

**STATE OF NORTH DAKOTA  
BEFORE THE INSURANCE COMMISSIONER**

**In the Matter of the Application           : Recommended Findings of Fact and  
Of Battle Creek Mutual Insurance       : Conclusions of Law  
Company                                       :  
File No. CO-23-872**

**RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**I. PRELIMINARY STATEMENT**

1. These Findings of Fact and Conclusions of Law are made in relation to the Plan of Mutual Property and Casualty Insurance Company Conversion dated August 4, 2023 (the "Plan") adopted by Battle Creek Mutual Insurance Company ("Battle Creek") and the Application for Approval of a Plan of Mutual Property and Casualty Insurance Company Conversion filed with the Commissioner on August 10, 2023 (the "Application").

2. On September 21, 2023, a hearing was held before the Insurance Commissioner of the State of North Dakota.

3. Appearing on behalf of Battle Creek were David F. Marx, Dorsey & Whitney LLP, Counsel to Battle Creek *pro hac vice*; Michael James (Jim) Alexander, President & CEO of Battle Creek; and Jack Sullivan, Dorsey & Whitney LLP. Timothy J. Milius, Secretary of Battle Creek, also attended the hearing.

4. Appearing for the Department were Matt Fischer, Chief Examiner and Division Director, Company Licensing and Examinations; and Laney Herauf, Legal Counsel. Other members of the staff of the Department were present but did not examine witnesses or testify.

5. Notice of the hearing was provided in accordance with law.

## II. FINDINGS OF FACT

These Findings of Fact are based upon the review of the contents of the Plan and the Application, including exhibits thereto, and the sworn testimony of Mr. Alexander and Mr. Fischer presented at the hearing.

### The Application Process:

1. Battle Creek is a North Dakota domiciled mutual insurance company.
2. The Application was filed with the Department on August 10, 2023.
3. The Application was filed pursuant to the provisions of § 26.1-12.2 et seq. of the North Dakota Century Code (the "Conversion Law"), relying on the Alternative Plan of Conversion provisions of § 26.1-12.2-05.

4. Mr. Alexander's testimony established the following:

(a) The Board of Directors of Battle Creek (the "Battle Creek Board") adopted and approved the Plan by a unanimous affirmative vote at a meeting held on August 4, 2023.

(b) On August 4, 2023, Battle Creek had 15,248 eligible members. An eligible member is a member of Battle Creek Mutual Insurance Company whose policy was in force on August 4, 2023. Battle Creek has no policyholders in North Dakota.

(c) Battle Creek mailed a notice required by § 26.1-12.2-02(3) of the Conversion Law to all the eligible members on August 11, 2023. Battle Creek also provided notice of the conversion to new policyholders who became policyholders after August 11, 2023. Policyholders were directed to a website where the Plan of Conversion and related materials are available for review. Battle Creek also mailed to eligible policyholders notification of the public hearing on or around August 30, 2023.

**The Plan:**

5. The Plan provides for the following:

(a) Battle Creek Mutual Insurance Company will convert to stock form and will be renamed Battle Creek Insurance Company (the "Conversion").

(b) Nodak Insurance Company will own 100% of the outstanding shares of Battle Creek Insurance Company.

6. The members of the Battle Creek Insurance Company Board of Directors will be selected in accordance with the bylaws of Battle Creek Insurance Company which were unanimously approved by the Board of Battle Creek and are on file with the North Dakota Department of Insurance. In accordance with the bylaws:

(a) The Battle Creek Insurance Company Board of Directors will be comprised of one or more directors. The number will be set by a resolution of the Board of Directors.

(b) As the sole stockholder of Battle Creek Insurance Company, Nodak Insurance Company will have the exclusive right to elect the members of Battle Creek Insurance Company's Board of Directors.

(c) The Battle Creek Insurance Company Board of Directors will make nominations for individuals to be elected as directors.

(c) Immediately following the Conversion, the Battle Creek Insurance Company Board of Directors will be comprised of the directors serving immediately prior to the Conversion.

