

BEFORE THE INSURANCE COMMISSIONER  
FOR THE STATE OF ARKANSAS

IN THE MATTER OF THE APPLICATION FOR  
APPROVAL OF ACQUISITION OF CONTROL  
OF AMERICAN UNDERWRITERS INSURANCE  
COMPANY AND AMC RE, INC. BY FIRST MERCURY  
FINANCIAL CORPORATION

AID NO. 2007- 083

**ORDER**

On Thursday, December 13, 2007, at 1:00 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, and 23-69-142, Section 14 of Rule and Regulation 73, and other pertinent provisions of the Arkansas Insurance Code and regulations promulgated by the Department, a Public Hearing was held pursuant to the Statement Regarding The Acquisition Of Control Of Or Merger With A Domestic Insurer ("Acquisition Statement") filed by First Mercury Financial Corporation ("First Mercury") seeking approval of the acquisition of control of American Underwriters Insurance Company ("AUIC") and AMC Re, Inc. ("AMC Re"), (collectively, the "Arkansas Insurers") as detailed in the Acquisition Statement dated November 16, 2007, and received by the Department on the same day, the exhibits thereto, and the supplemental filings in relation thereto.

The hearing was held before State Insurance Commissioner Julie Benafield Bowman. The Department was represented by Mr. Robert Alexander, Associate Counsel, and Mr. Mel Anderson, Deputy Commissioner for Financial Regulation and Audit. Representing the Arkansas Insurers and American Management Corporation were Mr. Stephen L. Strange, Sr. and Mr. T. Ark Monroe, III and Mr. Derrick W. Smith of Mitchell, Williams, Selig, Gates, & Woodyard, P.L.L.C. as the Arkansas Insurers' counsel. Representing First Mercury were Mr.

Jeffrey R. Wawok, Executive Vice President of First Mercury, and Mr. Derrick W. Smith and Mr. T. Ark Monroe, III of Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C. as First Mercury's counsel. Pursuant to Department Directive 3-99, Mr. Monroe and Mr. Smith submitted waivers executed by Mr. Wawok and Mr. Strange regarding their joint representation at the hearing.

#### FINDINGS OF FACT

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

1. AUIC is an Arkansas domiciled property and casualty insurer as defined by Ark. Code Ann. § 23-60-102, with its principal offices in Conway, Arkansas. AMC Re is an Arkansas domiciled producer reinsurance captive insurance company as defined by Ark. Code Ann § 23-63-1610, with its principal offices located in Conway, Arkansas. The Arkansas Insurers are both wholly-owned direct subsidiaries of American Management Corporation ("AMC"). AMC is a direct subsidiary of Lafayette American, Inc. Lafayette American is wholly owned by Stephen L. Strange, Sr.

2. First Mercury is a publicly-traded Delaware Corporation headquartered in the State of Michigan. Through its various subsidiaries First Mercury provides insurance products and services to specialty commercial insurance markets.

3. The testimony presented by Mr. Wawok at the hearing, and the biographical affidavits filed as part of the Acquisition Statement, indicate that the individuals associated with First Mercury have prior extensive experience in the insurance industry, including experience in

the management of insurance companies; have not been subject to a felony of misdemeanor conviction, other than minor traffic offenses in the last twenty years; have not been found to be in violation of any insurance laws by a court of competent jurisdiction or the insurance commissioner or another state; have not been found to have committed any unfair insurance trade practice or fraud by a court of competent jurisdiction or a regulatory agency; and have not had an insurance producer license or its equivalent denied, suspended or revoked.

4. Mr. Wawok testified that First Mercury will acquire control of the Arkansas Insurers through a Stock Purchase Agreement dated October 10, 2007, between First Mercury, AMC, and Stephen L. Strange, Sr. ("Stock Purchase Agreement"). The stages of the acquisition relevant to the Stock Purchase Agreement are described as follows:

(a) First Mercury will acquire control of the Arkansas Insurers by acquiring all of the issued and outstanding shares of common capital stock of AMC from Stephen L. Strange, Sr. AMC directly or indirectly owns all of the issued and outstanding shares of stock of AUIC and AMC Re. Immediately prior to First Mercury's acquisition of all of the issued and outstanding shares of common stock of AMC from Stephen L. Strange, Sr., AMC will engage in a reverse stock split, pursuant to which Lafayette American will become the sole owner of AMC. Lafayette American will then merge into AMC resulting in AMC being wholly owned by Stephen L. Strange, Sr.

