

BEFORE THE STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER

**FILED**

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HEARINGS UNIT  
OFFICE OF  
INSURANCE COMMISSIONER

In the Matter of:

Docket No. 17-0369

The Form A and Form E Applications for the  
Proposed Acquisition of Control of:

**REtitle Insurance Company,**

By

**A10 Capital, LLC,**

**Applicant.**

**CASE MANAGEMENT ORDER**

**TO:** David Bayley, President  
REtitle Insurance Company  
P.O. Box 278  
Shelton, WA 98584

Richard Hoss  
Hoss & Wilson-Hoss LLP  
236 West Birch Street  
Shelton, WA 98584

Jerry Dunn, President  
A10 Capital, LLC  
800 West Main Street, Suite 1100  
Boise, ID 83702

Ben Slaughter, General Counsel  
A10 Capital, LLC  
800 West Main Street, Suite 1100  
Boise, ID 83702

**COPY TO:** Mike Kreidler, Insurance Commissioner  
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner  
Doug Hartz, Deputy Commissioner, Company Supervision Division  
Ronald Pastuch, Holding Company Manager, Company Supervision Division  
Toni Hood, Deputy Commissioner, Legal Affairs Division  
Dave Jorgensen, Insurance Enforcement Specialist, Legal Affairs Division  
Office of the Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

This Notice is provided pursuant to RCW 48.04.010, RCW 34.05.434, RCW 48.31B.015(4)(b), and RCW 48.31B.020(5)(a)(ii)(B).

William Pardee, Presiding Officer, has been designated by the Insurance Commissioner to hear and determine this matter. The hearing will be held under the authority granted to the Insurance Commissioner under RCW Chapter 48.04.

1. Receipt of Form A and Form E Filings.

On October 2, 2017, the Office of the Insurance Commissioner ("OIC") received an application, or Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer ("Form A"), from A10 Capital, LLC ("Applicant") along with the Pre-Acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-Domiciliary Insurer doing Business in this State or by a Domestic Insurer ("Form E"). Applicant, founded in 2007, and domiciled in the state of Idaho, is in the business of commercial real estate lending. In both the Forms A and E, Applicant seeks the OIC's approval to acquire control of REtitle Insurance Company ("REtitle"). If OIC approves the proposed transaction, Applicant would wholly own and control REtitle, a title insurer domiciled in the state of Washington.

Additional details on the proposal are contained in the Form A, which is available on the OIC's website at [www.insurance.wa.gov](http://www.insurance.wa.gov).

2. Adjudicative Hearing on Form A.

The review of the Form A is governed by the Insurer Holding Company Act ("Act"), RCW Chapter 48.31B. RCW 48.31B.015(4)(b) requires the OIC to hold a public hearing within 30 days of the date that the Form A was filed, or by November 1, 2017. Therefore, for the sole purpose of meeting this statutory timeline I hereby tentatively schedule the hearing on the Form A in question for November 1, 2017, beginning at 9 a.m., Pacific Time, at the OIC, 5000 Capital Blvd., Tumwater, Washington, **but in issuing this order immediately adjourn such proceeding (i.e., cancel it)** pursuant to RCW 48.04.010(1)(a) (the Commissioner's general authority to conduct hearings), RCW 48.04.060, and RCW 2.28.120, or other similar authority, in order to fulfill the scope of the requirements of the public hearing intended by RCW 48.31B.015(4)(b).

As explained more fully below, because the Form A presents questions of important public interest, the OIC will at a date to be set later and publicly announced, be holding a public adjudicative hearing to consider the matter and to receive evidence and testimony from Applicant, A10 Capital LLC, the agency staff review team ("OIC Staff"), expert consultants, and any other person whose interest may be affected by the proposal.

RCW 48.31B.015(4)(b) specifically allows the parties and any person whose interest may be affected thereby to "present evidence, examine, and cross-examine witnesses, and offer oral and written arguments and in connection therewith are entitled to conduct discovery proceedings in the same manner as is presently allowed in the superior court of this state." More time is needed to

conduct discovery in this matter, for the OIC to review the Form A, to identify those persons whose interest may be affected by the proposed transaction underlying the Form A, and for the OIC Staff, the parties, and others to present evidence.

RCW 48.31B.015(4)(b) also requires that the Commissioner issue a ruling on the Form A within the sixty-day period preceding the effective date of the proposed transaction, or February 1, 2018.

