

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC
DEVELOPMENT
DIVISION OF INSURANCE
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STATE OF ALASKA

DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

IN THE MATTER OF THE PROPOSED)
ACQUISITION AND CHANGE OF)
CONTROL OF)
SUNDERLAND MARINE MUTUAL)
INSURANCE COMPANY, LTD)
PARENT OF)
SUNDERLAND MARINE MUTUAL)
INSURANCE COMPANY, LTD)
(US BRANCH))
NAIC No. 10838)
_____)

Case No. H 14-01

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER

Background

On November 14, 2013, North of England Protecting and Indemnity Association, Ltd (North), a United Kingdom corporate group association mutual insurer, under AS 21.22.010 and AS 21.22.020, submitted to the Division of Insurance (Division) a statement for acquisition of control of Sunderland Marine Mutual Insurance Company, Ltd (SMMI), a United Kingdom mutual insurer, parent of Sunderland Marine Mutual Insurance Company, Ltd – US Branch (SMMI-US, or US Branch), an Alaska domiciled property and casualty marine insurer.

SMMI is domiciled in the United Kingdom and is licensed as a mutual company limited by guarantee without capital stock. SMMI was founded in Sunderland, England, in 1882, as a marine mutual hull club, and currently operates in the United Kingdom and locations around the world, including Canada, South Africa, Australia, Europe, South America, New Zealand and the

1 United States. They have expanded their underwriting to include hull and machinery (“H&I”),
2 protection and indemnity (“P&I”), personal accident (“PA”), and, within the last few years,
3 aquaculture.

4 SMMI has approximately 29,000 policyholders of which there are approximately 5,000
5 members. Under United Kingdom mutual association laws, not all policyholders are required to
6 be members. However, all policyholders of the US Branch are voting members of SMMI as
7 required for mutual insurers in Alaska statute AS 21.69.280.

8 SMMI-US received a certificate of authority from the division on February 3, 1996,
9 and is authorized to write marine, wet marine, transportation and risks incidental to marine
10 insurance including protection and indemnity. The US Branch is currently licensed only in
11 Alaska and writes Alaska business exclusively, and has a total of 472 members.

12
13 North of England Protecting and Indemnity Association, Ltd (North), is an alien mutual
14 insurer of Protection and Indemnity (“P&I”), Freight Demurrage and Defence (“FD&D”), and
15 War risks, headquartered in Newcastle Upon Tyne, England. North was established in 1860 in
16 Newcastle Upon Tyne, which still remains North’s head office, and is an established member of
17 the International Group of P&I Associations (“IG”). North’s predominant line of business is
18 P&I which accounts for 90% of its premium income.

19 In addition to Newcastle Upon Tyne, North provides member services through regional
20 offices in Hong Kong, Piraeus, Singapore and, most recently, Japan. North does not write any
21 direct business in the United States.

22 North has 404 Fleets of Members.

23 Pursuant to Alaska Statute (AS) 21.22.010 – 21.22.030, North has requested approval
24 of the proposed acquisition through which it will become the sole member of the Acquired Party
25 and, as the Acquiring Party, North requests nondisapproval of the effectuation of the Plan of
26 Merger presented under their Form A filing.

27 After the submission of the Form A filing on November 13, 2013, the Division
28 determined that it was incomplete as filed and SMMI had not paid the application fee. The
29 application fee was subsequently received on November 20, 2013. The Division’s review also

1 identified additional information that was required under AS 21.22.020. This information was
2 subsequently provided by North on December 20, 2013. While the Division's financial
3 examiner advised North via email on December 26, 2013 that the Form A filing was deemed
4 complete, that determination was premature. Subsequent review by the Division's Chief
5 Financial Examiner and the Division's attorney revealed that the Form A filing did not have
6 sufficient information or detail to determine whether the transaction complied with Alaska law
7 pertaining to a merger of mutual insurers under AS 21.69.600. Further, membership votes of
8 both North and SMMI did not occur until January 16, 2014 and January 28, 2014, respectively.
9 SMMI submitted documentation to the Division on February 7, 2014 confirming the meeting of
10 SMMI members and the vote on the proposed merger. On February 26, 2014, SMMI submitted
11 to the Division testimony by affidavit to demonstrate compliance with the requirements in AS
12 21.69.290 and AS 21.69.600.

13 Under the authority of AS 21.06.180 and AS 21.22.030, a Notice of Hearing dated
14 January 23, 2014, was published for the purpose of receiving public comments on the proposal
15 acquisition and ultimate change in control of SMMI-US ("the Plan").

