

BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS

IN THE MATTER OF THE
APPLICATION FOR APPROVAL OF
ACQUISITION OF CONTROL
OF IMERICA LIFE & HEALTH INSURANCE CO.
BY IMERICA ADMINISTRATIVE SERVICES CORP.

A.I.D. No. 2007- 004

ORDER

On Thursday, January 25, 2007, at 1:30 p.m., in the Hearing Room of the Arkansas Insurance Department (the "Department"), in accordance with the provisions of Ark. Code Ann. §§ 23-61-109, 23-61-303, 23-63-510, and other pertinent provisions of the Arkansas Insurance Code, a public hearing was held pursuant to a Form A Application filed by IMERICA ADMINISTRATIVE SERVICES CORP. ("IASC") seeking approval of the acquisition of control of IMERICA LIFE & HEALTH INSURANCE COMPANY ("IMERICA"), NAIC # 63533, as detailed in the Form A Application dated December 18, 2006, the exhibits thereto and the supplemental filings in relation thereto (hereinafter, collectively "Form A").

Also, in accordance with Ark. Code Ann. § 23-63-514, FirstBank Holding Company ("FirstBank"), a Colorado company, filed a Disclaimer of Control and requested that it be considered contemporaneously with the Form A, since it beneficially owns more than ten percent (10%) of IASC. FirstBank represents that it does not exert "control" over either IASC or IMERICA after the close of the transaction, as the term "control" is defined in the Arkansas Holding Company Act, Ark. Code Ann. §§ 23-63-501 et seq.

IASC further requests approval under Ark. Code Ann. § 23-69-134(c)(1), to maintain the books and records of IMERICA post-acquisition in Englewood, Colorado; and IASC also requests that the statutory home office of IMERICA be changed to 400 West Capitol Avenue, Suite 2000, Little Rock, Arkansas 72201.

The hearing officer was the Honorable Julie Benafield Bowman, Commissioner of the Arkansas Insurance Department. The Department was represented by Ms. Jean Langford, Chief Counsel, Ms. Amanda Capps Rose, Associate Counsel, and Mr. Mel Anderson, Deputy Commissioner for Financial Regulation & Audit. Representing IMERICA and the Seller, Imerica Financial Corporation ("IFC"), was Mr. Michael G. Hankinson, Chief Operating Officer, Secretary & General Counsel of the IMERICA and Chief Executive Officer of IFC. Representing IASC was Mr. Eric Sipf, Chairman, Mr. John C. Herbers, President, and Mr. Rob Ruiz-Moss, Chief Executive Officer, along with Ms. Ragenea Thompson Hodge, of Friday, Eldredge & Clark, LLP, its counsel. Mr. Sipf, Mr. Herbers, and Mr. Ruiz-Moss testified at the hearing on behalf of IASC, and Ms. Tammy Keffeler testified at the hearing on behalf of FirstBank; Mr. Mike Hankinson testified on behalf of IMERICA. Finally, Deputy Commissioner Mel Anderson testified on behalf of the Department.

As an initial matter, it was agreed by all parties that certain filings, concerning the Form A, including related information therein and other supplemental filings, are confidential in nature; therefore, the Applicant shall be notified prior to any request for disclosure of said exhibits and supplemental filings and related information. Furthermore, it appears that certain filings and related and supplemental information may be exempt from disclosure under both the Arkansas Freedom of Information Act,

Ark. Code Ann. §§ 25-19-101 *et seq.* and various provisions of the Arkansas Insurance Code.

The hearing record closed on Wednesday, January 31, 2007 at close of business of the Department. The following documents were submitted by the Department and IASC and were admitted into the record after the conclusion of the hearing: (1) copies of Arkansas Code Annotated §§ 23-63-503, 23-63-507, and 23-63-514; (2) e-mail correspondence from Mr. Hankinson dated January 29, 2007; and (3) correspondence amending and correcting testimony of Mr. Ruiz-Moss concerning future infusions of capital.

FINDINGS OF FACT

Proposed acquisition of IMERICA by IASC

From the Form A, testimony of witnesses and other evidence adduced at the hearing (including exhibits filed in connection therewith), reports, correspondence, financial information, business plans, and statements on file with the Department, and representations of counsel, the Commissioner finds that:

1. IMERICA is an Arkansas domiciled life and health insurer. The insurer is a wholly owned direct subsidiary of IFC, a Delaware holding company formed in 2003 for the sole purpose of acquiring IMERICA.