7. The Plan provides that policyholders of Battle Creek as of August 4, 2023 (the date the Plan was adopted) will receive policyholder credits equal to \$30.00 per

policyholder. Policyholder credits will be issued at the renewal of such policy, after the effective date of the Conversion. Eligible policyholders whose policies were cancelled or not renewed after the adoption of the Plan of Conversion will receive a cash payment equal to \$30.00 per policyholder, in lieu of the policyholder credit. New policyholders who became policyholders after August 4, 2023 (the date the Plan of Conversion was adopted by the Board of Directors) will not be eligible to receive the policyholder credit. No member of Battle Creek will receive subscription rights to purchase shares of common stock of Battle Creek Insurance Company or otherwise have any right to vote on any matters relating to Battle Creek Insurance Company following the Conversion.

8. The Alternative Plan of Conversion provisions of § 26.1-12.2-05 provide that the alternative plan of conversion may provide for issuing stock, cash, policyholder credits, or other consideration, or any combination of the foregoing, to policyholders instead of subscription rights.

9. Mr. Alexander's testimony established the following:

(a) Nodak Insurance Company and Battle Creek are parties to that certain Affiliation Agreement dated December 30, 2010 (the "Affiliation Agreement").

(b) Nodak Insurance Company holds a Surplus Note (the "Surplus Note") originally issued by Battle Creek on December 30, 2010 in the amount of \$3,000,000. The Plan provides that upon the Conversion, the outstanding principle under the Surplus Note will convert into shares of common stock of Battle Creek, as converted, representing all of the issued and outstanding shares of Battle Creek, as converted. Accrued interest under the Surplus Note will be repaid in cash immediately prior to the effectiveness of the Conversion.

(c) Pursuant to the Affiliation Agreement, Nodak Insurance Company has the right to appoint two-thirds of the members of the Battle Creek Board, with the remaining one-third elected by the members from nominees selected by the Battle Creek Board.

(d) Nodak Insurance Company is a wholly owned subsidiary of NI Holdings, Inc. ("NI Holdings").

(e) Because NI Holdings has concluded that it controls Battle Creek, NI Holdings consolidates the financial statements of Battle Creek, and Battle Creek's policyholders' interest in Battle Creek is reflected as a noncontrolling interest in shareholders' equity in NI Holdings' Consolidated Balance Sheets and Battle Creek's net income or loss is excluded from net income attributed to NI Holdings in NI Holdings' Consolidated Statements of Operations.

(f) Mr. Alexander testified that there have been no material developments since the date of NI Holdings' December 31, 2022 financial statements that would affect the value of Battle Creek used in preparing such financial statements.

(g) Mr. Alexander testified that he did not anticipate any loss of jobs in North Dakota based on the Plan and that the Plan would have no effect on Battle Creek's independent agents.

10. If the Plan is approved by the Commissioner, Battle Creek must then send out the Proxy Statement and Form of Proxy, drafts of which are included as part of Battle Creek's Application, and the members of Battle Creek must vote to approve the Plan at a Special Meeting of the members of Battle Creek. Adoption of the Plan by the members requires approval by two-thirds of the votes cast by the members at the Special Meeting.

**Evaluation of the Effects of the Plan:**

11. Mr. Alexander's testimony established the following with respect to the proceedings of the Battle Creek Board:

(a) The Battle Creek Board periodically engages in strategic planning meetings.

(b) The Battle Creek Board first considered the concepts of mutual holding companies and conversion from mutual to stock form in 2021.

(c) Members of the Battle Creek Board and management of Battle Creek were involved in the conversion of Nodak Insurance Company from a mutual insurance company to a stock insurance company in 2017.

(d) The Battle Creek Board considered the options for conversion available under the Conversion Act and Nodak Insurance Company's experience with the conversion process.

(e) The Battle Creek Board unanimously adopted the Plan at a meeting held August 4, 2023.

12. Mr. Alexander testified that the Battle Creek Board determined the Plan to be in the best interests of Battle Creek and its policyholders. Mr. Alexander explained these reasons for such determination:

(a) Battle Creek would remain an independent, well-capitalized company and all currently in-force policies will remain in force.

