OFFICE OF THE COMMISSIONER OF INSURANCE (OCI) STATE OF WISCONSIN

In the Matter of the Acquisition of Control of:
Ambac Assurance Corporation

OCI Case No. 25-C46550

by

American Acorn Corporation
American Acorn Holdings LLC, Oaktree Opportunities Fund XII Holdings (Delaware), L.P., Oaktree Fund GP, LLC, Oaktree Fund GP I, LP, Oaktree Capital I GP, LLC, Oaktree Capital Holdings, LLC, Oaktree Capital Group Holdings, LP, Oaktree Capital Group Holdings GP, LLC, Bruce Karsh, Howard Marks, and Sheldon Stone,

Petitioners.

**PETITIONERS' RESPONSE TO THE PROPOSED INTERVENORS' MOTIONS TO BE ADMITTED AS PARTIES**

On July 25, 2025, the Ad Hoc Group of noteholders of surplus notes issued by Ambac Assurance Corporation (the "Ad Hoc Group") moved to intervene in this proceeding. Shortly thereafter, on August 4, 2025, ESM Management LLC and Align Private Capital also moved to intervene (the "Investment Group") on similar grounds (together with the Ad Hoc Group, the "Proposed Intervenors").[1]

American Acorn Corporation, American Acorn Holdings LLC, Oaktree Opportunities Fund XII Holdings (Delaware), L.P., Oaktree Fund GP, LLC, Oaktree Fund GP I, LP, Oaktree Capital I GP, LLC, Oaktree Capital Holdings, LLC, Oaktree Capital Group Holdings, LP, Oaktree Capital Group Holdings GP, LLC, Bruce Karsh, Howard Marks, and Sheldon Stone (collectively, the "Petitioners") hereby respond to the Proposed Intervenors' motions.

[1] The Investment Group have referred to themselves as the Proposed Intervenors. As noted above, the use of the term "Proposed Intervenors" in this brief encompasses both movants.

The Proposed Intervenors' motions fail to satisfy well-established and long-recognized requirements for intervention as a party in a Form A change of control proceeding before the Wisconsin Office of the Commissioner of Insurance (the "OCI"). As described below, the Proposed Intervenors' motions should be denied because: (a) both groups fail to identify any direct or immediate injury relating to the change of control; and (b) the interests asserted by Proposed Intervenors are not interests recognized or regulated by the applicable statutes.

The Proposed Intervenors seek to use these proceedings in an unprecedented way—as a means to assert their own private contractual interests. This is not the right forum for that. Moreover, the proposed acquisition fully respects and leaves unimpaired the Proposed Intervenors' private contractual rights. Accordingly, the Proposed Intervenors' requests should be denied.

## I. The Proposed Intervenors fail to qualify for intervention under Wis. Stat. § 227.44(2m).

Wisconsin Statute § 227.44(2m) permits "[a]ny person whose substantial interest may be affected by the decision" to be admitted as a party, including by intervention. The OCI has consistently confirmed that this section is subject to the two-prong standing test required to challenge an administrative action in circuit court. *See, e.g., In the Matter of the Acquisition of Control of Humana Ins. Co., HumanaDental Ins. Co., Humana Wis. Health Org. Ins. Corp., and Indep. Care Health Plan by Aetna Inc.,* Case No. 15-C40896 (OCI Mar. 25, 2016) (OCI's Order Re: Motion to Intervene); *In the Matter of the Acquisition of Control of Physicians Plus Ins. Corp. by Iowa Health Sys.*, Case No. 13-C35798 (OCI Dec. 20, 2013) (Prehearing Conf. Mem. & Ord.); *In the Matter of Application for Conversion of Blue Cross & Blue Shield United of Wis.,* Case No. 99-C26038 (OCI Nov. 29, 1999) (Decision on Mots. to Intervene as Parties).[2]

[2] These decisions are collectively attached as Exhibit A.

The first prong requires the Proposed Intervenors to prove that the agency's decision will directly cause injury to their interests. *Fox v. Wis. Dep't of Health & Soc. Servs*., 112 Wis. 2d 514, 524, 334 N.W.2d 532 (1983). "Abstract injury is not enough. The plaintiff must show that he has sustained or is immediately in danger of sustaining some direct injury as the result of the challenged official conduct and the injury or threat of injury must be both real and immediate, not conjectural or hypothetical." *Id.* at 525 (internal quotation marks and citation omitted).

