

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

IN RE:

APPLICATION OF PATRIOT MUTUAL
INSURANCE COMPANY FOR APPROVAL TO)
REORGANIZE AS A STOCK INSURER)
WITHIN A MUTUAL HOLDING COMPANY)
STRUCTURE)

and)

APPLICATION OF FRANKENMUTH MUTUAL)
INSURANCE COMPANY FOR APPROVAL OF)
THE ACQUISITION OF CONTROL BY)
MERGER OF THE REORGANIZED PATRIOT)
COMPANIES)

DECISION AND ORDER

Docket No. INS-06-400

Eric A. Cioppa, Acting Superintendent of the Maine Bureau of Insurance (hereinafter the "Superintendent"),¹ issues this Decision and Order regarding the above-captioned matters.

I. THE PROPOSED REORGANIZATION

The above-captioned applications seek approval by the Superintendent of a two-step transaction. First, Patriot Mutual Insurance Company ("Patriot Mutual"), a Maine domestic insurer, seeks to reorganize into a stock insurance company, to be named "Patriot Insurance Company", that will be a wholly-owned subsidiary of a newly formed mutual holding company, "Patriot Holding Company." Patriot Mutual's members will become members of Patriot Holding, and every policy of insurance of Patriot Mutual that is in force on the effective date of the reorganization will continue as a policy of insurance of Patriot Insurance Company. Second, Frankenmuth Mutual Insurance Company ("Frankenmuth"), a Michigan domestic insurer, seeks to acquire through merger Patriot Holding, upon approval by its stockholders, with Frankenmuth being the surviving corporation. Members of Patriot Holding at the time of the merger will become members of Frankenmuth. Following the merger, Patriot Insurance Company will be Frankenmuth's wholly-owned stock subsidiary and Patriot Life Insurance Company ("Patriot Life") will be a subsidiary of Patriot Insurance Company as well as Frankenmuth's downstream subsidiary.²

II. STANDARD OF REVIEW

Patriot Mutual's proposal to reorganize must be approved subject to the criteria delineated in 24-A M.R.S. §§ 3488(4)(A)-(D). Frankenmuth's proposal for the acquisition of control by merger of the reorganized Patriot Companies must be approved based on the criteria of 24-A M.R.S. §§ 222(7)(A)(1)-(7) and 3476(2)(A)-(D). The conduct of corporate directors with regard to these transactions must comport with 24-A M.R.S. §§ 3413(1) and 3413(4). Finally, the provisions of Title 13-C, the Maine Business Corporation Act, are specifically made applicable by the Insurance Code to mutual insurers and mutual holding companies. See 24-A M.R.S. §§ 3304 and 3489(2)(A). This includes chapter 8, subchapter 3 and subchapter 6 of Title 13-C, entitled respectively "directors" and "directors' conflicting-interest transactions." 13-C M.R.S. §§ 831-833 and 871-874.

III. PARTIES; PATRIOT MUTUAL BOARD OF DIRECTORS

The moving parties in this proceeding are Patriot Mutual Insurance Company, Patriot Life Insurance Company, and Frankenmuth Mutual Insurance Company. By ruling of the Superintendent, the Maine Attorney General was granted limited intervenor party status in this proceeding. No other person applied for intervenor party status.

Although not an independent party in this proceeding, legal counsel on behalf of the Patriot Mutual Board of Directors entered an appearance in this matter. The Patriot Board is comprised of the following persons:

Kathleen Case
Robert Clark, Chairman of the Board
Dana Connors
Peter Hunt
Richard Pattenau
David Reinke
Gregory St. Angelo, Jr.

During the creation and negotiation of the proposed reorganization and merger transactions which are the subject of this proceeding, each of the above-identified persons was an "outside director" of Patriot Mutual, meaning that none of these persons were an officer, employee, or consultant of Patriot Mutual; provided, however, that at all relevant times Richard Pattenau was the corporate secretary of Patriot Mutual.

IV. PROCEDURAL HISTORY

On August 21, 2006, Frankenmuth filed a "Form A Statement" seeking approval of the proposed acquisition of control of Patriot Mutual and Patriot Life, including exhibits thereto. The Bureau of Insurance designated the matter as Docket No. INS-06-400.

On September 26, 2006, Patriot Mutual filed an application for approval of the proposed reorganization of the company, including exhibits thereto. Patriot Mutual filed an amendment to the Reorganization Agreement on October 5, 2006.

On October 5, 2006, Superintendent Alessandro A. Iuppa issued an order delegating all authority for the adjudication of this matter to then Deputy Superintendent Eric A. Cioppa.

On October 6, 2006, Patriot Mutual filed proposed communications with policyholders, including a transmittal letter, summary document, and proxy documents. Thereafter, Bureau staff and Patriot Mutual communicated with one another as to suggested revisions to the policyholder communications. By e-mail communication made October 20, 2006 on behalf of the Superintendent by legal counsel Assistant Attorney General Thomas Sturtevant, Patriot Mutual was advised that the Superintendent found the latest revised policyholder communications and proxy to be acceptable.

On October 10, 2006, Frankenmuth requested confidentiality for Exhibits 14, 15, and 16 of the Form A Statement; namely the business description of Frankenmuth and five-year plan of operation for Patriot Insurance Company, Patriot Insurance Company Projected Financial Statements, and the Asset Management Company Agreement between Frankenmuth and Conning Asset Management and correspondence pertinent to that agreement. By Protective Order issued October 16, 2006, the Superintendent accepted as confidential Exhibits 14, 15, and 16 of the Form A Statement, subject to certain specified terms.

On October 12, 2006, Patriot Mutual made a request for specific scheduling accommodations, including that the public hearing not be set until sometime in early January 2007.

On October 13, 2006, the Superintendent issued a First Information Request on Patriot Mutual and Frankenmuth. Written responses to the First Information Request were separately filed by Patriot Mutual and Frankenmuth on November 15, 2006.

On October 16, 2006, the Superintendent issued a Notice of Pending Proceeding and Hearing. The notice set a public hearing for January 9, 2007, outlined the purpose of the hearing, set a deadline for intervention, and explained the hearing procedure. No timely applications for intervention were made.

By correspondence dated October 20, 2006, Frankenmuth's Michigan-based corporate counsel, Francis Flood, advised Assistant Attorney General Thomas Sturtevant that the company had retained local counsel, Charles Soltan, to provide legal representation in this proceeding. Attorney Soltan entered his

appearance with the Superintendent in this proceeding on behalf of Frankenmuth on that same date.

