

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

STATE OF ALASKA

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

In the Matter of the Merger of)
)
THE FIRST AMERICAN CORPORATION,)
A California corporation, and)
PACIFIC NORTHWEST TITLE INSURANCE)
COMPANY, a Washington Insurer.)
)
_____)

Case No. A 04-01

STIPULATED AGREEMENT AND ORDER

Background

On March 8, 2004, the Division of Insurance (division) received a notice of proposed merger between The First American Corporation and Pacific Northwest Title Insurance Company (the companies), accompanied by a Form E filing. The division requested additional information, which the companies provided on April 9, 2004. Under AS 21.22.065, the director may issue an order requiring an insurer to cease doing business in this state if an acquisition violates the competitive standards established.

The division staff has reviewed and researched the Form E filing, met with representatives of the companies, and determined that any anti-competitive effect of the proposed merger may be remedied by stipulation of the parties to the following conditions.

Representations

As a condition to the director's issuance of this Stipulated Agreement and Order, the companies make the following representations to the director and the division:

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE
ROBERT B. ATWOOD BUILDING
550 WEST SEVENTH AVENUE, SUITE 1560
ANCHORAGE, ALASKA 99501-3567
PHONE: (907) 269-7900
FAX: (907) 269-7910
TDD: (907) 465-5437

STATE OF ALASKA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE
ROBERT B. ATWOOD BUILDING
550 WEST SEVENTH AVENUE, SUITE 1560
ANCHORAGE, ALASKA 99501-3587
PHONE: (907) 269-7900
FAX: (907) 269-7910
TDD: (907) 465-5437

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

A. The Agreement and Plan of Merger, dated December 17, 2003, between the companies provides that each company will maintain a separate existence in the Alaska title insurance market. The companies will maintain their licenses as insurers, and each will have management that will operate independently of the other insurer. The Agreement and Plan of Merger between the companies provides in Section 3.5:

[First American] currently intends to continue operations of [PNW Title Insurance Company] after the Closing in a manner similar to the conduct of the operations of [Pacific Northwest Title Insurance Company] prior to the Closing, including (i) the use of the current names and branding of [PNW Title Insurance Company], (ii) providing the managers of [PNW Title Insurance Company] with autonomy and (iii) maintaining the current operational structure under which the managers of [PNW Title Company] report to [PNW Title Holding Company]and after the Closing, to [First American Corporation].

B. The Agreement and Plan of Merger will permit the consolidation of certain back office functions to avoid duplication of administrative expense. Further, the two companies desire that the technological and centralized production capabilities of The First American Corporation be available to Pacific Northwest Title Insurance Company, to permit it to offer streamlined processes and lower cost products to its customers, without the need to duplicate those technological and production capabilities of The First American Corporation.

C. From a market perspective at the consumer level, however, the companies will remain separate and operate in competition with one another as well as with other title insurers. Pacific Northwest Title's agents will continue to sell title policies underwritten by Pacific Northwest Title Insurance Company as well as First American Title Insurance Company and other title insurers not affiliated with Pacific Northwest Title Insurance Company or The First American Corporation or First American Title Insurance Company.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

D. The First American Corporation is a California corporation doing business in the State of Alaska and elsewhere. The corporation is in good standing and is current in all fees owing the State of Alaska. Its subsidiary, First American Title Insurance Company, is also a corporation in good standing, is current in all fees owing the State of Alaska, and has a valid and current certificate of authority to transact title insurance in the State of Alaska.

E. Pacific Northwest Title Insurance Company is a corporation in good standing, is current in all fees owing the State of Alaska, and has a valid certificate of authority from the State of Alaska.

Stipulations

Based upon the foregoing representations, as well as the representations and documents submitted by the companies as part of the Form E filing made with the division in connection with this transaction, the division and the companies stipulate and agree that no cease and desist order should be issued under AS 21.22.065 on the Form E filed March 8, 2004 in return for performance by the companies of the following:

1. The companies recognize the division's concern that the Alaskan consumers are protected from the consequences of a withdrawal from the Alaska insurance market of a family of insurers that collectively have a significant market share of the Alaska market. In order to address this concern, the companies agree that, for a period of 20 years, neither company will voluntarily withdraw from the Alaska title insurance market, or voluntarily surrender, cancel, or fail to renew its certificate of authority. This commitment will expire 20 years from the date of this Stipulated Agreement and Order or on the date of the financial statement filing showing the companies' combined market share in the Alaska title insurance market does not reach 50 percent, whichever event occurs first.