2. IASC is a Colorado corporation formed in 2006 for the purpose of acquiring IMERICA. The testimony presented by the Officers of IASC at the hearing, and the biographical affidavits filed as part of the Form A, evidences that each of the proposed Directors and Officers, have prior extensive experience in the insurance and managed care industry.

3. On its Annual Statement for calendar year 2005, IMERICA reflected net admitted assets of \$5,382,281, liabilities of \$734,305 and policyholder surplus of \$4,647,976.

4. Mr. Herbers and Mr. Ruiz-Moss testified that IASC will acquire control of IMERICA through the Stock Purchase Agreement ("SPA"); the stages of the acquisition relevant to the SPA were described as follows:

a. IASC will acquire control of IMERICA by acquiring all of the 750,000 issued and outstanding shares of common capital stock of the company from its parent, IFC, which shares represent all of the issued and outstanding stock of IMERICA, par value at \$2 per share.

b. The acquisition will be effected pursuant to the terms specified in the SPA between IASC and IFC, whereby IASC will pay to IFC one-million dollars (\$1,000,000) plus an amount equal to the statutory capital and surplus of IMERICA as of August 31, 2006, which amount is \$2,841,280.

c. The source and nature of the consideration for purchase of IMERICA consists of cash from IASC.

5. Mr. Ruiz-Moss testified that IMERICA, upon consummation of this transaction, will have sufficient levels of capital and surplus to support its business.

6. Based on testimony of Mr. Ruiz-Moss, business plans, projections and other information filed by IASC in conjunction with the Form A:

a. IASC does not plan on making substantial changes post-acquisition to the operations of IMERICA, except for those identified herein or in the Form A.

b. The proposed Directors and Officers of IASC will be as follows:

1. Directors

Eric D. Sipf	Chairman of the Board
John C. Herbers	Director
Rob Ruiz-Moss	Director
Tammy S. Keffeler	Director
Stephen S. S. Hyde	Director
Stephen O. James	Director
David C. Baker	Director

2. Officers

Eric D. Sipf	Chairman
John C. Herbers	President and Treasurer
Rob Ruiz-Moss	Chief Executive Officer and Secretary
Laura S. James	Chief Financial Officer

c. IASC proposes for IMERICA to write new business as described in the Form A filing.

d. IASC has no present plans to cause IMERICA to declare any extraordinary dividends.

e. The company's name will remain the same. In the event a decision is made in the future to change the name, all appropriate regulatory filings shall be made.

7. Concerning the Disclaimer of Control filed by FirstBank, Ms. Tammy Keffeler, a duly authorized representative and officer of the bank, testified that she has knowledge of its ownership of certain shares of common stock of IASC, as identified

and explained in an Affidavit executed by Ms. Keffeler and admitted in the hearing Record as Exhibit No. 10. According to the Affidavit, FirstBank proposes to own approximately 21% of the outstanding shares of common stock of IASC.

a. Pursuant to the Arkansas Holding Company Act, Ark. Code Ann. § 23-63-503(2), it is presumed one exercises “control” of a company if the person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person. Since FirstBank’s stock ownership of IASC exceeds the ten percent (10%) threshold, it is presumed to exercise control of IASC, and potentially of IMERICA, unless it can rebut the presumption.

b. According to FirstBank’s Affidavit, the presumption can be rebutted. First, while FirstBank, via its investment in IASC, will have the right to appoint individuals to two (2) seats to the Board of Directors of IASC, such right and appointment does not constitute a voting block or majority since there are seven (7) total Directors. Consequently, the business and affairs of IASC, and by implication that of IMERICA if acquired, is directed by the *entire* Board of Directors of which FirstBank’s right of appointment is only a part. Second, while the Banking Services Agreement and the Shareholders Agreement permit FirstBank certain rights that are solely granted to it compared to other shareholders, it is neither the intent nor practical effect of those rights and Agreements to constitute or grant the exercise of control to FirstBank of IASC or IMERICA. Rather, these rights and Agreements simply provide FirstBank reasonable assurance and comfort of a financial nature as to the stability and predictability of its investment and proposed continued relationship with IASC and IMERICA. Ms. Keffeler

confirmed the affirmations contained in FirstBank's Affidavit for Disclaimer of Control. Mr. Ruiz-Moss testified on behalf of IASC as to the intent of the Agreements and the negotiating process resulting in the rights of FirstBank at issue in the Disclaimer of Control; he confirmed that the investors, officers and directors of IASC all desire for FirstBank to play an important role in the business plan described in the Form A, but that FirstBank's role is limited to that of business investor. There was never any contemplation nor intention for FirstBank to have or exercise control of IASC or IMERICA or to otherwise be involved in the day-to-day operations of either of these companies.