On November 22, 2006, Patriot Mutual filed affidavits confirming publication of the Notice of Pending Proceeding and Hearing on two separate dates in each of the following newspapers: The Burlington Free Press (Vermont); The Union Leader (New Hampshire); the Kennebec Journal (Maine); the Morning Sentinel (Maine); the Sun-Journal (Maine); the Portland Press Herald / Maine Sunday Telegram (Maine); and the Bangor Daily News (Maine).

On December 7, 2006, the Superintendent issued a Second Information Request on Patriot Mutual and Frankenmuth. Written responses to the Second Information Request were separately filed by Patriot Mutual and Frankenmuth on December 21, 2006, as supplemented by Patriot Mutual and Frankenmuth on January 19, 2007. By e-mail communication made December 19, 2006 on behalf of the Superintendent by legal counsel Assistant Attorney General Thomas Sturtevant, the request by Patriot Mutual for an extension of the 3:00 p.m. response deadline to 5:00 p.m. on December 21, 2006 for the Second Information Request was granted.

On December 22, 2006, Patriot Mutual filed (a) a proposed notice of special meeting of policyholders and members, and (b) an executed Second Amendment to the Reorganization Agreement.

On December 29, 2006, attorney Michael Quinlan entered his appearance as legal counsel for the Board of Directors of Patriot Mutual.

By e-mail communication made January 2, 2007 on behalf of the Superintendent by legal counsel Assistant Attorney General Thomas Sturtevant, Patriot Mutual and Frankenmuth were ordered to file witness lists together with a brief summary of the substance of the direct testimony anticipated from each witness. On January 4, 2007, Patriot Mutual and Frankenmuth filed their witness lists and summaries.

On January 4, 2007, Patriot Mutual requested confidentiality for Attachments B and F to Patriot Mutual's response to the Superintendent's Second Information Request, namely a document entitled "Commercial Lines Plan", prepared by Lincoln J. Merrill, President of Patriot, dated April 21, 2004, and the text of a PowerPoint presentation entitled "Mutual Insurer Control Transactions", presented to Patriot's Board of Directors by Patriot's corporate counsel in July 2005. By Protective Order issued January 9, 2007, the Superintendent accepted as confidential Attachments B and F to Patriot Mutual's response to the Superintendent's Second Information Request, subject to certain specified terms.

On January 4, 2007, the Maine Attorney General made a late-filed application for intervention. By e-mail communication made January 4, 2007 on behalf of

the Superintendent by legal counsel Assistant Attorney General Thomas Sturtevant, Patriot Mutual and Frankenmuth were provided an opportunity to file a statement in opposition to the Attorney General's application for intervention. On January 5, 2007, Patriot Mutual and Frankenmuth separately filed oppositions to the Attorney General's intervention; the Attorney General, through Assistant Attorney General James Bowie, responded to those oppositions; and Patriot Mutual filed a reply to the Attorney General's response. Also on January 5, 2007, the Superintendent issued an order granting limited intervenor status to the Attorney General. In the Attorney General's application for intervention it was suggested that the entire seven member Patriot Board be made available at hearing for examination. While the Superintendent declined to compel the attendance of the entire Patriot Board at the hearing, in his order the Superintendent encouraged the participation and availability of the Patriot Directors to give testimony at the hearing.

On January 9, 2007, the public hearing was convened as scheduled. The Superintendent provided an opportunity for Patriot Mutual's directors, officers, employees, and policyholders to be heard in this matter. No such persons were present at the public hearing and no member of the public attended the public hearing. Thereafter, due to the inability of one of Patriot Mutual's witnesses to be present to testify at the January 9th hearing, about which the Superintendent had been advised by Patriot Mutual on January 8, 2007, the Superintendent indefinitely continued the hearing.

On January 10, 2007, Patriot Mutual and Frankenmuth advised the Superintendent of those parties desire that the hearing be reconvened on January 22 or 23, 2007. The Attorney General did not oppose reconvening the hearing on either date. Also on January 10, 2007, the Superintendent issued an order setting a continued hearing date of January 22, 2007 at 10:00 a.m.

On January 19, 2007, Patriot Mutual filed, among other matters, a tally of proxy votes as of that date with respect to (i) the proposed reorganization of Patriot Mutual, (ii) the proposed Amended and Restated Certificate of Organization of Patriot Mutual, and (iii) the proposed merger of Patriot Holding with Frankenmuth.

On January 22, 2007, the public hearing was reconvened as scheduled. The hearing was conducted entirely in public session. The Superintendent provided an opportunity for Patriot Mutual's directors, officers, employees, and policyholders, and also members of the public, to be heard in this matter. Separate from the designated witnesses, no such person asked to be heard. Patriot Mutual, represented by attorneys Peter Bickerman and Keith Jones, presented testimonial evidence under oath from Patriot Directors Robert Clark, Chairman, and Gregory St. Angelo. Frankenmuth, represented by attorney Charles Soltan, presented testimonial evidence under oath from Frankenmuth's Director, President and Chief Operating Officer, John Benson. The Attorney General was represented by Assistant Attorney General James Bowie. Non-

witness Patriot Directors present at the hearing were Kathleen Case, Dana Connors, and Peter Hunt. No such person was proffered to present testimony under oath. The Superintendent took official notice of certain items and admitted into evidence several exhibits. After the parties rested their cases at hearing, the Superintendent provided an opportunity for the submission of written closing arguments.

The following documents were offered into evidence at the January 22, 2007 public hearing. As no party objected, those documents listed below were admitted into the record:

(a) All of the filings made in this proceeding with the Superintendent by Patriot Mutual, Frankenmuth, and the Attorney General, including but not limited to Patriot Mutual's and Frankenmuth's responses to the First and Second Information Requests of the Superintendent.

(b) Patriot Mutual's and Patriot Life's Supplemental Compensation Exhibits for years 2002-2005. These were designated Attorney General Exhibit 1.

(c) Frankenmuth's, Ansur America Insurance Company's, ASure Worldwide Insurance Company's, and Fortuity Insurance Company's Supplemental Compensation Exhibits for years 2002-2005. These were designated Hearing Officer Exhibit 3.⁴

(d) Patriot Mutual's year-end 2005 Annual Statement.

(e) Patriot Mutual's quarterly statement for the quarter ended September 30, 2006.

(f) The May 25, 2000 Decision and Order of the Superintendent In Re: Application of Associated Hospital Service of Maine d/b/a/ Blue Cross and Blue Shield of Maine to Convert to a Stock Insurer and Voluntarily Liquidate and Dissolve and In Re: Application of Anthem Health Plan of Maine, Inc. to Acquire the Assets of Associated Hospital Service of Maine d/b/a/ Blue Cross and Blue Shield of Maine and Related Transactions, Docket No. INS-99-14 (consolidated).

