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STATE OF ARIZONA

DEPARTMENT OF INSURANCE

**In the Matter of the Acquisition of Control of:** )  
   )  
**CAPITOL AMERICAN LIFE INSURANCE**          )  
**COMPANY, (NAIC No. 78174)**                  )  
**Insurer,**  )  
**by**  )  
**CONSECO INC.**  )  
**Petitioner.**  )  
\_\_\_\_\_)

**Docket No. 96A-183-INS**

**ORDER**

On December 4, 1996, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal submitted "Recommended Decision of Administrative Law Judge" (the "Recommended Decision"), a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance (the "Director") has reviewed the recommendation, and enters the following order:

1. The Proposed findings of fact contained in the Recommended Decision are adopted.
2. The proposed conclusions of law contained in the Recommended Decision are adopted.
3. The acquisition of control of the Insurer by the Petitioner be approved subject to the express conditions as follows:
  - a. If the completed fingerprint cards furnished to the Department reveal that any of Petitioner's officers or directors have been charged with or convicted of a felony or misdemeanor other

1 than minor traffic violations, the individual(s) shall be removed as an officer and/or director of the  
2 Petitioner and/or Insurer within 30 days after notice to Petitioner by the Department and shall be  
3 replaced with an officer or director acceptable to the Director. If Petitioner fails to take the prescribed  
4 action within 30 days, this failure will constitute an immediate danger to the public and the Director  
5 immediately may suspend or revoke Insurer's certificate of authority without further proceedings.

6 4. All information, documents, and copies relating to the Insurer and Petitioner obtained by  
7 or disclosed to the Director, or any other person in the course of a filing, an examination or investigation  
8 made pursuant to A.R.S. §§20-481.03 and 20-481.20, not be given confidential treatment, be subject to  
9 subpoena and shall be made public documents, subject to inspection, examination or copying by any  
10 person.

11 5. The Petitioner shall advise the Director in writing of the effective date of the change of  
12 control.

13 6. Until further notice from the Department, the Insurer shall file quarterly financial  
14 statements following the effective date of the acquisition.

15 7. The Petitioner and/or Insurer shall promptly remit payment of all expenses incurred as a  
16 result of the proposed acquisition to the Insurance Examiners' Revolving Fund ("IERF").

17 8. Upon consummation of this acquisition, the Insurer shall file its registration statement in  
18 the form prescribed by A.R.S. §20-481.10 and within the time period prescribed by A.R.S. §20-481.09  
19 or §20-481.13. If the registration statement would duplicate the information previously submitted by the  
20 Petitioner in the statement filed with the Department pursuant to A.R.S. §20-481.03 and there have been  
21 no material changes since the filing of that statement, then the Insurer shall submit a statement to that  
22 effect incorporating by reference the statement previously filed with the Department in lieu of the  
23 registration statement.

1 9. The failure to adhere to one or more of the above terms and conditions shall result  
2 without further proceedings in the suspension or the revocation of the Insurer's certificate of authority.

3 10. In accordance with the Order entered by Judge Paul A. Katz in Hershey v. Arizona  
4 Department of Insurance, John C. King, et al., Maricopa County Superior Court Case No. CV96-21343,  
5 and consistent with A.A.C. R20-6-159(C), this Order shall become effective ten days from the date of  
6 this Order.

7 NOTIFICATION OF RIGHTS

8 The aggrieved party may request a rehearing with respect to this Order by filing a written petition  
9 with the Office of Administrative Hearings within 30 days of the date of this Order, setting forth the  
10 basis for such relief pursuant to A.A.C. R20-6-114(B).

11 The final decision of the Director may be appealed to the Superior Court of Maricopa County for  
12 judicial review pursuant to A.R.S. §§ 20-166 and 20-481.30

13 **DATED** this 6th day of December, 1996

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\_\_\_\_\_  
John King  
Director of Insurance

18 A copy of the foregoing mailed  
19 this 6th day of December, 1996

19 Robert A. Zumoff  
20 Office of the Attorney General  
21 1275 W. Washington  
22 Phoenix, Arizona 85007

21 S. David Childers  
22 Low & Childers, P.C.  
23 2999 North 44th Street, Suite 250  
Phoenix, AZ 85018

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Charles R. Cohen, Deputy Director  
Gregory Y. Harris, Executive Assistant Director  
Mary Butterfield, Assistant Director  
Catherine O'Neil, Assistant Director  
Gary Torticill, Assistant Director  
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Cleveland, Ohio 44114-1195

*Curvey W. Burston*



**IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

In the Matter of the Acquisition of  
Control of

No. 96A-183-INS

**CAPITOL AMERICAN LIFE INSURANCE  
COMPANY (NAIC No. 78174),**

Insurer,

**RECOMMENDED DECISION  
OF ADMINISTRATIVE  
LAW JUDGE**

by

**CONSECO, INC.,**

Petitioner.

