

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE:)
)
REQUEST FOR APPROVAL OF)
AGREEMENT AND PLAN OF MERGER)
BETWEEN DANVILLE MUTUAL FIRE) **DECISION AND ORDER**
INSURANCE COMPANY AND NORTH)
YARMOUTH-CUMBERLAND MUTUAL)
FIRE INSURANCE COMPANY)
)
Docket No. INS-13-402)

Deputy Superintendent of Insurance Timothy N. Schott issues this Decision and Order in the above-captioned proceeding.¹ The proceeding was instituted upon the application of North Yarmouth-Cumberland Mutual Fire Insurance Company (“North Yarmouth-Cumberland”) to merge with Danville Mutual Fire Insurance Company (“Danville”). Both North Yarmouth-Cumberland and Danville (together, the “applicants”) are Maine domiciled mutual fire assessment companies.

I. THE PROPOSED MERGER

Under the terms of the proposed merger, Danville will be merged into North Yarmouth-Cumberland with North Yarmouth-Cumberland being the surviving company. All policyholders of Danville will become policyholders of North Yarmouth-Cumberland, and all assets of Danville will be absorbed into North Yarmouth-Cumberland. No monetary consideration will be provided for this merger, and no assets, dividends or other monetary benefit will be paid to any policyholder, officer or director of either company as a result of this transaction.

II. PROCEDURAL HISTORY

North Yarmouth-Cumberland and Danville filed an application for approval and a Form A statement with the Bureau on December 26, 2013. On February 3, 2014, the Deputy Superintendent issued the following: A First Information Request, directing the applicants to respond by February 13, 2014; a Notice of Hearing, setting the public hearing in this matter for March 21, 2014; and an Order directing North Yarmouth-Cumberland and Danville to provide a copy of the Notice of Hearing to all their policyholders. North Yarmouth-Cumberland and Danville indicated that they delivered this notice as required on February 10, 2014.

On February 12, 2014, the applicants provided their response to the First Information Request of the Deputy Superintendent. A Second Information Request of the Deputy Superintendent was issued on February 27, 2014, directing the applicants to respond by March 7,

¹ Superintendent of Insurance Eric A. Cioppa delegated all procedural and decision making legal authority with respect to this proceeding to Deputy Superintendent Schott. *See* 24-A M.R.S.A. § 206(2).

2014. On March 1, 2014, the applicants submitted a Motion for Enlargement of Time, requesting additional time to submit some of the requested information in the Second Information Request. An extension was granted to March 14, 2014.

The applicants provided their response to the Second Information Request on March 7, 2014. On March 14, 2014, the applicants moved to delay the public hearing for approximately two months. This motion was granted, and the hearing was rescheduled for June 3, 2014.

On May 14, 2014, the Deputy Superintendent issued a Third Information Request. The applicants submitted a response to this request on May 27, 2014.

The public hearing was held as rescheduled on June 3, 2014 at 9:00 a.m. in the Central Conference Room of the Maine Department of Professional and Financial Regulation in Gardiner, Maine. The applicants participated in the hearing and were represented by Charles C. Soltan. The Form A filing and its attachments, the Bureau's three information requests and the applicants' responses to them were admitted into the record. Additional exhibits were admitted at the hearing, an advertisement for North Yarmouth-Cumberland was submitted as an exhibit following the conclusion of the hearing, and Danville's charter and by-law materials were admitted into the record following the conclusion of the hearing. Testifying on behalf of the applicants were William Stiles, president of both North Yarmouth-Cumberland and Danville, Leo Ferland, Jr., vice-president of Danville, Mary H. Goodall, former secretary/treasurer of North Yarmouth-Cumberland and George Goodall, Jr., vice-president of North Yarmouth-Cumberland. The Goodalls are policyholders of North Yarmouth-Cumberland. Mr. Stiles and Mr. Ferland, Jr. are policyholders of Danville. No parties moved to intervene. No members of the public or other policyholders of either company attended the hearing.

III. STANDARD OF REVIEW

Under 24-A M.R.S.A. § 3478(1), mutual insurers existing under any of the laws of Maine “may absorb by merger or consolidation, or be merged into or consolidate with, any one or more domestic or foreign mutual insurers either authorized to transact insurance in this State or qualified for such authority. The procedure for effectuation of such merger or consolidation shall be as set out in sections 3479 to 3482.” (*See also*, 24-A M.R.S.A. § 222(4-C) and its incorporated statutory requirements, including but not limited to section 222(7)).