The Superintendent also took official notice of and admitted into the record as a post-hearing exhibit, with no objections from the parties, the A.M. Best Rating and Report Updates for Patriot Mutual, Report Revision Date 09/01/2006.⁵

On February 2, 2007, Patriot Mutual, Frankenmuth, and the Attorney General filed written closing arguments, which are also part of the record for review and consideration by the Superintendent.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. General Findings of Fact

As demonstrated by the record of this case, the Superintendent makes the following general findings of fact:

Patriot Mutual proposes to reorganize as a stock insurance company (to be named Patriot Insurance Company) within a mutual holding company structure (with the holding company named Patriot Holding Company). Following the reorganization, Patriot Life will be a wholly-owned subsidiary of Patriot Insurance Company. As part of the proposed reorganization, Patriot Mutual's members will become members of Patriot Holding, and every policy of insurance of Patriot Mutual that is in force on the effective date of the reorganization will continue as a policy of insurance of Patriot Insurance Company.

Frankenmuth proposes to acquire control of Patriot Insurance Company and Patriot Life through a merger with those companies' ultimate controlling person, the newly formed Patriot Holding Company. On the effective date of the proposed merger of Patriot Holding with and into Frankenmuth, Patriot Holding's members will become members of Frankenmuth, and Patriot Insurance Company will become Frankenmuth's wholly-owned subsidiary. Patriot Life would remain a wholly-owned subsidiary of Patriot Insurance Company. As stated in its filing, Frankenmuth will not pay any other consideration to Patriot Holding. Form A Statement, item 4, p. 5.

From 1980 to the present, Frankenmuth has been rated A+ (Superior) by A.M. Best. Through December 31, 2005, Frankenmuth had \$806 million in assets with direct written premiums of \$354 million and a policyholder contingency reserve fund of \$286 million. Patriot Holding's members (that is Patriot Mutual's policyholders at the time of the merger) will become members of Frankenmuth once the merger is effective. Those policyholders will not be required to give up any membership or related interest because of the merger. Patriot Mutual's members will become members of a financially stronger insurance company, given Frankenmuth's A+ rating and capital and surplus of \$286 million. Patriot Mutual's current A.M. Best rating is B++ (Good) with company surplus on December 31, 2005 of approximately \$19.7 million. Additionally, Frankenmuth and Patriot Insurance Company will enter into a Quota Share Reinsurance Agreement by which Frankenmuth will reinsure 80% of Patriot Insurance's business written. The Reinsurance Agreement will strengthen Patriot Insurance Company financially and give it greater writing capacity. Frankenmuth believes that the Reinsurance Agreement will result in Patriot Insurance Company achieving an A+ A.M. Best rating.

Frankenmuth indicated that it entered into this transaction as part of an expansion into a new region of the United States. Frankenmuth deems it necessary to retain those officers and directors who have personal and business

ties to Patriot Mutual's markets. Salary Continuation Agreements are proposed for Patriot's chief executive officer, Lincoln Merrill, and chief financial officer, Donald Sirois. Frankenmuth has represented that it will not request or demand the resignation of any current Patriot Director for a period of three years following the effective date of any merger. Each of the current Patriot Directors will be paid meeting and retainer fees at 2006 budget levels while continuing to serve on the Patriot Board, with the annual retainer fee initially in an amount of approximately \$35,000.00 (adjusted annually thereafter for inflation). Additionally, Consulting Agreements and Confidentiality and Non-competition Agreements are proposed for each of Patriot's current Directors. These agreements will be funded by Frankenmuth.

The Consulting Agreements and the Confidentiality and Non-competition Agreements are by and among each Patriot Director, Patriot Insurance Company, Patriot Life, and Frankenmuth. The proposed Consulting Agreement with each Director is for a three year term with compensation of \$100,000.00 payable in full upon the execution of the agreement or in two equal payments, half upon execution of the agreement and the remaining half on the first business day of the calendar year following execution of the agreement. The proposed Confidentiality and Non-competition Agreement with each Director provides compensation in the amount of \$190,000.00 to be paid in equal monthly installments over a three year period. The contractual confidentiality obligations arise during the term and after termination of the agreement. The contractual non-competition obligations arise while the Director is associated with the Companies and for a period of two (2) years following the last day such Director is associated with the Companies.

As part of the proposed transactions, Frankenmuth has committed to contributing \$1,000,000.00 to a newly formed Maine non-profit tax exempt organization to be named "Patriot Education Foundation". The principal purpose of the Foundation would be to promote and advance education and educational opportunities in the State of Maine regarding insurance and the business of insurance, including funding educational scholarships for residents of Maine who pursue a career in the insurance industry. The applications propose that Patriot Mutual's current seven Directors would be the Foundation's initial directors.

B. Reorganization of Patriot Mutual Insurance Company into a Mutual Holding Company

Based on a review of the record of this proceeding, the Superintendent finds that subject to and by virtue of the conditions of approval established in this Decision and Order, Patriot Mutual has met the legal standards for approval of its proposed reorganization as a stock insurance company within a mutual holding company set forth in 24-A M.R.S. §§ 3488(4)(A)-(D), summarized as follows:

(1) Based on the totality of the evidence in the record the Superintendent finds

that the terms and conditions of Patriot Mutual's reorganization plan are fair and equitable.

(2) Based on the totality of the evidence in the record the Superintendent finds that Patriot Mutual's reorganization plan is acceptably structured in that Patriot Mutual's reorganization plan is subject to approval by the vote of not less than two-thirds of Patriot Mutual's policyholders voting on the plan in person, by proxy, or by mail at a meeting of policyholders pursuant to a reasonable notice of the meeting and procedures as approved by me. The plan specifies that only persons who were Patriot Mutual policyholders on September 1, 2005 (which is at least one year before the submission of the plan to the Superintendent) and on the fifth business day following the issuance of this Decision and Order (the subsequent date before the vote proposed by Patriot Mutual and hereby found reasonable) are entitled to vote. Each eligible policyholder is entitled to one vote.

(3) Based on the totality of the evidence in the record the Superintendent finds that Patriot Mutual's reorganization plan, when completed, would provide paid-in capital stock for Patriot Insurance Company in an amount not less than the minimum paid-in capital stock required of a new domestic stock insurer upon initial authorization to transact like kinds of insurance, together with expendable surplus funds in an amount not less than one-half of such required capital stock.

(4) Based on the totality of the evidence in the record the Superintendent finds that Patriot Mutual's management has not, through reduction in volume of new business written or cancellation or any other means, sought to reduce, limit or affect the number or identity of Patriot Mutual's members to be entitled to participate in the reorganization plan or to secure for the individuals comprising management any unfair advantage through the plan.⁶

For all of the foregoing reasons, the Superintendent concludes that subject to and by virtue of the conditions of approval established in this Decision and Order Patriot Mutual has met the legal standards for approval set forth in 24-A M.R.S. §§ 3488(4)(A)-(D).

