BEFORE THE DIRECTOR OF INSURANCE
FOR THE STATE OF ILLINOIS

IN RE THE PLANS OF DIVISION OF: ALLSTATE INSURANCE COMPANY; ALLSTATE INDEMNITY COMPANY; ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY; ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY; ENCOMPASS INDEMNITY COMPANY; ENCOMPASS PROPERTY AND CASUALTY COMPANY; ESURANCE INSURANCE COMPANY; ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY, Applicants	Hearing No. 21-HR-0010 Hon. Mary Anne Mason (Ret.), Hearing Officer

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDATIONS**

Mary Anne Mason, Hearing Officer designated by the Director of Insurance (the "Director") of the Illinois Department of Insurance (the "Department") pursuant to 215 ILCS 5/402 and 50 Ill. Admin. Code 2402.140, hereby offers her Findings of Fact, Conclusions of Law, and Recommendations to Kevin Fry, who has been duly authorized to act on behalf of the Department's Acting Director, Dana Popish Severinghaus.

At the request of the Applicants, the Director issued notice for a public hearing (the "Hearing") to be held in this matter, and it was convened on March 3, 2021, via Zoom.

The purpose of the Hearing is to determine whether, pursuant to the Domestic Stock Company Division Law (the "Division Law"), Article IIB of the Illinois Insurance Code (the "Code"), 215 ILCS 5/35B-1 *et seq.*, the Director should approve certain Plans of Division (the "Plans"). The Dividing Companies (defined below) filed the Plans with the Department on Tuesday, February 2, 2021. Exs. 2–9.

Having reviewed the Plans; having read, heard and considered all the evidence presented by the parties at the open Hearing, including sworn written and oral testimony, the exhibits admitted into evidence, and the record before the Hearing Officer; having taken notice of matters stipulated by the parties and which may be taken notice of by operation of law; having considered the legal authorities presented; and having been otherwise fully advised in the premises, the Hearing Officer makes the following Findings of Fact, Conclusions of Law, and Recommendations to the Director pursuant to 50 Ill. Admin. Code 2402.140(h) and 2402.260:

I. FINDINGS OF FACT

1. Any findings of fact stated by the Hearing Officer on the record at the Hearing are hereby incorporated, to the extent they are not inconsistent with findings contained herein.

2. Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to them in the Plans.

The Applicants

3. The Applicants seeking approval of the Plans are eight (8) Illinois-domiciled insurers (the "Dividing Companies" and, following the Divisions, the "Surviving Companies"). Each Applicant seeks approval for their respective division (each, a "Division") and subsequent merger and related transactions (each, a "Merger," and together with the Divisions, the "Proposed Restructuring").

4. Pursuant to the Plans, the Dividing Companies will allocate certain portions of the automobile insurance business written by the Dividing Companies in Michigan—namely their inactive policies with outstanding claim reserves (the "Specified Policies")[1]—to eight (8) new insurance companies created in the Divisions (the "New Companies") and ultimately to three (3) recently established Illinois-domiciled insurance companies that will be the surviving companies in the Mergers (the "Merger Companies") pursuant to Article X of the Code, 215 ILCS 5/156 *et seq.* (the "Merger Law"). (The Merger Companies together with the Surviving Companies are collectively, the "Resulting Companies.")

5. The Dividing Companies are eight Illinois-domiciled insurance subsidiaries of The Allstate Corporation ("Allcorp" and together with its subsidiaries, "Allstate") that transact, among other business, automobile insurance in Michigan. The Dividing Companies are: (i) Allstate Insurance Company; (ii) Allstate Indemnity Company; (iii) Allstate Property and Casualty Insurance Company; (iv) Allstate Fire and Casualty Insurance Company; (v) Encompass Indemnity Company; (vi) Encompass Property and Casualty Company; (vii) Esurance Insurance Company; and (viii) Esurance Property and Casualty Insurance Company.

6. The New Companies to be created in the Divisions are Michigan AIC Auto Insurance Company, Michigan AI Auto Insurance Company, Michigan APC Auto Insurance Company, Michigan AFCIC Auto Insurance Company, Michigan EPC Auto Insurance Company, Michigan EI Auto Insurance Company, Michigan ESPC Auto Insurance Company,

[1] "Specified Policies" allocated to the New Companies are set forth in Schedule 1 to the respective Plans and include Michigan private passenger automobile Policies (the "MI Auto Policies") that (a) were issued on or after July 1, 1978 (i.e., date of establishment of the MCCA), (b) were no longer in force as of December 31, 2019 (and have not been reinstated as of June 30, 2020), (c) had an outstanding claim reserve as of December 31, 2019, on a Personal Injury Claim and (d) still retained a reserve on a Personal Injury Claim as of June 30, 2020. The MI Auto Policies were policies that provided coverage for a motor vehicle that was registered in the State of Michigan or whose owner held a valid license to operate a motor vehicle issued by the State of Michigan, as such information was reflected in the records of the Dividing Company as of the time the MI Auto Policy was issued.

and Michigan ESIC Auto Insurance Company. The New Companies will hold the Specified Polices following the Division and prior to the Merger.

7. The Merger Companies are recently established Illinois-domiciled insurance companies licensed to conduct insurance business in Illinois: ASMI Auto Insurance Company ("ASMI"); ECMI Auto Insurance Company ("ECMI"); and ESMI Auto Insurance Company ("ESMI" and, together with ASMI and ECMI, the "ASMI Group"). The Merger Companies have submitted applications to be licensed to conduct insurance business in Michigan as well, and such licenses are expected to be approved and issued to the Merger Companies prior to the effective date of the Proposed Restructuring.

