

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

AUG 26 2021

RICK WARREN
COURT CLERK

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In Re: Transfer and Novation of Insurance)
Policies from **SENTRY INSURANCE**)
COMPANY, f/k/a SENTRY)
INSURANCE A MUTUAL)
COMPANY, a Wisconsin domestic)
insurance company,)
))
Applicant,)
To)
))
NATIONAL LEGACY INSURANCE)
COMPANY, an Oklahoma domestic)
insurance company,)
))
Assuming Insurer,)
))
HONORABLE GLEN MULREADY,)
Insurance Commissioner of the State of)
Oklahoma,)
))
Statutory Party.)

Case No. CJ-2020-5754

JUDGMENT AND
ORDER OF APPROVAL AND IMPLEMENTATION OF THE
INSURANCE BUSINESS TRANSFER PLAN

THIS COURT, having reviewed the Petition for Implementation of the Insurance Business Transfer (“IBT”) Plan filed by Applicant and Transferring Insurer, Sentry Insurance Company f/k/a Sentry Insurance a Mutual Company, domiciled in Wisconsin, and the Assuming Insurer, National Legacy Insurance Company, domiciled in Oklahoma, in accordance with the Insurance Business Transfer Act (“IBT Act”); having evaluated the evidence provided by the witnesses’ sworn testimony as examined in open Court, the exhibits admitted into evidence, and the record before the Court; having taken notice of matters stipulated by the Parties; having considered the legal authorities presented; and otherwise being fully advised in the premises, enters this JUDGMENT which FINDS and ORDERS the following regarding the proposed transfer of the policies which are the subject of the IBT Plan (“Subject Business”).

FINDINGS OF FACT

To the extent any of the evidence in the record conflicts with any of the facts found below, the Court has weighed the competing evidence and found the greater weight of the evidence in favor of the facts set forth below:

1. Sentry Insurance Company, a Wisconsin corporation, is an insurance company which is also referred to as “Applicant,” “Transferring Insurer,” and “Sentry.” The IBT Act requires the transferring insurer or reinsurer to initiate this process.¹ Therefore, Sentry is seeking this Court’s approval to implement the IBT Plan.²
2. National Legacy Insurance Company, an Oklahoma corporation, is an insurance company, which is also referred to as “NLIC” and “Assuming Insurer.”
3. The Honorable Glen Mulready, the Commissioner of the Insurance Department of the State of Oklahoma,³ is also referred to interchangeably as the “Commissioner.” The Commissioner is the chief executive officer and is generally charged with the duty of administering and enforcing all provisions of the Oklahoma Insurance Code,⁴ and otherwise represents *ex relatione* the Insurance Department of the State of Oklahoma⁵ (“Oklahoma Insurance Department”).⁶ The Commissioner is a Party to this case, as required by OKLA. STAT. tit. 36, § 1686(B)(4).⁷
4. Sentry formally initiated this process on October 2, 2020, by filing the IBT Plan with the Commissioner and Insurance Department.⁸

¹ See OKLA. STAT. tit. 36, §§ 1683(2), 1683(16), and 1686(A)(1).

² See *Id.*

³ See OKLA. STAT. tit. 36, § 1683(6) (“‘Commissioner’ means the Oklahoma Insurance Commissioner.”); see also OKLA. STAT. tit. 36, § 106 (“When used with reference to administration of this Code, ‘Insurance commissioner’ or ‘Commissioner’ means the Insurance Commissioner of the State of Oklahoma.”); OKLA. STAT. tit. 36, § 1631(2) (“‘Commissioner’ means the Insurance Commissioner of the State of Oklahoma, the Commissioner’s deputies, or the Insurance Department, as appropriate[.]”).

