, the Commissioner has established good cause to believe that the State of California would
27 be prejudiced were it to provide respondent advanced notice of this proceeding in that CIC has within
28 its authority power to at any time complete the ostensible consummation of the transaction, which

1 would have the effect of at least forfeiting CIC Certificate of Authority, rendering California
2 policyholders ostensibly insured by an out-of-state insurer without authority to transact insurance in
3 California, and thereby reducing the Commissioner's regulatory authority over CIC.

4
5 WHEREFORE, the Commissioner prays that this Court issue an order:

6 1. Appointing the California Insurance Commissioner as the Conservator of CIC as set
7 forth in section 1011, and directing him as Conservator to conduct the business of CIC or so much
8 thereof as he may deem appropriate, to pay or defer payment of all proper claims and obligations
9 against CIC accruing prior to or subsequent to his appointment as Conservator and directing him to act
10 in all ways and exercise all powers necessary or appropriate for the purpose of carrying out such order.

11 2. Enjoining CIC, its officers, directors, agents and employees and any person that acts or
12 purports to act on behalf of any of the foregoing from taking any actions or filing any document with
13 any governmental entity or any governmental subdivision necessary to consummate the merger of CIC
14 into and with CIC II, to otherwise transfer the domicile of CIC from California to New Mexico, or to
15 otherwise adversely affect the California Certificate of Authority of CIC.

16 3. Appointing David E. Wilson, Special Deputy Insurance Commissioner, as Deputy
17 Conservator empowered to carry out any and all duties and exercise the authority of the Conservator
18 granted herein and the Insurance Code; appointing Joseph B. Holloway, Jr. as Conservation Manager
19 and Scott Pearce as Conservation Supervisor empowered to carry out any and all duties and exercise
20 the authority of the Conservator and Deputy Conservator, and as may be delegated by the Conservator
21 and Deputy Conservator.

22 4. Providing that the Conservator's immunity and related protections from claims, suits or
23 liability under applicable law, including but not limited to Government Code 820.2, shall apply
24 equally to the Deputy Conservator, Conservation Manager and the Conservation Supervisor in their
25 capacities as Receiver of CIC, their successors in office, the Conservation & Liquidation Office
26 ("CLO"), and their agents and employees.

27 5. Authorizing the Commissioner as Conservator to appoint and employ special deputies,
28 estate managers, other professionals, clerks and assistants and to give each of them such power and

1 authority as he may deem necessary and authorizing the Commissioner as Conservator to compensate
2 these persons from the assets of CIC as he may deem appropriate.

3 6. Authorizing the Conservator to assist CIC in addressing their Form A deficiencies with
4 the goal of obtaining Form A approval and settlement of disputes with CDI.

5 7. Ordering CIC, except upon the express written authorization of the Conservator, not to
6 cancel or otherwise terminate or attempt to cancel or terminate any insurance policy or contract in-
7 force as of the date of this Order, and ordering CIC to continue to administer such in-force policies and
8 contracts in the ordinary course consistent with past practices.

9 8. Directing that, except as otherwise determined by the Conservator in his or her
10 discretion, any contract or agreement to provide administrative, claims, or other management services
11 to CIC necessary or appropriate for the efficient operations of CIC during the pendency of the
12 conservation shall remain in full force and effect unless rejected, modified or terminated by the
13 Conservator in writing, and unless directed otherwise by the Conservator, each such person or entity
14 shall continue to perform its respective obligations under such contract or agreement during the
15 pendency of the conservation consistent with past practice.

16 9. Authorizing the Conservator, in his or her discretion, to pay or defer payment of some
17 or all proper claims, expenses, liabilities, and obligations of CIC, in whole or in part, accruing prior or
18 subsequent to his appointment as Conservator.

19 10. Authorizing the Conservator to assume, reject, or modify any executory contracts
20 including, without limitation, any lease, rental or utilization contract or agreement (including any
21 schedule to any such contract or agreement), and any license or other arrangement for the use of
22 computer software of business information systems, to which CIC is a party or as to which CIC agrees
23 to accept an assignment of such contract.

