

**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
OF THE STATE OF TENNESSEE**

IN THE MATTER OF:

**THE ACQUISITION OF
AMERICAN CONTINENTAL INSURANCE COMPANY
AND CONTINENTAL LIFE INSURANCE COMPANY OF
BRENTWOOD, TENNESSEE BY
CVS HEALTH CORPORATION**

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No.: 18-111

ORDER APPROVING PLAN OF ACQUISITION

On the 22nd day of August, 2018, a public hearing was held before the Commissioner of the Department of Commerce and Insurance of the State of Tennessee (“Commissioner”) to consider the proposed plan filed by CVS Health Corporation (“Applicant”) to acquire control of Aetna Inc. (“Aetna”) and its Tennessee subsidiaries, American Continental Insurance Company and Continental Life Insurance Company of Brentwood, Tennessee (the Tennessee subsidiaries are collectively “the Domestic Insurers”).

These Findings of Fact and Conclusions of Law are issued based on the proposed plan of acquisition as filed and supplemented with the Tennessee Department of Commerce and Insurance (the “Department”) and the record of the public hearing:

FINDINGS OF FACT

1. Mr. Steven Whitmer, Mr. Timothy Farber and Mr. Daniel Krane filed Motions for Admission *Pro Hac Vice* in compliance with Tennessee Supreme Court Rule 19.

2. American Continental Insurance Company (“American Continental”) is a Tennessee domestic insurance company that is authorized to sell accident and health insurance and life insurance in Tennessee.

3. American Continental is an indirect, wholly-owned subsidiary of Aetna, a publicly traded Pennsylvania corporation.

4. American Continental’s principal place of business is located at 800 Crescent Centre Drive, Suite 200, Franklin, Tennessee 37067.

5. Continental Life Insurance Company of Brentwood, Tennessee (“Continental Life”) is a Tennessee domestic insurance company that is authorized to sell accident and health insurance and life insurance in Tennessee.

6. Continental Life is a direct, wholly-owned subsidiary of Aetna.

7. Continental Life’s principal place of business is located at 800 Crescent Centre Drive, Suite 200, Franklin, Tennessee 37067.

8. The Applicant, a pharmacy health care company, is a publicly traded Delaware corporation.

9. The Applicant filed a Form A with the Department on January 5, 2018, and a Form E with the Department on January 24, 2018. The Form A and E filings (as supplemented after filing) relate to the proposed acquisition of control of the Domestic Insurers (the “Proposed Acquisition”), by the Applicant. The Form A listed December 31, 2018, as the anticipated effective date of the Proposed Acquisition.

10. Specifically, the Applicant will acquire control of Aetna with Aetna becoming a direct, wholly-owned subsidiary of CVS Pharmacy, Inc., which is a direct, wholly-owned subsidiary of the Applicant.

11. The Form A and E filings were deemed complete on July 26, 2018.

12. Notice of the public hearing was provided to the Applicant on July 30, 2018, which was more than twenty (20) days prior to the hearing date, meeting the requirements of Tenn. Code Ann. § 56-11-103(d)(2).

13. Notice of the public hearing was provided to Aetna more than seven (7) days prior to the public hearing, meeting the requirements of Tenn. Code Ann. § 56-11-103(d)(2).

14. The public hearing was held August 22, 2018, which was less than thirty (30) days after the Form A and E filings were deemed complete, meeting the requirements of Tenn. Code Ann. § 56-11-103(d)(2).

15. The Applicant called Ms. Florence Crisp, Senior Legal Counsel of the Applicant, and Mr. Gregory S. Martino, Assistant Vice President of State Government Affairs of Aetna, who testified regarding the Proposed Acquisition and its impact on the Tennessee insurance market.

16. Mr. David Vacca, a Supervising Analyst within the Financial Analysis Section of the Department, testified regarding the analysis performed by the Department's staff when evaluating the Proposed Acquisition pursuant to Tenn. Code Ann. § 56-11-103.

17. Other than those set forth above, no other witnesses testified.

18. On and after the effective date of the Proposed Acquisition, the Domestic Insurers will continue to operate as accident and health insurance and life insurance companies in

Tennessee and the other jurisdictions in which they are licensed to transact insurance business and will continue to be subject to and governed by the laws of the State of Tennessee.

19. The Applicant has filed with the Commissioner all the materials contemplated and required for the Proposed Acquisition by Tenn. Code Ann. § 56-11-103.

20. After the Proposed Acquisition has been consummated, the Domestic Insurers will continue to satisfy all requirements for the issuance of a license to engage in the activities for which they are presently licensed.

