

STATE OF NORTH DAKOTA

BEFORE THE COMMISSIONER OF INSURANCE

In the Matter of the Proposed Acquisition)
of Control of Clarica Life Insurance)
Company-U.S. by Midland National Life)
Insurance Company)
)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

FILE NO. CO-02-092

INTRODUCTION

Matter Heard. After due and proper notice, a public hearing on the above-captioned matter was held on December 3, 2002, before the Commissioner of Insurance in the State of North Dakota pursuant to the North Dakota Insurance Holding Company Act, N.D. Cent. Code Chapter 26.1-10. The purpose of the hearing was to receive and consider evidence and to allow all interested parties to be heard regarding the proposed acquisition of control (“Proposed Transaction”) of Clarica Life Insurance Company-U.S. ("Clarica"), a North Dakota domestic stock life insurer, by Midland National Life Insurance Company, an Iowa stock insurance company ("Applicant"), an indirect wholly-owned subsidiary of Sammons Enterprises Inc., a Delaware corporation.

Form A. The terms and conditions of the proposed acquisition and change of control are set forth in the Form A Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer (the "Form A") that was filed by Applicant with the Commissioner of Insurance on November 8, 2002, as amended. The Commissioner finds that the Form A filing of Applicant was complete prior to the date of the hearing.

Persons Appearing. John J. Craig, President and Chief Operating Officer and a Director of Applicant, Thomas M. Meyer, Senior Vice President and Chief Financial Officer of

Applicant, and Stephen P. Horvat Jr., Senior Vice President – Legal of Applicant were witnesses who appeared at the hearing to testify or answer questions on behalf of Applicant. Attorney John B. Simon of the law firm of Jenner & Block, LLC, Chicago, represented Applicant.

Commissioner of Insurance Jim Poolman presided at the hearing. Appearing at the hearing on behalf of the Commissioner of Insurance were General Counsel Charles E. Johnson, Financial Analyst Timothy Hill, Deputy Commissioner Douglas L. Holloway, and Actuary and Director of the Life and Health Division, Michael Fix.

Evidence Presented. Both documentary evidence and oral testimony were presented at the hearing. The written testimony submitted at the hearing by Mr. John J. Craig is attached hereto as Exhibit 1. The written testimony submitted at the hearing by Mr. Thomas M. Meyer is attached hereto as Exhibit 2. The written testimony submitted at the hearing by Mr. Timothy Hill is attached hereto as Exhibit 3. The letter from Clarica dated November 26, 2002 requesting approval of an extraordinary dividend of up to \$29,061,329 in connection with the sale of certain assets not to be acquired by Applicant is attached hereto as Exhibit 4 (the “Dividend Request Letter”). All interested persons were given the full opportunity to be heard and examine all witnesses and evidence presented at the hearing. As a result, a full and complete record was developed in this matter.

Commissioner Poolman, after reviewing the evidence and testimony presented at the hearing, and after considering and reviewing all the documents, instruments, and materials on file herein, hereby makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

I.

Notice. An Order fixing December 3, 2002 as the date for the hearing was entered by Commissioner Poolman, which date was agreed to by the Applicant and Clarica. The Commissioner's office sent notice of the hearing to Applicant, to its attorneys, Jenner & Block, LLC, and to Clarica via United States mail, first class postage prepaid, on November 19, 2002. Nancy Brady attested to the mailing of the notice of the hearing.

II.

Applicant's Locations. Applicant is an Iowa domiciled life insurer that transacts insurance in 49 states in the United States as well as the Virgin Islands, Puerto Rico, and on U.S. military bases in Japan, Germany, and Korea. Applicant's executive offices are located in Sioux Falls, South Dakota, with approximately 450 employees. Applicant's principal office is located in West Des Moines, Iowa, with approximately 200 employees. The name and business address of the executive office and principal office of Applicant are as follows:

Executive Offices: Midland National Life Insurance Company
One Midland Plaza
Sioux Falls, South Dakota 57193

Principal Offices: Midland National Life Insurance Company
4601 Westown Parkway, Suite 300
West Des Moines, Iowa 50266

III.