24 11. Authorizing the Conservator in his or her discretion to take possession of any and all
25 assets of CIC, including books, records, property (both real and personal), accounts, safe deposit
26 boxes, rights of action, and all such assets as may be in the name of CIC, wheresoever situated.

27 12. Ordering that title to all property and assets of CIC, designated by the Conservator in
28 his or her discretion, including deposits, securities, contracts, rights of actions, books, records, and

1 other assets of every type and nature, and including both those presently in CIC's possession and those
2 that may be discovered hereafter, wheresoever situated, that are necessary or appropriate for the
3 orderly conservation of CIC to be vested in the Conservator or his or her successor in office, in his
4 official capacity as Conservator and authorizing the Conservator to deal with such assets in his or her
5 own name as Conservator or in the name of CIC and enjoining all persons from interfering with
6 Conservator's possession and title to such assets.

7 13. Authorizing the Conservator to maintain and invest such of CIC's assets and funds in
8 such a manner as the Conservator determines in his or her discretion is in the best interest of CIC's
9 creditors.

10 14. Authorizing the Conservator to exercise all the powers of the directors, officers, and
11 managers of CIC, necessary or appropriate for the orderly conservation of CIC whose authorities are
12 suspended except as such powers may be redelegated to them in writing by the Conservator.

13 15. Enjoining, except upon the express written authorization of the Conservator or as is
14 necessary to continue to administer in the ordinary course consistent with past practices any in-force
15 insurance policies as of the date of this Order, CIC and its officers, directors, agents, and employees
16 from transacting any of the business of CIC, whether in the State of California or otherwise, disposing
17 of, using, transferring, selling, assigning, canceling, alienating, hypothecating, or concealing in any
18 manner or any way, or assisting any person in any of the foregoing, the property or assets of CIC, or
19 property or assets in the possession of CIC, of any nature or kind, including claims or causes of action,
20 until further order of the Court. Further, such persons are enjoined from obstructing or interfering with
21 the Conservator's conduct of his or her duties as Conservator.

22 16. Enjoining CIC and its officers, directors, agents and employees from issuing any new
23 or renewing any insurance policies except upon the written consent of the Conservator.

24 17. Enjoining, except upon the written consent of the Conservator, all persons from
25 instituting, prosecuting, or maintaining any action at law or suit in equity, including but not limited to,
26 actions or proceedings to compel discovery or production of documents or testimony, and matters in
27 arbitration, except for matters before the California Workers' Compensation Appeals Board or
28 equivalent administrative boards in other states, against CIC, or against the Conservator, and from

1 attaching, executing upon, redeeming of or taking any other legal proceedings against any of the
2 property of CIC, and from doing any act interfering with the conduct of said business by the
3 Conservator, except after an order of this Court obtained after reasonable notice to the Conservator.

4 18. Directing CIC and all officers, directors, agents, employees, successors, assigns,
5 affiliates of CIC, and other persons acting in concert or participation with CIC, to deliver to and
6 immediately make available to the Conservator those assets, books, records, accounts, records,
7 information, computers, tapes, discs, writings, other recordings of information, equipment, and other
8 property of CIC, wheresoever situated, in said persons' custody or control specified in writing by the
9 Conservator, and further, directing the aforesaid persons to disclose verbally, or in writing if requested
10 by the Conservator, the exact whereabouts of the foregoing items if such items are not in the
11 possession custody, or control of said persons.

12 19. Ordering all officers, directors, trustees, employees, or agents of CIC, or any other
13 person, firm, association, partnership, corporate parent, holding company, affiliate, or other entity in
14 charge of any aspect of CIC's affairs, either in whole or in part, and including but not limited to banks,
15 savings and loan associations, financial or lending institutions, brokers, stock or mutual associations,
16 or any parent, holding company, subsidiary or affiliated corporation, or any other representative acting
17 in concert with CIC, to cooperate with the Conservator in the performance of his or her duties.

18 20. Authorizing the Conservator to pay all reasonable costs of taking possession of and
19 conserving CIC (including but not limited to the Conservator's pre-conservation costs in examining
20 CIC's financial condition, and preparing to take possession and conserve CIC, and the attorneys' fees
21 and costs incurred by the Commissioner in bringing and prosecuting this proceeding) out of the funds
22 and assets of the CIC.