The Department

8. The Department is the Respondent in this proceeding.

9. The Department is the Illinois state agency tasked with the administration and enforcement of the Illinois Insurance Code (215 ILCS 5/1 *et seq*.) and related laws and regulations, including Title 50 of the Illinois Administrative Code. The Department's mission is "[t]o protect consumers by providing assistance and information, by efficiently regulating the insurance industry's market behavior and financial solvency, and by fostering a competitive insurance marketplace." *About the Illinois Department of Insurance*, Department (Dec.11, 2020), https://insurance.illinois.gov/main/aboutUs.html.

10. Department staff involved in this matter included individuals from the Property & Casualty Actuarial Team, the Financial Examination Team, the Financial Analysis Team, the Legal Team, and a member of the Corporate Team ("Department Staff").

11. The Department also retained a project manager (Luann Petrellis) in July 2020, legal counsel (DLA Piper LLP US) in November 2020, and an independent consulting actuarial expert, Risk & Regulatory Consulting ("RRC") in July 2020 to assist it in reviewing and evaluating the Plans, the costs of all of which the Applicants have acknowledged they bear pursuant to 215 ILCS 5/35B-25(h) and the Plans (the Department, its officers, Department Staff, employees and agents, including Ms. Petrellis, DLA Piper and RRC are the "Department Team").

12. Given that this is the first division in Illinois, the Department Team expended more than 2000 hours (including more than 1000 by Department Staff) on the evaluation of the proposed Division as well as overall contemplation of division best practices and repeatable processes.

Notice

13. The Applicants proposed, and after extensive review the Department accepted and the Hearing Officer approved, a procedure for notice, comment, and hearing with respect to the Plans pursuant to the Division Law, 215 ILCS 5/35B-25(a), and 50 Ill. Admin. Code 2402.10, *et seq. See, e.g.,* Annex B to Ex. 2 (the "Communication Plan"), Plan of Division dividing Allstate

Fire and Casualty Insurance Company into Allstate Fire and Casualty Insurance Company and Michigan AFCIC Auto Insurance Company, dated January 29, 2021.[2]

14. Pursuant to the Communication Plan, on February 4, 2021, 26 days before the Hearing date, Allstate sent a written notice (the "Notice") to each policyholder of a Specified Policy (a "Policyholder") and each person with an outstanding personal injury claim under a Specified Policy (a "Claimant"), whose claim will become a claim of a Merger Company as a result of the Proposed Restructuring.[3] Such Notices were sent by United States mail to the Policyholders' and Claimants' last-known addresses as indicated by the records of the Dividing Companies. *See* Ex. 22 at ¶ 148, Pre-Filed Written Statement of Michael A. Pedraja, Senior Vice President and Treasurer, The Allstate Corporation, dated February 25, 2021.

15. The Notice was entered into the record as Ex. 15. The Notice:

(a) Described the Proposed Restructuring;

(b) Informed each Policyholder and Claimant that there would be a public Hearing on the Proposed Restructuring. and provided the dates and times such Hearing would commence;

(c) Informed each Policyholder and Claimant that they were entitled to submit a written statement or offer oral testimony under 50 Ill. Admin. Code 2402.190(a) or to submit a petition for intervention under 50 Ill. Admin. Code 2402.120;

(d) Provided each Policyholder and Claimant with contact information for the Department and referred them to the Department's website for updates and to access the Plans;

(e) Advised each Policyholder and Claimant that if they do not have internet access, they may contact the Department by phone to request copies of materials related to the Plans; and

(f) Was sent to any current attorney or guardian on Allstate's records for the Claimant or Policyholder. Ex. 16, Certification of Laura Prestler Regarding Mailing of Notice of Hearing and Cover Letter to Policyholders and Claimants, dated February 25, 2021.

16. At least 25 days before the Hearing date, Allstate provided written notice of the Proposed Restructuring and Hearing to the Michigan Department of Insurance and Financial Services (the "MI DIFS"), including copies of the eight Plans filed with the Department. Ex. 18,

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[2] The eight Plans each contain provisions unique to the Dividing Company, but otherwise are identical in most substantive respects. Provisions common to each Plan will be cited as "Plans of Division Art. _." A chart summarizing the material differences across the Plans was entered into the record as Ex. 10.

[3] Due to a printing error that needed to be corrected, approximately 68 of the Notices were sent out on February 5, 2021, 25 days before the Hearing date. Ex. 16, Certification of Laura Prestler Regarding Mailing of Notice of Hearing and Cover Letter to Policyholders and Claimants, dated February 25, 2021.

Certification of Katie Jones Regarding Delivery of Notice to Michigan Property and Casualty Guaranty Association, Michigan Catastrophic Claims Association, and Michigan Department of Insurance and Financial Services, dated February 23, 2021. Allstate previously notified MI DIFS of the Proposed Restructuring, including the Merger Companies' intention to submit licensing applications to become authorized to transact insurance in Michigan. Such applications were formally submitted to the MI DIFS on February 11, 2021.

17. Allstate provided written notice of the Proposed Restructuring and Hearing to the Michigan Property and Casualty Guaranty Association ("MPCGA"), the Illinois Insurance Guaranty Fund, the National Conference of Insurance Guaranty Funds, and the Michigan Catastrophic Claims Association ("MCCA"). Exs. 17–18, Certification of Robert Zeman Regarding Delivery of Notice to Illinois Insurance Guaranty Fund and National Conference of Insurance Guaranty Funds, dated February 23, 2021; Certification of Katie Jones Regarding Delivery of Notice to Michigan Property and Casualty Guaranty Association, Michigan Catastrophic Claims Association, and Michigan Department of Insurance and Financial Services, dated February 23, 2021.