21. The effect of the Proposed Acquisition will not substantially lessen competition in insurance in this state or tend to create a monopoly in this state.

22. Upon consummation of the Proposed Acquisition, the financial condition of the Applicant will not be such as might jeopardize the financial stability of the Domestic Insurers or prejudice the interests of the Domestic Insurers' policyholders.

23. The Applicant has no plans or proposals to wind down or liquidate the Domestic Insurers, sell their assets or consolidate or merge them with any person, or to make any other material change in their business or corporate structure or management that are unfair or unreasonable to the policyholders of the Domestic Insurers or that are not in the public interest.

24. The competence, experience and integrity of those persons who would control the operation of the Domestic Insurers following consummation of the Proposed Acquisition are not such that it would be against the interest of the policyholders of the Domestic Insurers or of the public to permit the Proposed Acquisition.

25. The Proposed Acquisition of the Domestic Insurers by the Applicant is not likely to be hazardous or prejudicial to the insurance buying public.

26. Upon the uncontroverted testimony of Ms. Crisp, the Applicant will refrain from issuing ordinary or extraordinary dividends or ordinary or extraordinary distributions from the Domestic Insurers for the three (3) years following approval of the Proposed Acquisition.

27. Upon the uncontroverted testimony of Mr. Vacca, the projections within the original Form A stated that no dividends are expected to be paid by the Domestic Insurers for three (3) years following consummation of Proposed Acquisition.

CONCLUSIONS OF LAW

Tenn. Code Ann. § 56-11-103(d)(1) provides that the Commissioner shall approve any merger or other acquisition of control of a domestic insurer unless, after a public hearing thereon, the Commissioner finds that:

- (A) 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;
- (B) The effect of the merger or other acquisition of control would be to substantially lessen competition in insurance in this state or tend to create a monopoly therein. In applying the competitive standard in this subdivision (d)(1)(B):
 - (i) The informational requirements of § 56-11-104(c)(1) and the standards of § 56-11-104(d)(2) shall apply;
 - (ii) The merger or other acquisition shall not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by § 56-11-104(d)(3) exist; and
 - (iii) The commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;
- (C) The financial condition of any acquiring party is such as might jeopardize the financial stability of the domestic insurer, or prejudice the interest of its policyholders;

- (D) The plans or proposals which the acquiring party has to liquidate the domestic 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 of the domestic insurer and not in the public interest;
- (E) The competence, experience and integrity of those persons who would control the operation of the domestic insurer are such that it would not be in the interest of policyholders of the domestic insurer and of the public to permit the merger or other acquisition of control; or
- (F) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

Applying the standards delineated in Tenn. Code Ann. § 56-11-103(d)(1)(A)-(F) to the Proposed Acquisition, as established by the testimony at the public hearing and the filings made in this matter, the Findings of Fact contained herein, and the record taken as a whole, the Proposed Acquisition meets the statutory standards for approval by the Commissioner.

ORDER

Accordingly, based upon the above Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that:

1. The Motions for Admission *Pro Hac Vice* of Mr. Steven Whitmer, Mr. Timothy Farber and Mr. Daniel Krane are **GRANTED**.
2. The Applicant will not pay any ordinary dividend or make any other ordinary distribution from the Domestic Insurers for three (3) years following the consummation of the Proposed Acquisition without approval of the Commissioner. Failure to adhere to the order in this paragraph would be a violation of Tenn. Code Ann. § 56-2-305 and would subject the Applicant to the penalties contained therein.

3. The Applicant will ensure that the Domestic Insurers maintain a Risk Based Capital level of at least three hundred fifty percent (350%) at all times for the three (3) years following the consummation of the Proposed Acquisition. Failure to adhere to the order in this paragraph would be a violation of Tenn. Code Ann. § 56-2-305 and would subject the Applicant to the penalties contained therein.

4. The Form A filing, as supplemented by the Applicant, to acquire control of American Continental Insurance Company and Continental Life Insurance Company of Brentwood, Tennessee is **APPROVED**.

ENTERED this the 23rd day of October, 2018.



Julie Mix McPeak, Commissioner
State of Tennessee
Department of Commerce and Insurance

APPROVED FOR ENTRY:



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Order Approving Plan of Acquisition has been sent via email to CVS Health Corporation's attorneys Tim Farber at TFarber@lockelord.com and Steve Whitmer at SWhitmer@lockelord.com and place in the State's mail system to be mailed first class, postage prepaid, to Tim Farber, Locke Lord LLP, 111 South Wacker Drive, Chicago, IL 60606, on this the 23rd day of October 2018.



Patrick W. Merkel