**HEARING:** November 19, 1996. The record of this matter closed on  
November 26, 1996.

**APPEARANCES:** Steven R. Henry, Esq. for the Petitioner, S. David Childers,  
Esq. for the Insurer, Kurt Regner for the Arizona Department of Insurance and Samuel  
G. Coppersmith, Esq. for Loren W. Hershey.

**ADMINISTRATIVE LAW JUDGE:** Lewis D. Kowal

On November 19, 1996, a hearing took place to consider the application for the  
acquisition of control of Capitol American Life Insurance Company (the "Insurer"), filed  
by Consec, Inc. (the "Petitioner"), with the Arizona Department of Insurance (the  
"Department"), and for approval of Petitioner as the controlling person of the Insurer  
pursuant to the provisions of A.R.S. §§20-481 through 20-481.23, and A.A.C. R20-6-  
1402.

Based upon the entire record in this matter, the following Recommended  
Findings of Fact, Conclusions of Law and Recommended Order are made:

Office of Administrative Hearings  
1700 West Washington, Suite 602  
Phoenix, Arizona 85007  
(602) 542-9826

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1           1.       The Insurer is a domestic insurer as referred to in A.R.S. §20-481.02.

2           2.       The Petitioner has filed a statement as referred to in A.R.S. §§20-481.02  
3 and 20-481.03, in the form required by A.A.C. R20-6-1402.

4           3.       The Insurer and its security holders waived the ten (10) day advance  
5 notice to be given as required by A.R.S. §20-481.07.

6           4.       Samuel G. Coppersmith, appeared as counsel for Loren W. Hershey, an  
7 individual who has direct and indirect beneficial ownership of approximately 14% of the  
8 shares of the Capitol American Financial Corporation ("CAFC"), the holding company of  
9 the Insurer. Mr. Coppersmith contended that Mr. Hershey was entitled to notice  
10 pursuant to A.R.S. §20-481.07 and did not receive proper notice so as to adequately  
11 prepare for the hearing of this matter.

12           5.       Mr. Coppersmith participated at the hearing, had an opportunity to  
13 examine and cross-examine witnesses and present oral and written arguments  
14 pursuant to A.R.S. §20-481(B) which, among other things, raised an issue as to  
15 whether Mr. Hershey was entitled to receive notice of the hearing of this matter.

16           6.       The Petitioner, the Insurer and the Department submitted written  
17 arguments in opposition to the notice issue raised by Mr. Coppersmith.

18           7.       A.R.S. §20-481.07(B) requires notice to be given by the person filing the  
19 statement required by A.R.S. §20-481.02, to the Insurer and to such other persons as  
20 may be designated by the Director. A.R.S. §20-481.07(B) also requires the Insurer to  
21 give notice to its security holders.

22           8.       Mr. Coppersmith contended that Mr. Hershey is a person entitled to be  
23 designated to received notice by the Director of the Department.

24           9.       Mr. Heshey did not present evidence that he is a security holder of the  
25 Insurer or a person designated by the Director of the Department entitled to notice,  
26 therefore Mr. Hershey did not demonstrate at the hearing that he is a person entitled to  
27 notice pursuant to the provisions of A.R.S. §20-481.07(B).  
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1           10. Mr. Coppersmith further contended that Mr. Hershey was entitled to notice  
2 because he is a party to the transfer of control as defined in A.R.S. § 41-1001(13)<sup>1</sup> and  
3 A.A.C. R20-6-101(B)(5)<sup>2</sup>

4           11. A.R.S. §41-1001(14) defines a "party" as "each person or agency named  
5 or admitted as a party or properly seeking and entitled as of right to be admitted as a  
6 party."

7           12. Although Mr. Hershey presented evidence that demonstrated that he is a  
8 person whose interests may be affected by the outcome of the hearing, Mr. Hershey did  
9 not present sufficient evidence or legal authority that would support a finding that he is  
10 a party to the hearing within the meaning of A.R.S. §41-1001(14).

11           13. An affidavit executed by Thomas J. Hildebrandt, Vice-President of CAFC,  
12 the sole shareholder of the Insurer, was submitted on November 20, 1996, marked as  
13 Exhibit 3 and admitted into evidence. That affidavit states that CFAC did not receive  
14 any oral or written requests of a copy of the Form A filings related to the instant  
15 transaction from any shareholder of CAFC.

16           14. No evidence has been produced at the hearing that would indicate or form  
17 the basis for a finding that the Petitioner's acquisition of control of the Insurer:

- 18           a. Is contrary to law;  
19           b. Is inequitable to the shareholders of any domestic insurer involved;  
20           c. Would substantially reduce the security of and service to be rendered to  
21 the policyholders of the domestic insurer in this State or elsewhere;  
22           d. After the change of control the domestic insurer would not be able to  
23 satisfy the requirements for the reissuance of a certificate of authority to write the line or  
24 lines of insurance for which it is presently licensed;

25  
26  
27 <sup>1</sup> The term "party" is defined in A.R.S. §41-1001(14) and not A.R.S. §41-1001(13).