The Act specifies that the hearing held by the Commissioner in connection with his review of the Form A shall be conducted as an adjudicative proceeding, resulting in a final administrative order. See RCW 48.31B.070 and the Administrative Procedure Act ("APA"), RCW Chapter 34.05. The parties to the proceeding are REtitle, Applicant, intervenors (if any – see paragraph 5 below), and the OIC Staff. The position and recommendations of the OIC will be presented to the Presiding Officer during the proceedings by OIC Staff, who will have the assistance of various expert consultants. In addition, those persons whose interest may be affected by the proposed transaction underlying the Form A will be given the right to participate in the proceedings. Such persons will be permitted to present evidence, examine witnesses, and conduct discovery. See RCW 48.31B.015(4)(b).

### 3. Adjudicative Hearing on Form E.

The OIC's review of the Form E is governed by RCW 48.31B.020. RCW 48.31B.020(5)(a) states the Commissioner may not enter an order requiring an involved insurer to cease doing business in the state of Washington, or denying an application of an acquired or acquiring insurer to do business in this state, unless a hearing is held, and states:

- (i) If an acquisition violates the standards of this section, the commissioner may enter an order:
  - (A) Requiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or
  - (B) Denying the application of an acquired or acquiring insurer for a license to do business in this state.
- (ii) Such an order may not be entered unless:
  - (A) There is a hearing;
  - (B) Notice of the hearing is issued prior to the end of the waiting period and not less than fifteen days prior to the hearing; and
  - (C) The hearing is concluded and the order is issued no later than sixty days after the filing of the preacquisition notification with the commissioner.
- (iii) Every order must be accompanied by a written decision of the commissioner setting forth findings of fact and conclusions of law.
- (iv) An order pursuant to this subsection (5)(a) does not apply if the acquisition is not consummated.

RCW 48.31B.020(3)(b) explains that the waiting period begins on the date the Commissioner receives the Form E, and ends on the earlier of the thirtieth day after that date, or the Commissioner's termination of the waiting period.

Therefore, for the sole purpose of meeting the statutory deadlines governing a hearing concerning the Form E in the instant matter, the undersigned hereby tentatively schedules the hearing for November 1, 2017, beginning at 9 a.m., Pacific Time, at the OIC, 5000 Capital Blvd., Tumwater, Washington, **but in issuing this order immediately adjourns such proceeding (i.e., cancels it)** pursuant to RCW 48.04.010(1)(a) (the Commissioner's general authority to conduct hearings), RCW 48.04.060, and RCW 2.28.120, or other similar authority, in order to fulfill the scope of the requirements of the hearing intended by RCW 48.31B.020(5)(a).

4. The Standard by which Applicant's Form A and Form E Are Analyzed.

As to the Form A, at least one authorized representative of Applicant (officers, directors, or in-house counsel are acceptable) and the OIC Staff shall testify as to the criteria set forth in 48.31B.015(4)(a), which provides that the OIC shall approve a merger or acquisition of control, unless after a public hearing thereon, the OIC finds that:

(i) After the change of control, the domestic insurer referred to in subsection (1) of this section 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;

(ii) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein. In applying the competitive standard in this subsection (4)(a)(ii):

(A) The informational requirements of RCW 48.31B.020(3)(a) and the standards of RCW 48.31B.020(4)(b) apply;

(B) The merger or other acquisition may not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by RCW 48.31B.020(4)(c) exist; and

(C) 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;

(iii) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

(iv) The plans or proposals which 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 policyholders of the insurer and not in the public interest;

(v) 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

(vi) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

As to the Form E, at least one authorized representative of Applicant (officers, directors, or in-house counsel are acceptable) and the OIC shall testify as to the criteria set forth in RCW 48.31B.020(4)(a), which provides that the OIC shall approve an acquisition if there is not substantial evidence that the effect of the acquisition may substantially lessen competition in a line of insurance in this state or tend to create a monopoly therein, and the insurer does not fail to file

adequate information under RCW 48.31B.020(3). In determining whether the proposed acquisition violates this competitive standard, the OIC shall consider the criteria in RCW 48.31B.020(4)(b). RCW 48.31B.020(4) requires that the OIC not deny such an acquisition if (i) the acquisition will yield substantial economies of scale or economies in resource that cannot be feasibly achieved in any other way, and the public benefits that would arise from the economies exceed the public benefits that would arise from not lessening competition; or (ii) the acquisition will substantially increase the availability of insurance, and the public benefits of the increase exceed the public benefits that would arise from not lessening competition.

Finally, authorized representatives of Applicant, and the OIC Staff shall also testify as to whether they, or any employees, officers or directors, or other affiliates, have received comments, complaints or concerns concerning the proposed acquisitions at issue in the Forms A and E, and the nature and source.