Applicant's Background. Applicant offers a wide range of life insurance and annuity products to individuals and smaller businesses. Applicant was organized in South Dakota in 1906 as Dakota Mutual Life Insurance Company. Applicant was reorganized into a stock

insurance company in 1909 and changed its name to Midland National Life Insurance Company in 1925. Sammons Enterprises Inc., Applicant's ultimate corporate parent, was organized as a Delaware corporation in 1962.

IV.

Applicant's Regulatory Status. Applicant's activities are regulated pursuant to the Iowa Insurance Code, which is administered by the Department of Insurance of the State of Iowa. The Iowa Insurance Code requires the filing of annual and other reports on the financial condition of Applicant, provides for periodic examinations of Applicant's affairs, imposes restrictions on transactions with related parties, and sets forth requirements governing certain aspects of an insurance company's business, including policy reserves and investments. Applicant redomiciled from South Dakota to Iowa in 1999. The Department contacted the Commissioners of Insurance for the States of Iowa and South Dakota, Applicant's current and former states of domicile. The reports from those offices confirmed that the Applicant was in good standing and had no major complaints pending against it. According to those regulatory authorities, Applicant generally has had a good record of compliance and service to its policyholders.

V.

Applicant's Significant Affiliates. Applicant is an indirect wholly owned subsidiary of its ultimate holding company, Sammons Enterprises, Inc., a Delaware corporation. Sammons Enterprises, Inc. is subject to the insurance holding company acts of the states in which Applicant and the two other insurance subsidiaries of Sammons Enterprises, Inc. are domiciled. Sammons Enterprises, Inc. also owns through Sammons Financial Group, Inc., a Delaware corporation, North American Company for Life and Health Insurance, an Illinois domiciled life

insurer, and North American Company for Life and Health Insurance of New York, a New York domiciled life insurer. Sammons Enterprises, Inc. owns almost \$14 billion in assets and has relatively little debt.

VI.

Applicant's General Financial Facts. Applicant has in force approximately \$72 billion in life insurance coverage. For the 12 months ended December 31, 2001, Applicant's insurance operations generated approximately \$1.75 billion in direct premium and annuity considerations. As of September 30, 2002, Applicant had statutory capitalization and surplus of approximately \$485 million, approximately \$7.7 billion in total assets and over 700,000 policyholders.

VII.

Applicant's Financial Soundness. Applicant has maintained an A+ (Superior) rating from A. M. Best & Co. for 22 consecutive years, and has an AA (Very Strong) rating from Standard & Poors. As of September 30, 2002, Applicant had a risk based capital ratio (adjusted capital to authorized control level capital) of approximately 500%. In connection with the Proposed Transaction, Applicant is receiving a capital contribution of approximately \$250 million from Sammons Enterprises, Inc., which will be utilized to acquire Clarica.

VIII.

Debt Service. The proposed transaction will not be debt financed. Applicant's projected operational cash flow is good and its free cash flow is good. Applicant's and Clarica's investments are conservatively positioned. These factors indicate that the proposed transaction will impose no strain on the cash of Applicant or Clarica.

IX.

Applicant's Management. Applicant will replace current directors of Clarica with directors who are executive officers of Applicant. Applicant's current management, which is the management it proposes for Clarica, is well qualified, experienced, and competent. Applicant's executive officers have over 90 years of experience as managers or officers in the insurance industry. Testimony and facts in the record submitted in support of Applicant's Form A Application indicates that Applicant's current management have managed Applicant's business for approximately the past five years competently and profitably.

X.