23 21. Authorizing the Conservator to pay all reasonable costs of operating CIC as
24 Conservator (including direct and allocated direct costs, direct and allocated general and
25 administrative costs and overhead, and all other allocated costs) out of any and all funds and assets of
26 CIC, and if there are insufficient funds, to pay for the costs out of the Insurance Fund pursuant to
27 Insurance Code section 1035.

28 22. Ordering all persons who maintain records for CIC, pursuant to written contract or any

1 other agreement, shall maintain such records and deliver to the Conservator such records upon his
2 request.

3 23. Ordering all agents of CIC, and all brokers who have done business with CIC, to make
4 remittances of all funds collected by them or in their hands designated by the Conservator in his or her
5 discretion, directly to the Conservator.

6 24. Ordering all persons having possession of any lists of policyholders of CIC to deliver
7 such lists to the Conservator upon his or her written request and enjoining all such persons from using
8 any such lists or any information contained therein without the written consent of the Conservator.

9 25. Authorizing the Conservator to initiate such equitable or legal actions or proceedings in
10 this or other states that the Conservator determines is in his or her discretion are necessary to carry out
11 his or her functions as Conservator.

12 26. Enjoining CIC, its officers, directors, agents and employees from disposing of, or
13 assisting any person in the transfer or alienation of, the property or assets of CIC, until further order of
14 this Court.

15 27. Enjoining all persons, except with leave of this Court issued after a hearing in which
16 the Conservator has received reasonable notice, from obtaining preferences, judgments, attachments,
17 or other liens, or making any levy against CIC or its assets or property, and from executing or issuing
18 or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other
19 process, for the purpose of impounding or taking possession of or interfering with or creating or
20 enforcing a lien upon any property or assets owned or in the possession of CIC or the Conservator,
21 wheresoever situated, and from doing any act interfering with the conduct of said business by
22 Conservator.

23 28. Enjoining all persons, except with leave of this Court issued after a hearing in which
24 Conservator has received reasonable notice, all persons from accelerating the due date of any
25 obligation or claimed obligation; exercising any right of set-off; taking, retaining, retaking, or
26 attempting to retake possession of any real or personal property; withholding or diverting any rent or
27 other obligation; doing any act or other thing whatsoever to interfere with the possession of or
28 management by the Conservator of the property and assets, owned or controlled by CIC or in the

1 possession of CIC, or in any way interfering with the Conservator or interfering in any manner during
2 the pendency of this proceeding with the exclusive jurisdiction of this Court over CIC.

3 29. Ordering that any and all provisions of any agreement entered into by and between any
4 third party and CIC that provide in any manner that selection, appointment, or retention of a
5 conservator, receiver, or trustee by any court, or entry of any order such as hereby made, shall be
6 deemed to be or otherwise operate as a breach, violation, event of default, termination, event of
7 dissolution, event of acceleration, insolvency, bankruptcy, or liquidation, shall be stayed, and the
8 assertion of any and all rights and remedies relating thereto shall also be stayed and barred, except as
9 otherwise ordered by this Court. This Court shall retain jurisdiction over any cause of action that has
10 arisen or may otherwise arise under any such provision.

11 30. Enjoining all persons from wasting the assets of CIC.

12 31. For such other or further relief as may be necessary and proper.

13
14 Dated: November 1, 2019

Respectfully submitted,

15 STRUMWASSER & WOOCHEER LLP
16 Michael J. Strumwasser
17 Dale K. Larson

18 

19 By _____
20 Michael J. Strumwasser

21 *Attorneys for Applicant Insurance*
22 *Commissioner of the State of California*

1 In obtaining an ex parte order pursuant to section 1011, the Commissioner need only show that
2 he has determined and found that one of the conditions enumerated exists. (*Financial Indemnity Co.*,
3 *supra*, 45 Cal.2d at p. 402; *Rhode Island Ins. Co.*, *supra*, 95 Cal.App.2d at pp. 230-231.) Under the
4 insolvency and delinquency provisions of the Insurance Code, the issuance of an order under section
5 1011 is mandatory. (*Financial Indemnity Co.*, *supra*, 45 Cal.2d at p. 402.) The seized company may
6 apply for and have a full hearing pursuant to Section 1012 after an ex parte order pursuant to Section
7 1011 has been obtained. (*Rhode Island Ins. Co.*, *supra*, 95 Cal.App.2d at pp. 235-36.)