The second prong obligates the Proposed Intervenors to show that their alleged injury is an interest recognized by law. *Id.* at 524. In determining whether a moving party has asserted an interest recognized by law, the courts look to the law applied by the agency. *Blue Cross & Blue Shield United of Wis.*, Case No. 99-C26038 (OCI Nov. 29, 1999); *see, e.g*., *Waste Mgmt. of Wis., Inc. v. Wis. Dep't of Nat. Res*., 144 Wis. 2d 499, 507, 424 N.W.2d 685 (1988) ("To apply this second part of the two-step standing analysis—whether the injury is to an interest which is protected by the law—we must examine sec. 144.44(2)(nm), Stats., the law the DNR was applying in making the determination of need.") (footnote omitted). "[T]his inquiry centers on a textually driven analysis of the language of the specific statute cited by the petitioner as the source of its claim to determine whether that statute 'recognizes or seeks to regulate or protect' the interest advanced by the petitioner." *Friends of Black River Forest v. Kohler Co.*, 2022 WI 52, ¶ 28, 402 Wis. 2d 587, 977 N.W.2d 342 (citation omitted).

Here, the Proposed Intervenors cannot satisfy either prong, and they are therefore not entitled to intervene.

**a. The Proposed Intervenors' claimed injury is hypothetical, not direct or immediate.**

The Proposed Intervenors have not established that any decision by the OCI will cause a "direct," "real," or "immediate" injury to them. Instead, they assert only a hypothetical and

conjectural injury, namely that the approval of the transaction will impair their "legal and financial interests." The alleged injuries relate to: (a) the purchase price being paid directly to the seller and not to the target entity itself; and (b) the loss of net operating losses.

The proposed acquisition of the Domestic Insurer will not directly impact the Proposed Intervenors' rights as noteholders—let alone in a manner that could be deemed "direct," "real," or "immediate." *See, e.g., Kenosha 2020, LLC v. Wis. Dep't of Admin.*, 2003 WI App 42, ¶ 13, 260 Wis. 2d 601, 658 N.W.2d 87 (unpublished) (denying standing where the plaintiff failed to demonstrate a direct injury or a real and immediate threat).

The mere fact that ownership is changing does not in itself create harm to the Proposed Intervenors. Each group's respective rights as noteholders are governed by the terms of the specific notes and related agreements. These rights are independent of, and not directly related to, the current ownership of the Domestic Insurer. For instance, payment of the principal and interest amounts due on the notes is subject to the direct approval of the OCI based on the financial strength of the Domestic Insurer.

Indeed, the Ad Hoc Group speculates—without any supporting basis—that a change in ownership will result in injury because of the potential impact on net operating losses (NOLs) to offset future tax obligations. However, even assuming a partial loss of net operating losses resulting from the change of control, such a loss would be only a hypothetical or conjectural injury at best. NOLs would only be relevant to the extent that the Domestic Insurer begins generating substantial profit—something the current ownership of the Domestic Insurer has not accomplished. Moreover, the tax management strategies of the Domestic Insurer are only a piece of its total plan of operations. Additional NOLs could accrue based on unforeseen developments relating to the company's liabilities and business and be used to offset future tax obligations. Or,

the Petitioners' plans for the Domestic Insurer may result in the growth of the Domestic Insurer's assets, and its ability to obtain approval to pay the notes sooner than the current ownership.

Moreover, the proposed acquisition maintains the Ad Hoc Group's seniority as debt holders, as well as the value of the surplus—key protections that serve their long-term interests.

Finally, the Proposed Intervenors' assertion that they will suffer direct injury because the Domestic Insurer itself will not directly be paid in connection with the acquisition of its equity securities is without basis and does not amount to an injury in fact. In any stock purchase transaction, the buyer acquires the outstanding shares of the target company directly from its shareholders. As a result, it is the selling shareholders—not the target company itself—who receive the purchase price for the securities being sold, based on the value of such securities as determined between the parties. The target company does not receive any of the consideration paid in exchange for the shares being sold, and its corporate assets and liabilities remain unchanged by the transaction.

