BEFORE THE
SOUTH CAROLINA DEPARTMENT INSURANCE

In the Matter of:	)	
	)	Docket No. 2007-03
The Proposed Acquisition of Carolina Care Plan, Inc. a South Carolina Domestic Health Maintenance Organization, by Medical Mutual of Ohio, an Ohio Health Insurer	)	Decision and Order

This matter comes before me pursuant to the Form "A" Statement regarding the Acquisition of Control of or Merger with a Domestic Insurer ("the Form A") filed by Medical Mutual of Ohio (the "Applicant"), in accordance with South Carolina's Insurance Holding Company Regulatory Act. *See* S.C. Code Ann. § 38-21-70; 25A S.C. Code Ann. Reg. 69-14. South Carolina law requires the approval of the Director of Insurance or his designee of any merger or acquisition of control of a South Carolina domestic insurer unless after a public hearing he finds that one of the conditions set forth in S.C. Code Ann. § 38-21-90 exists.

STATEMENT OF THE CASE

The Form A filed on or about April 25, 2007 and the Agreement and Plan of Merger dated May 5, 2007 provided notice of the Applicant's intent to acquire control of Carolina Care Plan, Inc. ("CCP"), a South Carolina domestic HMO. The Applicant proposes to acquire all of the issued and outstanding shares of capital stock of CCP for $10.675 million.

STATUTORY STANDARD OF REVIEW

S.C. Code Ann. § 38-21-10(2) of the South Carolina Code of Laws creates a presumption of control whenever an acquiring entity would directly or indirectly own ten

percent or more of the voting securities of a regulated entity. S.C. Code Ann. § 38-21-60 prohibits any person from acquiring control of a domestic insurer without first having filed information required pursuant to the Insurance Holding Company Regulatory Act and having obtained approval for that acquisition from the Director of Insurance or his designee under S.C. Code Ann. § 38-21-90.

S.C. Code Ann. § 38-21-90 of the Insurance Holding Regulatory Company Act specifically requires the approval of the proposed acquisition of control of a South Carolina domestic insurer unless the Director of Insurance or his designee determines, after a public hearing, that:

> (1) After the change of control the domestic insurer is not able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;
>
> (2) The effect of the merger or other acquisition of control would substantially lessen competition in insurance in this State or tend to create a monopoly. In applying the competitive standard in this provision:
>
> > (a) The information requirements and standards of Section 38-21-125(C) and (D) apply.
> >
> > (b) The merger or other acquisition must not be approved if the Director or his designee finds that at least one of the situations in Section 38-21-125(D) exists.
> >
> > (c) The Director or his designee may condition the approval of the merger or other acquisition on the removal

of the basis of disapproval within a specified period of time.

(3) The financial condition of the acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders.

(4) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, or consolidate or merge it with a person or to make another material change in its business or corporate structure or management are unfair and unreasonable to the insurer's policyholders and not in the public interest.

(5) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it is not in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

(6) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

Therefore, the Applicant must prove by a preponderance of the evidence that those factors do not exist.

FINDINGS OF FACT

Having considered the Form A, the Agreement and Plan of Merger, and the financial statements of the Applicant, I find, by a preponderance of the evidence, the following as to the requested approval of the acquisition of CCP:

1. A Form A application was filed with the Department on or about April 25, 2007. The application complies with the requirements of S.C. Code Ann. § 38-21-70.

2. A hearing is not required.

3. CCP is a South Carolina domestic HMO.

4. The Applicant was incorporated in 1934 and is a mutual insurance company domiciled in Ohio. MMO/Carolina Acquisition Corp. is a South Carolina corporation and a wholly owned subsidiary of the Applicant. Upon consummation of the merger, MMO/Carolina Acquisition Corp will merge into CCP and cease to exist. Post-closing, the Applicant will be the ultimate parent of CCP.

5. The Applicant proposes to acquire, directly or indirectly, all of the issued and outstanding stock of CCP for an aggregate purchase price of $10.675 million cash, to be deposited in an escrow account for the ultimate benefit of CCP's shareholders. The escrow account will be used to fund, among other things, ongoing litigation involving CCP.[1] This represents the total consideration to be paid by the Applicant pursuant to the terms of the purchase agreement. The boards of directors of all interested entities have approved the transaction. CCP will continue its operations in South Carolina.

---

[1] These lawsuits have been assigned to CCP's shareholders, and neither the surviving corporation nor the Applicant will be liable for any judgment in that litigation. The Department has received a letter from the attorney for the plaintiff in one of those cases, objecting that the amount placed in escrow is insufficient to cover potential judgments in the litigation. This objection, however, provides no legal basis for me to disapprove the merger. The escrow is nothing more than a means to ensure that the funds obtained by CCP's shareholders in consideration for their shares in the company—i.e., the purchase price—are available to pay claims against CCP or its successors in interest. An objection that the purchase price in this transaction is insufficient to pay potential judgments is unavailing, provided that the purchase price is otherwise fair and reasonable. Indeed, the transaction and the amount to be placed in escrow will actually benefit potential claimants of CCP's successors in interest, by ensuring that funds are available to pay those claims. That those funds may ultimately prove to be insufficient is irrelevant to my decision; in fact, funds available to pay potential judgment creditors likely would be significantly less were I to disapprove the transaction. South Carolina law is clear: a merger or acquisition shall be disapproved only if there is a finding that one or more of the conditions in Section 38-21-90 exist. This objection does not fall within either of the categories set forth in Section 38-21-90. Finally, it appears from the attorney's letter that, although her client *may* become a creditor of CCP or its successors in interest, he is not currently a creditor, and thus has no standing to object to the transaction.