⁴ See OKLA. STAT. tit. 36, § 101 (“Title 36 of the Oklahoma Statutes shall be known and may be cited as the Oklahoma Insurance Code.”). See generally OKLA. STAT. tit. 36, §§ 101, *et seq.*

⁵ See OKLA. STAT. tit. 36, § 108 (“Unless the context otherwise requires, ‘Insurance Department’ or ‘Department’ means the Insurance Department established by Section 301, Article 3 of this Code.”); OKLA. STAT. tit. 36, § 301 (“The Insurance Department of the State of Oklahoma is hereby created. The Insurance commissioner shall be the chief executive officer of the Insurance Department. The powers and duties of the Insurance Commissioner shall be those created by the Oklahoma Insurance Code.”)

⁶ See OKLA. STAT. tit. 36, § 307.

⁷ See OKLA. STAT. tit. 36, § 1686(B)(4) (“The Commissioner shall be a party to the proceedings before the court concerning the petition and shall be served with copies of all filings pursuant to the Rules for District Courts of Oklahoma.”).

⁸ See OKLA. STAT. tit. 36, § 1686(A).

5. The IBT Plan proposes to transfer and novate Sentry's liabilities as an assuming reinsurer within the Excess and Casualty Reinsurance Association ("ECRA") Pool to NLIC, which constitutes the "Subject Business,"⁹ OKLA. STAT. tit. 36, § 1683(14).
6. The Commissioner performed a thorough and careful assessment of the IBT Plan, pursuant to OKLA. STAT. tit. 36, § 1686(A).
7. The Commissioner's evaluation included analysis by an Independent Expert,¹⁰ which is also referred to as the "Independent Expert Report."¹¹
8. The Independent Expert Report includes all substantive information and complies with the procedures required by the IBT Act.¹²
9. On September 21, 2020, the Commissioner of the Wisconsin Office of the Commissioner of Insurance, Mark Afable, transmitted correspondence to Sentry stating, "Under s. 611.78, Wis. Stat., the commissioner reviews and can disapprove a transfer of any part of the insurance business of an insurer or reinsurance outside the normal course of business. Please be advised that this office non-disapproved the proposed transaction this office non-disapproved the proposed transaction."¹³
10. Commissioner Afable's approval came only after he also considered the Independent Expert's conclusion that cedants would not be adversely impacted by this IBT Plan.¹⁴

⁹ See OKLA. STAT. tit. 36, § 1683(14).

¹⁰ See OKLA. STAT. tit. 36, § 1683(10) ("Independent [E]xpert' means an impartial person who has no financial interest in either the assuming insurer or transferring insurer, has not been employed by or acted as an officer, director, consultant or other independent contractor for either the assuming insurer or transferring insurer within the past twelve (12) months, is not appointed by the Commissioner to assist in any capacity in any proceeding initiated pursuant to Article 18 or Article 19 of Title 36 of the Oklahoma Statutes and is receiving no compensation in connection with the transaction governed by this act other than a fee based on an hourly basis that is not contingent on the approval or consummation of an Insurance Business Transfer and provides proof of insurance coverage that is satisfactory to the Commissioner."); see also Okla. Stat. tit. 36, § 1686(A)(1)(n) ("[A]n opinion report from an independent expert, selected by the Commissioner from a list of at least two nominees submitted jointly by the transferring insurer and the assuming insurer, to assist the Commissioner and the court in connection with their review of the proposed transaction. Should the Commissioner, in his or her sole discretion, reject the nominees, he or she may appoint the independent expert.").

¹¹ Melissa S. Holt, PwC, Independent Expert's Report on the Proposed Insurance Business Transfer from Sentry Insurance a Mutual Company to National Legacy Insurance Company, dated September 29, 2020 (Exhibit 2 in Appendix B to the Trial Brief).

¹² See OKLA. STAT. tit. 36, § 1686(A)(2).

¹³ Letter from Mark Afable, Commissioner of Insurance, Wisconsin Office of the Commissioner of Insurance, to Wesley Sunu, Associate General Counsel—Insurance Services, Sentry, dated September 21, 2020 ("Wisconsin Non-Disapproval Letter") (Exhibit 3 in Appendix B of the Trial Brief).