8 The Commissioner applies to this Court for an order appointing him as Conservator of
9 respondent California Insurance Company ("CIC"). The Commissioner's verified application is based
10 upon his determination that an attempt was made to merge CIC into a New Mexico domestic insurer
11 without seeking and receiving the Commissioner's prior written approval. Pursuant to section 1011, it
12 is appropriate and necessary to conserve CIC.

13 Any person subject to examination by the Commissioner, or for whom the Commissioner's
14 Certificate of Authority is required for the transaction of business in the State of California, is subject
15 to an order of conservation issued by the superior court of the county in which the principal office of
16 such person is located. (Ins. Code, §§ 1010-1011.) Respondent's principal office is located in Foster
17 City, California.

18 As stated in this verified application, the Commissioner has established that an attempted
19 merger of CIC has occurred in violation of section 1215.2, subdivision (a).

20 Section 1020 provides that this Court shall issue orders as may be deemed necessary to, among
21 other things, prevent waste of assets, obtaining of preferences, and interference with the Commissioner
22 as Conservator or the conservation proceeding.

23 Section 1035 provides that the Commissioner as Conservator may appoint and employ deputy
24 commissioners, clerks, and assistants to carry out his function and to pay the costs and expenses of
25 conserving the insurer out of the assets of the insurer, and then to the extent necessary, out of the funds
26 of the Department of Insurance.

27 Section 1037 specifies the powers that accrue to the Commissioner upon his appointment as
28 Conservator. These include, but are not limited to, the authority to collect all monies and debts due to

1 the insurer, to conserve the assets of the insurer, to compromise and settle claims against the insurer, to
2 acquire and dispose of property belonging to the insurer, and to prosecute and defend all lawsuits
3 against the insurer.

4 **CONCLUSION**

5 Based on the facts set forth in this verified application, appointment of the Commissioner as
6 Conservator of Respondent is fully warranted. For all the foregoing reasons, the Commissioner
7 respectfully submits that his request for an order appointing the Commissioner as Conservator and to
8 conserve Respondent should be granted.

9
10 Dated: November 1, 2019

Respectfully submitted,

11 STRUMWASSER & WOOCHEER LLP
12 Michael J. Strumwasser
13 Dale K. Larson

14 

15 By _____
16 Michael J. Strumwasser

17 *Attorneys for Applicant Insurance*
18 *Commissioner of the State of California*


1 VERIFICATION

2 I, BRYANT HENLEY, state that:

3 I am employed by the Insurance Commissioner of the State of California as the Deputy
4 Commissioner and Special Counsel of the California Department of Insurance. I make this
5 verification in my official capacity. I have read the foregoing VERIFIED EX PARTE
6 APPLICATION FOR ORDER APPOINTING INSURANCE COMMISSIONER AS
7 CONSERVATOR and know the contents. The facts contained therein are all within my personal
8 knowledge except for statements based upon information provided by the New Mexico
9 Superintendent of Insurance and assembled by authorized employees of the California Department of
10 Insurance, and I am informed and believe that the statements based upon that information are true.
11 As to those matters that are within my own personal knowledge, the statements are true.

12 I declare under penalty of perjury that the foregoing is true and correct.

13 Executed this 1st day of November, 2019, at Sacramento, California.

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16 _____
17 BRYANT HENLEY
18 Deputy Commissioner and Special Counsel
19 California Department of Insurance
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BEFORE THE NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE

IN THE MATTER OF THE FORM A)
FILING BY CALIFORNIA INSURANCE)
COMPANY II, INC., RELATED TO THE)
ACQUISITION OF CONTROL OF)
CALIFORNIA INSURANCE COMPANY, A)
FOREIGN INSURER THROUGH A)
MERGER)
_____)