18. On February 5, 2021, and February 12, 2021, Allstate published notice in *The Chicago Tribune* and *The Detroit Free Press*, newspapers of general circulation in the States of Illinois and Michigan, respectively, both in print and electronic or digital editions. Notice was also posted on the websites of Allstate and the Department on February 4. 2021, 26 days prior to the Hearing date. Exs. 20-21 *The Chicago Tribune* Affidavit of Publication, dated February 13, 2021; *The Detroit Free Press* Affidavit of Publication, dated February 16, 2021.

19. On February 10, 2021, Allstate provided written notice of the Proposed Restructuring and Hearing, pursuant to 215 ILCS 5/35B-30(b)(6), to Allstate Insurance Company ("AIC"), the reinsurer under Quota Share Reinsurance Agreements between AIC and the other seven Dividing Companies. Ex. 19, Certification of Martin Cillick, dated February 22, 2021, Regarding Delivery of Notice to Allstate Insurance Company as Reinsurer.

The Hearing

20. The Hearing opened on March 3, 2021, commencing at or about 9 a.m. Central Time. The Hearing was transcribed by Robin LaFemina, Magna Legal Services.[4] Exhibits stipulated to by the parties were admitted into evidence. The Hearing Officer heard opening statements from the parties' counsel; testimony from two witnesses on behalf of Allstate, (i) Michael Pedraja, the Senior Vice President and Treasurer of Allcorp, and (ii) Joseph Cassanelli, Managing Director and Co-Head, Financial Institutions (North America) for Lazard, Frères & Co. LLC ("Lazard"), Allstate's independent financial expert; and testimony on behalf of the Department from Shannon Whalen the Department's Chief Deputy Director of Product Lines. No petitions to intervene were filed. In addition to the parties, their representatives, and witnesses, a number of participants identifying themselves as members of the public appeared for the Hearing. At the close of the evidentiary portion of the Hearing, the Hearing Officer afforded

[4] The transcript of the Hearing was provided to the Hearing Officer on March 4, 2021. The Hearing Officer has had the opportunity to review the transcript prior to submission of these Findings and Conclusions to the Director.

members of the public attending the Hearing, either online or by telephone, the opportunity to raise objections, make comments, or ask questions. No member of the public indicated that they wished to be heard. After hearing closing arguments from counsel, the Hearing was closed and the Applicants' request that the Hearing Officer recommend approval of the Plans of Division to the Director was taken under advisement.

The Plans

21. The Plans provided,[5] and witnesses' testimony established, that the Proposed Restructuring will proceed as follows:

(a) Currently, AIC reinsures 100% of the insurance liabilities of all of the Dividing Companies (other than AIC) pursuant to existing reinsurance agreements. First, and immediately prior to the effective date of the Divisions, AIC and the Dividing Companies plan to commute this reinsurance for the Specified Policies. (*see, e.g.*, Plans of Division Art. II(4)).

(b) Second, each Dividing Company will divide into two Resulting Companies: a Surviving Company and a New Company. Upon the Divisions, the Specified Policies and all of the assets, liabilities, contracts, and required surplus associated with the Specified Policies will be allocated to the New Companies by operation of law; the Surviving Companies will retain all the assets, liabilities, contracts, and required surplus associated with the Dividing Companies other than such assets, liabilities, contracts, and required surplus relating to the Specified Policies. Other items related to the Specified Policies, such as any rights or obligations in respect of the MCCA relating to the Specified Policies (*e.g.*, recoverables owed by the MCCA), will also be allocated to the New Companies by operation of law. (*see, e.g.*, Plans of Division Art. VI).

(c) Third, following the Divisions, the eight New Companies will merge into three newly formed Illinois-domiciled Merger Companies under the Merger Law so that there is one surviving insurer for each of the Allstate brands—i.e., ASMI for the Allstate-brand Specified Policies, ECMI for the Encompass-brand Specified Policies, and ESMI