¹⁴ *Id.*

11. Commissioner Mulready and the Oklahoma Insurance Department approved the filing of this IBT Plan for approval by the Court, as memorialized by the Order (“Commissioner’s Order”) filed on November 23, 2020, in the underlying application to the Commissioner and the Oklahoma Insurance Department.¹⁵
12. The Applicant has paid or agreed to pay all fees and costs related to these proceedings, pursuant to OKLA. STAT. tit. 36, § 1688(B).¹⁶
13. The IBT Plan includes all information and otherwise complies with the requirements of the IBT Act.¹⁷
14. This Court adopts as true and correct the Commissioner’s Order, including all findings, conclusions, and all other portions found therein, without reservation.¹⁸
15. No objections have been submitted or requested of this Court regarding any facts admitted into evidence or legal arguments and conclusions submitted by the Parties.¹⁹
16. Sentry has followed the statutory procedure for administrative and court approval of an IBT Plan, as set forth in OKLA. STAT. tit. 36, §§ 1681 – 1688.
17. Sentry has provided notice to all persons entitled to such notice, and in accordance with the methods prescribed in OKLA. STAT. tit. 36, § 1685.²⁰
18. No objections to the proposed IBT Plan have been filed with the Court, and no person or other entity has requested to be heard at the hearing for this matter.
19. On June 28, 2021, Nationwide Indemnity Company (“Nationwide”), an agent authorized by two companies involved in the ECRA business, filed a comment with the Court.²¹ As stated in the letter, Nationwide is “authorized by Employers Insurance Company of Wausau and National Casualty Company to provide their comments regarding the Sentry/National Legacy Petition.”²² As such, Nationwide’s comment letter is limited to providing their thoughts on the IBT process and statute in general and focuses on their opinions on transparency, stress test and risk factors, and the comment period.

¹⁵ Approval Order in Case No. 20-0582-IBT from Oklahoma Insurance Commissioner, filed on November 23, 2020 (Exhibit 2 to the Petition for Implementation) (Exhibit 4 in Appendix B to the Trial Brief).

¹⁶ See Commissioner’s Order at pg. 4 (Findings of Fact 6) (Exhibit 2 to the Petition for Implementation) (Exhibit 4 in Appendix B to the Trial Brief).

¹⁷ See OKLA. STAT. tit. 36, § 1686(A)(1).

¹⁸ See Approval Order in Case No. 20-0582-IBT from Oklahoma Insurance Commissioner, filed on November 23, 2020 (Exhibit 2 to the Petition for Implementation) (Exhibit 4 in Appendix B to the Trial Brief).

¹⁹ See Trial Brief; see also Pre-Trial Conference Order and Scheduling Order.

²⁰ See Affidavit of Daniel Jurgella, August 24, 2021 (Exhibit 11 in Appendix B to the Trial Brief); Proof of Publication Affidavit by Wisconsin State Journal, published on April 27, 2021, signed by Arlene Staff on April 27, 2021 (Exhibit A Daniel Jurgella’s Affidavit); Ad Proof from Wisconsin State Journal for Notice by Publication of Insurance Business Transfer (Exhibit B to Daniel Jurgella’s Affidavit).

²¹ Exhibit 9 in Appendix B to the Trial Brief.

²² *Id.* at pg. 1. (underline added).

20. Nationwide, Employers Insurance Company of Wausau, and National Casualty Company are not and do not request to be recognized as “[a]ny person, including by their legal representative, who considers himself, herself or itself to be adversely affected[.]” OKLA. STAT. tit. 36, § 1686(B)(8).
21. Nationwide does not offer any affirmative evidence or argument that any cedant, claimant, person, or entity will be “adversely affected” pursuant to OKLA. STAT. tit. 36, § 1686(B)(8).
22. After careful consideration of the Nationwide comment, this Court finds that none of the comments provide any basis to refrain from entering an Order of Approval and Implementation of the IBT Plan.
23. The Court finds no evidence or argument assert in the comment filed by Nationwide that implementation of the IBT Plan will materially adversely affect the cedants, claimants, persons, and other entities associated with the Subject Business.
24. The proposed IBT Plan has been analyzed by an Independent Expert and the Oklahoma Insurance Commissioner. Both have concluded that the proposed IBT Plan will not materially, adversely affect the cedants or claimants that are part of the Subject Business.²³ The proposed IBT Plan has also been analyzed by the Wisconsin Commissioner of Insurance who has not disapproved of the proposed transfer.²⁴
25. Likewise, this Court has not been presented with any evidence to the contrary, and therefore, finds that implementation of the IBT Plan will not materially, adversely affect the interests of cedants or claimants that are part of the Subject Business, nor any other person or entity.