(b) Battle Creek will continue to be controlled by Nodak Insurance Company and NI Holdings.

(c) The Conversion will eliminate certain costs associated with being a mutual insurance company, including costs associated with holding annual meetings of Battle Creek's policyholders.

(d) The Conversion will streamline corporate governance matters for Battle Creek by aligning its structure with that of NI Holdings' other direct and indirect insurance company subsidiaries, which the Battle Creek Board believes will promote greater efficiency in managing NI Holdings' group of insurance company subsidiaries, including Battle Creek.

(e) Each eligible member will receive a policyholder credit that the Battle Creek Board believes represents greater value than would be received through the receipt of subscription rights.

**Policyholder Credits:**

13. Section 26.1-12.2-05 of the Conversion Law provides that an alternative plan of conversion may be adopted "that does not rely in whole or in part upon issuing nontransferable subscription rights...if the commissioner finds the plan of conversion does not prejudice the interests of the members, is fair and equitable, and is not inconsistent with the purpose and intent" of the Conversion Law.

14. The Plan provides that policyholders of Battle Creek as of August 4, 2023 (the date the Plan of Conversion was adopted) will receive policyholder credits equal to \$30.00 per policyholder. Policyholder credits will be issued at the renewal of such policy, after the effective date of the Conversion. Eligible policyholders whose policies were cancelled or not renewed after the adoption of the Plan of Conversion will receive a cash payment equal to \$30.00 per policyholder, in lieu of the policyholder credit. New

policyholders who became policyholders after August 4, 2023 (the date the Plan of Conversion was adopted by the Board of Directors) will not be eligible to receive the policyholder credit. Policyholders will not receive subscription rights to purchase shares of common stock of Battle Creek Insurance Company.

15. Mr. Alexander testified that in Nodak Insurance Company's conversion from a mutual insurance company to a stock insurance company, approximately 98% of the Nodak Insurance Company's members elected to receive the redemption value of the subscription rights, rather than exercising to purchase shares of common stock of NI Holdings. Based on this experience, the Battle Creek Board believes that the vast majority of Battle Creek's members would choose to receive the redemption value of subscription rights.

16. Mr. Alexander testified that, if issued, subscription rights to purchase shares of common stock of Battle Creek Insurance Company would have a total redemption value of approximately \$15.45 per policyholder. The proposed policyholder credit represents a premium of approximately 94% compared to the estimated redemption value of subscription rights. Therefore, the Battle Creek Board believes that the policyholders would receive greater value from the policyholder credits than from subscription rights.

17. Mr. Alexander testified that the Battle Creek Board also considered the additional costs that would be required if Battle Creek pursued a standard plan of conversion, including the issuance of subscription rights. When compared with the valuation of Battle Creek, and in light of the amount of the policyholder credits, the Battle



Creek Board does not believe that such additional expenses would result in greater benefits provided to the policyholders.

18. Mr. Alexander testified that the Plan does not prejudice the interests of the members, is fair and equitable, and is not inconsistent with the purpose and intent of the Conversion Law; to the contrary, he believes the members will benefit. While the members of Battle Creek will no longer be able to elect one-third of the members of the Battle Creek Board, Nodak Insurance Company has controlled the Battle Creek Board since December 2010. In addition, no member of Battle Creek has ever submitted a nominee for election to the Battle Creek Board.

19. Mr. Alexander testified that Battle Creek considered risks to the policyholders, including risks relating to (i) the policyholders' participation in the election of directors of Battle Creek and (ii) impacts on policyholders' policies with Battle Creek and determined that such risks are minimal based on the following factors: (a) while the policyholders of Battle Creek will no longer be able to elect one-third of the members of the Battle Creek Board, Nodak Insurance Company has controlled the Battle Creek Board since December 2010, (b) no policyholder of Battle Creek has ever submitted a nominee for election to the Battle Creek Board, (c) insurance coverage under existing policies will continue in accordance with their respective terms and provisions and the adoption of the Plan and consummation of the conversion of Battle Creek thereunder will not affect premiums or coverage and will not result in any cancellation or termination of any such policy, (d) there will be no disruption in the insurance relationship of policyholders of Battle Creek, and (e) Battle Creek currently has adequate capital and surplus to support its

operations and its AM Best “A” rating, and Battle Creek Insurance Company, as the converted company, will have sufficient capital and surplus to support its operations.