Clarica's General Background. Clarica is a stock life insurance company that was organized under the laws of North Dakota in 1930. Clarica is authorized to transact life insurance and annuity business in North Dakota and all other states other than New York and Maine. Clarica is a direct, wholly owned subsidiary of Clarica U.S., Inc., a Wisconsin corporation. The current owner of all of the issued and outstanding voting securities of Clarica U.S., Inc. is Clarica Life Insurance Company, a Canadian domiciled life insurance company ("Clarica Canada"). For the nine months ended September 30, 2001, Clarica reported \$257 million in direct premium revenues. It had as of December 31, 2001, an adjusted risk based capital to authorized capital ratio of 470%, and is expected to have as of December 31, 2002, an adjusted risk based capital to authorized capital ratio of 370%. Ultimate control of Clarica was acquired by Sun Life Financial Services of Canada, Inc. ("Sun Life") on May 29, 2002. A hearing to approve the change of control of Clarica to Sun Life was held by this office on February 27, 2002, pursuant to which the change of control was approved.

XI.

Proposed Transaction. The proposed transaction is a cash-for-stock transaction. Pursuant to the terms of a Stock Purchase Agreement, dated as of October 21, 2002, between Applicant and Clarica Canada, Clarica Canada will sell to Applicant all of the issued and outstanding shares of Clarica U.S., Inc., the holding company for Clarica, in exchange for a purchase price equal to \$286 million, subject to certain purchase price adjustments. Following the completion of the Proposed Transaction, Clarica U.S., Inc. will be a direct, wholly owned subsidiary of Applicant and Clarica will be an indirect, wholly-owned subsidiary of Applicant. Applicant anticipates that the closing of the Proposed Transaction will be completed in late December 2002 or early January 2003.

XII.

Merger and Interim Support of Clarica. Approximately one year following the acquisition of control of Clarica, Applicant intends to merge Clarica into Applicant. Prior to that merger, Applicant intends to enter into a tangible net worth maintenance agreement in a form acceptable to a rating agency, which will require Applicant to maintain the net worth of Clarica at acceptable levels. In addition, Applicant intends at or shortly after closing to cause Clarica to cede on a coinsurance basis approximately 30% of its life insurance business to a substantial reinsurer, in exchange for a ceding fee of approximately \$25 million. This ceding of insurance will reduce the amount of Clarica's risk and increase the amount of its capital, thereby increasing its risk based capital ratio. Although not quantified, the combination of Applicant and Clarica and their eventual merger should result in significant cost savings to the operations of both businesses.

XIII.

Excluded Assets and Dividend Request. According to the Form A Application and the Dividend Request Letter, at the time of the hearing Clarica owned 85% of the stock of Ash Brokerage Corporation (“Ash”), and 100% of the stock of AFH Financial Consortium, Inc., and Ash owned 85% of the stock of Hamilton Marketing Group, Inc. and 100% of the stock of Management Consolidated Corporation. According to the Dividend Request Letter, these assets have been held on the books of Clarica for statutory adjusted risk based capital and SAP accounting purposes at less than \$11 million, with their remaining value booked as non-admitted assets. Applicant’s Form A submission, the Clarica Dividend Request Letter and testimony of Applicant’s witnesses indicated that these companies are being sold by Clarica prior to Applicant’s purchase of Clarica for approximately \$27 million, that the cash from the sale of the stock of these companies will be captured by Clarica, and that pursuant to the Stock Purchase Agreement, Clarica is also selling or transferring for approximately \$2 million certain mortgages on Wisconsin property because of potential environmental issues. Pursuant to the Dividend Request Letter, Clarica has requested this office to approve an extraordinary dividend in an amount not to exceed the proceeds from the sale of these excluded companies and the Wisconsin mortgages. Clarica’s Dividend Request Letter stated that approximately \$14 million of the amount of the dividend requested is an ordinary dividend. Applicant expects that after this dividend its adjusted risk based capital to authorized control level capital will be approximately 370%.

XIV.

Pro Forma Combined Financials. Based on financial statements as of September 30, 2002, the combined assets from the Applicant/Clarica businesses would have pro forma

combined total net capital and surplus of approximately \$610 million, and a risk based capital ratio (based on adjusted capital to authorized control level capital) of approximately 480%. This ratio is calculated without considering the beneficial impact on Clarica's risk based capital ratio from Applicant's planned reinsurance arrangement for 30% of Clarica's life insurance business.

XV.

