

FILED

2015 APR -2 P 12: 24

BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

In the Matter of the Form A Application )  
for the Proposed Acquisition of Control )  
of: )  
MASON COUNTY TITLE )  
INSURANCE COMPANY, )  
a Washington domestic insurer, )  
by )  
RETITLE HOLDING COMPANY, LLC, )  
an Idaho limited liability company. )  
\_\_\_\_\_ )

Docket No. 15-0021  
FINAL ORDER ON APPLICATION  
FOR PROPOSED ACQUISITION OF  
CONTROL

**TO:** James J. Dufficy, Managing Member  
REtitle Holding Company LLC  
2900 Bristol Street, Suite G-203  
Costa Mesa, CA 92626

David C. Bayley, CEO  
Mason County Title Insurance Company  
P.O. Box 4157  
Olympia, WA 98501

**AND TO:** Mike Kreidler, Insurance Commissioner  
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner  
AnnaLisa Gellermann, Deputy Commissioner, Legal Affairs Division  
Darryl Colman, Insurance Enforcement Specialist, Legal Affairs Division  
William R. Michels, Deputy Commissioner, Company Supervision  
Ronald Pastuch, Holding Company Manager, Company Supervision  
Office of the Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

## NATURE OF PROCEEDING

On September 11, 2014, the Office of the Washington State Insurance Commissioner ("OIC") received a Statement regarding the Acquisition of Control of a Domestic Insurer (Form A) of Mason County Title Insurance Company ("MCTIC" or "Company") by REtitle Holding Company LLC ("Applicant" or "REtitle"), requesting the OIC's approval of the proposed acquisition of control.

On February 15, 2015, the OIC determined that the Form A contained all required documents and information and transmitted it to the OIC Hearings Unit.

The hearing of this matter was held on March 31, 2015 before the undersigned, Judge George Finkle (Ret.), who has been delegated the responsibility to act as Presiding Officer in this matter.

I have considered the records and files herein, as well as the oral testimony of Ronald J. Pastuch, CPA, Holding Company Manager, OIC Company Supervision Division, and James J. Dufficy, Managing Member, REtitle.

Documents filed with the Form A Application and all supplemental documents and information referenced here, as well as documents entered by the undersigned in this matter, are published on the OIC website at: <http://www.insurance.wa.gov/laws-rules/administrative-hearings/judicial-proceedings/m-o/> or can be obtained by contacting Kelly Cairns, Hearings Unit Paralegal, at (360)725-7002 or [KellyC@oic.wa.gov](mailto:KellyC@oic.wa.gov).

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. MCTIC is a Washington-domiciled title insurer wholly owned by David Bayley, which has been in existence since 1912 and holds a Certificate of Authority, issued by the OIC in 1958, to transact title insurance business.
2. REtitle is an Idaho limited liability company formed on June 11, 2014, for the purpose of acquiring MCTIC. The Form A states that REtitle currently intends no business operations other than holding the capital stock of MCTIC.
3. REtitle is seeking approval to acquire 100% of the issued and outstanding stock of MCTIC in an all-cash transaction. REtitle intends to apply for a Certificate of Authority to issue title insurance in the State of California and to transfer MCTIC's domicile to California.
4. Pursuant to RCW 48.05.290, the Applicant seeks the Commissioner's approval for the Company to withdraw from the title insurance market in Washington. RCW 48.05.290 sets forth the requirement that a withdrawing insurer must procure reinsurance for its existing policies as a condition to withdrawal, but permits the requirement to be waived if upon examination the withdrawing insurer is fully solvent and the protection of policyholders in this state will not be impaired by the waiver.