C. Acquisition of Control of Patriot Mutual Holding Company by Merger with and into Frankenmuth Mutual Insurance Company

Based on the testimonial and documentary evidence presented at the hearing, and upon a review of the record of this proceeding, the Superintendent finds that, subject to and by virtue of the conditions of approval established in this Decision and Order, no issues of material concern exist with respect to Frankenmuth's abilities to satisfy the legal standards for approval set forth in 24-A M.R.S. §§ 222(7)(A)(1)-(7) and 3476(2)(A)-(D), summarized as follows:

(1) Based on the totality of the evidence in the record the Superintendent finds that Patriot Mutual (to be reorganized and renamed Patriot Insurance Company)

can satisfy the requirements for the issuance of a certificate of authority according to requirements in force at the time of the issuance, or last renewal or continuation of its certificate of authority to do the insurance business which it intends to transact in the State of Maine.

(2) Based on the totality of the evidence in the record the Superintendent finds that no aspect of the proposed merger will substantially or materially lessen competition in insurance or the insurance business in the State of Maine or elsewhere as to the kinds of insurance involved, or would materially tend to create a monopoly as to such business therein, or would violate the laws of the State of Maine or of the United States relating to monopolies or restraints of trade.

(3) Based on the totality of the evidence in the record the Superintendent finds that no aspect of the proposed merger would jeopardize the financial stability of Patriot Insurance Company. As discussed below, there are certain aspects of the proposed transaction that might prejudice the interests of Patriot Insurance Company's policyholders and/or Patriot Holding's members, but which prejudicial aspects are satisfactorily addressed by the conditions of approval imposed by this Decision and Order.

(4) Based on the totality of the evidence in the record the Superintendent finds that Frankenmuth's proposed acquisition or proposals to make any other major change in the business or corporate structure or management of Patriot Mutual / Patriot Insurance Company as a whole are not unfair or prejudicial to policyholders. As discussed below, there are certain aspects of the proposed transaction that might be unfair or prejudicial to the interests of Patriot Insurance Company's policyholders and/or Patriot Holding's members, but which unfair or prejudicial aspects are satisfactorily addressed by the conditions of approval imposed by this Decision and Order.

(5) Based on the totality of the evidence in the record the Superintendent finds that the competence, experience, and integrity of Frankenmuth's directors and officers indicate that it would be in the interest of policyholders or the public to permit them to control the operation of Patriot Insurance Company; and that Frankenmuth's directors and officers are qualified by character, experience, and financial responsibility to control and operate Patriot Insurance Company, or cause it to be operated, in a lawful and proper manner.

(6) Based on the totality of the evidence in the record the Superintendent finds that the proposed acquisition would not tend to affect adversely the contractual obligations of Patriot Insurance Company or its ability and tendency to render service in the future to its policyholders and the public.

(7) Based on the totality of the evidence in the record the Superintendent finds that the interests of Patriot Insurance Company or its stockholders would not be impaired through the proposed merger.

For all of the foregoing reasons, the Superintendent concludes that, subject to and by virtue of the conditions of approval established in this Decision and Order, Frankenmuth has met the legal standards for approval of an acquisition by merger set forth in 24-A M.R.S. §§ 222(7)(A)(1)-(7) and 3476(2)(A)-(D).

D. Compensation to Board Members of Patriot Insurance Company via Consulting Agreements and Confidentiality and Non-competition Agreements

As part of the merger transaction, it is proposed that each of the current members of the Patriot Board of Directors enter into two agreements with the Companies (Frankenmuth, Patriot Insurance, and Patriot Life). The first agreement is entitled "Consulting Agreement", the second is entitled "Confidentiality and Non-competition Agreement".⁷ These agreements were included in Frankenmuth's Form A Statement at tabs 19 and 20 respectively. The terms contained in these agreements squarely raise two legal questions: (1) whether the compensation contained therein is permissible as "a reasonable fee for lawful services actually rendered" under the strictures of section 3413 of the Insurance Code, and (2) whether the agreements are fair and not prejudicial to policyholders of Patriot Insurance Company and Patriot Life pursuant to the requirements of section 222. 24-A M.R.S. §§ 3413 and 222.

(1) The Legal Standards Applicable to Director Compensation

Under the Insurance Code, the compensation a corporate director may receive via a merger transaction is limited in that:

(1) Any officer or director . . . shall not take or receive to his own use any fee, brokerage, gift or other similar consideration for or on account of any [merger] transaction made by or on behalf of the insurer.

. . . .

(4) [However,] section [3413] shall not ... prohibit any director or member of a committee from receiving a reasonable fee for lawful services actually rendered to the insurer.

24-A M.R.S. §§ 3413(1) and 3413(4). Furthermore, section 222(7) provides the standards for approval of the merger transaction, including the requirement that the Superintendent must find that the terms of the transaction are fair and not prejudicial to the interests of the policyholders. *Id.* at § 222(7). Thus, the Superintendent must determine whether the compensation contained in these agreements provide reasonable fees for lawful services that will actually be rendered. Furthermore, the Superintendent cannot find the merger transaction fair and non-prejudicial to the interests of policyholders, pursuant to section 222, unless the Director compensation meets the requirements of section 3413, because to approve Director compensation in an amount other than a

reasonable fee or for actions other than lawful services actually rendered would be contrary to the financial interests of the policyholders and contrary to the law. *Id.* at §§ 222 and 3413. In addition, the Superintendent must find that the merger transaction is fair and does not prejudice the interests of the policyholders. The Superintendent finds a merger transaction that includes compensation that does not accord with section 3413 automatically violates the requirement that the terms of the merger be fair and non-prejudicial to the interests of policyholders because any such compensation asks them to pay an amount that does not reflect appropriate compensation to directors, officers, or employees. *Id.* at § 3413. Section 3413 acts to protect policyholders from the very unfairness and prejudice that results from Directors benefiting personally in the exercise of their fiduciary duties. *Id.* Read together sections 3413(1) and (4) and 222(7)(D) create a standard that requires any compensation to a director as a part of a merger transaction to be “a reasonable fee for lawful services actually rendered,” and any fees that do not meet that requirement are prohibited and are unfair and prejudicial to the interests of policyholders. *Id.* at §§ 3413(1), 3413(4), and 222(7)(D).

