

**BEFORE THE INSURANCE COMMISSIONER  
FOR THE STATE OF ARKANSAS**

**IN THE MATTER OF THE APPLICATION FOR  
APPROVAL OF THE ACQUISITION OF  
CONTROL OF FOUNDATION LIFE INSURANCE  
COMPANY OF ARKANSAS BY BENNIE B.  
WESTPHAL AND ROBIN WESTPHAL CLEGG**

**AID NO. 2020- 52**

**ORDER**

A hearing was held at 10:00 a.m. on September 17, 2020, at the Arkansas Insurance Department in accordance with the provisions of Ark. Code Ann. §§ 23-63-501, *et seq.*, and other pertinent provisions of the Arkansas Insurance Code, pursuant to a Statement Regarding the Acquisition of Control of Foundation Life Insurance Company of Arkansas (“Foundation Life”) by the Applicants, Bennie B. Westphal and Robin Westphal Clegg (the “Statement”). The hearing was held before Russ Galbraith, Chief Deputy Commissioner (“Hearing Officer”) pursuant to his appointment by Commissioner Alan McClain in accordance with Ark. Code Ark. § 23-61-103(e). The Arkansas Insurance Department (“Department”) was represented by Amanda Capps Rose, Associate Counsel, and Mel Anderson, Deputy Commissioner for Financial Regulation.

The Applicants were represented by their attorney, Randall Bynum, of Dover Dixon Horne PLLC. Bennie B. Westphal testified on behalf of the Applicants.

**FINDINGS OF FACT**

From the Statement, exhibits, related filings, testimony of the witness, other evidence introduced at the hearing, reports and statements on file with the Department, representations of counsel, and other matters and things considered, the Hearing Officer finds as follows:

1. The Statement, along with exhibits, was filed with the Department on August 5, 2019. The Notice of Hearing was provided within the time and in the manner required by law, and the parties consented to the holding of the hearing on the date specified therein.

2. The Applicants proposed transfer of control is necessitated by the death of Betsy Westphal, the owner of the stock of the Foundation Life. Pursuant to the terms of the Betsy J. Westphal Revocable Trust, upon the death of Ms. Westphal, two separate irrevocable trusts came into existence, one for each of her children, the Applicants. Ownership of the stock of Foundation Life became the property of the Applicants' irrevocable trusts in equal shares.

3. Bennie B. Westphal is and will continue to serve as the President of Foundation Life. Robin Westphal Clegg is and will continue to serve as the Vice President of Foundation Life.

4. Bennie B. Westphal testified that, in his opinion:

(a) The acquisition will not adversely affect contractual obligations of Foundation Life to render service in the future to policyholders and the public;

(b) The effect of the acquisition will not substantially lessen competition in insurance in Arkansas or tend to create a monopoly in Arkansas;

(c) The financial condition of the Applicants will not jeopardize the financial stability of Foundation Life or prejudice the interest of its policyholders;

(d) The plans, proposals, operations, investment policies, corporate structure, and management will be fair and reasonable to the policyholders of Foundation Life and are in the public interest;

(e) The competence, experience, and integrity of those persons who will control Foundation Life are such that it would be in the interest of policyholders of Foundation Life and the public to permit the acquisition of control; and

(f) The officers and directors have not been subject to:

(i) Any conviction for a felony or misdemeanor, other than minor traffic violations, during the past twenty (20) years;

(ii) A misconduct order by a regulatory agency, a court of competent jurisdiction, or a finding of a violation of any insurance laws by a misconduct order of the Commissioner or of another state's commissioner;

(iii) An order by a regulatory agency or a court of competent jurisdiction finding that an unfair insurance trade practice or fraud had been committed; or

(iv) Having an insurance producer license or its equivalent denied, suspended, or revoked in any other state, province, district, territory, or foreign or alien country.

#### **CONCLUSIONS OF LAW**

5. The parties agree that the Commissioner has jurisdiction of the parties and the subject matter under the provisions of Ark. Code Ann. §§ 23-63-501, *et seq.*, and other pertinent provisions of the Arkansas Insurance Code.

6. All filings, hearings, and other procedures required by law or otherwise deemed appropriate by the Hearing Officer have been duly completed by the Applicants and the Department.

7. None of the conditions specified in Ark. Code Ann. § 23-63-510 as preclusions for the approval of the proposed acquisition exist.

#### **RECOMMENDATIONS OF THE HEARING OFFICER**

WHEREFORE, based upon the foregoing Findings of Fact, Conclusions of Law, and other matters before him, the Hearing Officer recommends that the proposed acquisition of

control of Foundation Life by the Applicants be approved as provided in the Statement, exhibits, related filings, and as described in this Order.



RUSS GALBRAITH  
CHIEF DEPUTY COMMISSIONER  
AND HEARING OFFICER

**CERTIFICATION**

I, Alan McClain, Insurance Commissioner for the State of Arkansas, do hereby certify that the above Findings of Fact, Conclusions of Law, and Recommendations of the Hearing Officer were made by and under my authority and supervision by Russ Galbraith, Chief Deputy Commissioner and Hearing Officer in this proceeding. I hereby adopt the Findings of Fact, Conclusions of Law, and Recommendations of the Hearing Officer in full and enter this Order.

THEREFORE, it is hereby ORDERED, based upon the above and foregoing Findings of Fact, Conclusions of Law, and other matters, the Commissioner does hereby approve the proposed acquisition of Foundation Life Insurance Company of Arkansas pursuant to and subject to the terms and conditions of the Statement, related filings and submissions, the Findings of Fact, and Conclusions of Law.

IT IS SO ORDERED THIS 28<sup>th</sup> DAY OF SEPTEMBER, 2020.



ALAN McCLAIN  
INSURANCE COMMISSIONER  
STATE OF ARKANSAS