Pursuant to 24-A M.R.S.A. § 3480(2), the Deputy Superintendent shall approve the proposed merger unless he finds that it:

- A. Is contrary to law; or
- B. Is inequitable to the policyholders of any domestic insurer involved; or
- C. Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer; or

D. Would materially tend to lessen competition in the insurance business in this State or elsewhere as to the kinds of insurance involved, or would materially tend to create a monopoly as to such business; or

E. Is subject to other material and reasonable objections.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The applicants are both Maine domiciled mutual fire assessment companies. North Yarmouth-Cumberland was incorporated in 1965 as a result of the merger of North Yarmouth Mutual Fire Insurance Company and Cumberland Mutual Fire Insurance Company, two companies which were originally incorporated in the mid-1800s. Danville was created by an Act of the Maine Legislature in 1860.

The applicants both issue fire and lightning policies. Danville has 12 policies in force, ranging in coverage from \$3,000 to \$10,000. North Yarmouth-Cumberland has 50 policies in force, ranging in coverage from \$5,000 to \$560,000. Danville has not issued a new policy in several years, while North Yarmouth-Cumberland is actively selling new policies. According to Mr. Stiles, the policies issued by the applicants provide coverage for underserved risks, such as risks in unprotected areas and structures that more traditional insurers may not write, such as old barns. Often, the relatively low coverage amounts are meant to defray costs of clean-up in the event of a fire.

Directors of both companies first discussed the possibility of merger in 1969. This possibility appears to have been discussed by the companies throughout the intervening years with the discussion becoming more formalized in 2007. In December 2013 both boards voted in favor of a merger. The terms of the merger call for a combined board of seven directors. Three of the directors of the merged company (including Mr. Stiles, who is a director of both companies) are current directors of Danville.

In their filings and at the hearing, the applicants explained several benefits of the merger to the policyholders of the two companies, including the following:

North Yarmouth-Cumberland has licensed insurance personnel on its board of directors;

North Yarmouth-Cumberland has appointed agents and actively sells new policies;

North Yarmouth-Cumberland is able to write policies with higher limits and is able to utilize reinsurance for larger policies;

North Yarmouth-Cumberland charges lower premiums than Danville;

North Yarmouth-Cumberland writes policies for 5 years. Danville currently writes policies for a three-year period;

The merged company will have a larger surplus;

The merged company will have the advantage of what appears to be the more active and professional business presence of North Yarmouth-Cumberland, including email, fax capabilities and a dedicated phone line.

Bureau staff's pre-hearing information requests asked whether the Danville policyholders had considered the possibility of dissolution rather than merger. At the hearing, Bureau staff provided an analysis (Hearing Officer Exhibit 1) estimating the potential payout to policyholders of both companies prior to and following a merger. The estimated payout for Danville policyholders prior to merger ranged from approximately \$3,554 to \$11,846 per policy. After a merger, this analysis shows, the potential payout to Danville policyholders by a dissolution of the merged company would be substantially reduced due to post-merger dilution of the Danville policyholders' ownership interests.

Mr. Stiles and Mr. Ferland, Jr. explained efforts they have made to inform Danville's policyholders of the potential financial results of either a merger or dissolution. A meeting of Danville policyholders was held on May 22, 2014 in Lewiston, Maine. Prior to the meeting, Mr. Ferland, Jr., attempted to make personal contact with all of the policyholders. He was able to contact all but two of the policyholders, and he left detailed messages for the others. He explained the issues to be discussed at the meeting. During this process, it was determined that one of the policyholders had died a few years earlier. In addition to Mr. Ferland, Jr.'s personal notification, notice of the meeting was published. Six of the ten policyholders were present at the May 22 meeting. At this meeting, Mr. Soltan explained different scenarios for policyholders' payout upon different methods of dissolution. He also provided to the policyholders an estimate of what their individual payout would be under what was agreed to be the fairest method of dissolution (Applicant Exhibit 1). The estimated payouts listed ranged from approximately \$3,418 to approximately \$17,091 per policy.² After this discussion a vote was held, and the attendees unanimously supported moving ahead with the merger. According to Mr. Ferland, Jr., those present believed that a merger was preferable to dissolution, despite a potential financial gain through dissolution. In addition to the business operational advantages of the merger, Mr. Ferland stated that it is important to the policyholders to keep the tradition of the mutual company alive, which will be realized by acknowledgement of Danville on the merged company's policies and letterhead.