(2) Effect on Policyholders of the Consulting Agreements and Confidentiality and Non-competition Agreements

Frankenmuth stated that the proposed Consulting Agreements and Confidentiality and Non-competition Agreements (the “Director Agreements”) will be funded by Frankenmuth. Form A Statement, item 5(j), p. 8. This assertion does not insulate the policyholders of Patriot from the effects of these agreements because under the reorganization and merger transactions Patriot Mutual’s members will become members of Frankenmuth, the entity compensating the Directors. The record shows that the pre-merger Patriot Mutual members, together with Frankenmuth’s other members, will be effected by the proposed compensation arrangements under the Consulting Agreements and the Confidentiality and Non-competition Agreements via their membership interests in Frankenmuth. As discussed below, there are certain aspects of the Director Agreements that might violate the prohibitions against director compensation and that might also be unfair and/or prejudicial to the interests of Patriot Insurance Company’s policyholders and/or Patriot Holding’s members because their terms include fees that are beyond reasonable, remunerate for services that may or may not be actually rendered, and compensate in part for existing legal obligations. The Superintendent’s Decision and Order sets forth the reasonable fees that permissibly may be provided to the Patriot Directors for the lawful services they will actually render thereby mitigating any potential unfair or prejudicial effects to the interests of policyholders as a result of the merger transaction.

(3) The Proposed Consulting Agreements

Through the proposed Consulting Agreements the Companies (Frankenmuth, Patriot, and Patriot Life) would employ each individual Patriot Director as a

consultant for a three year term and provide compensation of \$100,000.00 payable in full upon the execution of the agreement or in two equal payments, half upon execution of the agreement and the remaining half on the first business day of the calendar year following execution of the agreement. Under the terms of the agreements, the Directors are retained by the Companies "to act as a consultant in the operation of their insurance businesses in the Northeastern United States." Consulting Agreement at numbered paragraph 1. "In particular, consultant will advise the Companies' executive management on regional business and marketing issues." *Id.* The agreement specifies that the consultant will be "on-call" to the Companies between 8:00 a.m. and 6:00 p.m. E.S.T., Monday through Friday, for the purpose of performing the services contemplated under this Agreement ("Services")." *Id.* at numbered paragraph 5. This is the full articulation of what services shall be provided by the Patriot Directors acting in their capacity as consultants. Further, the agreement provides that "consultant will determine the method, details and means of performing the work to be carried out for the Companies." *Id.* at numbered paragraph 6.

Frankenmuth and Patriot were both asked by the Superintendent through discovery to provide a detailed description of "the nature, scope, and substance of consulting services that will be provided by each Patriot director, individually, under the Consulting Agreements." Superintendent's Second Information Request, Item B(11)(i). Frankenmuth's response provided a historic description of the Patriot Mutual organization and of the historic role of the Patriot Directors. *Id.* Frankenmuth then stated that it "anticipates relying on the services of the directors above and beyond those services that have been rendered to date." *Id.* Patriot Mutual's response adopted Frankenmuth's response. At hearing, John Benson testified that the consulting services that would be provided by the Patriot Directors "haven't been nailed down yet." Tr. at p. 109, lines 8-13. Robert Clark testified similarly that the scope of the consulting services "haven't really [been] determined ... with Frankenmuth at this point." *Id.* at p. 65, lines 11-20.

Based on the record, the Superintendent finds that Frankenmuth and Patriot Mutual have not demonstrated what services each of the Patriot Directors will actually render to the insurer under the Consulting Agreements. Moreover, to the extent some level of services might be performed under a Consulting Agreement, Frankenmuth and Patriot have demonstrated no correlation between the actual services Directors may render and the \$100,000.00 of compensation proposed per Director. The inability of the parties to articulate actual services to be rendered and an explanation of how and why \$100,000.00 is a reasonable fee for any services to be provided under the Consulting Agreements makes it impossible for the Superintendent to find that the compensation provided under the agreements meets the standards of 3413, that the directors' fees in this instance are "reasonable fees for lawful services actually rendered." 24-A M.R.S. § 3413. Furthermore, the Superintendent finds

that the proposed Consulting Agreements are unfair and prejudicial to the interests of the policyholders of Patriot Mutual Insurance who will accede to membership rights in Frankenmuth as a result of the merger transaction and will thus be effected by this monetary commitment by Frankenmuth to pay \$100,000.00 per Director for an ambiguous set of services that may be rendered in varying degrees by the individual Patriot Directors who have diverse areas of expertise. Therefore, the Superintendent disapproves *in toto* the proposed Consulting Agreements.

The Superintendent notes that his decision in this matter does not prohibit future agreements among individual directors, Frankenmuth, Patriot, and Patriot Life for consulting services, so long as those agreements are in accord with the strictures of section 3413, by contracting only for services to be rendered by directors that are lawful, actual, and that the fees for such services are reasonable, for example fees established based on the amount of time expended and expertise such services involve. 24-A M.R.S. § 3413. An illustration of a practice that on its face conforms to this requirement is found on the record. John Benson explained Frankenmuth's usual practice in this regard: the Company might ask one of its board members who has particular expertise to undertake a specific consultative engagement for the insurer, and that the board member would then be separately compensated for that specific undertaking, on a case-by-case basis. Tr. at p. 116, line 19, through p. 117, line 2. This type of arrangement represents a permissible approach that Frankenmuth and directors might choose to follow in the future to meet their consulting needs as well as the standards of section 3413(4). 24-A M.R.S. § 3413(4).

(4) The Proposed Confidentiality and Non-competition Agreements

The proposed Confidentiality and Non-competition Agreements by and among each Patriot Director and the Companies (Frankenmuth, Patriot, and Patriot Life) provides compensation in the amount of \$190,000.00 to be paid in equal monthly installments (\$5,277.78 per month) over a three year period beginning when the agreement is signed or, if later, the effective date of the merger. The contractual confidentiality obligations attach during the term that each person is a Patriot Director and extends permanently after such Director is no longer associated with the Companies. The contractual non-competition obligations exist while the person is a Patriot Director and continues for a period of two (2) years following the last day the Director is associated with the Companies.

(a) Existing Legal Confidentiality Obligations. In the absence of the Confidentiality and Non-competition Agreement, each Patriot Director owes a company she or he serves certain duties of confidentiality. Pursuant to section 3413(2), no director "shall directly or indirectly use for his own private pecuniary advantage confidential information concerning the insurer or its past, existing or proposed affairs or transactions acquired by him in the course of his services" as such director. 24-A M.R.S. § 3413(2). This statutory confidentiality

obligation is not limited in duration, and continues after such person is no longer a director. Thus, Patriot's Directors are prohibited by law from using directly or indirectly for a pecuniary advantage, both during and subsequent to that person's service as a Patriot Director, certain confidential information acquired by the Director during the course of services as a Patriot Director. Moreover, in discharging their duties with respect to the handling of confidential information, Patriot's Directors "shall act in good faith" and "in a manner the director reasonably believes to be in the best interests" of Patriot. 13-C M.R.S. § 831(1). As a result of those two statutory requirements, the Patriot Directors already have certain obligations to refrain from disclosing the Companies' confidential information.

