

**STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

IN THE MATTER OF:

**FORM A STATEMENT REGARDING THE ACQUISITION OF CONTROL OF
RSUI INDEMNITY COMPANY, LANDMARK AMERICAN INSURANCE COMPANY,
AND COVINGTON SPECIALTY INSURANCE COMPANY BY BERKSHIRE
HATHAWAY INC., O&M ACQUISITION CORP., AND WARREN E. BUFFET.**

Docket No: Ins 22-024-AP

ORDER

A. Procedural History

On April 22, 2022, Berkshire Hathaway Inc. (“Berkshire Hathaway”); O&M Acquisition Corp. (“O&M”); and Warren E. Buffet (together, “Applicants”) submitted a Form A Statement. The Applicants seek approval for the acquisition of control of RSUI Indemnity Company (“RSUI”); Landmark American Insurance Company (“Landmark”); and Covington Specialty Insurance Company (“Covington”), collectively referred to as “Insurers” herein. The Applicants propose to acquire control of the Insurers by acquisition of Alleghany Corporation (“Alleghany”), which indirectly owns the Insurers.

A public hearing on the proposed acquisition of control was held on September 1, 2022 at the New Hampshire Insurance Department. At the hearing Bruce Byrnes, Vice President, Senior Counsel and Chief Compliance Officer of Berkshire Hathaway, testified for the Applicants. Ronald Hardeman, Senior Vice President of Compliance, Legal, and Risk Management of RSUI Group, Inc., (which wholly owns the Insurers), testified for the Insurers. In addition, Douglas Bartlett, Director of Financial Regulation, testified on behalf of the New Hampshire Insurance Department’s Analysis Team (“Department Analysis Team”).

At the hearing the Applicants had submitted seven (7) exhibits, (Exhibits 1-7), which included the Form A Statement within Exhibit 1. The Department Analysis Team also submitted one exhibit, which was a memorandum outlining that team’s analysis of the Form A application, (Exhibit 1). There were no objections to these exhibits and all eight of these exhibits were admitted into evidence during the hearing.¹

¹ Based upon a review of the hearing transcript, I want to clarify that the hearing record was not closed until the very end of the hearing at 1:17 pm on 9/1/2022. Upon review, I realize that I misspoke *near* the end of the hearing after Attorney Varley asked me to close the hearing at the end of the proceeding. See Hearing Transcript at page 20. During that exchange, I stated that the record is closed but that was not my intent at that time. See id. Rather, I meant to say that the record would be closed at the end of the proceeding, as had been requested. Consistent with my intent, at the very end of the hearing I concluded the hearing and closed the record by stating that if there’s nothing further, “I’m going to close the record at this time.” See Hearing Transcript at Page 21.

B. Findings of Fact

Pursuant to New Hampshire RSA 401-B:3, I have considered the Form A Statement and, based on the testimony and exhibits presented at the hearing, I find and conclude as follows:

1. Proper notice was given of the hearing pursuant to RSA 401-B:3, VI(b).
2. RSUI is a New Hampshire domiciled stock property and casualty insurance company with its main administrative office in Atlanta, Georgia. RSUI currently markets its products in all states and the District of Columbia. Landmark is a New Hampshire domiciled stock property and casualty insurance company with its main administrative office in Atlanta, Georgia. Landmark is a New Hampshire domestic surplus lines insurer and currently operates on a surplus lines or non-admitted basis in all states and the District of Columbia, the US Virgin Islands, and Puerto Rico. Covington is a New Hampshire domiciled stock property and casualty insurance company with its main administrative office in Atlanta, Georgia. Covington currently operates on a surplus lines or non-admitted basis in all states and the District of Columbia.
3. Landmark and Covington are wholly owned subsidiaries of RSUI. RSUI is a wholly owned subsidiary of RSUI Group, Inc., which is a wholly owned subsidiary of Alleghany Insurance Holding LLC, which in turn is a wholly owned subsidiary of Alleghany.
4. Alleghany is a New York Stock Exchange publicly traded holding company for subsidiaries engaged in diverse business activities, including property and casualty reinsurance and insurance. Alleghany has a number of property and casualty insurer subsidiaries, including the Insurers.
5. Berkshire Hathaway is a Delaware corporation with its executive offices in Omaha, Nebraska. It is a New York Stock Exchange publicly traded holding company. The only person owning more than 10% of the voting power of the outstanding shares of Berkshire Hathaway is Warren E. Buffet. As of December 31, 2021, Mr. Buffet who is Chairman and Chief Executive Office of Berkshire Hathaway, owned shares equivalent to approximately 32% of the voting power of the outstanding shares of Berkshire Hathaway.
6. Berkshire Hathaway owns subsidiaries that engage in a number of diverse business activities, including insurance and reinsurance; freight rail transportation; utilities and energy; finance; manufacturing; services; and retailing.
7. O&M is a recently formed Delaware company that is a wholly owned subsidiary of Berkshire Hathaway. To date, it has not conducted any business operations.
8. As set forth in the Form A Statement and its exhibits, the Applicants propose to acquire control of the Insurers and other companies pursuant to an Agreement and

Plan of Merger dated March 20, 2022 (“Merger Agreement”) between Berkshire Hathaway, O&M, and Alleghany. Pursuant to the Merger Agreement, Berkshire Hathaway will acquire Alleghany by the merger of O&M into Alleghany with Alleghany continuing as a wholly owned subsidiary of Berkshire Hathaway. The holders of the shares of common stock of Alleghany will be paid a purchase price of \$848.02 per share in cash, representing \$850.00 per share less a financial advisory fee payable to a financial advisor retained by Alleghany in connection with the transaction.