Docket No. 19-00040-COMP-EX

FILED

2019 OCT -8 PM 4:10

NEW MEXICO
OFFICE OF
SUPERINTENDENT
OF INSURANCE

ORDER ESTABLISHING PROCEEDING, APPOINTING HEARING OFFICER, AND PROVIDING NOTICE OF HEARING

THIS MATTER comes before the Superintendent of the New Mexico Office of Superintendent of Insurance ("Superintendent" or "OSI", respectively) upon the filing of a Form A Statement by California Insurance Company II, Inc., ("CIC II") a New Mexico domiciled insurance company, related to the acquisition of California Insurance Company ("CIC"), a California domiciled insurer, through a merger. The Superintendent, having reviewed the Form A Statement, and being otherwise fully informed in the premises, **FINDS AND CONCLUDES:**

1. The Superintendent has jurisdiction over this matter pursuant to NMSA 1978, §§ 59A-1-1 et seq., of the New Mexico Insurance Code, including, but not limited to, §§ 59A-2-8, 59A-4-15, 59A-37-1, 59A-37-6 and 59A-34-36.
2. CIC II submitted to the Superintendent a Form A Statement and supporting documents in accordance with NMSA 1978 § 59A-37-5 (the "Form A").
3. OSI Staff notified the Superintendent that it completed its review of the Statement A and supporting documents and deems it complete.
4. Pursuant to § 59A-34-36(B), the Superintendent must hold a hearing on the Form A, following notice to the stockholders of each involved insurer. Attached to the Form A are duly executed waivers of notice and appearance by the stockholders of each involved insurer.

5. The Superintendent should retain and appoint a Hearing Officer to preside over this matter, to schedule a hearing for the purpose of taking evidence as contemplated by § 59A-34-36(B), and to assist the Superintendent to review the proposed merger.

IT IS THEREFORE ORDERED:

A. The Superintendent hereby designates R. Alfred Walker as Hearing Officer to preside over this matter and to take the actions necessary and convenient within the limits of his authority and consistent with applicable procedural rules.

B. A hearing to take evidence on the Form A is set for October 9, 2019 at 1:00 p.m. Mountain Time, at the old PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico, 87501, Room 428.

C. The hearing will be conducted pursuant to the formal hearing rules of Rule 13.1.5 NMAC.

D. All persons whose interests may be affected and who wish to present oral or written arguments or otherwise participate or be heard in connection herewith and pursuant to § 59A-4-17 shall notify Todd S. Baran, Associate General Counsel, Office of Superintendent of Insurance, 1120 Paseo de Peralta, Santa Fe, NM 87501, NM 87510, todd.baran@state.nm.us no later than 12:00 p.m. Mountain Time on October 9, 2019.

E. This order is effective immediately.

F. This order shall be served upon the parties listed on the attached Certificate of Service by electronic or regular mail.

ISSUED under the Seal of the New Mexico Office of Superintendent of Insurance at Santa Fe, New Mexico, this 8th day of October, 2019.



HON. JOHN G. FRANCHINI, Superintendent

CERTIFICATE OF SERVICE

I **HEREBY** certify that a true and correct copy of the forgoing *Order* was sent via electronic mail to the following individuals, as indicated below, this 8th day of October 2019.

Jeffrey A. Silver
10805 Old Mill Road
Omaha, Nebraska 68154
Jeffreysilver@silver-law.net

Hon. John Franchini, Superintendent of Insurance
Office of Superintendent of Insurance
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Margaret Caffey-Moquin, Chief Staff Counsel
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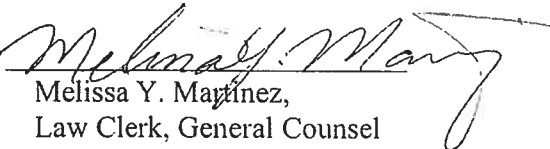
Bryan E. Brock, General Counsel
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R. Alfred Walker, Hearing Officer
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Todd.baran@state.nm.us

By: 
Melissa Y. Martinez,
Law Clerk, General Counsel
Office of Superintendent of Insurance

BEFORE THE NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE

IN THE MATTER OF THE FORM A)
FILING BY CALIFORNIA INSURANCE)
COMPANY II, INC., RELATED TO THE)
ACQUISITION OF CONTROL OF)
CALIFORNIA INSURANCE COMPANY, A)
FOREIGN INSURER THROUGH A)
MERGER)