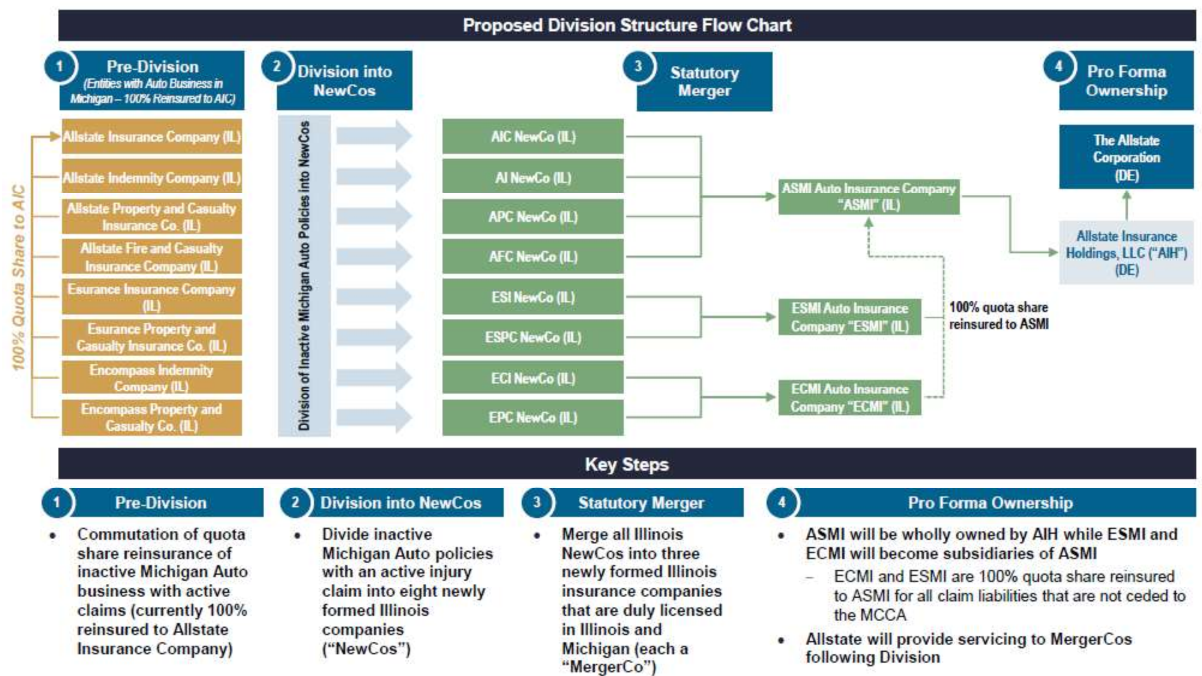
[5] Each Plan includes, in compliance with the Division Law, (1) the name of the domestic stock company seeking to divide; (2) the name of each resulting company that will be created by the proposed division; (3) for each new company that will be created by the proposed division, a copy of its proposed articles of incorporation, proposed bylaws, and the kinds of insurance business enumerated in Section 4 that the new company would be authorized to conduct; (4) the manner of allocating between or among the resulting companies, including: the assets of the domestic stock company that will not be owned by all of the resulting companies as tenants in common pursuant to section 35B-35, and the liabilities of the domestic stock company, including policy liabilities, to which not all of the resulting companies will become jointly and severally liable pursuant to paragraph (3) of subsection (a) of Section 35B-40; (5) the manner of distributing shares in the new companies to the dividing company or its shareholders; (6) a reasonable description of the liabilities, including policy liabilities, and items of capital, surplus, or other assets, in each case, that the domestic stock company proposed to allocate to each resulting company, including specifying the reinsurance contract, reinsurance coverage obligations, and related claims that are applicable to those policies; (7) all terms and conditions required by the laws of this State or the articles of incorporation and bylaws of the domestic stock company; (8) evidence demonstrating that the interest of all classes of policyholders of the dividing company will be properly protected (discussed in further detail below); and (9) all other terms and conditions of the division.

for the Esurance-brand Specified Policies. The Plans provide that the Divisions and Mergers will occur as simultaneously as possible. Following the Mergers, all the assets, liabilities, contracts, and required surplus associated with the Specified Policies allocated to the New Companies will pass by operation of law to the Merger Companies. (*See, e.g.*, Plans of Division Art. V(4)).

(d) Fourth, effective upon the Mergers and subject to the approval of the Department, ECMI and ESMI will cede 100% of their insurance liabilities to ASMI, pursuant to reinsurance agreements to be entered into by ASMI with each of ECMI and ESMI. (*See, e.g.*, Plans of Division Art. V(8)).

22. A diagram depicting the various steps of the Proposed Restructuring is set forth in Figure A below:

Figure A:



23. Each Plan was approved in accordance with the applicable provisions of the respective Dividing Company's articles of incorporation and bylaws, including unanimous approval by the Dividing Companies' boards of directors and approval by the shareholders as required by 215 ILCS 5/35B-20(a) and (b). *See* Ex. 14, Certified copies of Board and Shareholder Resolutions approving the Plans of Division in Exhibits 2 to 9 and related transactions, dated February 15, 2021.

Department Review of the Plans

24. The Department reviewed and provided input on draft versions of the Plans. Allstate's preliminary discussions with the Department about the Plans also caused the

Department to initiate a confidential property and casualty target financial examination in July 2020, pursuant to 215 ILCS 5/131.21, 132.2, 132.4, 132.5, 401, 402, 403 and 425 (the "Examination"). In July 2020, the Department retained RRC to provide actuarial assistance in connection with the Examination and review of the related Plans. The Examination involved select affiliates within the Allstate group. Consistent with the Plans, the scope of the engagement included, among other items, loss and loss adjustment expense reserve analysis and an evaluation of initial capital levels for the Merger Companies.

25. The Department devoted substantial internal and external resources (including, but not limited to, the retention of Ms. Petrellis, DLA Piper, and RRC) to its review of the Plans and related materials over a period of many months prior to their filing and formal submission. The Department also relied upon, and reviewed the analysis provided by the above-referenced consultants and experts who were retained to assist in the evaluation of the Plans.

26. Shannon Whalen, the Department's Chief Deputy Director of Product Lines, directed the activities of, supervised, and oversaw the Department Team reviewing the proposed Plans. Ms. Whalen has held various roles within the Department, including Assistant Actuary, Supervising Actuarial Examiner, Assistant Deputy Director Actuarial Services, Deputy Director Financial- Corporate Regulatory, Acting Chief of Staff, and Interim Acting Director. Ms. Whalen earned an Actuarial Science degree from the University of Illinois, Champaign-Urbana. She is an Associate of the Casualty Actuarial Society and a Member of the American Academy of Actuaries. Ms. Whalen has 28 years of experience working in the insurance industry, with 11½ of those years in the service of the Department. Previously, Ms. Whalen worked for three insurance companies and has significant experience in personal lines reserving, pricing, and reinsurance.

