

STATE OF NORTH DAKOTA

BEFORE THE COMMISSIONER OF INSURANCE

**In the Matter of the Petition of)
Tri-State Insurance Company of)
Minnesota and American West)
Insurance Company for Approval)
Of Transfer and Assumption Agreement)** **FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

After due and proper notice, a public hearing on the above-captioned matter was held on March 22, 2001, before the Commissioner of Insurance in the State of North Dakota pursuant to N.D. Cent. Code Chapter 26.1-07. The purpose of the hearing was to receive and consider evidence and to allow all interested parties to be heard regarding the proposed Transfer and Assumption Agreement between Tri-State Insurance Company of Minnesota ("Petitioner") and American West Insurance Company ("AWIC") whereby the North Dakota business would be assumed by Petitioner.

The terms and conditions of the proposed Transfer and Assumption Agreement are set forth in the Transfer and Assumption agreement that was filed with the Department on February 15, 2001.

John F. Thelen, Vice President and Secretary and General Counsel, R. Douglas Kroh, Research and Statistical Team Leader, and Patricia A. Broesder, Regional Claims Manager, Tri-State Region, appeared on behalf of Petitioner. Appearing on behalf of the North Dakota Insurance Department was its Legal Counsel, Susan J. Anderson, and its Financial Analyst, Timothy Hill. Commissioner Jim Poolman, presided at the hearing.

Both documentary evidence and oral testimony were presented at the hearing. All

interested persons were given a full opportunity to be heard and to examine all witnesses and evidence presented at the hearing. As a result, a full and complete record was developed in this matter.

Commissioner Jim Poolman, Commissioner for the North Dakota Insurance Department, after reviewing all the documents and material on file herein, hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

I

Tri-State Insurance Company of Minnesota has petitioned the Commissioner of Insurance for the State of North Dakota under the provisions of N.D. Cent. Code Chapter 26.1-07 for approval of the assumption of North Dakota business of American West Insurance Company ("AWIC").

II

Petitioner is a Minnesota property and casualty insurance company, owning 100% of the outstanding shares of AWIC. It has its principal place of business in Luverne, Minnesota. Both Petitioner and AWIC are licensed in the State of North Dakota.

III

Petitioner was issued and currently has an effective Certificate of Authority authorizing it to transact multiple line property and casualty insurance business in the State of North Dakota and has been conducting such business.

IV

AWIC is a North Dakota domestic insurance company with its principal offices in Luverne, Minnesota. AWIC is licensed to write multiple property and casualty lines of insurance

but has not been writing any new business since 1999. In 1999 AWIC began to nonrenew or cancel policies replacing such policies with either a Petitioner or Continental Western Insurance Company policy. As of March 22, 2001, AWIC is only actively writing bonds in North Dakota.

V

Petitioner has entered into a Transfer and Assumption Agreement with AWIC. Petitioner intends to assume all North Dakota business and all other non-insurance liabilities relating to AWIC in exchange for assets equal to the reserves on North Dakota business, including loss and loss adjustment expense reserves and reserves for losses incurred but not yet reported. This amount as of December 31, 2000, was \$553,357.00.

VI

On or about March 2, 2001, all current AWIC policyholders and bondholders were provided notification of the hearing on the proposed Transfer and Assumption Agreement by first class mail pursuant to the Commissioner's Order dated February 28, 2001. An Affidavit of Mailing of Policyholder and Bondholder Notice was received and entered as State Exhibit 2.

VII

On or about March 4, 2001, publication was made in five daily newspapers including the Bismarck Tribune. Affidavits of Publication were received and entered as State Exhibit 1. The notification informed policyholders of their right to be present and be heard at the hearing.

VIII

As of March 1, 2001, AWIC had 47 active bondholders in the state of North Dakota. AWIC has been in depopulation mode since 1999. There are 59 open claims in all lines of business in North Dakota.

