OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

April 15, 1999

Ms. Mary Keller
Senior Associate Commissioner
Legal and Compliance Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR99-1025

Dear Ms. Keller:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123370.

The Texas Department of Insurance (the "department") received a request for information relating to Conseco Services, L.L.C. ("Conseco") and Jefferson National Life Insurance Company of Texas ("JNX"), a wholly owned subsidiary of Conseco. You state that some of the information will be released to the requestor. You contend that the remaining information is excepted from disclosure pursuant to section 552.112 of the Government Code and pursuant to section 552.101 of the Government Code in conjunction with articles 1.15 and 21.49-1 of the Insurance Code.

On behalf of Conseco and JNX, you also raise section 552.305 of the Government Code. Since you indicate that the proprietary interests of Conseco and JNX may be implicated by the release of the information at issue, this office notified Conseco and JNX about the request for information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). An attorney representing both Conseco and JNX responded by claiming that the information at issue is excepted from disclosure pursuant to sections 552.101, 552.110, 552.111, and 552.112 of the Government Code.

You contend that submitted information relating to Conseco's acquisition of Colonial Penn Life Insurance Company and Providential Life Insurance Company is excepted from disclosure under section 552.101 of the Government Code in conjunction with article 21.49 of the Insurance Code. Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Article 21.49-1 governs the acquisition of a domestic insurance company authorized to do business in the

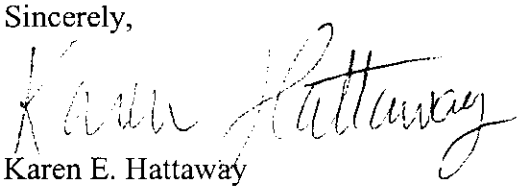
State of Texas. A party seeking to acquire control of a domestic insurer (the "acquiring party") must file a statement, known as a Form A application, with the Commissioner of Insurance (the "commissioner"). Ins. Code art. 21.49-1, § 5(a). Section 9(a) of article 21.491 permits the commissioner to conduct an examination of a domestic insurer that is the subject of an acquiring party's Form A application. Section 10 of article 21.49-1 deems all information obtained by the commissioner in an examination made pursuant to section 9 confidential.

You inform us that the commissioner, pursuant to section 9 of article 21.49-1, contracted with Arthur Andersen to conduct an independent valuation of Colonial Penn Life Insurance Company and Providential Life Insurance Company. The submitted documents include Arthur Andersen's final valuation report and information obtained during the preparation of the report. We agree that the final valuation report and related information are confidential under section 10 of article 21.49-1 of the Insurance Code. Accordingly, the department must withhold this information from disclosure pursuant to section 552.101 of the Government Code.

You contend that the remaining information at issue is confidential under article 1.15 of the Insurance Code. Section 9 of article 1.15 deems examination reports and related work papers obtained during the course of an examination of a carrier confidential. Ins. Code art. 1.15, § 9; Open Records Decision No. 640 (1996). You explain that the remaining information at issue relates to the department's examination of the financial condition of Conseco and its subsidiaries. Based upon this representation, we conclude that the department must withhold this information from disclosure under section 552.101 of the Government Code as information deemed confidential by section 9 of article 1.15 of the Insurance Code.

Because we are able to resolve this matter under section 552.101, we do not address the department's or Conseco's additional arguments against disclosure. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 123370

encl. Submitted documents

cc: Mr. Scot Paltow
The Wall Street Journal
200 Liberty Street
New York, New York 10281
(w/o enclosures)

Mr. Richard Dykhouse
Vice President and Associate General Counsel
Conseco Services, L.L.C.
Mail Code A2A
P.O. Box 1911
Carmel, Indiana 46032
(w/o enclosures)

Mr. Will D. Davis
Heath, Davis & McCalla, P.C.
720 Brazos Street
Austin, Texas 78701
(w/o enclosures)

Mr. Robert Wilkinson, Jr.
Attorney for Service
Jefferson National Life Insurance Company of Texas
205 East Tenth Street
Amarillo, Texas 79101
(w/o enclosures)