27. Ms. Whalen explained that based on the small size of the Merger Companies relative to the Surviving Companies and the run-off nature of the Merger Companies (*i.e.*, that the Merger Companies would not write new automobile policies in Michigan, but would only service the inactive Specified Policies), significant analysis of the Merger Companies was needed. For evaluation of the loss and loss adjustment expense reserves and the capital levels of the Surviving Companies, the Department relied on its existing analysis and examination processes, of which the Director (and Hearing Officer) may take notice, 50 Ill. Admin. Code 2402.220, and its knowledge of the Dividing Companies as the lead regulator of the Allstate group. Based on these standard processes, the Department concluded that the loss and loss adjustment expense reserves and capital levels of the Surviving Companies appear to be reasonable.

28. Certain information that the Department considered important to its evaluation of the Merger Companies included that:

(a) Claims for the Merger Companies will continue to be serviced by AIC in the same manner as they are currently serviced.

(b) Subject to regulatory approval, the Merger Companies will become parties to existing Allstate intercompany agreements that have been submitted to and approved

by the Department, including (1) an investment management agreement, (2) a service and expense agreement, (3) a tax sharing agreement, and (4) an agreement for the settlement of state and local tax credits. The Merger Companies have filed for approval by the Department for entry into these intercompany agreements.

(c) The Merger Companies shall not pay dividends to its shareholders for a period of five years after the Merger without the approval of the Director.

29. The Department's review encompassed information and material that Allstate provided on a confidential basis, including, without limitation, a capital assessment plan. Ms. Whalen explained that Allstate is entitled to confidential treatment, and non-disclosure to and non-discovery by third parties, of such material.

30. While preserving statutory confidentiality, Ms. Whalen testified that the Department Team evaluated the loss and loss adjustment expense reserves of the New Companies, and ultimately the Merger Companies, as part of the Examination process. The Team also evaluated the initial capital level of the Merger Companies.

31. No exceptions were noted in the Department's report of its Examination, which was admitted into evidence as Ex. 32, Report of Examination of Allstate Insurance Company as of June 30, 2020.

32. After consideration of all of the work of the Department's Team, the findings presented, and giving consideration to the final structure of the Merger Companies upon completion of the Proposed Restructuring, the Department concluded that the initial capital levels Allstate has proposed for the Merger Companies appear to be reasonable and that the loss and loss adjustment expense reserves allocated to the Merger Companies for the Specified Policies appear to be reasonable.

33. Ms. Whalen also described how certain actions will occur either immediately before or immediately after the Division itself, including (i) the commutation of the 100% reinsurance to AIC of the Specified Policies immediately prior to the Division, (ii) certain actions immediately after the Divisions and before the Mergers, (iii) the Mergers of the New Companies into the three Merger Companies, (iv) the contribution of the shares of ESMI and ECMI to ASMI; and (v) the reinsurance by ASMI of 100% of the insurance liabilities of ESMI and ECMI, subject to Department approval as may be applicable.

34. Ms. Whalen testified that the Department has determined that Policyholders and Claimants would not be adversely impacted by the Plans. To ensure that interests of policyholders and shareholders are properly protected, the Department reviewed, among other things, a letter from the MCCA (Ex. 31, Letter from the Michigan Catastrophic Claims Association to the Illinois Department of Insurance, dated February 19, 2021), regarding continued MCCA coverage for the Merger Companies, and material related to continued guaranty fund coverage for the Merger Companies and their Policyholders and Claimants.

Statutory Requirements

35. No evidence in the Record suggests, and, accordingly, there is no basis for the Hearing Officer to find that "the interest of any class of policyholder or shareholder of any Dividing Company will not be properly protected." 215 ILCS 5/35B-25(b)(1).

36. The Applicants have represented, and the testimony of Mr. Cassanelli regarding capital adequacy of the Merger Companies and Mr. Pedraja's and Ms. Whalen's testimony have confirmed, that all Policyholders and Claimants may reasonably expect to continue to receive the same high level of service that they have received in the past, and that the rights of Policyholders to coverage under the Specified Policies issued to them by the Dividing Companies, as well as the rights and interests of Claimants asserting claims under the Specified Policies, shall be fully protected under the Plans. *See* Ex. 22 at ¶¶ 114–15. Specifically, Mr. Pedraja testified that: (i) under the Proposed Restructuring, Policyholders' Specified Policies and Claimants' Specified Policy-covered claims will be handled by the Merger Companies, whose sole business will be to maintain and process such claims and policies, *id.* at ¶ 115; (ii) upon the effective date of the Proposed Restructuring, the Merger Companies will be fully prepared and able to administer claims under the Specified Policies allocated to them, *id.* at ¶ 134; (iii) the Merger Companies will receive operational support through intercompany services agreements that they will enter into with AIC and its affiliates to assist in executing the Merger Companies' business, *id.* at ¶¶ 27, 119; (iv) the assets of the Resulting Companies will be sufficient to cover their respective allocated liabilities going forward, *see id.* at ¶¶ 73–113; and (v) the more efficient allocation of capital resulting from the Proposed Restructuring will enhance Allstate's ability to innovate and offer improved insurance products, *id.* at ¶ 113. Ms. Whalen testified that the Department has determined that no interest of any class of policyholder or shareholder of the Dividing Companies will not be properly protected by the Plans.

37. The Merger Companies[6] have all received licenses to do insurance business in the state of Illinois, so no such company "would be ineligible to receive a license to do insurance business in this State pursuant to Section 5."[7] 215 ILCS 5/35B-25(b)(2).

38. No evidence in the Record suggests and, accordingly, there is no basis for the Hearing Officer to find that "the [Proposed Restructuring] violates a provision of the Uniform Fraudulent Transfer Act [("<u>UFTA</u>")]." 215 ILCS 5/35B-25(b)(3).