5. Intervenors in the Adjudicative Proceeding.

Those persons whose interest may be affected by the proposed transaction underlying the Form A may participate in the adjudicative proceedings. Such participants may present evidence, examine and cross-examine witnesses, and offer oral and written arguments, and in connection therewith conduct discovery proceedings in the same manner as is allowed in the superior courts of this state. RCW 48.31B.015(4)(b).

Persons who are permitted to participate in the proceeding not only have rights but also obligations and responsibilities. These responsibilities include, but are not limited to, the following: (1) being subject to discovery and obligated to respond timely to discovery requests; (2) being subject to examination and cross-examination; (3) being required to attend, in person or by counsel, conferences and hearings scheduled by the Presiding Officer; and (4) being subject to all orders of the Presiding Officer, which may include orders regarding deadlines, protection of confidential documents and information, and the service and filing of pleadings.

**November 1, 2017**, is the deadline for all other persons to file a petition to participate in these proceedings. The petition shall set forth a statement of facts, including relevant evidence if any, demonstrating that the petitioner is a person whose interest may be affected by the proposed transaction underlying the Form A. The petition shall be supported by applicable law and argument that explains with particularity the basis for the request to participate. The petition shall be served on the Hearings Unit in the manner described in paragraph 8 of this Order and a copy served on all those persons listed on the attached Certificate of Service.

On or before **November 15, 2017**, the OIC Staff, REtitle, and Applicant, shall each file a single pleading responsive to all such petitions. On or before **November 22, 2017**, the petitioners may each file a single pleading in reply.

The Presiding Officer shall issue a written ruling on any petition(s) thereafter. The ruling may contain conditions on an intervenor's participation, such as: (1) limiting an intervenor's participation to designated issues in which the intervenor has established an interest; (2) limiting

an intervenor's use of discovery, cross-examination and other procedures so as to promote an orderly and efficient proceeding; and (3) requiring two or more intervenors to combine their presentations of evidence and argument, examination of witnesses, discovery, and other participation in the proceeding.

6. Standards Governing Confidentiality, Sealing, and Redaction of Records.

The parties are encouraged to examine the provisions in RCW Chapter 42.56, and the general authority for protective orders in CR 26(e) (and in particular subsection (7) therein that prevents disclosure of trade secret or other confidential research, development, or commercial information) applicable to adjudicative proceedings conducted by the OIC per WAC 284-02-070(2)(e)(i). Every effort should be made to segregate nonpublic information from public information so that public information is readily disclosable upon request and on the OIC website.

To achieve this, the duly authorized representatives of the parties or participants in this matter shall file with the OIC's Hearings Unit prior to the telephonic status conference set forth below their legal position with respect to what working papers, documents, materials, or information involved with the Form A and Form E at issue they deem to be confidential under RCW 48.31B.038(1), RCW 48.02.065(6), RCW 48.31B.020(3), and if not confidential, should be sealed or redacted pursuant to Washington General Rules 15(c) and 31(e). If the parties or participants in this matter are in agreement as to which documents, or portions thereof, should be confidential, they may submit a joint proposed Order regarding Confidentiality to the Hearings Unit by **December 1, 2017**.

If the parties are not in agreement, the parties should be prepared to argue their position at the telephonic status conference set forth below.

Following the parties' submission(s), and after oral argument, if necessary, the Presiding Officer will issue a ruling as to which documents will be deemed confidential, or redacted or sealed. Any documents not deemed confidential or sealed (in either redacted or un-redacted form) will be posted on the OIC's website.

Once the Presiding Officer has issued his ruling, if a document contains confidential proprietary, trade secret, or other non-public information, the document must be conspicuously marked confidential. If only portions of a document contain confidential or non-public information, the Applicant is responsible for redacting such information from the document and submitting the redacted copy, along with an unredacted copy, to the OIC's Company Supervision Division for inclusion in the Form A filing.

7. Telephonic Status Conference.

The parties to the above-referenced matter, REtitle, Applicant, intervenors whose petitions are granted (if any), and OIC Staff, through their counsel or representatives, shall be present for a telephonic status conference to be held on **December 5, at 10:00 a.m., Pacific Time**. The OIC's Hearing Unit will provide the call-in number for the teleconference to the parties' representatives

prior to its occurrence.