CONCLUSIONS OF LAW

26. Oklahoma’s IBT Act, OKLA. STAT. tit. 36, §§ 1681 – 1688, effective November 1, 2018, was enacted, in part, to provide a new and different process addressing the significant limitations in the current methods available to insurers to transfer or assume blocks of business. The statutory process requires a higher level of review than traditional methods and is intended to provide finality that is not available via existing processes, with a legal result that includes the assuming insurer being treated as if it were the original insurer of the transferred policies.²⁵

²³ See Independent Expert Report at pg. 32 (“I have concluded that the transfer does not materially, adversely impact either the Sentry policyholders or the ECRA reinsureds in the business being transferred.”) (Exhibit 2 in Appendix B to the Trial Brief); see Commissioner’s Order at pg. 5 (“The Commissioner has reviewed the Plan with the assistance of an appointed Independent Expert and determined that the Plan meets the criteria for approval and if implemented, would not have a material adverse impact on the interests of policyholders or claimants that are part of the subject business.”) (Exhibit 4 in Appendix B to the Trial Brief).

²⁴ See Wisconsin Non-Disapproval Letter at pg. 2 (“Please be advised that this office non-disapproved the proposed transaction.”) (Exhibit 3 in Appendix B to the Trial Brief).

²⁵ OKLA. STAT. tit. 36, §§ 1682, 1686.

27. The District Court of Oklahoma County, State of Oklahoma, has jurisdiction to hear, consider, and decide the issues in this case, pursuant to OKLA. STAT. tit. 36, §§ 1682, 1683, 1684, and 1686(B) and (C).
28. The District Court of Oklahoma County, State of Oklahoma, is the proper venue to hear, consider, and decide the issues stated in this case, pursuant to OKLA. STAT. tit. 36, § 1684(B).
29. Commissioner Afafe's correspondence dated September 21, 2020, satisfies the requirement of OKLA. STAT. tit. 36, § 1686(A)(1)(m) that the Transferring Insurer provide evidence of approval or non-objection of the transfer from the chief insurance regulator of the state of the Transferring Insurer's domicile.²⁶
30. Oklahoma Insurance Commissioner Mulready's Order, dated November 23, 2020, in the underlying application, Case No. 20-0582-IBT, satisfies the review and approval process set forth in OKLA. STAT. tit. 36, § 1686(A).
31. Notice provided to interested persons regarding the proposed IBT Plan was objectively reasonable, satisfied the requirements set forth in OKLA. STAT. tit. 36, § 1685, and satisfied constitutional Due Process considerations.
32. Interested persons have had a reasonable opportunity to be heard in writing during a comment period that exceeded the sixty (60) day requirement provided by OKLA. STAT. tit. 36, § 1686(B)(6). Only one (1) entity provided comment to the Court, as described in the above Findings of Fact. Because there were no other requests, the opportunity to be heard in writing is deemed waived by all other interested persons.
33. Interested persons have also had a reasonable opportunity to request to be heard by the Court at a hearing regarding this matter. Because there were no such requests, the opportunity to be heard in person or through counsel is deemed waived by all interested persons.
34. Treatment of NLIC as the "original" assuming reinsurer of the Subject Business applies not only to contractual rights, obligations, and liabilities, but also to seamless application of regulatory laws applicable to the Subject Business, as if NLIC were the "original" assuming reinsurer of the Subject Business from the time and in the manner that the policies were issued, without interruption or modification.
35. Approval of the IBT Plan by this Court will not impair any contractual rights or obligations regarding the Subject Business. Therefore, neither the Oklahoma Constitution's Contracts Clause²⁷ nor the U.S. Constitution's Contracts Clause²⁸ are infringed by this Court's action.