5. A waiver of reinsurance for MCTIC's existing policies is justified by the following factors:
- a. As established by the January 9, 2015 letter from Mr. Bayley to the OIC, reinsurance for outstanding title insurance policies is not available in the market from title insurers licensed in Washington (the requisite class of reinsurer under the statute).
  - b. The Company is solvent under the classic definition of solvency (i.e., able to meet its financial obligations when due). Against its unencumbered capital surplus of nearly \$750,000, it has no short term liabilities, and also has no long term liabilities other than reserves for its outstanding policies. The most recent actuarial opinion, obtained by MCTIC from Paul Struzzierrri of Milliman, FCAS and MAAA, estimated that as of December 31, 2014, reserves of \$13,055.00 constitutes reasonable provision to meet the estimated liabilities from the Company's outstanding book of policies.
  - c. The Applicant has committed that MCTIC will maintain the statutory premium reserve established under RCW 48.29.120 as reflected on the Company's books and records as of December 31, 2014 (the Washington Premium Reserve). The Washington Premium Reserve will be placed into an account maintained under the supervision of either the California or Washington Insurance Commission, and will be maintained solely for the purpose of ensuring that the Company meets any future obligations under Washington policies already in force. The Applicant has committed that Washington Premium Reserve will not be used as a fund to pay claims under Washington policies, and will not be used to constitute part of any statutory reserve required as a consequence of the future issuance of policies of title insurance in the state of California after the Closing. The Washington Premium Reserve will rather serve as a guaranty of the Company's proper performance of its obligation to resolve any claim promptly and properly on any policy existing at the time of Closing.
  - d. The Applicant has committed that for a period of no less than two (2) years from the acquisition of MCTIC pursuant to this Order, the Company will maintain access to its claims files on Washington policies, in paper or electronic format, at the offices of Mason County Title Company, located at 130 W. Railroad, Shelton, WA 98584. Any future claims made on any Washington policy in force so as to comply with the Claims Settlement Practices Act of Washington, W.A.C. 284-30-330. In order to facilitate the ability of any existing Washington insured to make a claim under an existing policy, Applicant submits the Company to the jurisdiction of the state courts of Washington in any dispute regarding a policy insuring Washington real estate, and service of process for any such dispute may be effected by service on the Commissioner's Office.

6. The Application was submitted in accordance with RCW 48.31B.015, and is found to fulfill the requirements of that statute.

7. The hearing herein was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied. Pursuant to Title 48 RCW, specifically RCW 48.31B, the Washington State Insurance Commissioner has jurisdiction

over the proposed control of Mason County Title Insurance Company by REtitle Holding Company, LLC. Further, authority to conduct the adjudicative proceeding in this matter was properly delegated to the undersigned to review and consider all documents and evidence presented at hearing, and to make the final determination herein.

8. Pursuant to RCW 48.31B.015(4), the OIC shall approve an acquisition of a domestic insurer unless, after a public hearing thereon, it is found: 1) that after the change of control, the domestic carrier 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 acquisition or merger may substantially lessen competition or tend to create a monopoly in insurance in this state; 3) the financial condition of an acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders; 4) the plans or proposals that the acquiring party has to liquidate the insurer, sell its assets, 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 the policyholders of the insurer and not in the public interest; 5) the competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or 6) the acquisition is likely to be hazardous or prejudicial to the insurance-buying public. Applying these criteria:

9. *After the change of control, the domestic carrier 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.* At present, and after the change of control requested in the Application, MCTIC would not be able to satisfy the requirements for the issuance of a license to write title insurance in Washington, the line for which it is presently licensed according to RCW 48.05.340. However, MCTIC may be able to satisfy the requirements for issuance of a license to write title insurance in California, which is a reason for this Application.

10. *The effect of the acquisition or merger may substantially lessen competition or tend to create a monopoly in insurance in this state.* MCTIC has been inactive since 1998, and has been under an Order of Supervision since 2008, as a consequence of its failure to meet the 2005 statutory increase in capital and surplus requirements to \$4 million for title insurers in Washington. The effect of the acquisition thus is not to substantially lessen competition or tend to create a monopoly in title insurance in this state.

11. *The financial condition of an acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders.* The financial condition of REtitle is not such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders, if the Conditions enumerated in this Order are fulfilled, because REtitle will inject capital.

12. *The plans or proposals that the acquiring party has to liquidate the insurer, sell its assets, 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 the policyholders of the insurer and not in the public interest.* The plans or proposals of REtitle to make certain material changes in the business or corporate structure or management of MCTIC, consisting chiefly in

acquiring a certificate of authority to write title insurance in the state of California, and to transfer MCTIC in California shortly after the acquisition, are fair and reasonable to the Washington policyholders of the insurer and in the public interest, if the Conditions enumerated in this order are fulfilled.

13. *The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.* The competence, experience, and integrity of the Members of REtitle are such that it is in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

14. *The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.* The Company has not shown that it has the financial resources to meet the Washington's minimum capital and surplus requirements. REtitle has stated its objection to the current requirements in RCW 48.05.340 and intends to move the Company to California shortly after the acquisition. However, if the Conditions enumerated in this Order are fulfilled, the acquisition is not likely to be hazardous or prejudicial to the insurance-buying public since the Conditions are reasonably calculated to provide adequate alternative protections to Washington consumers.

15. Neither the OIC, nor REtitle or MCTIC or any employees, officers or directors, or other affiliates of either entity have received comments, complaints or concerns concerning this proposed acquisition of control.

16. No objection to the Application was made at the public hearing by any party or by any member of the public. The OIC recommended approval of REtitle's Application provided the Conditions enumerated in this Order are fulfilled.