39. Under 215 ILCS 5/35B-25(e), in applying the UFTA, the Director shall treat "(1) the resulting company as a debtor, (2) liabilities allocated to the resulting company as obligations incurred by a debtor, (3) the resulting company as not having received reasonably equivalent

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[6] Because the Merger Companies are successors by operation of law to the New Companies, to the extent that the Division Law requirements apply to the New Companies under the terms of the statute, they have been applied to the Merger Companies as the surviving companies in the Mergers.

[7] Because the New Companies are non-surviving parties to the Mergers, they do not need to be eligible to receive licenses to transact insurance business in Illinois. Pursuant to Section 156(b) of the Merger Law, "a domestic stock company that is established for the sole purpose of merging…with an existing stock company simultaneously with the effectiveness of a division authorized by this Code" is not required to "be licensed to transact insurance business in this state before such merger and division."

value in exchange for incurring the obligations, and (4) assets allocated to the resulting company as remaining property." The Hearing Officer addresses below the relevant elements of a UFTA violation in the context of the evidence presented at the Hearing:

(a) That the allocation of assets and liabilities to the New Companies was made "with actual intent to hinder, delay, or defraud" any creditor of the Resulting Companies. 740 ILCS 160/5(a)(1).

(i) All of the evidence presented demonstrates that the Dividing Companies are pursuing the Proposed Restructuring with the intent to more efficiently allocate capital and achieve strategic benefits. Mr. Pedraja testified that the more efficient use of capital would allow Allstate to better serve ongoing claims and new policyholders and to better allocate its personnel and technological resources. Ex. 22 at ¶ 19. In addition, greater flexibility with the allocation of capital further allows Allstate to continue to invest in the Michigan automobile insurance market through Allstate's Transformative Growth Plan, which is designed to expand customer access, improve customer value propositions through competitively priced products and enhanced policyholder features, and increase investments in growth and technology. *Id.* at ¶ 20.

(ii) No evidence in the Record suggests and, accordingly, there is no basis for the Hearing Officer to find that the Proposed Restructuring was undertaken with actual intent to hinder, delay, or defraud any creditor, including the Policyholders and Claimants. Moreover, none of the UFTA factors listed in determining actual intent under 740 ILCS 160/5(a)(1) are applicable to this transaction, nor has any evidence been presented to suggest that any of those factors exist. 740 ILCS 160/5(b).

(b) That the assets allocated to the Resulting Companies are unreasonably small in relation to the business in which the Resulting Companies are engaged or about to engage. 740 ILCS 160/5(a)(2)(A).

(i) The documents and testimony presented demonstrate that the Resulting Companies' assets are reasonable in relation to the business in which the Resulting Companies will engage. Specifically, Mr. Pedraja testified to three separate analyses that Allstate performed to determine the appropriate level of capitalization for the Merger Companies: a BCAR (Best's Capital Adequacy Ratio) analysis, a NAIC (National Association of Insurance Commissioners) CAL (Company Action Level) RBC (Risk-Based Capital) ratio analysis, and a peer-company review. Ex. 22 at ¶ 73–80. In addition, Allstate retained A.M. Best, a reputable insurance rating agency, to provide a Preliminary Credit Assessment ("PCA") of the ASMI Group. The PCA summary released by A.M. Best, and dated February 19, 2021, made a number of findings. First, A.M. Best provided each Merger Company a financial strength assessment of "A- pca (Excellent)" and a long-term issuer credit assessment of "a- pca." Exs. 25-28, A.M. Best Press Release, *AM Best Assigns Preliminary Credit Assessment to ASMI Auto Group*

Members, dated February 19, 2021; A.M. Best Preliminary Credit Assessment for ASMI Auto Insurance Company, dated February 19, 2021; A.M. Best Preliminary Credit Assessment for ECMI Auto Insurance Company, dated February 19, 2021; A.M. Best Preliminary Credit Assessment for ESMI Auto Insurance Company, dated February 19, 2021. A.M. Best also prepared an analysis for the ASMI Group. It determined that the balance sheet strength of the ASMI Group is within the "Very Strong" category, which aligns with Allstate's internal assessment using the BCAR framework. A.M. Best further provided the ASMI Group with a financial strength assessment of "A- pca (Excellent)" and a long-term issuer credit assessment of "a- pca" with a stable outlook. Likewise, Lazard's independent analysis confirmed that the Merger Companies' assets were not unreasonably small in relation to the business that they intended to engage. Ex. 24B, [REDACTED] Lazard Written Report to the Department, dated February 23, 2021. Finally, Mr. Pedraja testified to the reasonableness of the pro forma financial statements and projections prepared by Allstate, which further support the finding that the Surviving Companies' assets are not unreasonably small in relation to their business. *See* Ex. 22 at ¶ 59, 72.

(ii) No evidence in the Record suggests and, accordingly, there is no basis for the Hearing Officer to find that the assets allocated to the Resulting Companies are unreasonably small in relation to the business in which the Resulting Companies are engaged or are about to engage. Ms. Whalen confirmed that this was the Department's finding, as well.

(c) That the Resulting Companies intended to incur, or believed, or reasonably should have believed, that they would incur debts beyond their ability to pay as they become due, 740 ILCS 160/5(a)(2)(B).

(i) The evidence presented demonstrates the Dividing Companies' commitment to adequate capitalization of the Merger Companies, to reasonably ensure that they will be able to pay the Policyholders and Claimants' claims going forward. Again, the Dividing Companies conducted numerous analyses, including of the reserve amounts themselves, to provide such assurance.

(ii) Based on the documents and testimony presented with respect to the financial stability of the Resulting Companies, and the lack of evidence to the contrary, the Hearing Officer does not find that the Resulting Companies intend to incur, believe or reasonably should have believed that they will incur, debts beyond their ability to pay as they become due.