Combined Business. Testimony and the Form A submission of Applicant stated that the proposed transaction will combine the complementary product lines and distribution channels of Applicant and Clarica, that Applicant offers products and services that will complement those offered by Clarica, such as variable life insurance, variable annuities and a variety of other life insurance and fixed annuity products which can be marketed to Clarica customers. Testimony also stated that Clarica is an established participant in the bank owned life insurance or "BOLI" business and that the combined organization will benefit from the similar markets of Applicant and Clarica, will benefit from the economies and efficiencies realized from combining the two organizations, and will create a stronger competitor than either of the companies would be separately. This testimony is credible and was uncontradicted and the Commissioner finds no reason not to accept it.

XVI.

Department's Witness. Witness Timothy Hill has been a Financial Analyst with the North Dakota Department of Insurance for the past 11 years. Prior to his current position, Mr. Hill was an internal auditor with a savings and loan corporation and a life insurance company for almost 20 years. Mr. Hill reviewed the Form A filing, rating agency reports for Applicant and

other financial information relating to Applicant and Clarica. Mr. Hill testified that Applicant and Sammons Enterprises, Inc. are financially sound and viable entities.

XVII.

Continuation of Clarica's Business. Mr. Hill testified that Clarica's ability to continue to write its lines of insurance should not be hampered by the acquisition of Clarica by Applicant. Accordingly, the evidence supports a finding that, after the change of control, Clarica would be able to satisfy the requirements for the issuance of a certificate of authority to write the lines of insurance for which it is presently licensed.

XVIII.

Competition. Mr. Hill testified that based on NAIC market share data, competition will not be lessened in North Dakota. Evidence presented in the Form A filing of Applicant indicates that Applicant, Applicant's other insurance affiliates and Clarica combined would account for less than 5% of life and annuity policies issued in the state of North Dakota. Accordingly, the evidence supports a finding that the effect of Applicant's acquisition of control of Clarica would not substantially lessen competition in insurance in this State or tend to create a monopoly therein.

XIX.

Financial Condition Benefits. Mr. Hill testified that it appears that the transaction will benefit the financial condition of Clarica since it will become part of a large, financially sound holding company. Mr. Hill testified that the indications are that the transaction will result in a lower cost structure through economies of scale and cost synergies. Accordingly, the evidence

supports a finding that the financial condition of Applicant should not jeopardize the financial stability of Clarica or prejudice the interests of its policyholders.

XX.

No Negative Material Changes. Mr. Hill testified that, based upon his review of the Form A filing and the testimony provided at the hearing, there is reason to believe that there will be a material change in Clarica's operations in the immediate future but these changes should be positive and for the benefit the policyholders of both organizations. Mr. Hill testified that Applicant's proposed plans do not appear to be unfair or detrimental to the financial condition of Clarica. Accordingly, the evidence supports a finding that Applicant's obtaining control of Clarica would not be unfair or unreasonable to the policyholders of Clarica or contrary to the public interest.

XXI.

Applicant's Management. Based upon his review of the proposed transaction and from the testimony put forth at the hearing, Mr. Hill testified that there is no reason to believe that the competence and integrity of Applicant's management will pose a risk to Clarica's policyholders. Accordingly, the evidence supports a finding that the competence, experience, and integrity of the persons who would control the operations of Clarica are not such that it would not be in the interest of policyholders of Clarica and the public to permit the proposed acquisition of control of Clarica by Applicant.

XXII.

No Prejudice to Policyholders. Based upon his own analysis of the proposed transaction and from the testimony presented at the hearing, Mr. Hill testified that, in his opinion,

the transaction does not appear to be hazardous or prejudicial to Clarica policyholders. Mr. Hill further testified that the combined company will probably be more competitive and stronger financially than the individual companies, which should be good for the insurance buying public. The Form A filing and the testimony of Applicant's witnesses also supports this conclusion. Accordingly, the evidence supports a finding that the transaction would not be hazardous or prejudicial to the insurance buying public.

XXIII.

Compensation for Transaction. Based on testimony at the hearing, no officer, director, or employee of Clarica will receive a bonus or other extraordinary compensation for aiding or assisting in the completion of the transaction. Testimony indicated that bonuses and payments for change of control and severance arrangements and retention bonuses for Clarica employees are in place and will be honored by Applicant and Clarica after the closing under the Stock Purchase Agreement.