However, the Confidentiality and Non-competition Agreements with each Patriot Director do provide some additional confidentiality obligations besides those outlined above. First, the statutory prohibition against use of confidential information gained while a director directly or indirectly for his or her own private gain does not prohibit disclosures that are not made for pecuniary gain. While such disclosures may be less likely, the possibility of such disclosure is something that the Companies may forestall via a confidentiality agreement such as the one proposed in this transaction. Second, the statutory requirements that a director act in good faith and engage in fair dealing do not extend beyond a director's term on a board, and this obligation has been extended permanently for the Patriot Directors via the agreement. Third, the agreement specifies exactly the types of information the Companies consider confidential, as well as a procedure for resolving any questions regarding the confidentiality of any information. Accordingly, the Superintendent recognizes that the contractual confidentiality obligations do provide more specificity and create additional obligations beyond those already extant by law regarding the Patriot Director's use of confidential information. Under this agreement there are particular services that the contracting Director will be obliged to render to the Companies that they would not otherwise be required by Maine law to render. Therefore, compensation may be provided, so long as it is found by the Superintendent to be a reasonable fee for services actually rendered.

The Superintendent finds the amount provided under the Confidentiality and Non-competition Agreements unreasonable compensation for the performance of those services, in contravention of section 3413(4). 24-A M.R.S. § 3413(4). In addition, given section 3413 and the legal restrictions already imposed on the Patriot Directors under Maine law, the Superintendent finds that it is unfair and prejudicial to policyholders for the Directors to be so compensated for confidentiality obligations in the amount proposed under the Confidentiality and Non-competition Agreements. 24-A M.R.S. § 222(7)(A)(4). Although Frankenmuth would fund the compensation arrangements, under the reorganization and merger transactions Patriot Mutual's members will become members of Frankenmuth. The Superintendent concludes that it is unfair and prejudicial to have those members in effect paying for, through their

membership interests in Frankenmuth, the confidentiality obligations under the proposed Confidentiality and Non-competition Agreements as to those obligations that already exist under Maine law.

Because the Patriot Directors are obligated to provide greater confidentiality protections under the proposed Confidentiality and Non-competition Agreements than are imposed under Maine law, the Superintendent finds it fair and non-prejudicial to the policyholders' interests for the Patriot Directors to be reasonably compensated for such services. Patriot Mutual's members, who become members of Frankenmuth under the reorganization and merger transactions, would benefit from the services undertaken by the Patriot Directors for the benefit of Patriot and its affiliated companies. The Superintendent concludes that it is fair and non-prejudicial to have those members in effect paying for, through their membership interests in Frankenmuth, the confidentiality obligations under the proposed Confidentiality and Non-competition Agreements where such obligations do not already exist under Maine law.

(b) Existing Legal Non-competition Obligations. In the absence of the Confidentiality and Non-competition Agreements, each Patriot Director owes certain loyalties to the corporation and the policyholders she or he serves. First, as required by the general standards of conduct for corporate board members, each of Patriot's Directors, in the discharge of his or her duties, "shall act in good faith." 13-C M.R.S. § 831(1)(a). The basic standard of conduct for board members also requires that each Patriot Director act "in a manner the director reasonably believes to be in the best interests of the corporation." 13-C M.R.S. § 831(1)(b). Here the corporations to whom the Patriot Directors owe a duty are Frankenmuth, Patriot Insurance, and Patriot Life. The statutory obligations are limited in duration to the period a person is a corporate director. Therefore, during the time of service on the Board, a Director must act in "good faith" and "in the best interests of the [Companies]", but this obligation does not follow a corporate director after his or her service on the Board terminates.

By the terms of the proposed Confidentiality and Non-competition Agreements, the Patriot Directors, generally, shall not "acquire an ownership interest in or directly or indirectly become employed by or render other services to any business activity or person, or receive remuneration from such an activity or person, if the business or activity competes with the Companies." Confidentiality and Non-competition Agreement at numbered paragraph 3. John Benson explained how the current Patriot Directors could present a potential threat to Patriot, Patriot Life, and Frankenmuth's success in the New England market, such that competition by the current Patriot Directors would be detrimental to the Companies. Tr. at p. 123, lines 10-18. Furthermore, the agreements provide a "non-exclusion" clause that allows Directors to work at other levels of the insurance industry, i.e. at the level of producers or agents, who do not compete at the company level. See *id.* at p. 101, line 4, through p. 106, line 3. Thus, the

question is whether a Patriot Director could engage in the conduct prohibited by the Confidentiality and Non-competition Agreement in the localized markets in which Patriot Insurance and Patriot Life operate without running afoul of his or her statutory obligations to act in "good faith" and in the "best interests" of the Companies.

The Superintendent finds that given the specific conduct that the Companies seek to prohibit – competition at the company level against Patriot and Patriot Life - the terms of the Confidentiality and Non-competition Agreements related to non-competition during a Director's term are redundant with the obligations to act in "good faith" and "in the best interests of the corporation." 13-C M.R.S. § 831(1). Acquiring an ownership interest in a competitor, becoming employed by or rendering services to a competitor, all describe conduct that would run counter to the "good faith" obligations to the Companies, and would be contrary to the Companies' "best interests." Therefore, during a Director's term this legal obligation already exists and the Superintendent finds that the Patriot Directors cannot be compensated for their existing legal obligations, because, as described above in the section regarding the confidentiality obligation at Section V. D. 4. a., to compensate directors for legal obligations they already must perform would violate the requirement that all director compensation must constitute a "reasonable fee for lawful services actually rendered." 24-A M.R.S. § 3413(4). Additionally, fees paid in relation to a merger transaction that do not meet the statutory requirements for compensation are unfair and prejudicial to the interests of policyholders in contravention of 24-A M.R.S. § 222(7). The Superintendent concludes that reasonable compensation for a Patriot Director's post-association non-competition obligations conforms to the legal requirements of section 3413 and 222, but that any compensation for non-competition during a Director's tenure do not. 24-A M.R.S. §§ 222 and 3413.

(c) Compensation under the Proposed Confidentiality and Non-competition Agreements

The final issue is what amount of compensation is reasonable for those services deemed above to compensate for obligations that do not already exist under the law. The original amount contracted for, \$190,000.00, by the terms of the agreements covered both obligations to maintain confidentiality indefinitely and obligations to refrain from competition during the Director's tenure on the Board and for two additional years following that service. As stated above, the Superintendent finds that only the two years of post-association non-competition obligations meet the statutory standard, and that the additional confidentiality obligations qualifying as lawful services while supplementing the existing legal obligations involve a smaller set of services than those duties of confidentiality already owed under section 3413(2). 24-A M.R.S. § 3413(2). Therefore the Superintendent must evaluate what fees would be reasonable compensation for those particular lawful services as required under section 3413(4). *Id.* at § 3413(4).