IX

All employees of AWIC are employees of Continental Western Insurance Company. Continental Western has an administrative service agreement with AWIC; therefore, there will be no change in staffing of AWIC.

X

Petitioner intends to assume AWIC's business in the following lines of insurance: bonds, commercial multi-peril, business owners, and auto. By agreement Petitioner will also assume all non-insurance liabilities of which there exists only an Administrative Service Agreement between AWIC and Continental Western Insurance Company.

XI

As of January 1, 2001, AWIC had 350 licensed agents who also had Joint Agency Agreements with Petitioner and Continental Western Insurance Company. All North Dakota appointments have been non-renewed with AWIC on or about May 1, 2000. Those agents will continue to operate with Petitioner and Continental Western Insurance Company.

XII

Petitioner does not anticipate a change in the management structure of Petitioner in the near future.

XIII

After approval by the Commissioner of the Transfer and Assumption Agreement, an Assumption Certificate will be issued and mailed to each current policyholder. The Assumption Certificate was filed with the Transfer Agreement on February 15, 2001.

XIV

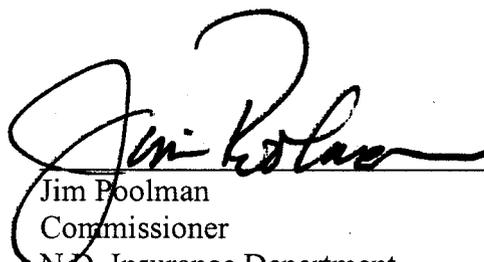
As of December 31, 2000, the capital and surplus of Petitioner was \$22,604,932. The

risk-based capital ("RBC") ratio has been sufficient and above trigger levels in past years. The RBC ratio of Petitioner as of December 31, 2000, was 1,862%.

CONCLUSIONS OF LAW

1. The Commissioner of Insurance has jurisdiction over the proposed transaction pursuant to N.D. Cent. Code Chapter 26.1-07.
2. Petitioner has met the procedural requirements of N.D. Cent. Code Chapter 26.1-07 with regard to seeking and receiving approval of the proposed Transfer and Assumption Agreement.
3. Based on the summary of notice contained in the introduction, as well as the Findings of Fact enumerated above, sufficient due and proper notice of these proceedings was given to all interested parties.
4. N.D. Cent. Code § 26.1-07-05.1 provides that the Commissioner of Insurance shall approve the reinsurance agreement unless he finds that the agreement would be inequitable or materially reduce the financial condition of policyholders of the State of North Dakota.
5. Based upon the Findings of Fact, the evidence presented at the public hearing meets the standards for approval of the proposed Transfer and Assumption Agreement pursuant to N.D. Cent. Code Chapter 26.1-07 and does not establish grounds to disapprove the above-mentioned agreement.

DATED this 30th day of March, 2001.



Jim Poolman
Commissioner
N.D. Insurance Department
600 East Boulevard Avenue
Bismarck, ND 58505
(701) 328-2440

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ORDER

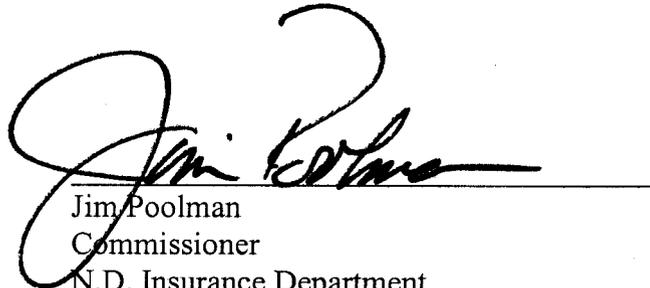
NOW, THEREFORE, based upon the Findings of Fact and Conclusions of Law, it is hereby ORDERED as follows:

The proposed Transfer and Assumption Agreement of American West Insurance Company by Tri-State Insurance Company of Minnesota is

APPROVED. The agreement will be subject to the approval of all other regulatory agencies having jurisdiction over this transaction.

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 30th day of March, 2001.



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