Docket No. 19-00040-COMP-EX

2019 OCT -9 PM 3:24
FILED
NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE

ORDER APPROVING MERGER

THIS MATTER comes before the New Mexico Superintendent of Insurance ("Superintendent") upon the Hearing Officer's Findings, Conclusions, and Recommendation, and having considered the record in this proceeding and being otherwise fully informed;

THE SUPERINTENDENT FINDS AND CONCLUDES:

1. The Superintendent has jurisdiction over this matter pursuant to the New Mexico Insurance Code, Sections 59A-1-1 *et seq.* NMSA 1978, including, but not limited to, Section 59-2-8 NMSA 1978, Section 59A-4-15, the Insurance Holding Company Law, Sections 59A-37-1 *et seq.*, including, but not limited to, Section 59A-37-6 NMSA 1978, and Section 59A-34-36.

2. California Insurance Company II, Inc. ("CIC II") submitted its application (Form A), in accordance with Section 59A-37-5 NMSA 1978, to acquire California Insurance Company ("CIC"), a California domiciled insurer, through a merger.

3. The Superintendent appointed Hearing Officer R. Alfred Walker to conduct a public hearing pursuant to Section 59A-34-36, to take evidence and make a recommendation to the Superintendent based on the evidence whether to approve or disapprove CIC II's application.

4. Hearing Officer Walker conducted a public hearing on October 9, 2019. Representatives of OSI Staff and CIC II attended the hearing in person, and offered testimony in support of the proposed merger. Representatives of Applied Underwriters, Inc., United Insurance Company, Berkshire Hathaway, Inc., and of the California Department of Insurance attended the hearing telephonically and raised no objections to the proposed merger. After hearing all of the evidence and closing arguments, Hearing Officer Walker entered his Findings, Conclusions, and Recommendation.

5. Hearing Officer Walker's Findings, Conclusions, and Recommendation are well supported, legally sound, and should be adopted.

IT IS THEREFORE ORDERED:

A. The application of CIC II to acquire CIC through a merger is **CONDITIONALLY APPROVED**. The approval is conditioned upon: (1) stock purchase transactions relating to CIC between Steven Menzies, the controlling shareholder of CIC II, Berkshire Hathaway and Sidney Ferenc must close contemporaneously and on or before October 10, 2019; and (2) immediately upon the closing of the foregoing transactions, CIC II must file Articles of Merger with the New Mexico Secretary of State.

B. California Insurance Company II, Inc. will assume and be liable for any and all liabilities of California Insurance Company including, but not limited to any issued policies as if such policies were issued directly by California Insurance Company, II and that it will maintain the current deposit of California Insurance Company with the California Department of Insurance for the benefit of its policyholders.

C. Judicial review of this Order is available pursuant to Section 59A-4-20 NMSA 1978. State and federal law may provide other remedies not described herein.

D. Copies of this Order shall be sent to all persons on the attached Certificate of Service.

E. This Order is effective immediately.

F. This docket is closed.

DONE AND ORDERED at Santa Fe, New Mexico, this 9th day of October, 2019.



HON. JOHN G. FRANCHINI, Superintendent

CERTIFICATE OF SERVICE

I **HEREBY** certify that a true and correct copy of the forgoing *Order Approving Merger* was sent via electronic mail to the following individuals, as indicated below, this 9th day of October 2019.

Jeffrey A. Silver
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Omaha, Nebraska 68154
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Margaret Caffey-Moquin, Chief Staff Counsel
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R. Alfred Walker, Hearing Officer
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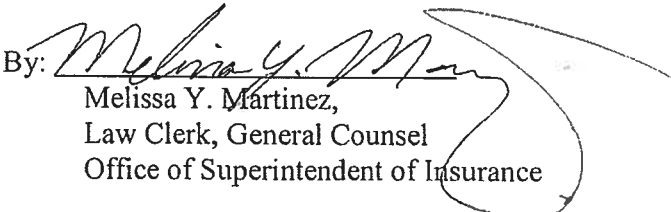
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By: 
Melissa Y. Martinez,
Law Clerk, General Counsel
Office of Superintendent of Insurance