

STATE OF ARIZONA

MAR 27 1998

DEPARTMENT OF INSURANCE

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In the Matter of Acquisition of)
Control of)
KEY PARTNERS INSURANCE COMPANY)
(NAIC No. 67305),)
Insurer,)
by)
CONSECO, INC.,)
Petitioner.)

Docket No. 98A-019-INS
ORDER

On March 24, 1998, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal, submitted "Recommended Decision of Administrative Law Judge" ("Recommended Decision"), a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed the Recommended Decision and enters the following order:

1. The recommended findings of fact and conclusions of law are adopted.
2. The acquisition of control of the Insurer by the Petitioner will be approved subject to the express conditions as follows:
 - a. If the completed fingerprint cards furnished to the Department reveal that any of Petitioner's officers or directors have been charged with or convicted of a felony or misdemeanor other than minor traffic violations, the individual(s) will be removed as an officer and/or director of the Petitioner within 30 days after notice to Petitioner by the Department and will be

1 replaced with an officer or director acceptable to the Director.
2 If Petitioner fails to take the prescribed action within 30 days,
3 this failure will constitute an immediate danger to the public
4 and the Director immediately may suspend or revoke Insurer's
5 certificate of authority without further proceedings.

6 3. Except as provided below, all information,
7 documents, and copies relating to the Insurer and Petitioner
8 obtained by or disclosed to the Director, or any other person in
9 the course of a filing, an examination or investigation made
10 pursuant to A.R.S. §§20-481.03 and 20-481.20, will not be given
11 confidential treatment, will be subject to subpoena and will be
12 made public documents, subject to inspection, examination or
13 copying by any person.

14 4. The Petitioner will advise the Director in writing
15 of the effective date of the change of control.

16 5. Until further notice from the Department, the
17 Insurer will file quarterly financial statements following the
18 effective date of the acquisition.

19 6. Upon consummation of this acquisition, the Insurer
20 will file its registration statement in the form prescribed by
21 A.R.S. §20-481.10 and within the time period prescribed by
22 A.R.S. §20-481.09 or §20-481.13. If the registration statement
23 would duplicate the information previously submitted by the
24 Petitioner in the statement filed with the Department pursuant to
25 A.R.S. §20-481.03 and there have been no material changes since
26 the filing of that statement, then the Insurer will submit a
27 statement to that effect incorporating by reference the statement
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previously filed with the Department in lieu of the registration statement.

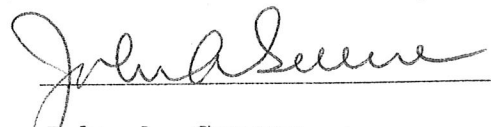
7. The failure to adhere to one or more of the above terms and conditions will result without further proceedings in the suspension or the revocation of the Insurer's certificate of authority.

NOTIFICATION OF RIGHTS

The aggrieved party may request a rehearing with respect to this Order by filing a written petition with the Office of Administrative Hearings within 30 days of the date of this Order, setting forth the basis for such relief pursuant to A.A.C. R20-6-114(B).

The final decision of the Director may be appealed to the Superior Court of Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal must notify the Office of Administrative Hearings of the appeal within ten days after filing the complaint commencing the appeal, pursuant to A.R.S. §41-1092.10.

DATED this 27 day of March, 1998


John A. Greene
Director of Insurance

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COPY of the foregoing mailed
this 27th day of March, 1998 to:

Charles R. Cohen, Deputy Director
Gregory Y. Harris, Executive Assistant Director
Mary Butterfield, Assistant Director
Catherine O'Neil, Assistant Director
Gary Torticill, Assistant Director
Deloris Williamson, Assistant Director
Scott Greenberg, Business Administrator
Arizona Department of Insurance
2910 N. 44th Street, Suite 210
Phoenix, AZ 85018

Office of Administrative Hearings
1700 West Washington, Suite 602
Phoenix, AZ 85007

John J. Sabl
Secretary
Richard R. Dykhouse
Associate General Counsel
Conseco, Inc.
11825 N. Pennsylvania Street
Carmel, Indiana 46032-4570

Steven R. Henry
Low & Childers, P.C.
2999 North 44th Street, Suite 250
Phoenix, Arizona 85018

Esther Davis

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In the Matter of the Acquisition of
Control of:

No. 98A-019-INS

4 **KEY PARTNERS INSURANCE**
5 **COMPANY (NAIC No. 673051),**

6 Insurer,

7 by

RECOMMENDED DECISION
OF ADMINISTRATIVE
LAW JUDGE

8 **CONSECO, INC.,**

9 Petitioner.
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HEARING: March 20, 1998

13 **APPEARANCES:** Steven R. Henry, Esq. for the Petitioner

14 **ADMINISTRATIVE LAW JUDGE:** Lewis D. Kowal
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17 On March 20, 1998, a hearing took place to consider the application for the
18 acquisition of control of Key Partners Life Insurance Company (the "Insurer"), filed by
19 Conseco, Inc. (the "Petitioner"), with the Arizona Department of Insurance (the
20 "Department"), and for approval of Petitioner as the controlling person of the Insurer
21 pursuant to the provisions of A.R.S. §§20-481 through 20-481.23, and A.A.C. R20-6-
1402.

