

STATE OF MAINE  
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION  
BUREAU OF INSURANCE

IN RE: )  
)  
APPLICATION OF PATRIOT MUTUAL )  
INSURANCE COMPANY FOR APPROVAL TO )  
REORGANIZE AS A STOCK INSURER )  
WITHIN A MUTUAL HOLDING COMPANY )  
STRUCTURE )  
)  
APPLICATION OF FRANKENMUTH MUTUAL )  
INSURANCE COMPANY FOR APPROVAL OF )  
THE ACQUISITION OF CONTROL BY )  
MERGER OF THE REORGANIZED PATRIOT )  
COMPANIES )

AMENDMENT NO. 1 TO  
DECISION AND ORDER

Docket No. INS-06-400

The Decision and Order issued by Acting Superintendent Eric Cioppa on February 23, 2007 in this proceeding is amended as set forth below.

**BACKGROUND**

The Form A filing dated August 18, 2006 that Frankenmuth Mutual Insurance Company ("Frankenmuth") filed in connection with this proceeding proposed and described the formation of an educational foundation.

As originally proposed, there was to be newly formed the Patriot Education Foundation ("Foundation") as a Maine non-profit tax exempt organization. The Foundation was to be incorporated by seven individuals who had been directors of Patriot Mutual Insurance Company and were to become directors of Patriot Insurance Company ("Patriot"). The Foundation was to be organized for charitable, educational and non-profit purposes and was to be classified under Maine law as a public benefit corporation.<sup>1</sup> The principal purpose of the Foundation would be to promote and advance education and educational opportunities in the State of Maine regarding insurance and the business of insurance, including funding scholarships to Maine residents who pursue a career in the insurance industry. Frankenmuth committed to contributing \$1,000,000 to the Foundation.

The seven then-current members of the Patriot Board of Directors were also proposed as the initial Board of Directors of the Foundation. The proposed organizational documents provided that the Foundation was not prevented from paying reasonable compensation and expenses to the directors for services rendered subject to specified limitations. Robert Clark, one of the proposed Directors of the Foundation nevertheless testified that he did not anticipate that

the Directors would receive any compensation other than expense reimbursement for their service to the Foundation.

The Acting Superintendent's February 23, 2007 Decision and Order found the establishment of the Foundation as set forth in the Form A filing in conformance with Maine law and approved it subject to the condition that, if necessary to reflect the intentions of the parties regarding limitations to compensation for the Education Foundation's Board of Directors, the Applicant file amended incorporation documents by March 2, 2007 with the Superintendent. Amendments were to be limited solely to the issue of Directors' compensation as discussed above.

#### THE AMENDMENT TO THE FILING

Per letter dated September 4, 2008, Counsel for Frankenmuth advised this Office that Frankenmuth and Patriot have revised the manner in which they intend to provide for educational funding and sought my approval of the revisions. Under the revised plan, the utilization of the Foundation as the vehicle for providing higher education funding regarding insurance has been replaced by a scholarship fund which is to be administered by the Maine Community Foundation. Frankenmuth has committed to making a \$1,000,000 contribution to the Maine Community Foundation in order to fund this scholarship fund. Details of the revised plan are set forth within Counsel's letter and attachments thereto.

Patriot Insurance Company, the Board of Directors of Patriot Insurance Company and the Maine Office of the Attorney General, each of whom was either a party or an intervenor to the proceeding have been provided notice of the proposed amendment to the filing and have indicated no opposition to it.

#### FINDINGS

A Scholarship Fund Agreement dated August 27, 2008 has been entered into between Frankenmuth and the Maine Community Foundation.<sup>2</sup> The Fund Agreement includes a Fee Schedule, Fund Guidelines for Administration, and Maine Community Foundation – Primary Pool: Statement of Investment Objectives and Policies. These documents describe the terms on which the Maine Community Foundation would establish the Patriot Education Scholarship Fund ("Fund").

Under these revisions, the creation of a new Foundation is neither contemplated nor necessary. Unlike the originally approved filing, the Patriot Directors will no longer receive compensation in connection with the Fund. Their role has been redefined as one of service as uncompensated members of an Advisory Committee regarding the Fund. The Superintendent's review of the Foundation originally proposed focused upon the question of whether or not it satisfied the legal requirement that Patriot's Directors be compensated only reasonable fees

in connection with services actually rendered. Findings in the February 23, 2007 Decision and Order regarding the compensation of Directors of the Foundation become moot points given the revised arrangement for support of education which has now been adopted. The revised arrangement also relieves the need of the Patriot Board of Directors and Frankenmuth to take any further action with respect to Condition Number 3 of the Acting Superintendent's February 23, 2007 Order.

This Amendment to the February 23, 2007 Decision and Order addresses those issues within the Superintendent's statutory authority and shall not be construed to determine or resolve any disputes, issues, or actions which may be ruled on by a court of competent jurisdiction.

It should be noted that, to the extent that a specific plan for establishing an educational foundation was filed by the Applicant and compliance therewith was a condition of this Office's approval during the 2006 proceeding, Frankenmuth Mutual should have sought an amendment of the Decision and Order prior to proceeding ahead with its restructuring of this element of the transaction. All parties are advised that should they desire any further amendment to any condition of the Acting Superintendent's 2006 approval, appropriate submissions to this Office are necessary.

### **ORDER**

The proposal of Frankenmuth Mutual Insurance Company to amend its August 18, 2006 filing as set forth in its September 4, 2008 request is hereby approved. Compliance with Condition Number three of the Acting Superintendent's February 23, 2007 Decision and Order is no longer required. In all other respects, the February 23, 2007 Decision and Order remains in full force and effect.

### **NOTICE OF APPELLATE RIGHTS**

This Decision and Order is final agency action of the Superintendent of Insurance, within the meaning of the Maine Administrative Procedure Act, 5 M.R.S. § 8002(4). It may be appealed to the Superior Court in the manner provided for by 24-A M.R.S. § 236, 5 M.R.S. §§ 11001 through 11008, and M.R. Civ.P. 80C. Any party to the proceeding may initiate an appeal within thirty days after receiving this notice. Any aggrieved non party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal within forty days of the issuance of this Decision and Order. There is no automatic stay pending appeal. Application for stay may be made in the manner provided in 5 M.R.S. §11004.

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<sup>1</sup> One of these individuals, Peter Hunt, passed away during the pendency of the proceeding.

<sup>2</sup> Attachment 3 to Counsel's September 4, 2008 letter

Dated: October 10, 2008

Per Order Of

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Eric A. Cioppa  
Deputy Superintendent  
Designated Presiding Officer