20. No testimony or other evidence was offered that the Plan does prejudice the interests of the members, is not fair and equitable, or is inconsistent with the purpose and intent of the Conversion Law.

**Capital and Surplus:**

21. Mr. Alexander testified that Battle Creek currently has adequate capital and surplus to support its operations and its AM Best “A” rating, and that Battle Creek Insurance Company, as the converted company, will have sufficient capital and surplus to support its operations.

22. Mr. Fischer for the North Dakota Insurance Department testified that Battle Creek has sufficient capital and surplus to support its operations, that it will have sufficient capital and surplus following the conversion and that the Plan would not have a detrimental effect on the capital and surplus of Battle Creek.

**Compliance with the Conversion Law:**

23. Mr. Fischer for the North Dakota Insurance Department testified in part to the following:

(a) He was one of the North Dakota Insurance Department staff members who reviewed the documentation submitted with respect to the proposed conversion.

(b) The Plan complies with the requirements of Chapter 26.1-12.2 of the North Dakota Century Code. The Plan sets forth all provisions that must be

included pursuant to said chapter, and does not set forth any provision that is contrary to said chapter.

**Insurance Policies:**

24. Mr. Alexander testified that adoption of the Plan and consummation of Battle Creek's conversion thereunder will not have any effect on the insurance coverage provided by Battle Creek. Insurance coverage under existing policies will continue in accordance with their respective terms and provisions. Adoption of the Plan and consummation of the conversion of Battle Creek thereunder will not affect premiums or coverage and will not result in any cancellation or termination of any such policy. There will be no disruption in the insurance relationship of members of Battle Creek.

**Public Comments:**

25. In addition to the mailing of notice of the Plan to eligible policyholders by Battle Creek (See ¶ [4(c)], supra), the Department published notice of the Plan together with copies of the Plan on the Department's website.

26. The Department received 2 comments on the Plan prior to the hearing and numerous telephone calls. These comments were ultimately inquiries into the specifics of the plan and the commenters were instructed to contact Battle Creek.

27. Mr. Alexander testified that Battle Creek received 1 inquiry, by email, about the Plan.

28. The inquiry was seeking clarification about the effects of the Plan on the inquiring person's insurance policy.

29. No commenters expressed any level of concern about or disagreement with the Plan.

30. The Department received no written comment following the hearing.

31. The North Dakota Insurance Department is aware of no objections to the Plan at this time which would be material to the factors found in N.D.C.C. § 26.1-12.2-02(4).

32. No objections to the proposed conversion were offered at the hearing.

33. No members of the public attended the hearing to make any comments to the Plan.

### **III. PROPOSED CONCLUSIONS OF LAW**

1. Battle Creek has properly filed all the materials required by § 26.1-12.2-02(2) of the Conversion Law.

2. Battle Creek has paid the required \$10,000 filing fee pursuant to § 26.1-12.2(2)(f) of the Conversion Law.

3. Pursuant to §26.1-12.2-02(4):

(a) Battle Creek's Plan complies with Chapter 26.1-12.2 of the North Dakota Century Code.

(b) Battle Creek's Plan is fair and equitable to the converting mutual company, the members of the converting mutual company, and the eligible members of the converting mutual company.


(c) The Plan does not prejudice the interests of the members of Battle Creek.

(d) Battle Creek Insurance Company, when converted in accordance with the Plan, will have the amount of capital and surplus that is reasonable for its future solvency.

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, Battle Creek Mutual Insurance Company's Application for Approval of a Plan of Mutual Property and Casualty Insurance Company Conversion is hereby APPROVED.

Dated this 29<sup>th</sup> day of September, 2023.



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