22 Based upon the entire record in this matter, the following Findings of Fact,
23 Conclusions of Law and Recommended Order are made:

24 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

- 25 1. The Insurer is a domestic insurer as referred to in A.R.S. §20-481.02.
26 2. The Petitioner has filed a statement as referred to in A.R.S. §§20-481.02
and 20-481.03, in the form required by A.A.C. R20-6-1402.
27 3. The Insurer and its security holders waived the ten (10) day advance
28 notice to be given as required by A.R.S. §20-481.07.
29 4. No evidence has been produced at the hearing that would indicate or form
30 the basis for a finding that the Petitioner's acquisition of control of the Insurer:

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1700 West Washington, Suite 602
Phoenix, Arizona 85007
(602) 542-9826

- 1 a. Is contrary to law;
- 2 b. Is inequitable to the shareholders of any domestic insurer involved;
- 3 c. Would substantially reduce the security of and service to Insurer in this
State or elsewhere;
- 4 d. After the change of control the domestic insurer would not be able to
5 satisfy the requirements for the reissuance of a certificate of authority to write the line or
6 lines of insurance for which it is presently licensed;
- 7 e. The effect of the acquisition of control would be to substantially lessen
8 competition in insurance in this state or tend to create a monopoly;
- 9 f. The financial condition of any acquiring party might jeopardize the
10 financial stability of the Insurer or prejudice the interest of its policyholders;
- 11 g. The plans or proposals that the acquiring party has to liquidate the
12 Insurer, sell its assets or consolidate or merge it with any person, or to make any other
13 material change in its business or corporate structure or management, are unfair and
14 unreasonable to policyholders of the Insurer and are not in the public interest;
- 15 h. The competence, experience and integrity of those persons who would
16 control the operation of the Insurer are such that it would not be in the public interest of
17 policyholders of the Insurer and of the public to permit the merger or other acquisition of
18 control; or
- 19 i. The acquisition is likely to be hazardous or prejudicial to the insurance-
20 buying public.

21 5. Within the past two years, Petitioner has furnished completed fingerprint
22 cards to the Department to enable the Department to determine if any of Petitioner's
23 officers or directors have been charged with or convicted of a felony or misdemeanor
24 other than minor traffic violations. During the past two years, the only change that
25 Petitioner has made with respect to its board of directors and officers is that Petitioner
26 has obtained a different general counsel. The Petitioner has made representations that
27 none of its officers or directors have been charged with or convicted of a felony or
28 misdemeanor other than minor traffic violations.

29 6. The interests of policyholders, shareholders or the public will be served by
30 the publication of all information, documents and copies, relating to the Insurer and
Petitioner, and obtained by or disclosed to the Director, or any other person in the
course of a filing, an examination, or investigation made pursuant to A.R.S. §§20-
481.03, 20-481.10 and 20-481.20.

1 7. Based upon its review of the Petitioner's Form A filing, the Department
2 represented its belief that the Petitioner's Form A filing is complete and in compliance
3 with Arizona law and recommended approval of this acquisition.

4 **RECOMMENDED ORDER**

5 The undersigned Administrative Law Judge recommends that:

6 1. The acquisition of control of the Insurer by the Petitioner be approved
7 subject to the express conditions as follows:

8 a. If the completed fingerprint cards furnished to the Department reveal that
9 any of Petitioner's officers or directors have been charged with or convicted of a felony
10 or misdemeanor other than minor traffic violations, the individual(s) shall be removed as
11 an officer and/or director of the Petitioner within 30 days after notice to Petitioner by the
12 Department and shall be replaced with an officer or director acceptable to the Director.
13 If Petitioner fails to take the prescribed action within 30 days, this failure will constitute
14 an immediate danger to the public and the Director immediately may suspend or revoke
15 Insurer's certificate of authority without further proceedings.

16 2. All information, documents, and copies relating to the Insurer and
17 Petitioner obtained by or disclosed to the Director, or any other person in the course of
18 a filing, an examination or investigation made pursuant to A.R.S. §§20-481.03 and 20-
19 481.20, not be given confidential treatment, be subject to subpoena and shall be made
20 public documents, subject to inspection, examination or copying by any person.

21 3. The Petitioner advise the Director in writing of the effective date of the
22 change of control.

23 4. Until further notice from the Department, the Insurer file quarterly financial
24 statements following the effective date of the acquisition.

25 5. Upon consummation of this acquisition, the Insurer file its registration
26 statement in the form prescribed by A.R.S. §20-481.10 and within the time period
27 prescribed by A.R.S. §20-481.09 or §20-481.13. If the registration statement would
28 duplicate the information previously submitted by the Petitioner in the statement filed
29 with the Department pursuant to A.R.S. §20-481.03 and there have been no material
30 changes since the filing of that statement, then the Insurer submit a statement to that
effect incorporating by reference the statement previously filed with the Department in
lieu of the registration statement.

...

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6. The failure to adhere to one or more of the above terms and conditions shall result without further proceedings in the suspension or the revocation of the Insurer's certificate of authority.

Done this day, March 24, 1998.



LEWIS D. KOWAL
Administrative Law Judge

Original transmitted by mail this
25 day of March, 1998, to:

Mr. John A. Greene, Director
Department of Insurance
ATTN: Curvey Burton
2910 North 44th Street, #210
Phoenix, AZ 85018-7256

By 