²⁶ See note 13.

²⁷ OKLA. CONST. art. 2, § 15.

²⁸ U.S. CONST. art. I, § 10.

36. Pursuant to the U.S. Constitution's Full Faith and Credit Clause²⁹ and federal legislation, this Court's findings of facts, conclusions of law, order and judgment "shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of Oklahoma."³⁰
37. Based on the above findings and conclusions, and pursuant to OKLA. STAT. tit. 36, § 1686(C)(3), "the court shall enter an implementation order."

ORDER OF APPROVAL AND IMPLEMENTATION
OF THE
INSURANCE BUSINESS TRANSFER PLAN

IT IS THEREFORE ORDERED THAT:

1. The Insurance Business Transfer Plan that is the subject of this action, which proposes to transfer Subject Business from Sentry Insurance Company to National Legacy Insurance Company, is hereby **APPROVED** and shall be **IMPLEMENTED**, effective as of the date of this Order ("Effective Date").
2. On and after the Effective Date of this Order, all policies which are part of the Subject Business shall be and hereby are transferred and novated pursuant to OKLA. STAT. tit. 36, §§ 1681 – 1688, and this Order.
3. On and after the Effective Date of this Order, the transfer and novation shall be with respect to all policyholders or reinsureds and their respective policies and reinsurance agreements under the Subject Business, including the extinguishment of all rights of cedants against Sentry Insurance Company under policies that are part of the Subject Business.
4. On and after the Effective Date of this Order, Sentry Insurance Company shall have no further rights, obligations, or liabilities with respect to the Subject Business.
5. On and after the Effective Date of this Order, National Legacy Insurance Company shall have all of Sentry Insurance Company's rights, obligations, and liabilities regarding the Subject Business as if it were the original assuming reinsurer of such policies, including the same standing as the Transferring Insurer pursuant to contract, statute, and interpretation, relating back to the insurance of such policies.
6. On and after the Effective Date of this Order, Sentry Insurance Company is released from any and all obligations or liabilities under policies that are part of the Subject Business.

²⁹ U.S. CONST. art. IV, § 1.

³⁰ 28 U.S.C. § 1738.

7. On and after the Effective Date of this Order, all property and liabilities related to the Subject Business, including, but not limited to, the ceded reinsurance of transferred policies and contracts on the Subject Business, shall be and hereby is transferred from Sentry Insurance Company to National Legacy Insurance Company, notwithstanding any non-assignment provisions in any such reinsurance contracts.
8. On and after the Effective Date of this Order, the Subject Business shall vest in and become liabilities of the National Legacy Insurance Company.
9. Sentry Insurance Company shall provide notice of this transfer and novation of the Subject Business in accordance with the notice provisions in OKLA. STAT. tit. 36, § 1685.
10. This Court shall retain jurisdiction over this case for the limited purpose of allowing the Parties to request such orders regarding incidental, consequential, and supplementary matters as are necessary to assure the Insurance Business Transfer Plan is fully and effectively carried out, pursuant to OKLA. STAT. tit. 36, § 1686(C)(3)(f).
11. This **JUDGMENT** shall be considered **FINAL** in every other respect.

Signed this 26th day of August, 2021

CINDY H. TRUONG
HONORABLE CINDY TRUONG
DISTRICT JUDGE

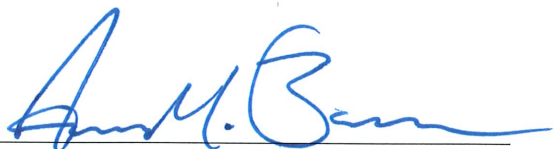
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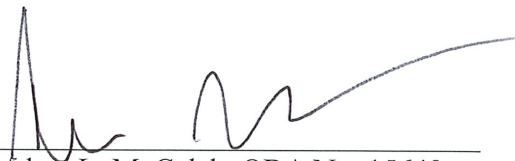
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