28 <sup>2</sup> A.A.C. R20-6-101(B)(5) states that the term "party" "shall be as defined in A.R.S.  
29 §41-1001(5). As noted above in footnote 1, The term "party" is defined in A.R.S. §41-  
30 1001 (14). Apparently, the reference to the definition of the term "party" in A.A.C. R20-  
6-101(B)(5) was not amended to reflect the renumbering of that statute with respect to  
the definitions contained therein.

1 e. The effect of the acquisition of control would be to substantially lessen  
2 competition in insurance in this state or tend to create a monopoly;

3 f. The financial condition of any acquiring party might jeopardize the  
4 financial stability of the Insurer or prejudice the interest of its policyholders;

5 g. The plans or proposals that the acquiring party has to liquidate the  
6 insurer, sell its assets or consolidate or merge it with any person, or to make any other  
7 material change in its business or corporate structure or management, are unfair and  
8 unreasonable to policyholders of the Insurer and are not in the public interest;

9 h. The competence, experience and integrity of those persons who would  
10 control the operation of the Insurer are such that it would not be in the public interest of  
11 policyholders of the Insurer and of the public to permit the merger or other acquisition of  
12 control; or

13 i. The acquisition is likely to be hazardous or prejudicial to the insurance-  
14 buying public.

15 15. The Petitioner has furnished completed fingerprint cards to the  
16 Department to enable the Department to determine if any of Petitioner's officers or  
17 directors have been charged with or convicted of a felony or misdemeanor other than  
18 minor traffic violations. The Petitioner has made representations material to the  
19 issuance of the Order to be issued in this matter that none of its officers or directors  
20 have been charged with or convicted of a felony or misdemeanor other than minor  
21 traffic violations.

22 16. The interests of policyholders, shareholders or the public will be served by  
23 the publication of all information, documents and copies, relating to the Insurer and  
24 Petitioner, and obtained by or disclosed to the Director, or any other person in the  
25 course of a filing, an examination, or investigation made pursuant to A.R.S. §§20-  
26 481.03, 20-481.10 and 20-481.20.

27 17. Based upon its review of the Petitioner's Form A filing, the Department  
28 represented its belief that the Petitioner's Form A filing is complete and in compliance  
29 with Arizona law and recommended approval of this acquisition.  
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## RECOMMENDED ORDER

The undersigned Administrative Law Judge recommends that:

1. The acquisition of control of the Insurer by the Petitioner be approved subject to the express conditions as follows:

a. If the completed fingerprint cards furnished to the Department reveal that any of Petitioner's officers or directors have been charged with or convicted of a felony or misdemeanor other than minor traffic violations, the individual(s) shall be removed as an officer and/or director of the Petitioner and/or Insurer within 30 days after notice to Petitioner by the Department and shall be replaced with an officer or director acceptable to the Director. If Petitioner fails to take the prescribed action within 30 days, this failure will constitute an immediate danger to the public and the Director immediately may suspend or revoke Insurer's certificate of authority without further proceedings.

2. All information, documents, and copies relating to the Insurer and Petitioner obtained by or disclosed to the Director, or any other person in the course of a filing, an examination or investigation made pursuant to A.R.S. §§20-481.03 and 20-481.20, not be given confidential treatment, be subject to subpoena and shall be made public documents, subject to inspection, examination or copying by any person.

3. The Petitioner shall advise the Director in writing of the effective date of the change of control.

4. Until further notice from the Department, the Insurer shall file quarterly financial statements following the effective date of the acquisition.


5. The Petitioner and/or Insurer shall promptly remit payment of all expenses incurred as a result of the proposed acquisition to the Insurance Examiners' Revolving Fund ("IERF").

6. Upon consummation of this acquisition, the Insurer shall file its registration statement in the form prescribed by A.R.S. §20-481.10 and within the time period prescribed by A.R.S. §20-481.09 or §20-481.13. If the registration statement would duplicate the information previously submitted by the Petitioner in the statement filed

1 with the Department pursuant to A.R.S. §20-481.03 and there have been no material  
 2 changes since the filing of that statement, then the Insurer shall submit a statement to  
 3 that effect incorporating by reference the statement previously filed with the Department  
 4 in lieu of the registration statement.

5 7. The failure to adhere to one or more of the above terms and conditions  
 6 shall result without further proceedings in the suspension or the revocation of the  
 7 Insurer's certificate of authority.

8 Done this day, December 4, 1996.

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 13 LEWIS D. KOWAL  
 14 Administrative Law Judge

15 Original transmitted by mail this  
 16 4 day of December, 1996, to:

17 John King, Director  
 18 ATTN: Curvey Burton  
 19 Department of Insurance  
 20 2910 North 44th Street, #210  
 21 Phoenix, AZ 85018-7256

22 By   
 23 \_\_\_\_\_