6. The Agreement and Plan of Merger provides that Applicant may enter into a surplus note agreement with CCP, under which the Applicant will agree to purchase surplus notes in an amount sufficient to achieve two hundred percent of risk-based capital, or such other amount up to $20 million.

7. Based upon the materials submitted by the Applicant, none of the conditions provided for under S.C. Code Ann. § 38-21-90(A) exist or apply with respect to the proposed acquisition.

8. The Applicant represented that CCP will continue to comply with all requirements for licensure.

9. The Applicant asserts in the Form A that it has no present plans to liquidate CCP or to sell its assets to any person. The Form A also states that the Applicant does not have any plans to cause CCP to merge or consolidate or transfer any of its assets with any other company. The officers and directors of CCP will be Kent W. Clapp, president and director; John S. Dorrell, secretary and director; Susan M. Tyler, treasurer and director; Errol D. Brick, director; and Rick Chiricosta, director. CCP will maintain its corporate identity and will operate as a South Carolina domestic HMO.

10. The Applicant is financially sound. Consummation of the Agreement will not reduce the security of, or the service to be rendered to, any policyholders of CCP, nor will the financial condition of the Applicant jeopardize the financial stability of CCP or prejudice the interests of its policyholders or the interests of any remaining security holders who are unaffiliated with the Applicant. The Applicant has no plans to declare any extraordinary dividends for CCP.

11. The biographical affidavits provided for the executive officers and directors of the Applicant were included in the Form A. That information indicates that the Applicant's proposed management team has management experience and further indicates that those individuals do not have a history of criminal convictions.

CONCLUSIONS OF LAW

I have considered the statutory requirements for approval of a change of control in accordance with the applicable provisions of the South Carolina Code and make the following conclusions of law:

1. I have jurisdiction over the parties and the subject matter pursuant to the provisions of S.C. Code Ann. §§ 38-21-60, 38-21-70, 25A S.C. Code Ann. Reg. 69-31 and other pertinent provisions of the South Carolina Insurance Code;

2. Upon completion of the proposed acquisition, CCP will continue to be able to satisfy the requirements for the issuance of a license as required by § 38-21-90(A)(1).

3. This acquisition will not substantially lessen competition or create a monopoly, which is prohibited by § 38-21-90(A)(2).

4. The Applicant's financial condition will not jeopardize the financial stability of CCP or prejudice the interest of its policyholders, pursuant to the provisions of § 38-21-90 (A)(3).

5. The transaction is neither unreasonable for policyholders nor contrary to the public interest, pursuant to the provisions of § 38-21-90(A)(4).

6. The Form A indicates that the Applicant will bring some experience and expertise to the transaction. It also appears that the conditions of § 38-21-90(A)(5) will

not occur because the experience and integrity of the persons who would control the operation of CCP are such that it would be in the interest of the policyholders of CCP and the public to permit the acquisition.

7. The proposed acquisition is not likely to be hazardous to those buying insurance as prohibited by § 38-21-90(A)(6). Any existing certificates of coverage will continue in force and effect.

CONCLUSION

In view of the foregoing findings of fact and conclusions of law, the criteria established under S.C. Code Ann. § 38-21-90 for approval of an acquisition of control or merger of a domestic insurer have been met. Accordingly, it is ordered that the Form A application to acquire direct control of CCP are APPROVED subject to the following conditions. The Applicant must:

1. Secure the approval of any other regulatory entities by making any required state and federal filings; and

2. Comply with all applicable provisions of South Carolina law to maintain the domestic licensure of CCP.

3. Infuse $20 million of capital into CCP.

All documents submitted in the Application and in response to requests of the Department which have been marked "Trade Secret: Confidential and Exempt" shall be provided confidential treatment pursuant to S.C. Code Ann. §§ 38-21-290 and 30-4-40.

IT IS SO ORDERED.

Scott H. Richardson
Director of Insurance

Columbia, South Carolina

May 15, 2007

MEMORANDUM

TO: Jeff Jacobs
Chief Legal Counsel

FROM: Rachel Pearce
Insurance Regulatory Analyst

DATE SUBMITTED: 5-1-07

COMPLAINT FILED AGAINST: Key Risk Insurance Company

COMPLAINANT: Michael Sharp/Arizona Premium Finance Company
CONSUMER SERVICES File # 130597

State Complaint: The company failed to send returned premiums from policy to the finance company .

Statute(s) or Regulation(s) allegedly violated: 38-39-90

Please attach all file material and/or documents related to this complaint. This form must be completed in its entirety. In addition, this form must be used when transferring a file or complaint to the Investigation Section.

CYNTHIA H. YOUNG
Manager
Consumer Services Division

5-1-07
DATE

RECEIVED
GENERAL COUNSEL
MAY 1 2007
STATE OF SOUTH CAROLINA
DEPARTMENT OF INSURANCE