The purpose of the status conference is to discuss discovery, confidentiality of documents, and other issues, and establish a timeline for scheduling the adjudicative hearing. The parties should be prepared to discuss the following matters:

- a. Consolidation of the Form A and Form E applications for purposes of the adjudicative hearing;
- b. Issues regarding confidentiality of documents submitted in the Form A and Form E applications;
- c. Whether the OIC Staff has issued data or information requests to REtitle or Applicant, and if so, the nature and number of those requests, and the status of REtitle or Applicant's responses to any requests;
- d. Plans of the OIC Staff, if known at this time, to issue data and information requests to REtitle or Applicant in the future;
- e. Each parties' estimate of the time that each parties' experts will require to prepare written reports regarding the transaction proposed in the Forms A and E; and
- f. Any other issues which may affect the issuance of a final recommendation by the OIC on the Form A and Form E applications and scheduling of the adjudicative hearing.

By close of business on **December 1, 2017**, each party shall file a brief written report addressing these items and submit it to the OIC's Hearings Unit.

8. Filing and Service of Pleadings and Other Papers.

Unless otherwise authorized, every person filing pleadings, letters, and other documents in this proceeding shall submit the original and an electronic copy to the attention of the Hearings Unit via email at [HearingsU@oic.wa.gov](mailto:HearingsU@oic.wa.gov), via U.S. Mail at P.O. Box 40255, Olympia, WA 98504-0255, via personal delivery at 5000 Capitol Boulevard, Tumwater, Washington 98501, and/or via facsimile at (360) 664-2782. Copies shall be served on all parties listed in the attached Certificate of Service.

9. Accommodation.

Pursuant to WAC 284-02-070(1)(c), accommodation will be made for persons needing assistance due to difficulty with language or disability. Further, pursuant to WAC 10-08-040(2) and in accordance with RCW Chapter 2.42, if a limited English speaking or hearing impaired or speech impaired party or witness needs an interpreter, a qualified interpreter will be appointed. There will be no cost to the party or witness therefore, except as may be provided by RCW Chapter 2.42. A Request for Accommodation form, with instructions, is attached to this Order.

All interested individuals and entities who have questions or concerns concerning this proceeding should direct them to the Hearings Unit paralegal, whose phone number is (360) 725-7002.

Dated: October 12, 2017.



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WILLIAM PARDEE  
Presiding Officer



CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the state of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be filed and served the foregoing Case Management Order on the following people at their addresses listed below:

David Bayley, President  
REtitle Insurance Company  
P.O. Box 278  
Shelton, WA 98584

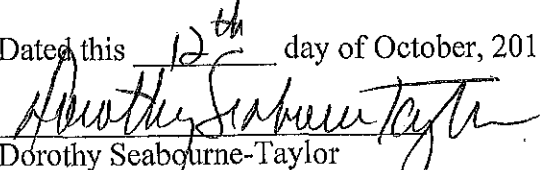
Richard Hoss  
Hoss & Wilson-Hoss LLP  
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Shelton, WA 98584

Jerry Dunn, President  
A10 Capital, LLC  
800 West Main Street, Suite 1100  
Boise, ID 83702

Ben Slaughter, General Counsel  
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Mike Kreidler, Insurance Commissioner  
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner  
Doug Hartz, Deputy Commissioner, Company Supervision Division  
Ronald Pastuch, Holding Company Manager, Company Supervision Division  
Toni Hood, Deputy Commissioner, Legal Affairs Division  
Dave Jorgensen, Insurance Enforcement Specialist, Legal Affairs Division  
Office of the Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

Dated this 12<sup>th</sup> day of October, 2017, in Tumwater, Washington.

  
Dorothy Seabourne-Taylor  
Paralegal, Hearings Unit

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**OFFICE OF INSURANCE COMMISSIONER  
HEARINGS UNIT**

To request an interpreter, complete and send this form to:

Hearings Unit  
Office of Insurance Commissioner  
P.O. Box 40255  
Olympia, WA 98504-0255  
HearingsU@oic.wa.gov

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**REQUEST FOR ACCOMMODATION FOR LANGUAGE OR DISABILITY**

I am a party in Matter No. 17-0369 before the Insurance Commissioner.  
I request accommodation for the following disability (insert your disability):

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I request an interpreter for myself or a witness who will be testifying at the evidentiary hearing.

Please check the statements that apply:

I am a non-English-speaking person and cannot readily speak or understand the English language. My primary language is \_\_\_\_\_ (insert your primary language). I need an interpreter who can translate to and from the primary language and English.

I am unable to readily understand or communicate the spoken English language because:

- I am deaf.
- I have an impairment of hearing.
- I have an impairment of speech.

[Please state below or on the reverse side any details which would assist the Commissioner or Presiding Officer in arranging for a suitable accommodation for your disability, an interpreter or in providing appropriate mechanical or electronic amplification, viewing, or communication equipment.]

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Please print or type your name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_