### **ORDER**

The Application of REtitle to acquire 100% of the capital stock of MCTIC is APPROVED, subject to fulfillment of the following CONDITIONS;

1. Pursuant to RCW 48.31.400-435, the confidential administrative supervision of the Company shall continue for a 60 day period for the purpose of ensuring that that Applicant meets the conditions of this ORDER. If the conditions of this ORDER have been met before the end of the 60 day period, the confidential administrative supervision shall cease. However, if the conditions have not been met, the confidential administrative supervision shall continue for a period of another 60 days, and continuing in like fashion until such time as the conditions have been met to the Commissioner's satisfaction.
2. The Company and Applicant shall submit the Company's application for admission to California within 30 days after the date of entry of this ORDER.

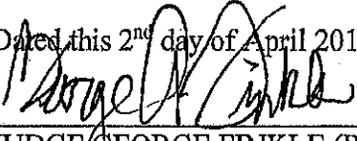
3. Before California's issuance of a certificate of authority for the Company, the Company WILL ESTABLISH a separate special deposit with either the California or Washington Insurance Commission/Department, which will operate to guarantee the future payment of any claims of existing Washington policyholders.
4. The initial amount of the deposit WILL BE BASED on the amount of claim reserves for existing Washington policies, as determined by the Company's 2014 actuarial opinion. The Company will adjust the deposit based upon separate actuarial reviews of the Washington claims reserves, as supported by the yearly actuarial opinion from the Company's appointed and credentialed actuary. In the event the Company wrongfully fails to pay a claim on an existing Washington policy, such a Washington claimant may call upon the funds held for such deposit for resolution and settlement of the claim, regardless of whether the deposit is held in Washington or California.
5. Within 30 days of the issuance of a certificate of authority by California, the Company WILL APPOINT the Washington Insurance Commissioner as agent to receive the service of process for any future claims made on existing Washington policies.
6. The Company SHALL CONSENT to Washington jurisdiction over any and all claims and litigation, administrative or judicial, which may arise from Washington policyholders and/or Washington transactions. The Company SHALL CONSENT to the jurisdiction of the Commissioner to resolve any and all Washington matters, as well as the jurisdiction of Washington courts to resolve any other matter, to the same extent as if the Company remained domiciled and licensed as a title insurer in Washington. The Company SHALL CONSENT that Washington law shall govern all such proceedings.
7. IT IS ORDERED THAT immediately upon the Company's receipt of a certificate of authority in California, the Company SHALL TRANSFER its domicile to that state. The Company will file the necessary forms and documents to withdraw from the Washington market and surrender its Washington certificate of authority within 15 days after its licensure in California. The applicant will provide the required forms, included NAIC Form #17, and original certificate of authority of the Company under the NAIC UCAA application process.
8. During the OIC review process of the withdrawal from the Washington market and the surrender of the Company's Washington certificate of authority, and if the other conditions herein have been met to the satisfaction of the OIC, the Commissioner will terminate the administrative supervision of the Company simultaneous with the Company's withdrawal from Washington and its surrender of its Washington certificate of authority. The OIC SHALL WAIVE the requirement for reinsurance of the policies in force of MCTIC as part of the withdrawal and surrender of the Company's Washington certificate of authority.
9. In order to allow the Washington OIC to monitor the Company's and Applicant's ongoing adherence to this ORDER, in the event the Company is not required to file its statutory financial statements and other statutorily-required filings with the NAIC, then the Company SHALL FILE its financial statements and other statutorily-required filings with the OIC according to the filing requirements for insurers in this state. In the event the Company is not

required to make its statutory filings with the NAIC, but later is so required, the Company may petition the OIC to reconsider its submission of financial statements and required filings to the OIC once it begins making its statutory filings with the NAIC.

10. If California does not license the Company, or the Applicant abandons its proposed acquisition of the Company as a consequence of the inability to obtain a certificate of authority from California, or if the Company has not transferred its business to another Washington licensed title insurer, then the administrative supervision of the Company may be extended upon the finding and notice under RCW 48.31.400.

The closing on the acquisition of MCTIC by Applicant shall not occur unless and until the certificate of authority is issued to MCTIC by the Insurance Commissioner of the State of California.

Dated this 2<sup>nd</sup> day of April 2015.

  
JUDGE GEORGE FINKLE (RET.)  
Presiding Officer

Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that, pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General.

Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: James J. Duffley, David C. Bayley, Mike Kreidler, James T. Odiorne, JD, CPA, AnnaLisa Gellermann, Darryl Colman, Ronald Pastuch and William R. Michels.

DATED this 2<sup>nd</sup> day of April 2015.

  
KELLY A. CAIRNS