John Benson testified that from Frankenmuth's "standpoint as to how the dollars ended up" the non-competition obligation "is the most important to us." Tr. at p. 123, lines 7-10. Considering the evidence in the record regarding the relative value to Frankenmuth, the Superintendent concludes that it is reasonable to allocate a larger percentage of any reasonable fee under the Confidentiality and Non-competition Agreements to the non-competition obligations. The Superintendent finds that a reasonable fee for each of the two years of non-competition each Patriot Director will observe after his or her tenure on the Board to be \$35,000.00 per year. This amount is comparable to the annual Board fee the Director would expect to receive if he or she remained with the Company during those additional two years, and reflects both the importance to the Companies and policyholders of preventing competition but also establishes a particularized and reasonable amount for that service. The Director will be in as good a position for each of these two years as if he or she had been on the Board, without any of the other responsibilities of that position beyond refraining from competition (and the additional confidentiality obligations also contracted for). Such compensation is supported by the evidence in the record in light of each Director's current compensation for active Board service and the stated importance to the Companies and the policyholders of securing an additional two year period of non-competition.

Regarding the confidentiality obligations, the Superintendent understands from Mr. Benson's testimony that these services were considered less valuable or less important to the Companies than the non-competition component, but in recognition that the confidentiality obligations endure permanently by the terms of the agreement (at Term 1, p. 1) the Superintendent finds an additional \$35,000.00 as compensation for the contractual confidentiality obligations to be supported by the evidence in the record as a reasonable fee. Therefore, based upon the record the Superintendent finds that \$105,000.00 total compensation represents a reasonable fee for lawful services actually rendered by each Patriot Director under the Confidentiality and Non-competition Agreement. The other terms of the agreements are not altered by this Decision and Order thus, the total compensation in the amount of \$105,000.00 shall be paid in equal monthly installments (\$2,916.67 per month) over a three year period beginning when the agreement is signed or, if later, the effective date of the merger.

E. Directors' Conflicting-Interest Transactions

The Maine Business Corporation Act, Title 13-C of the Maine Revised Statutes, is specifically made applicable by the Insurance Code to mutual insurers and mutual holding companies. See 24-A M.R.S. §§ 3304, 3489(2)(A). Statutory standards of conduct for directors are set forth at section 831, and require among other standards that a corporation's directors "shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances." 13-C M.R.S. § 831(2). Moreover, the corporate laws delineate specific director conflicts of interest and set forth

certain requirements related thereto. *Id.* at §§ 871-874. The proposed reorganization and merger of Patriot Mutual constitutes a “director’s conflicting-interest transaction” for each of the seven current Patriot Directors as that term is defined by law. *Id.* at §§ 871(1) and 871(2).

This Decision and Order does not resolve any disputes, issues, or actions which may be ruled on by a court of competent jurisdiction under the above sections.

F. The Patriot Education Foundation

As part of the proposed transactions, Frankenmuth has committed to contributing \$1,000,000.00 to a Maine non-profit tax exempt organization to be newly formed and named the “Patriot Education Foundation” (hereinafter the “Foundation”). Frankenmuth’s Form A Statement at tab 22. The Foundation would be incorporated by the Patriot Directors for charitable, educational, and non-profit purposes, and would be classified under Maine law as a public benefit corporation. *Id.* The principal purpose of the corporation would be to promote and advance education and educational opportunities in the State of Maine regarding insurance and the business of insurance, including funding educational scholarships for residents of Maine who pursue a career in the insurance industry. *Id.*

The initial Board of Directors of the Foundation is proposed to be the current members of the Patriot Board, namely Kathleen Case, Robert Clark, Dana Connors, Peter Hunt, Richard Pattenaude, David Reinke, and Gregory St. Angelo, Jr. The proposed organizational documents provide that the Foundation shall not be prevented from paying the reasonable compensation and expenses to directors for services rendered, subject to a \$20,000.00 cap (adjusted annually for inflation). Frankenmuth’s Form A Statement at tab 22, Exhibit A to proposed Articles of Incorporation (paragraph 6). The total amount paid by the Foundation in any one fiscal year for out-of-pocket expenses incurred by directors or officers for services rendered to the Foundation may not exceed \$5,000.00. *Id.*, Attachment 1 (paragraph 3) to June 27, 2006 correspondence. “No part of the net earnings of the [Foundation] shall benefit or be distributable to the Foundation’s directors, officers, or other private persons.” *Id.* Section 4.8 (“Compensation”) of the Foundation’s proposed corporate bylaws states that “Directors as such shall not receive any stated salaries for their services, subject to limits on Director compensation set forth in the Corporation’s Articles of Incorporation.” *Id.*, Attachment 3 (section 4.8) to June 27, 2006 correspondence.

The Superintendent finds that the establishment of the Foundation and the terms set out in the Articles of Incorporation, including director compensation of up to \$20,000.00, conforms to the legal requirement that as a part of merger transaction directors shall be compensated only reasonable fees for lawful services actually rendered. The directors under the Articles of Incorporation will be called upon to render services as a Board member to the Foundation and

may be compensated up to a capped amount for that service. In addition, the capped amount of \$20,000.00 is a reasonable amount of compensation tied to duties and services to be rendered as Board members. The Superintendent finds that by the terms of the incorporation documents the Foundation's directors will be compensated only for lawful services actually rendered, or expenses actually incurred, and the Superintendent further finds that such amount, capped at \$20,000.00 adjusted annually, is reasonable under the circumstances.

However, the Superintendent notes that the testimony of one of the Patriot Directors, who will also be one of the initial directors of the Foundation, is inconsistent with the terms of the Foundation's Articles of Incorporation regarding director compensation. At hearing, Robert Clark testified that the Foundation's directors are not going to receive any retention fees or compensation, other than out-of-pocket expenses. Tr. at p. 52, lines 12-13; *id.* at p. 71, lines 1-6. This statement is inconsistent the terms of the incorporation documents. The Superintendent determines that the written submissions in the filing control, and provide reasonable compensation as described above. However, if the parties intended compensation limitations for Foundation Directors as described by Robert Clark at hearing as opposed to those contained in the proposed incorporation documents, the parties shall amend the incorporation documents to appropriately reflect those intentions and immediately file the amended documents with the Superintendent to clarify the record.

This Decision and Order addresses those issues within the Superintendent's statutory authority and shall not be construed to determine or resolve any disputes, issues, or actions which may be ruled on by a court of competent jurisdiction.

