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VERISK/EAGLEVIEW MERGER DERAILED BY FTC CHALLENGE

James M. Burns

On December 16, Verisk Analytics, a leading provider of data analytics and related services to the insurance industry, including rooftop aerial measurement products, announced that it was terminating its efforts to acquire EagleView Technologies, an aerial image provider whose product is utilized in rooftop aerial measurement products. The announcement followed closely on the heels of an FTC announcement that it intended to challenge the transaction on antitrust grounds.

The Verisk/EagleView transaction was first announced in January of 2014 and, with a value of \$650 million, was subject to regulatory review for potential antitrust issues. At the time of the announcement of the deal, the parties stated that they expected the deal to close in the summer of 2014. However, FTC review of the transaction delayed the closing, leading to an updated announcement by the parties that they expected to close the deal in September. When September came and went without regulatory approval, the parties announced a year-end target date for closing.

However, the parties' merger plans were derailed when, on December 16, the FTC announced its intention to challenge the transaction. Asserting that, if completed, the deal would "result in a virtual monopoly in the U.S. market for rooftop aerial measurement products used by the insurance industry to assess property claims," the FTC announced the filing of an administrative complaint. In connection with the filing, Deborah Feinstein, the Director of the FTC's Bureau of Competition, stated that "Eagleview is the dominant company and Verisk is the only meaningful competitor offering rooftop aerial measurement products to insurance carriers," and that "if the transaction goes through, insurance carriers, and ultimately consumers, face the risk of higher prices."

In response to the FTC's announcement, Verisk announced that it was discontinuing its efforts to acquire Eagleview, bringing to a close an almost year-long effort to gain regulatory approval. Verisk also announced that a portion of the funds intended for the Eagleview transaction would be used to repurchase \$500 million in shares of Verisk.

AUTO BODY ANTITRUST ACTION CONTINUES TO EXPAND IN FLORIDA

James M. Burns

On December 12, the Judicial Panel on Multidistrict Litigation issued an order transferring *State of Louisiana v. State Farm Fire and Casualty Insurance* to the Middle District of Florida, making the case the latest addition to the multidistrict litigation entitled *In re Auto Body Shop Antitrust Litigation*. With the addition of the Louisiana case, the MDL proceeding now includes actions initially filed in Florida, Indiana, Mississippi, Tennessee, Utah, Alabama, Michigan, California, Washington, Illinois, Virginia, New Jersey, Oregon and Missouri.

The Louisiana case, like each of the previously transferred actions, centers upon a claim that more than thirty five auto insurers conspired to suppress reimbursement rates to repair shops for collision repairs. The first case, *A&E Auto Body v. 21st Century Centennial Insurance, et. al*, was filed in the Middle District of Florida in February of 2014, and it was to that court, and the Judge before whom that case was originally pending (Judge Gregory Presnell), that all of the subsequently-filed cases have been sent by the MDL Panel.

The Louisiana case, however, was somewhat unique – or at least different from – the other previously transferred cases in several respects. First, the Louisiana case was originally filed in state court, and subsequently transferred to federal court – improperly, in the view of the State. However, the Panel was not concerned by this, noting that jurisdictional issues do not present an impediment to transfer, because the plaintiff can present its arguments about why a case might properly be remanded to the transferee judge. See *In re Prudential Insurance Sales Practices Litigation*, 170 F.Supp.2d 1346 (J.P.M.L. 2001). In addition, Louisiana's contention that its case, which it characterized as an "enforcement action," was materially different in character than the private party actions currently before the transferee court, and thus the Louisiana case should not be transferred for this reason, was also rejected by the Panel. Calling Louisiana's contention "unconvincing," the Panel stated that it "often has transferred state enforcement actions to MDLs that involved cases brought by private litigants." See, e.g., *In re Countryside Fin. Corp. Mortgage Marketing and Sales Practices Litigation*, 582 F.Supp. 2d (J.P.M.L. 2008).

With the addition of the newly-transferred actions, *In re Auto Body Shop Antitrust Litigation* begins the new year with even greater significance. Judge Presnell has granted the newly-added parties until January to appear in the MDL proceeding, and will likely begin issuing rulings in the matter shortly thereafter. Given the issues in the cases and the large number of insurers now involved in the proceeding, the matter is unquestionably "one to watch" for 2015. Stay tuned.

SEVERAL LARGE INSURANCE INDUSTRY MERGERS ANNOUNCED AS 2014 COMES TO A CLOSE

James M. Burns

As 2014 came to a close, several significant insurance industry transactions were announced that, if completed, will likely reshape

several segments of the insurance industry in 2015. Each of them, of course, will require antitrust approval before they can be consummated.

The first, and largest, of these transactions was the late November announcement by RenaissanceRe Holdings that it had reached an agreement to acquire fellow Bermuda-based reinsurer Platinum Underwriters. The deal is valued at \$1.9 billion. Analysts commenting on the transaction have stated that RenaissanceRe is interested in enlarging its casualty insurance reinsurance business, and that casualty reinsurance represents over half of Platinum Underwriters's book of business.

Subsequently, in mid-December, Progressive Insurance announced its intention to acquire a controlling position in ARX Holding Corp, the parent company of American Strategic Insurance. American Strategic currently offers homeowners and property/casualty insurance to consumers in approximately 25 states. In announcing the transaction, Progressive stated that the transaction would support its strategy to service more customers who seek bundled homeowners/auto policies. The deal is valued at \$875 million.

Finally, on December 18, ACE Limited announced that it was acquiring Fireman's Fund's high net worth personal lines insurance business from Allianz Group. The deal is valued at \$365 million, and would supplement ACE's current high net worth personal lines business conducted through ACE Private Risk Services. The acquisition by ACE, coupled with Allianz's planned integration of the remainder of Fireman's Fund's commercial insurance business into Allianz Global Corporate & Specialty Insurance, will mean the end for the Fireman's Fund brand name, which has been in existence for over 150 years.

Notably, despite the insurance industry's antitrust exemption – the McCarran-Ferguson Act – the parties to these proposed transactions must obtain regulatory antitrust approval from the FTC/DOJ Antitrust Division before the transactions can be completed. This was made clear by the Supreme Court in *SEC v. National Securities, Inc.*, 393 U.S. 453 (1969), in which the Court expressly held that insurance industry mergers are not "the business of insurance" for McCarran purposes (and thus are not exempt). See also *In re American General Insurance Co.*, 81 F.T.C. 1052 (1972) (insurance company mergers are not the "business of insurance"). In addition, most states also regulate insurance industry mergers under their versions of the NAIC Insurance Company Holding Act, which typically require notice and approval of any "change in control." Accordingly, while none of the announced transactions appear to present any significant antitrust issues, and thus approval is not unlikely, the transactions are not expected to close until the first quarter of 2015, or later.