Further, the Surplus Notes and the common stock of the Domestic Insurer are distinct classes of securities, each with different rights and priorities, which were established at the time of their issuance and would remain unchanged by the proposed acquisition of control. Ambac Financial Group, Inc.'s ability to transfer ownership of the Domestic Insurer's common stock to a third party for value does not entitle holders of a different class of security—in this case the Proposed Intervenors as holders of the Surplus Notes—to compensation, nor does it trigger an obligation for the Domestic Insurer to receive additional capital contributions solely because the identity of the holder of its common equity securities has changed. Importantly, the rights of the Proposed Intervenors and the rights attaching to the Surplus Notes remain fully intact and

unchanged, and the Proposed Intervenors will suffer no direct or even indirect injury as a result of the proposed transaction.

The point is clear: the Proposed Intervenors' alleged injury rests entirely on the unfounded assumption that the acquisition will leave them worse off—a total hypothetical. The OCI may deny their request to intervene on this basis alone. *Fox*, 112 Wis. 2d at 529 ("[Claimant's] claims of injury are simply too indirect and speculative to confer standing on him . . . .")

**b. The Proposed Intervenors' alleged injuries are not interests recognized in Wis. Stat. § 611.72**

Even assuming the Proposed Intervenors can satisfy the first prong (they cannot), they also fail to meet the second prong. The Proposed Intervenors maintain that their interests in enforcing their contractual rights are rights recognized by law and that alone fulfills the second prong. Further, they claim that their private financial interest necessarily represents a public one. The Proposed Intervenors, however, are mistaken.

The "allegedly adversely affected interest" must be one "protected, recognized, or regulated by an identified law . . . ." *Friends of Black River Forest*, 2022 WI 52, ¶ 31.[3] In *Friends of Black River Forest*, the plaintiffs sued the Department of Natural Resources ("DNR") to prevent the state from transferring certain state park land to the defendant and providing that same group a two-acre easement. *Id.* ¶ 32. The plaintiffs claimed they had standing to sue the DNR because they would suffer aesthetic, recreational, conservational, and procedural injuries. *Id.*

In assessing whether the plaintiffs had standing, the state supreme court assumed they satisfied the injury-in-fact requirement and turned to whether their alleged injuries were legally cognizable. *Id.* It examined five statutes and administrative regulations cited by the plaintiffs to

[3] The Investment Group cites to *Friends of Black River Forest* to support a finding of standing. Yet, *Friends of Black River Forest* actually undermines their position.

determine whether any of them protected or regulated the interests at issue. *Id.* ¶¶ 33-45. Concluding that none of them did, the Court expressly held that to meet the second prong of the standing test, future plaintiffs must identify a statute that protects, recognizes, or regulates an interest they allege has been adversely affected. *Id.* ¶ 46.

The standards for determining approval and disapproval of mergers or other acquisitions of stock insurance corporations are set forth in Wis. Stat. § 611.72. The statute specifically identifies several criteria to be considered by the Commissioner: (1) satisfaction of the requirements for licensure as a domestic insurer, (2) the impact of the acquisition on the competitive nature of the insurance market, (3) the financial condition of the acquiring party, (4) that future plans for the insurer are fair and reasonable to policyholders or in the public interest, and (5) the competency and integrity of the officers and directors. Notably, the statute does not contemplate a basis to deny an acquisition based on the consideration of private financial interests.

The Proposed Intervenors fail to articulate how Wis. Stat. § 611.72 protects, recognizes, or regulates their private financial interests, because they cannot. Nothing in the statute's plain language says that private contractual obligations between commercial entities are to be considered legally protected interests. The Investment Group's analysis is further flawed by their suggestion that they are akin to policyholders. Both arguments should quickly be dismissed.

First, no breach of contract has occurred, or will occur, as a result of the OCI's approval of the transaction or its closing.

Second, the plain language of the statute does not recognize or address private financial relationships between commercial entities. Rather than applying the language as written, the Proposed Intervenors read into the statute rights and protections that do not appear anywhere in the text. The plain language of Wis. Stat. § 611.72 does not mention or reference "private

contractual rights," "enforcement of contracts," or any other similar terms. The Proposed Intervenors' interpretation would transform the statute into a catch-all vehicle for private enforcement of commercial agreements.