(d) That the Resulting Companies will not be solvent or will become insolvent upon finalization of the Divisions, 740 ILCS 160/6(a) and (b).

(i) Mr. Pedraja testified based on his first-hand knowledge and experience as the Treasurer of Allcorp and his familiarity with the Dividing Companies' financials, that the Merger Companies and Surviving Companies will

remain solvent following the closing of the Proposed Restructuring. *See* Ex. 22 at ¶¶ 58, 112. Both Mr. Pedraja and Lazard looked to 215 ILCS 5/34, which provides that solvency occurs when a company's assets are not less than a company's capital, minimum required surplus, and all liabilities, and determined that this standard was met for the Merger Companies.

(ii) Based on this and the evidence noted above, as well as the lack of evidence to the contrary, the Hearing Officer does not find that the Resulting Companies are or will become insolvent upon the finalization of the Divisions or the Proposed Restructuring.

40. Based on the same evidence set forth above, and lack of evidence to the contrary, the Hearing Officer does not find that the Proposed Restructuring is "being made for purposes of hindering, delaying, or defrauding any policyholders or other creditors of the [Dividing Company.]" 215 ILCS 5/35B-25(b)(4).

41. Based on the same evidence set forth above, and lack of evidence to the contrary, the Hearing Officer does not find that "one or more [Resulting Companies] will not be solvent upon the consummation of the [Divisions]." 215 ILCS 5/35B-25(b)(5).

42. Based on the same evidence set forth above, and lack of evidence to the contrary, the Hearing Officer does not find that "the remaining assets of one or more [Resulting Companies] will be, upon consummation of a division, unreasonably small in relation to the business and transactions in which the [Resulting Company] was engaged or is about to engage." 215 ILCS 5/35B-25(b)(6).

43. As noted above, although several individuals identifying themselves as members of the public appeared for the Hearing, none elected to make any objection, provide any comments, or ask any questions when afforded the opportunity to do so.

44. No individual state guaranty association or regulator has filed any objection or claim asserting any concern about the continued solvency of the Resulting Companies or asserts that these Plans would reduce, eliminate or in any way impact guaranty association coverage. No individual state guaranty association or regulator has offered any affirmative evidence or argument that any specific policyholder, claimant, person, or any other entity's interests will not be "properly protected" pursuant to 215 ILCS 5/35B-25(b)(1). The Hearing Officer has not received any comment, statement, testimony or evidence that provides any basis to refrain from recommending approval of the Plans.

45. The Hearing Officer has reviewed and considered the Plans and the arguments of counsel following a full Hearing as provided in 50 Ill. Admin. Code 2402.120 and 2402.190(a).

II. CONCLUSIONS OF LAW

46. Any conclusions of law stated by the Hearing Officer on the record at the Hearing are hereby incorporated, to the extent they are not inconsistent with the Director's order.

47. The parties have provided notice to all persons entitled to such notice, and in accordance with 215 ILCS 5/35B-25(a); 5 ILCS 100/10-25 and 50 Ill. Admin. Code 2402.80 and 2402.90. The notice was, and is timely, good, sufficient and appropriate under Article IIB of the Code under the circumstances of this division proceeding, provided an opportunity for Policyholders and Claimants and other purported parties-in-interest to object and to be heard with respect to the Plans and all matters raised therein, and otherwise complied with the requirements of applicable law. *See, e.g. In re Am. Mut. Reins. Co.*, 238 Ill. App. 3d 1, 7 (1992) (notice was adequate where notice of hearing on rehabilitation plan was given and creditors had opportunity to object). No other form of or further notice with respect to the Plans and the Hearing or any related matter was necessary or required.

48. Due process of law has been accorded to all. See *Stratton v. Wenona Cmty. Unit Dist. No. 1*, 133 Ill. 2d 413, 432 (1990) ("Due process entails an orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights. A fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.") (internal citation omitted). All interested persons were afforded a reasonable opportunity to be heard or object with respect to the Plans.

49. The Director has jurisdiction over the subject matter of this proceeding, as well as jurisdiction over the parties, policyholders and claimants, and other interested persons. The Director is charged with "the rights, powers and duties appertaining to the enforcement and execution of all the insurance laws of [Illinois]," 215 ILCS 5/401), and ensures "the interest[s] of . . .policyholder[s] . . . will [ ] be properly protected." 215 ILCS 5/35B-25(b)(1). *See also* RESTATEMENT (SECOND) OF JUDGMENTS SECTION 41 (1989) (providing that "(1) A person who is not a party to an action but who is represented by a party is bound by and entitled to the benefits of a judgment as though he were a party. A person is represented by a party who is . . . (d) An official or agency invested by law with authority to represent the person's interests."); *Citizens for Open Access to Sand and Tide, Inc.* v. *Seadrift Ass 'n,* 60 Cal. App. 4th 1053, 1069-74 (1998) (finding privity where state agencies acted in a representative capacity); *Del Costello* v. *State,* 135 Cal. App. 3d 887, 891 (1982) ("A person is represented by a party if the party is an agency invested by law with authority to represent the person's interests."). Accordingly, all such policyholders and claimants, creditors, and interested parties **may** be bound by the Director's order.

50. The Hearing Officer has jurisdiction over this proceeding as the presiding official duly designated by the Director pursuant to 50 Ill. Admin. Code 2402.30, 50 Ill. Admin. Code 2402.140, 5 ILCS 100/10-10, and 5 ILCS 100/10-20, to conduct the Hearing. (*See* Ex. 1, Order from the Director of Illinois Department of Insurance appointing Judge Mason, dated February 3, 2021.) Pursuant to 50 Ill. Admin Code 2402.260, the Hearing Officer is empowered to issue Findings of Facts, Opinions, and Recommendations to the Director in writing.