9. Berkshire Hathaway is pursuing the proposed acquisition of Alleghany because it believes there is a strong strategic fit between Berkshire Hathaway and Alleghany.
10. The Merger Agreement was subject to satisfying several closing conditions, including the following:
 - a. Approval of the Alleghany stockholders;
 - b. Approval of several regulatory agencies, including approval of the Form A Statement by the New Hampshire Insurance Department, as well as similar filings with the Delaware Insurance Department, the Nebraska Department of Insurance, the New York Department of Financial Services, the Vermont Department of Financial Regulation, and the Wisconsin Office of the Insurance Commissioner; and
 - c. The expiration or termination of any applicable waiting period under the federal Hart-Scott-Rodino Antitrust Improvements Act of 1976.
11. As to the merger conditions, Alleghany’s stockholders approved and adopted the merger at a meeting on June 9, 2022. The federal Hart-Scott-Rodino waiting period has expired. At the time of the hearing, the only remaining insurance regulatory approvals to satisfy the Merger Agreement, besides New Hampshire, were Delaware and New York.
12. The nature and amount of the consideration to be paid for Alleghany was determined based on Berkshire Hathaway’s assessment of the economic value of Alleghany and an arm’s length negotiation between Berkshire Hathaway and Alleghany’s management and board of directors. The aggregate purchase price of approximately \$11.6 billion will be paid in cash by Berkshire Hathaway from its existing assets. No debt financing will be used.
13. After the closing of the Proposed Acquisition, the Applicants intend that the Insurers will continue to be managed by their existing boards of directors and officers in substantially the same manner as their pre-merger operations.
14. The Applicants do not contemplate changes to the Insurers’ operations as a result of the proposed acquisition. The only anticipated changes are that (a) the Insurers will enter into an investment management agreement between Berkshire Hathaway and the Insurers under which Berkshire Hathaway will manage the Insurers’ investment

portfolios and (b) the Insurers and their affiliates will enter into a tax sharing agreement with Berkshire Hathaway and its affiliates. The Insurers will make Form D filings with the New Hampshire Insurance Department seeking the approval of each investment management agreement and the tax sharing agreement pursuant to RSA 401-B:5.²

15. Based upon the Form E Statement also filed by the Applicants, it does not appear that competition in this state will be substantially decreased by the proposed acquisition.

C. Conclusions of Law

The New Hampshire Holding Company Act, RSA 401-B:3, provides that the Commissioner shall approve any merger or other acquisition of control unless, after a public hearing, the Commissioner finds that one or more of six conditions exist. See RSA 401-B:3, VI(a). Those potentially disqualifying findings are set forth in RSA 401-B:3, VI(a)(1)-(6), as here:

- (1) After the change of control the domestic insurer . . . would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;
- (2) The effect of the merger or other acquisition of control would substantially decrease competition in insurance in this state or tend to create a monopoly (referring to the information and standards of RSA 401-B:3-a);
- (3) The financial condition of any acquiring party may jeopardize the financial stability of the insurer or prejudice the interest of its policyholders;
- (4) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders and not in the public interest;
- (5) The competence, experience, and integrity of those persons who would control the operation of the insurer are against the interest of policyholders of the insurer and the public if the acquisition is permitted; and
- (6) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

² RSUI had a permitted practice approved by the Department in 2003 respecting its investments, as set forth in its financial statements. The Applicants acknowledge that this permitted practice will expire by its terms upon the change of control sought by the Applicants.

None of the six conditions specified in RSA 401-B:3 are supported in the record. Based on the evidence presented, I find that:

1. After the acquisition of control, the Insurers will continue to be qualified to write the lines of insurance for which they are presently licensed.
2. The acquisition of control (a) will not substantially decrease competition in insurance business in the State of New Hampshire and (b) will not tend to create a monopoly therein.
3. The financial condition of the Applicants will not jeopardize the financial stability of the Insurers or prejudice the interest of their policyholders.
4. The Applicants' plans for the Insurers are not (a) unfair or unreasonable to policyholders of the Insurers or (b) against the public interest.
5. The competence, experience, and integrity of those persons who would control the operations of the Insurers are not against the interest of the policyholders of the Insurers or the public.
6. The acquisition of control of the Insurers is unlikely to be hazardous or prejudicial to the insurance buying public.

I conclude, therefore, that the application to acquire control of the Insurers should be approved.

ORDER

Accordingly, it is hereby ORDERED that the acquisition of control of RSUI Indemnity Company, Landmark American Insurance Company, and Covington Specialty Insurance Company by Berkshire Hathaway, Inc., O&M Acquisition Corp., and Warren E. Buffet is APPROVED, subject to the condition that the Applicants shall provide the New Hampshire Insurance Department with written confirmation of the closing of the acquisition transaction contemplated by the Form A Statement promptly after the closing.

SO ORDERED.

Dated: 9/22, 2022


Christopher R. Nicolopoulos, Commissioner