None of the Proposed Intervenors point to any language in Wis. Stat. § 611.72, or any other statute, regulation, or contractual provision, that affords protection for their asserted contractual interests—let alone one that would support standing under Wisconsin law. That is because the Proposed Intervenors' interests are well outside the scope of interests addressed in Wis. Stat. § 611.72. *See Friends of Black River Forest,* 2022 WI 52, ¶ 31 (finding that the law must "actually affords" legal protection to the asserted interest).

Further, surplus notes and related transactional documents confer no rights upon the Proposed Intervenors to either approve or object to a change of control transaction, nor do they provide the Proposed Intervenors standing to do so.

The Proposed Intervenors, or their predecessors-in-interest, had the opportunity to negotiate such provisions at the time the surplus notes were issued but did not do so. The contractual terms of the surplus notes do not require the Proposed Intervenors' consent for a sale of the Domestic Insurer. Permitting the Proposed Intervenors to intervene in an effort to influence the Commissioner's review of the proposed acquisition of control would effectively grant the Proposed Intervenors rights they neither bargained for nor were afforded under the agreements. These are sophisticated commercial parties operating in the context of securities issued by an insurance company—precisely the kind of arrangement in which one would expect consent rights over future transactions that would result in a change of control of the issuing insurance company to be expressly negotiated if they were intended. Their absence reflects deliberate contractual choices by the parties that accepted the notes.

Third, the Investment Group's assertion that their financial interests must be considered as those of policyholders recognized under Wis. Stat. § 611.72 also fails. Their effort to portray themselves as "successors" to policyholders is merely an inappropriate attempt to backdoor their way into the protections of the statute. In fact, the Investment Group's argument deviates significantly from the reality of the terms applicable to the issuance of their notes—which was made in "full satisfaction" of the policyholders' claims.[4]

The Investment Group (and the Ad Hoc Group) plainly and unequivocally are not policyholders. They are neither policyholders in the traditional sense nor policyholders under the statutory definition of that term.[5] The Investment Group points to no Wisconsin law, regulation, or judicial opinion to support their broad interpretation of the term "policyholder," and no such reading should be made here. Accordingly, this argument must be rejected outright.

In short, because the Proposed Intervenors' private financial interests fall outside the ones contemplated by Wis. Stat. § 611.72, they are not interests recognized by law. *Friends of Black River Forest*, 2022 WI 52, ¶ 30 ("[T]he injury must be to an interest which the law recognizes or seeks to regulate or protect.") (internal quotation marks and citation omitted).

## III. The Proposed Intervenors' grievances are not suited for a Form A proceeding.

A Form A proceeding is not the proper venue to address the Proposed Intervenors' asserted interests. This proceeding governs the acquisition of control of a domestic insurer and focuses on

[4] The Proposed Intervenors (or their predecessors-in-interest) were provided cash and surplus notes in "complete satisfaction" and "full satisfaction" of permitted claims. *See* Disclosure Statement Accompanying Plan of Rehabilitation, *In the Matter of Rehab. of Segregated Acct. of Ambac Assurance Corp.*, No. 10-CV-1576 (Wis. Cir. Ct. Dane Cnty. Oct. 8, 2010), https://ambacpolicyholders.com/storage/rehabilitation/02%20Disclosure%20Statement.pdf.

[5] Wis. Stat. § 600.03(37) defines "Policyholder" to mean "the person who controls the policy by ownership, payment of premiums or otherwise." Likewise, Wis. Stat. § 600.03(26) defines "Insured" to mean "any person to whom or for whose benefit an insurer makes a promise in an insurance policy. The term includes policyholders, subscribers, members and beneficiaries."

protecting the interests of the insurer, its existing policyholders, and the public—not third-party creditors or investors. Allowing investors or creditor groups like the Proposed Intervenors to leverage Form A proceedings to pursue their own economic interests—and even argue that fiduciary duty obligations apply (as the Ad Hoc Group has) —would open the door to disputes that fall well outside the authority of this tribunal.