STATE OF ALASKA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE
ROBERT B. ATWOOD BUILDING
550 WEST SEVENTH AVENUE, SUITE 1560
ANCHORAGE, ALASKA 99501-3587
PHONE: (907) 269-7900
FAX: (907) 269-7910
TDD: (907) 465-5437

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

2. The companies further recognize the division's concern that the Alaskan policyholders are protected from the consequences of any involuntary withdrawal of an insurer with a significant market share from the Alaska market. In order to address this concern, and to further protect the title insurance buying public, specifically purchasers of the companies' title insurance policies, the companies agree that they will make additional voluntary deposits to the guaranty fund established in AS 21.66.020 (guaranty fund). In particular, the companies will

a. Fulfill and remain current in all obligations imposed by AS 21.66.020.

b. For each calendar year in which the combined market share of the companies exceeds 50 percent of the total Alaska title insurance market, measured in annual premiums written in the prior calendar year, the companies will make an additional deposit to the guaranty fund. The supplemental deposit will be calculated as follows:

(i) In each calendar year in which the prior year combined Alaska market share of the companies exceeds 50 percent, as determined by annual Direct Premiums Written in Alaska, within 30 days after the filing of the annual statement, the companies will collectively make an additional voluntary deposit into the guaranty fund equal to: the amount by which the companies' collective market share exceeds 50 percent expressed as a percentage and then applied to the premiums collected by the companies on the market share that exceeded the 50 percent threshold (i.e., if the combined market share were 65 percent, the resulting percentage would be 15 percent, so the deposit would be 15 percent of the insurance premiums that represented that 15 percent market share). Each of the companies will deposit its share of the above amount in proportion to their respective market share (i.e., if the companies collectively had a 65 percent market share and the two companies split that market share at 40 percent and 25 percent, the amount of the deposit for each company would be 40/65ths and

STATE OF ALASKA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE
ROBERT B. ATWOOD BUILDING
550 WEST SEVENTH AVENUE, SUITE 1560
ANCHORAGE, ALASKA 99501-3567
PHONE: (907) 269-7900
FAX: (907) 269-7910
TDD: (907) 465-5437

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

25/65ths, respectively, of the total deposit). The maximum amount of additional deposit each year shall be \$100,000 for each company.

(ii) Notwithstanding the above, total deposits made over time, including supplemental deposits made under this section, by each of the companies to its guaranty fund shall not cumulatively exceed \$1,000,000.00 per company.

c. The first deposit calculated under paragraph b above, based on the market share reported in financial statements for December 31, 2003, shall be made within 30 days of the effective date of the acquisition.

DATED: May 7, 2004

THE FIRST AMERICAN CORPORATION

By: 
James J. Dufficy
Its: Vice President & Regulatory Counsel

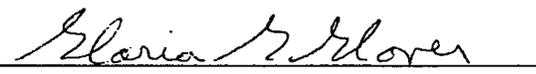
DATED: May 10, 2004

PACIFIC NORTHWEST TITLE INSURANCE COMPANY

By: 
Raymond Davis
Its: President

DATED: May 10, 2004

DIVISION OF INSURANCE

By: 
Gloria Glover
Chief Financial Examiner

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ORDER

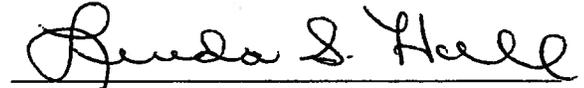
Based on the foregoing representations and stipulations it is HEREBY ORDERED

THAT

1. the above stipulations are accepted in lieu of an order under AS 21.22.065(b);
- and
2. the companies shall abide by the stipulations set forth above. In the event the companies fail to comply with this stipulated agreement and order, the director will issue a cease and desist order under AS 21.22.065.

IT IS FURTHER ORDERED that this Stipulated Agreement and Order is adopted in full resolution of the issues in this matter, and shall constitute the final order in this matter.

DATED this 10th day of May, 2004.



Linda S. Hall
Director of Insurance