Although, as with any merger, there are relative advantages and disadvantages of the proposal to the two companies, the terms of the proposed merger are designed to continue in force the current policies of the members of both companies. The terms of the proposed merger will not favor particular Danville policyholders over others nor particular North Yarmouth-Cumberland policyholders over others. The proposed merger will provide operational modernization and the ability for Danville policyholders to increase their policy limits and the duration of their policies. There was no evidence presented that any Danville policyholders who attended the May 22 meeting preferred a dissolution rather than a merger. No objections were made to the proposed merger at the hearing, and there was no evidence of any objections existing

² This estimate differs somewhat from the estimated payouts in Hearing Officer Exhibit 1. The payout range shown in Hearing Officer Exhibit 1 appears to be more accurate, reflecting a lower amount insured of one policy and an updated list of policyholders entitled to a payout.

among any of the policyholders of either company. Although Mr. Stiles and Mr. Ferland, Jr. have made good faith efforts to notify Danville policyholders of the alternative option of dissolution, the record does not show that all policyholders have had the opportunity to review and ask questions about a payout analysis similar to that provided to attendees at the May 22 meeting.

Another concern that arose during this proceeding was whether Danville was in good standing with the office of the Maine Secretary of State. Mr. Soltan explained at the hearing that the Secretary of State did not appear to have complete records relating to Danville's registration with that office. In Article IV, Section 4.1 of the parties' Agreement and Plan of Merger, Danville has represented to North Yarmouth-Cumberland that it "is duly authorized to conduct business and is in good standing under the laws of Maine," and as Mr. Soltan suggested at the hearing, the issue of Danville's current good standing under the laws of Maine should be clarified.

Based upon the documentary and testimonial evidence and the record, and subject to the conditions of approval set forth below, the Deputy Superintendent hereby does not find any of the following:

- A. The proposed merger is contrary to law;
- B. The proposed merger is inequitable to the policyholders of either Danville or North Yarmouth-Cumberland;
- C. The proposed merger will substantially reduce the security of and service to be rendered to the policyholders of either Danville or North Yarmouth-Cumberland;
- D. The proposed merger will materially tend to lessen competition in the insurance business in this State or elsewhere as to the kinds of insurance involved, or would materially tend to create a monopoly as to such business; or
- E. The proposed merger is subject to other material and reasonable objections.

For all of the forgoing reasons, and subject to satisfaction by Danville and North Yarmouth-Cumberland of the conditions established below, the Deputy Superintendent concludes that the applicants have met the legal standards for approval set forth in 24-A M.R.S.A. § 3478 and §§ 222(4-C), 222(7).

V. ORDER

The request for approval of the Agreement and Plan of Merger between Danville Mutual Fire Insurance Company and North Yarmouth-Cumberland Mutual Fire Insurance Company is hereby APPROVED; subject to the prior satisfaction by Danville and North Yarmouth-Cumberland, as determined by the Deputy Superintendent in his sole discretion, of the following conditions:

1. Prior to finalizing the merger with North Yarmouth-Cumberland, Danville shall provide the Deputy Superintendent with documentation from the Maine Secretary of State's Office, or otherwise, resolving the organization's current good standing under the laws of Maine.
2. Prior to publishing notice of the special meeting of members, Danville shall obtain the Deputy Superintendent's approval of the form and content of (a) the policyholder letter, (b) notice of special meeting, (c) voting instructions, and (d) proxy. Danville is to provide its policyholders in these various special meeting materials a clearly written disclosure of the financial impact of the dissolution option as an alternative to pursuing the merger.³
3. Prior to calling the special meeting of members, Danville and North Yarmouth-Cumberland shall have complied with the publication requirements set forth under 24-A M.R.S.A. § 3479(2).
4. At the special meeting of members, Danville and North Yarmouth-Cumberland shall have received approval of the Agreement and Plan of Merger by the requisite two-thirds (2/3) vote set forth under 24-A M.R.S.A. § 3479(1). The companies shall file the results of the special meeting votes with the Deputy Superintendent.

VI. NOTICE OF APPEAL RIGHTS

This Decision and Order is a final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act. It may be appealed to the Superior Court in the manner provided by 24-A M.R.S.A. § 235, 5 M.R.S.A. § 1101 *et seq.* and Maine Rule of Civil Procedure 80C. Any party to this proceeding may initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal within forty days of the issuance of this decision. There is no automatic stay pending appeal. An application for stay may be made in the manner provided for by 5 M.R.S.A. § 11004.

PER ORDER OF THE DEPUTY SUPERINTENDENT OF INSURANCE

June 27, 2014


TIMOTHY N. SCHOTT
Deputy Superintendent of Insurance

³ A disclosure substantially similar to Exhibit 5 in the applicants' response to the Deputy Superintendent's Third Information Request combined with an overall payout breakdown in a form substantially similar to either Hearing Officer Exhibit 1 or Applicant Exhibit 1 (with a corrected list of policyholders and policy amounts) would be helpful in satisfying this condition.