VI. ORDER

The application of Patriot Mutual Insurance Company for the reorganization of the Company into a stock insurer within a mutual holding company structure and the application of Frankenmuth Mutual Insurance Company for the acquisition of control by merger of the reorganized Patriot Mutual and its wholly-owned subsidiary, Patriot Life Insurance Company, are APPROVED subject to and contingent upon the following:

(1) The proposed Consulting Services Agreement with each Patriot Director (included at tab 19 of Frankenmuth's Form A Statement) and the \$100,000.00 compensation contemplated thereunder is disapproved. This disapproval does not prohibit future agreements among individual directors, Frankenmuth, Patriot, and Patriot Life for consulting services, so long as those agreements are in accord with the strictures of section 3413, by contracting only for services to be rendered by directors that are lawful, actual, and that the fees for such services are reasonable, consistent with this Decision and Order and the requirements of Title 24-A.

(2) Compensation limited to the amount of \$105,000.00 under the proposed Confidentiality and Non-competition Agreement with each Patriot Director (included at tab 20 of Frankenmuth's Form A Statement) is approved. A revised Confidentiality and Non-competition Agreement shall be filed with the Superintendent containing terms consistent with this ordering paragraph and this Decision and Order. Revisions to the Confidentiality and Non-competition Agreements must be limited to the dollar amounts, and shall not include any other revisions.

(3) If necessary to reflect the intentions of the parties regarding limitations to compensation for the Education Foundation's Board of Directors, file amended incorporation documents by March 2, 2007 with the Superintendent. These amendments shall be limited solely to the issue of Directors' compensation as discussed above. Any such amendment must be adopted by all necessary parties prior to submission to the Superintendent. Any such amendment will be added to the record.

(4) Immediately following the taking of the final vote, Patriot Mutual shall file with the Superintendent voting information with respect to the following three voting initiatives: (1) the proposed reorganization of Patriot Mutual, (2) the proposed Amended and Restated Certificate of Organization of Patriot Mutual, and (3) the proposed merger of Patriot Holding with Frankenmuth. The information provided for each separate initiative shall include the number of total individuals eligible to vote on each separate initiative; the number of total votes cast on such initiative; and a breakdown of the total voting by tally on such initiative ("for", "against", or "abstain").

(5) If the Superintendent or his designee(s) find it necessary for any reason to travel out-of-state for purposes of examining the books and records of Frankenmuth Mutual Insurance Company, Patriot Insurance Company, and/or Patriot Life Insurance Company, or for any other valid regulatory purpose, Frankenmuth Mutual Insurance Company, Patriot Insurance Company and/or Patriot Life Insurance Company shall bear all reasonable costs related thereto.

(6) If for any reason the reorganization of Patriot Mutual into a mutual holding company structure is consummated but the proposed merger of Patriot Holding with and into Frankenmuth does not promptly occur consistent with the Reorganization Agreement at tab 1 of Frankenmuth's Form A Statement, as amended by the First and Second Amendments thereto, the Superintendent hereby expressly reserves all rights to further investigate, examine, impose conditions, and/or otherwise regulate Patriot Holding Company and its affiliated companies for compliance with all insurance laws and regulations.

VII. NOTICE OF APPELLATE RIGHTS

This Decision and Order is final agency action of the Superintendent of Insurance, within the meaning of the Maine Administrative Procedure Act, 5

M.R.S. § 8002(4). It may be appealed to the Superior Court in the manner provided for by 24-A M.R.S. § 236, 5 M.R.S. §§ 11001 through 11008, and M.R. Civ.P. 80C. Any party to the 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 and Order. There is no automatic stay pending appeal. Application for stay may be made in the manner provided in 5 M.R.S. § 11004.

¹ Effective January 15, 2007, Eric A. Cioppa was appointed Acting Superintendent of Insurance. Prior to that date, Eric A. Cioppa was Deputy Superintendent of Insurance and designated hearing officer in this matter pursuant to *Order Authorizing Deputy Superintendent To Act As Presiding Officer On Behalf Of The Superintendent* issued on October 5, 2006 by then Superintendent of Insurance Alessandro A. Iuppa.

² Patriot Life currently is a wholly-owned subsidiary of Patriot Mutual.

³ Ansur America Insurance Company, ASure Worldwide Insurance Company, and Fortuity Insurance Company are Frankenmuth's wholly-owned subsidiaries.

⁴ There was no Hearing Officer Exhibit 1 or Hearing Officer Exhibit 2 offered for admission into the record.

⁵ By e-mail communication made January 29, 2007 on behalf of the Superintendent by legal counsel Assistant Attorney General Thomas Sturtevant, Patriot Mutual, Frankenmuth, and the Attorney General were advised of the official notice to be taken by the Superintendent of this document and provided an opportunity to contest the substance or materiality of this documentary evidence. No party opposed the admission into the record of this document.

⁶ By separate filing made with the Superintendent on June 8, 2006, Patriot Mutual sought to sell its dental insurance business. This request was approved by the Superintendent on July 26, 2006. That transaction reflects the decision of Patriot Mutual to divest itself of a less profitable line by sale to the company that had been administering the dental plan for Patriot Mutual. See Tr. at p. 22, line 8, through p. 23 line 4; see *also* p. 25, line 23 through p. 26, line 13. The sale of the dental line of business does not relate to this transaction because it was engaged in for independent business reasons and not to minimize the number of eligible voters regarding the merger transaction and therefore does not violate 3488(D). 24-A M.R.S. § 3488(D).

⁷ Other compensation to the Patriot Directors is being provided as a part of this merger in the form of annual retention and meeting fees for their service on the Board. This compensation is referred to above in Section V. A. The Directors will continue to be compensated at the 2006 Board fee rates annually, adjusted for inflation. This compensation constitutes a "reasonable fee for lawful services

actually rendered”, as required by section 3413. 24-A M.R.S. § 3413. The Officers, Lincoln Merrill and Donald Sirois, will enter into Salary Continuation Agreements, referenced above in Section V. A., that establish the level of pay they will receive as they continue in their positions, again the 2006 compensation level, annually adjusted for inflation. Likewise, these agreements constitute “a reasonable fee for lawful services actually rendered.” Both sets of agreements satisfy the requirements of section 3413 and of section 222(7)(4). *Id.* at §§ 3413 and 227(4).

⁸ In responding to questioning by Acting Superintendent Eric Cioppa regarding the Directors’ fee component of the proposed compensation, Robert Clark testified that it “would be at the 35,000 level.” not including travel, lodging, meals, etc. Tr. at p. 63, lines 4-8. See also John Benson testimony, *id.* at p. 100, lines 8-9.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

Dated: February 23, 2007

ERIC A. CIOPPA
Acting Superintendent of Insurance