8. The company's main administrative office for IMERICA will be located at 304 Inverness Way South, Suite 465, Englewood, Colorado, 80112-5828. For this reason, IASC requested that the books and records of IMERICA be maintained at the Englewood, Colorado office after the acquisition. As required by Arkansas law, the statutory home office of IMERICA following the acquisition will be located at 400 West Capitol Avenue, Suite 2000, Little Rock, Arkansas 72201.

9. Mr. Herbers and Mr. Ruiz-Moss testified on behalf of IASC that, in their opinion:

a. IASC's acquisition of control of IMERICA will not cause IMERICA to be unable to satisfy the requirements to issue the lines of business it is authorized to write;

b. IASC's acquisition of control of IMERICA will not substantially lessen competition in insurance in Arkansas or create a monopoly in the state;

c. The financial condition of IASC will not jeopardize the financial stability of IMERICA or prejudice IMERICA's policyholders or the interest of remaining security holders;

d. The terms of the acquisition are fair and reasonable to any policyholders of IMERICA;

e. IASC has no plans to liquidate IMERICA, sell its assets or consolidate or merge the insurer with any person or make any other material changes to the business, corporate structure, or management that are unfair or unreasonable to IMERICA or its policyholders or inconsistent with the public interest; and

f. The competence, experience and integrity of the persons who would control the operations of IMERICA after acquisition are such that it is consistent with the interest of IMERICA's policyholders and the public to allow the acquisition to go forward.

10. Should there be a change in the proposed Directors or Officers of IMERICA within sixty days of the close of the transaction or after the entry of this Order, IASC shall notify the Commissioner, and any such change shall be subject to prior written approval by the Commissioner.

Closing of transactions

11. Mr. Herbers testified that the anticipated closing date for the acquisition of IMERICA and all related transactions is on or before January 31, 2007.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and the record before her, the Commissioner concludes as follows:

1. The Commissioner has jurisdiction over the parties and subject matter herein.

2. None of the preclusions of Ark. Code Ann. § 23-63-510 exist as to the acquisition of control of IMERICA by IASC. Therefore, the acquisition should be approved.

3 FirstBank has presented sufficient evidence to rebut the presumption of control, as that term is defined in the Arkansas Holding Company Act; thus, its Disclaimer is allowed. Should there be a material change in FirstBank's relationship or affiliation with IASC or IMERICA, it is hereby ordered to disclose those facts to the Commissioner pursuant to Ark. Code Ann. § 23-63-514(i).

Based on the foregoing Findings of Fact and Conclusions of Law, and being in all things duly advised, IT IS THEREFORE ORDERED that:

- a. Pursuant to Ark. Code Ann. § 23-63-510, the acquisition of control of IMERICA by IASC from IFC [including the proposed Revised Management & Marketing Services Agreement between IASC and IMERICA, the Banking Services Agreement between IASC and FirstBank, and other related Agreements], as described in the Form A, testimony of witnesses and other evidence adduced at the hearing (including exhibits filed in connection therewith), reports, correspondence, financial information, business plans, and statements on file with the Department, and representations of counsel, should be and are hereby approved;
- b. Pursuant to Ark. Code Ann. § 23-63-514(i), FirstBank's Disclaimer of Control and affiliation is not disapproved.

- c. Pursuant to Ark. Code Ann. § 23-69-134(c), the request to maintain the books and records of IMERICA, after the acquisition, in Englewood, Colorado should be and is hereby approved, and IMERICA's statutory home office will continue to be located in Little Rock, Arkansas.

IT IS THEREFORE ORDERED this 31st day of JANUARY, 2007.


JULIE BENAFIELD BOWMAN
INSURANCE COMMISSIONER