XXIV.

Department's Witness Recommendation. Mr. Hill testified that he did not have any present concerns about the proposed transaction and its potential impact upon Clarica policyholders. Based upon his analysis of the transaction and the testimony provided at the hearing, Mr. Hill stated that there was no evidence upon which to find that the transaction will be harmful to Clarica policyholders or that the transaction otherwise does not satisfy North Dakota's legal requirements. The Form A filing and the testimony of Applicant's witnesses also supports his conclusion. Mr. Hill recommended that the Commissioner approve Applicant's application for acquisition of control of Clarica.

CONCLUSIONS OF LAW

1. The Commissioner of Insurance has jurisdiction over the proposed transaction pursuant to N.D. Cent. Code Chapter 26.1-10.
2. Applicant has met the procedural requirements of N.D. Cent. Code Chapter 26.1-10 with regard to seeking and receiving approval of the proposed acquisition of control of a domestic insurance company.
3. Based on the summary of the notices given concerning this hearing contained in the Findings of Fact above, sufficient, due, and proper notice of these proceedings was given to all interested parties.
4. N.D. Cent. Code § 26.1-10-03(4) provides that the Commissioner of Insurance shall approve the acquisition unless he finds any of the grounds for disapproval or denial enumerated in N.D. Cent. Code § 26.1-01-03(4)(a) through (f) which generally provide that policyholders of Clarica must be protected and that the acquisition is not likely to be hazardous or prejudicial to the insurance buying public.
5. The evidence establishes that the financial condition of Applicant will not jeopardize the financial stability of Clarica, or prejudice the interests of Clarica's policyholders. No evidence or testimony was presented which would suggest that the acquisition is likely to be hazardous or prejudicial to the insurance buying public.
6. The evidence indicates that the competence, experience, and integrity of the persons who will control the operations of Clarica are such that it would not be contrary to the interests of the policyholders of Clarica or the public to permit the acquisition.
7. No evidence has been introduced to establish that after the proposed acquisition of control or change of control, Clarica will not be able to satisfy the requirements for the issuance

of a certificate of authority to write the lines of insurance for which it is presently licensed to write.

8. No evidence has been introduced to establish that after the proposed acquisition of control or change of control, the effect of such acquisition would be to substantially lessen competition in insurance in North Dakota or tend to create a monopoly herein.

9. The evidence establishes that applicant has no present plans or proposals to liquidate Clarica, to sell its assets or consolidate or merge it with any person, or to make any other material change in Clarica's businesses or corporate structure or management, that are unfair or unreasonable to the policyholders of Clarica.

10. The Form A, including all supplementary filings submitted by Applicant in connection therewith, is in compliance with the provisions of the North Dakota Insurance Holding Company Act.

11. Based upon the Findings of Fact, the evidence presented at the public hearing, and in the Form A, including all supplementary filings submitted by Applicant in connection therewith, meets the standards for approval of the proposed acquisition pursuant to N.D. Cent. Code § 26.1-10-03(4) and does not support a finding that grounds exist to disapprove the acquisition of control of Clarica by Applicant or the grant of the extraordinary dividend requested in connection with the proposed transaction representing proceeds from the sale of the excluded assets.

NOW, THEREFORE, based upon the Findings of Fact and Conclusions of Law, it is ordered as follows:

ORDER

The proposed acquisition of Clarica Life Insurance Company-U.S. by Midland National Life Insurance Company, under the provisions of the Form A Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer filed with the Commissioner of Insurance is **APPROVED**.

Clarica's request for an extraordinary dividend up to the amount of the proceeds from sale of the excluded assets is **APPROVED**.

The Commissioner of Insurance will retain jurisdiction over the subject matter of this proceeding and over the parties for the purpose of entering such further order or orders as may be deemed proper.

DATED this _____ day of December, 2002.

Jim Poolman
Commissioner of Insurance
N.D. Insurance Department
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Bismarck, ND 58505
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