Indeed, any other reading would expand the scope of this proceeding beyond the statutory requirements of Wis. Stat. § 611.72 and allow anyone with a financial interest in an insurance company or claiming to act on behalf of the public to obtain party status. *See Aetna & Humana Acquisition*, Case No. 15-C40896 (OCI Mar. 25, 2016). Deviating from the clear scope and intent of Wis. Stat. § 611.72 and granting party status to the Proposed Intervenors would, as warned in *Blue Cross & Blue Shield*, "permit hundreds of persons appearing in agency proceedings to cross examine witnesses, to make opening statements, and to depose witnesses, would produce a chaotic, unmanageable and interminable proceeding….leav[ing] agency proceedings vulnerable to deliberate obstruction." Decision at 5, *Blue Cross & Blue Shield United of Wis.*, Case No. 99-C26038 (OCI Nov. 29, 1999) (internal quotation marks and citation omitted).

Tellingly, the Investment Group argues that the public's interests are implicated in this transaction because their own private financial rights are implicated. If this kind of tenuous link to the public interest were sufficient, then the OCI would be flooded with intervention motions from any person or group that wished to oppose a transaction. Fortunately, that is not the law.

Lastly, granting the Proposed Intervenors discovery would be unprecedented and without justification in this transaction.[6] Discovery is inappropriate because the Proposed Intervenors seek to use it as a tool to advance their own financial interests—without any connection to the approval

[6] This transaction is classified as a Class 1 hearing, and the Examiner retains broad discretion regarding discovery. Wis. Admin. Code § Ins. 5.35(2) (Dec. 2024).

criteria under Wis. Stat. § 611.72. Further, allowing discovery in this proceeding would significantly delay the September hearing that is only weeks away. Accordingly, the Proposed Intervenors' requests should be denied.

### IV. The Proposed Intervenors' interests will be heard in this matter.

Finally, a denial of party status will not prevent the Proposed Intervenors from being heard in this matter, and they do not need to intervene for their viewpoints to be considered. In fact, the Ad Hoc Group has already filed written comments and both groups will have the opportunity to provide further comments at the September 3, 2025 hearing.

## CONCLUSION

Accordingly, for the reasons above, the Proposed Intervenors' request to intervene should be denied.

Dated: August 15, 2025

Respectfully Submitted,

GODFREY & KAHN, S.C.

*/s/ Zachary P. Bemis*

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# Exhibit A

OFFICE OF THE COMMISSIONER OF INSURANCE | STATE OF WISCONSIN

In the Matter of Application for Conversion of
Blue Cross & Blue Shield United of Wisconsin

Decision on Motions
To Intervene as Parties

Motions to Intervene as Parties,
Motions by ABC for Health, WI AARP,
WI Coalition for Advocacy, Medical College
of Wisconsin, and UW-Madison Medical School

Case No. 99-C26038

## PRELIMINARY DISCUSSION

### Procedural History

On June 14, 1999, Blue Cross and Blue Shield United of Wisconsin ("BCBSUW"), a service insurance corporation organized under ch. 613, Stats., filed with the office of the commissioner of insurance ("Office") an application for approval of a plan of conversion to a stock insurer organized under ch. 611. On November 3, 1999, the Office served notice on BCBSUW that a class 1 contested case hearing regarding the application would be held on November 29, 1999, commencing at 10:00 a.m. in Milwaukee. At the same time the Office caused notice of a public and informational hearing (and notice to the public of the class 1 contested case hearing) to be published in the official state newspaper and in all the major newspapers located in the state ("Notice"). The public hearing commences at noon on November 29, after the class 1 contested case hearing, and continues from 10 a.m. to 4 p.m. on Tuesday, November 30.

The Notice contained a deadline for motions of November 19, 1999. On November 19, 1999, motions to intervene in the class 1 contested case hearing were received by the Office from ABC for Health, WI AARP, WI Coalition for Advocacy, UW-Madison Medical School, and Medical College of Wisconsin ("movants"). BCBSUW filed a brief in opposition to all the motions on November 22. No other motions were filed. On November 23, 1999, at 2 p.m. I, Connie L. O'Connell, Commissioner of Insurance ("Commissioner") presided over a pre-hearing conference regarding the pending motions to intervene.