16 Prior to the hearing, the Division determined that AS 21.69.600 would apply to the
17 transaction proposed by North and SMMI because it involved the merger of two mutual
18 insurers. The hearing notice did not reference this statute, but the requirements for approving a
19 merger of mutual insurers pursuant to AS 21.69.600 are similar if not the same as those required
20 under AS 21.22.030. Accordingly, the lack of citation to AS 21.69.600 in the Hearing Notice, in
21 the Division's view, did not prejudice and harm the parties to the acquisition or others receiving
22 notice.

23 A Hearing was held on Wednesday, February 12, 2014. Richard B. Foster, Insurance
24 Financial Examiner II, served as Hearing Officer; Maxine L. Froemling, Chief Financial
25 Examiner, appeared as Financial Examination Section representative;; Chris Owen, North of
26 England Protecting and Indemnity Association, Ltd, Company Secretary, appeared on behalf of
27 the Acquiring Party; and Lee Williamson, General Counsel, Sunderland Marine Mutual
28 Insurance Company, Ltd, appeared on behalf of the Acquired Party. Martin D. Hester, Acting
29

1 Director for the Division; Chip Wagoner, Regulations Specialist II and hearing coordinator for
2 the Division, also attended the hearing.

3
4 At the start of the hearing, the Hearing Officer advised the parties that AS 21.69.600
5 applied to the proposed transaction and stated the Division's view that the failure to cite to that
6 statute in the hearing notice did not result in any prejudice or harm to the parties or others
7 receiving notice of the hearing. The Hearing Officer further advised that unless there was an
8 objection to proceeding under AS 21.69.600(d), the Division intended to proceed with the
9 hearing as planned. No objections were declared and the Hearing proceeded under the provisions
10 of AS 21.69.600.

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12 There were no individuals appearing at the Hearing in opposition to the acquisition and
13 change in control.

14
15 FINDINGS OF FACT

16 1. North of England Protecting and Indemnity Association, Ltd (North), is an alien
17 mutual insurer of Protection and Indemnity ("P&I"), Freight Demurrage and Defence
18 ("FD&D"), and War risks, headquartered in Newcastle Upon Tyne, England. In addition to
19 Newcastle Upon Tyne, North provides member services through regional offices in Hong Kong,
20 Piraeus, Singapore and, most recently, Japan. North does not write any direct business in the
21 United States.

22 2. North maintains a Standard & Poor's rating of "A," which was received on February
23 2, 2005, and last reviewed and affirmed on December 19, 2012. The rating reflects North's very
24 strong financial flexibility, strong capital adequacy, and historically strong growth in free
25 reserves, indicating strong profitability. According to Standard & Poors, their outlook is stable.
26 Further, the rating noted that the positive aspects are partly offset by North's size relative to the
27 wider international insurance market, its virtual monoline status, and the continuing soft rating
28 environment in the protection and indemnity (P&I) market.

1 3. SMMI utilizes Alaska as a domestic Port of Entry through its US Branch, SMMI-
2 US, which accounts for 11.6% of the Alaska ocean marine premium volume written in the state
3 as of December 31, 2013, in a non-highly concentrated market.

4 4. The change in control does not involve a distribution of existing capital to support
5 the business or additional financing via a supplementary call or external financing.

6 5. The Merger Agreement proposes that North will become SMMI's sole member by
7 way of a demutualization of SMMI whereby the Members relinquish their membership rights
8 and member obligations to pay supplementary calls upon approval of the Plan. Further
9 consideration given to the SMMI Members for the transaction is North's assumption of the
10 obligations for the run-off of existing claims liabilities and the SMMI defined benefit pension
11 obligation. No cash consideration will be provided to SMMI Members by way of a distribution.
12 North and SMMI anticipate enhanced services to policyholders, stable pricing and cost savings
13 as a result of the merger.

14 6. North has no present plans to make any material changes in SMMI's business, to
15 liquidate SMMI or to sell any of its assets. However, in the event North sells SMMI or its
16 business within a three year period following completion of the Merger, then a proportion of the
17 monies generated by the disposal following deduction of agreed liabilities will be shared
18 between SMMI's former members.

19 7. North duly called a meeting of its members on January 16, 2014, to approve the
20 Plan of Merger of SMMI with North by special resolution, along with related amendments to its
21 Articles of Association. A unanimous vote was received FOR the resolution.

22 8. SMMI duly called a meeting of its members on January 28, 2014, to approve the
23 Plan of Merger of SMMI with North by special resolution, along with related amendments to its
24 Articles of Association. The resolution was passed with a 93% vote FOR the proposed merger by
25 all members of SMMI that participated in the vote in person or by proxy. The vote included 45
26 members of the US Branch participating by proxy, of which 40 voted FOR the Resolution, an
27 88.9% vote in favor of the resolution.