(b) The acquisition will be effected pursuant to the terms specified in the Stock Purchase Agreement, whereby First Mercury will pay total consideration of \$43,958,897 of which \$15,000,000 will be applied to the redemption of the Series A Preferred Stock of AMC held by the Arkansas State Highway Employees' Retirement System.

(c) The source and nature of the consideration for the purchase of the Arkansas Insurers consists of cash held by First Mercury.

5. Based on the testimony of Mr. Wawok and Mr. Strange and other information filed by First Mercury in conjunction with the Acquisition Statement:

(a) First Mercury does not plan on making substantial changes post-acquisition to the operations of the Arkansas Insurers except for those identified herein or in the Acquisition Statement.

(b) The proposed directors and officers of the Arkansas Insurers will not immediately change upon consummation of the transaction.

(c) The location of the books, records, and assets of the Arkansas Insurers will not immediately change upon the consummation of the transaction.

(d) First Mercury proposes for the Arkansas Insurers to continue to operate as they do currently as described in the Acquisition Statement.

7. Mr. Wawok testified on behalf of First Mercury and Mr. Strange testified on behalf of the Arkansas Insurers that in their opinion:

(a) First Mercury's acquisition of the Arkansas Insurers will not violate any law;

(b) First Mercury's acquisition of the Arkansas Insurers is not inequitable to the Arkansas Insurers' shareholders; and

(c) First Mercury's acquisition of the Arkansas Insurers will not substantially reduce the security of and service rendered to the Arkansas Insurers' policyholders.

## CONCLUSIONS OF LAW

Based upon the foregoing findings of fact and other matters of facts and things before her, the Commissioner concludes as follows:

1. The Commissioner has jurisdiction over the parties and subject matter herein.
2. The Acquisition of Control Approval Request as supplemented, is in compliance with and satisfies the requirements of Ark. Code Ann. §§ 23-69-142.
3. None of the preclusions of Ark. Code Ann. § 23-69-142 exist as to the acquisition of control of the Arkansas Insurers by First Mercury. Therefore, the acquisition should be approved.

Based on the foregoing findings of fact and conclusions of law, IT IS THEREFORE ORDERED that:

(a) Pursuant to Ark. Code Ann. § 23-69-142 and Section 14 of Rule and Regulation 73, the acquisition of control of the Arkansas Insurers by First Mercury as described in the Acquisition Statement, testimony of witnesses, and other evidence adduced at the hearing (including exhibits filed in connection therewith), reports, correspondence, financial information, business plan and statements on file with the Department, representations and other matters and things considered, should be, and is hereby approved and the parties are authorized to consummate the Stock Purchase Agreement in accordance with its terms.

It is also noted that the customary third party background checks of the individuals who serve as officers and directors of First Mercury (the "Individuals") have not yet been received by the Department as of the date of this Order. It is thus FURTHER ORDERED that these background checks will be delivered to the Department for review as soon as practicable. The Department may request additional information from any of the Individuals within 30 days after

the receipt of the background checks. Further, if the competence, experience, or integrity of any of the Individuals is found to be inconsistent with the interests of the Arkansas Insurers' policyholders and the public, the Department may, within 30 days after receipt of all additional biographical information requested by the Department, place conditions on such Individual's involvement with the Arkansas Insurers, subject to an opportunity for hearing and appeal of the Department's decision by First Mercury or the Individual(s). The conditions upon the Individual's involvement with the Arkansas Insurers shall, at minimum, require that the Individual refrain from participating in any decisions regarding the management of the Arkansas Insurers until any hearing or appeal of the Department's decision is finally resolved.

DATED this 21<sup>st</sup> day of December, 2007.

  
JULIE BENAFIELD BOWMAN,  
INSURANCE COMMISSIONER