51. The stated purpose of the Division Law is to improve the competitive position of Illinois domestic stock companies and enhance the desirability of Illinois as a jurisdiction of domicile for stock insurance companies. 215 ILCS 5/35B-5.

52. 215 ILCS 5/35B-25(a) and (b) require the Director to approve a plan of division, after reasonable notice and public hearing (if the notice and hearing are deemed by the Director to be in the public interest, or if a hearing is requested by the dividing company) unless the Director makes one of seven findings.

53. Pursuant to Code Section 156, 215 ILCS 5/156, "The Director may permit the formation of a domestic stock company that is established for the sole purpose of merging or consolidating with an existing stock company simultaneously with the effectiveness of a division authorized by this Code …."

54. At the Division Effective Time (as defined in the Plans and as may be modified by the Director's order):

(a) The assets and surplus and liabilities of the Dividing Companies will be allocated to the Resulting Companies as set forth in Plans of Division Art. VI. 215 ILCS 5/35B-35; and

(b) The Surviving Companies shall be fully and unconditionally released and discharged from, and have no responsibility or liability for, the assets, liabilities and contracts allocated to the New Companies. 215 ILCS 5/35B-40;

55. As a result of the Proposed Restructuring, the Merger Companies will hold, by operation of law, all of the assets, liabilities, and contracts associated with the Specified Policies. 215 ILCS 5/166.

56. The Division Law was enacted, in part, to provide a new and different process addressing the significant limitations in the current methods available to insurers to restructure blocks of business. The statutory process requires a higher level of review than traditional methods and is intended to provide finality that is not otherwise available, with a legal result that includes the assuming insurer being treated as if it were the original insurer of the allocated policies.

57. The Merger Companies shall become members of the MPCGA upon receipt of their licenses in Michigan, and Policyholders and Claimants shall be entitled to the same guaranty fund coverage upon the effectiveness of the Proposed Restructuring that they were entitled to before the effectiveness of the Proposed Restructuring. M.C.L.A. 500.7901 *et seq.*

58. Treatment of the Merger Companies as the "original insurers" of the Specified Policies applies not only to contractual rights, obligations, and liabilities, but also to seamless application of regulatory laws applicable to the Specified Policies, as if the Merger Companies

were the original insurers of the Specified Policies from the time and in the manner that the policies were issued, without interruption or modification.

59. After careful review of the evidence, for the reasons stated above, the Hearing Officer concludes that:

(a) The Plans comport with 215 ILCS 5/35B-25(b), which provides that the Director "shall approve a plan of division unless the Director finds that: (1) the interest of any class of policyholder or shareholder of the dividing company will not be properly protected; (2) each new company created by the proposed division, except a new company that is a non-surviving party to a merger pursuant to subsection (b) of Section 156, would be ineligible to receive a license to do insurance business in this State pursuant to Section 5;[. . . .][8] (3) the proposed division violates a provision of the Uniform Fraudulent Transfer Act; (4) the division is being made for purposes of hindering, delaying, or defrauding any policyholders or other creditors of the dividing company; (5) one or more resulting companies will not be solvent upon the consummation of the division; or (6) the remaining assets of one or more resulting companies will be, upon consummation of a division, unreasonably small in relation to the business and transactions in which the resulting company was engaged or is about to engage."

(b) Each Plan complies with the requirements of 215 ILCS 5/35B-15(b)(1)–(9) and 5/35B-15(c)(1)–(c)(3). The Plans include all information and otherwise comply with the requirements of the Division Law. 215 ILCS 5/35B-1 *et seq*.

(c) The Dividing Companies have complied with and satisfied the statutory procedures for approval of a plan of division as set forth in 215 ILCS 5/35B-25. Applicants have demonstrated that all requirements set forth in, and required by, 215 ILCS 5/35B-25(b) are met.

60. The Hearing Officer has not made and the evidence does not support any of the findings set forth in 215 ILCS 5/35B-25(b).

61. Applicants' Plans should be approved, and the Divisions should become effective subject to such conditions the Director sets.

62. Under 50 Ill. Admin. Code 2402.270, and upon receipt, the Director shall review the Hearing Officer's Findings, Opinions and Recommendations and shall issue an Order as set forth by applicable statutes or within a reasonable time. The Director's decision will become effective immediately upon execution of a written Order, or as otherwise specified by either the Order or applicable statute.

63. To the extent that the Director adopts the Hearing Officer's recommendations set forth below, the Director's Order approving the Plans will constitute the adjudication of the

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[8] 215 ILCS § 5/35B-25(b)(2.5) does not apply here.

rights of all Policyholders and Claimants, creditors, and interested persons with respect to the Proposed Restructuring. Upon effectiveness of the Divisions, the terms of the Plans are and shall be binding upon and enforceable against the Resulting Companies' policyholders and claimants, all creditors, any assigns, and other interested persons in accordance with their terms.

64. Any objection that could have been raised has been waived.

III. RECOMMENDATIONS

Based on the above-stated Findings of Fact, Conclusions of Law and the entire Record in this matter, the Hearing Officer offers the following Recommendations to the acting Director of Insurance:

a. That the Plans be APPROVED; and

b. That the Director enter an Order consistent with the foregoing.

SO RECOMMENDED this 5th day of March, 2021.

/s/ *Mary Anne Mason*

The Honorable Mary Anne Mason (Ret.)
Hearing Officer