28 9. An Affidavit was obtained from Alan Stuart Rowland, Company Secretary for
29 SMMI, stating that the SMMI Notice of the Extraordinary General Meeting scheduled for

1 January 28, 2014 was mailed to all members. The Notice mailing included the following
2 documents: a cover letter prepared by him, a proxy card for voting, a pre-paid return envelope
3 and a Members' Circular that described the merger transaction and its perceived advantages and
4 disadvantages.

5 10. Mr. Stuart's affidavit also stated that a mailing center was engaged to perform the
6 mailing service and he provided the list of Members to whom the Notice and Documents were
7 required to be sent.

8 11. Mr. Stuart's affidavit also stated that a notice of the public hearing held by the
9 Alaska Division of Insurance on January 29, 2014 was sent to each of its US Branch Members;
10 and he provided a list of the US Branch Members.

11 12. An Affidavit was also obtained from Mr. Lee Redford, a director of Aztec Mailing
12 Centre Limited, the mailing house engaged by SMMI to print, compile and mail the Notice of
13 Extraordinary General Meeting scheduled for January 28, 2014. He also provided a copy of the
14 engagement letter and contract with SMMI to perform these services. The affidavit confirms
15 that the contracted services and tasks were performed as requested.

16 13. Following the acquisition, three members of the current Board of Directors of SMMI
17 will sit on the Board of Directors of North, one as an executive officer, two as non-executive
18 officers.

19 14. SMMI will still retain its own Board of Directors as a subordinate subset of North's
20 Board of Directors.

21 15. North plans to maintain SMMI as a separate and self-identifiable "mutual ethos"
22 culture and operation for a minimum of two years after the effectualization of the Plan.

23 16. The Division has reviewed the Form A application for the acquisition and change in
24 control of SMMI-US Branch and its parent, SMMI, and has found after reviewing the testimony,
25 exhibits, and other documents provided in support of the proposed transaction, that (a) after the
26 acquisition and change of control, SMMI-US will still satisfy the requirements for issuance of a
27 certificate of insurance to write the line or lines of insurance for which they are presently
28 authorized; (b) the acquisition and change in control will not substantially lessen competition in
29 insurance in Alaska or tend to create a monopoly in the state; (c) the financial condition of the

1 Acquiring Party will not jeopardize the financial stability of the company or prejudice the
2 interest of its policyholders; (d) the Acquiring Party plans or proposals are fair and reasonable to
3 the policyholders of the company and are in the public interest; (e) the competence, experience,
4 and integrity and change in control will be in the best interest of the policyholders of the
5 company and the public; and (f) the acquisition and change in control of the company will not be
6 hazardous or prejudicial to the insurance buying public.

7 8 CONCLUSIONS OF LAW

9 1. North, the Acquiring Party, filed the statement required by AS 21.22.020 and AS
10 21.69.600(c) with the Alaska Division of Insurance. The statement filed under oath by North
11 and supplemented as requested by the Division contained all information for proper
12 determination of approval required of AS 21.69.600(c) and AS 21.69.600(d) as well as the
13 provisions in AS 21.22.030.

14 2. In compliance with AS 21.69.600(c), both North and SMMI submitted a plan of
15 agreement for merger and consolidation to their members by proper and reasonable notice in a
16 duly called meeting that was approved by at least two-thirds of the members of each mutual
17 insurer involved and voting in person or by proxy at the meeting. Specifically, voting members
18 of North unanimously approved the merger while 93% of SMMI voting members approved the
19 merger.

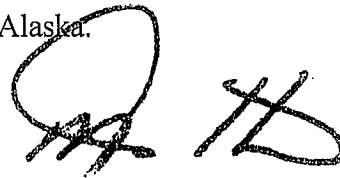
20 3. Pursuant to AS 21.69.600(d)(1), the merger does not appear to be inequitable to
21 the policyholders of the US Branch. The policyholders will retain their policies but will be
22 released from any liability as mutual members to contribute additional premiums if a
23 supplementary call was needed to cover SMMI liabilities. Former members of SMMI also will
24 retain limited rights to share in the proceeds of a future sale of SMMI or its business should it
25 occur within the three-year period following the merger. In addition, North and SMMI
26 anticipate enhanced services to policyholders, stable pricing, and cost savings as a result of the
27 merger.

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(5) SMMI files a new Power of Attorney with the Division.

This order is effective February 26, 2014.

Dated this 26th day of February, 2014, at Juneau, Alaska.



Lori Wing-Heier, Director

State of Alaska

Division of Insurance