### Appearances

The movants and BCBSUW, appeared, by agreement, at the pre-hearing conference represented as follows:

Joseph C. Branch, Attorney
Foley and Lardner
For Blue Cross & Blue Shield United of Wisconsin, Petitioner
Firstar Center
777 E. Wisconsin Avenue
Milwaukee, WI 53202-5367

Helen H. Madsen, Attorney
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T. Michael Bolger, Attorney, President & CEO
For the Medical College of Wisconsin, Movant
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For ABC for Health, WI AARP, WI Coalition for Advocacy, Movant
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Jeff Spitzer-Resnick, Attorney
For ABC for Health, WI AARP, WI Coalition for Advocacy, Movant
16 N. Carroll Street, Suite 400
Madison, WI 53703

**Pre-Hearing Conference Order**

At the conclusion of the pre-hearing conference, and with agreement of the movants and BCBSUW, an order was entered providing for argument of the motions by briefs to be simultaneously filed with the Commissioner not later than 3 p.m. November 26. Each of the movants filed a brief or a letter.

**DECISION**

**Summary**

The motions to intervene are denied because the movants asserted interests do not constitute interests specifically protected under ss. 611.76 and 613.75, Stats. However, the Office will ensure that each of the organizations seeking party status has a full opportunity to participate in this proceeding, including, if appropriate, to offer expert testimony at a continuation of today's hearing, to pose questions to the applicant, and to discuss the pending application with the investment banking firm retained by the Office. Today's hearing will be continued. Any such further proceedings will be added to the record. The Office intends to ensure that this application receives a complete and public review. The Office has no intention of allowing any consideration, including the applicant's expressed desire to complete the approval process by year end, to supercede that full and fair review.

To have standing as a party in the contested case the petitioners must meet a two part test. They must demonstrate the decision of the agency causes injury to their interest and the interest they are asserting is recognized by law. The potential injury asserted by these parties is no different from potential injury to any member of the general public caused by the agency action or inaction in this proceeding. To allow standing in the instant case would establish a precedent for the agency to admit multiple parties in future proceedings, each with a specific interest that is one among many to be considered by the Office in determining the public interest. This is not what the statute contemplates. Therefore, I have denied the motions to intervene.

Fortunately, the Office has broad discretion to structure the review process to maximize participation by organizations such as those represented by the petitioners. I will use this discretion to ensure each of the organizations seeking party status has a full opportunity to participate in this proceeding. Therefore, although I cannot, under the law, grant the petitioners status as parties, I can grant them similar ability to participate in the process.

The Office has already met with a wide range of organizations (including all of the movants) which have expressed their views regarding issues associated with the pending application. For example, I personally have met with representatives of ABC for Health and WI Coalition for Advocacy on June 23, 1999 and November 4, 1999 (as well as on May 4, 1999, in a meeting which preceded, but foreshadowed the current application). Wisconsin AARP participated in the meeting on November 4. In addition I have received letters dated June 23, July 21, August 31, October 21, and November 17, 1999, from those organizations. These letters include expressions of satisfaction that suggestions made by the organizations were adopted by the Office. Office staff have had innumerable contacts or discussions with representatives of these

organizations. I intend to continue to use the statutory discretion to structure the review of the BCBSUW application to allow these organizations meaningful participation in that process.

## Discussion

The application of BCBSUW for approval of a plan of conversion to a stock insurer is governed by s. 613.75, Stats. Section 613.75, Stats., provides that a service insurance corporation may convert to a stock insurer organized under ch. 611, Stats., "upon complying with ... as much of s. 611.76 as is applicable...." Section 611.76, Stats., is the statute that governs the conversion of a mutual insurer to a stock insurer.

There are two significant aspects to note regarding s. 611.76, Stats. First, it applies to a conversion that affects rights policyholders have in a mutual insurer (voting, interest in equity etc.) Policyholders do not have any similar rights with respect to a service insurance corporation. This leaves a great deal to the Commissioner's judgement as to what portion of s. 611.76, Stats., is "applicable" to a service insurance corporation conversion. Second, s. 611.76, Stats., gives substantial discretion to the Commissioner to control the conversion subject to the standard that the Commissioner must approve the conversion unless the Commissioner finds that "the plan violates the law or is contrary to the interests of policyholders or the public." The relevant portions of these statutes are as follows:

> 613.75 Conversion of a service insurance corporation into a stock or mutual insurance corporation. (1) Authorization. Any service insurance corporation may be converted into a stock insurance corporation under ch. 611 upon complying with sub. (2) and as much of s. 611.76 as is applicable, or into a mutual under ch. 611 upon complying with sub. (2) and s. 611.75.
>
> 611.76 Conversion of a domestic mutual into a stock corporation. (6) Hearing.
> (a) The commissioner shall hold a hearing after receipt of a plan of conversion, notice of which shall be mailed to the last-known address of each person who was a policyholder of the corporation on the date of the resolution under sub. (2), together with a copy of the plan of conversion or a copy of a summary of the plan, if the commissioner approves the summary, and any comment the commissioner considers necessary for the adequate information of policyholders. If the plan of conversion is submitted under sub. (4m), the hearing shall be held not less than 10 days nor more than 30 days after notice is mailed. Failure to mail notice to a policyholder does not invalidate a proceeding under this section if the commissioner determines the domestic mutual has substantially complied with this subsection and has attempted in good faith to mail notice to all policyholders entitled to notice.
>
> (b) With regard to a mutual life insurance company, the notice, the plan or a summary of the plan, and any comments under par. (a) shall also be mailed to the commissioner of every jurisdiction in which the mutual life insurance company is authorized to do any business.
>
> (c) Any policyholder under par. (a) and any commissioner under par. (b) may present written or oral statements at the hearing and may present written statements within a period after the hearing specified by the commissioner. The commissioner shall take statements presented under this paragraph into consideration in making the determination under sub. (7).
>
> (7) Approval by commissioner. (a) The commissioner shall approve the plan of conversion unless he or she finds that the plan violates the law or is contrary to the interests of policyholders or the public.
>
> 601.62 Hearings. (2) Special insurance hearings. Chapter 227 shall apply to all hearings under chs. 600 to 655, except those for which special procedures are prescribed.

Section 611.76, Stats,. provides for a hearing with respect to the special proceeding governing conversion of a mutual insurer (and by virtue of s. 613.75, Stats., a service insurance corporation) to a stock insurer. The hearing is a public and informational hearing, not a contested case hearing under ch. 227, Stats. Section 611.76 (6) (c) allows any policyholder to participate by providing oral or written statements. The Office, recognizing the discretion granted it under the statutes, also extended that right to any member of the public and any organization. The Office has made great efforts to make available to the public and interested organizations the documents associated with the BCBSUW application. The Notice continues the invitation for any person to access those documents. Key documents may be accessed or downloaded from or through the Office web site, and the Office has routinely responded to requests for copies.

While s. 611.76 (6), Stats., does not contemplate a ch. 227, Stats., contested case hearing the Office has the discretion to convene a class 1 contested case hearing to aid in the consideration of the BCBSUW application:

"Though a hearing is not expressly proscribed by statute, the Commissioner is of course not prohibited from having one." (W.S.A., Committee Comment to s. 601.62, Stats.)

In the Notice the Office scheduled such a class 1 contested case hearing, in addition to the public and informational hearing. Now the movants seek the status of parties in the class 1 contested case hearing in addition to the broad opportunity to participate and express their views which the statutes and the Office has afforded them in the public hearing or otherwise in the process.

To have standing the movants must demonstrate they are entitled to standing under s. 227.44 (2m), Stats. That is, they must show they are a "person whose substantial interest may be affected by the decision following the hearing...". The courts have not interpreted this particular provision, but have discussed ss. 227.52 and 227.53, Stats., which apply a similar standard:

"(T)he first step is to determine 'whether the decision of the agency directly causes injury to the interest of the petitioner. The second step is to determine whether the interest asserted is recognized by law.' " Fox v. Department of Health and Social Services, 112 Wis. 2d 514, 524 (1983).

"Abstract injury is not enough. The plaintiff must show that he 'has sustained or is immediately in danger of sustaining some direct injury' as the result of the challenged official conduct and the injury or threat of injury must be both 'real and immediate,' not 'conjectural' or 'hypothetical.'" Fox v. Department of Health and Social Services, supra, 525.

In determining whether the movants asserted interest in the proceeding is one recognized by law the courts look to law applied by the agency. The second part of the test requires a determination whether "the injury is of a type recognized, regulated, or sought to be protected ". (Waste Management of Wisconsin v. Wisconsin Department of Natural Resources, 144 Wis. 2d 499, 505 (1988).

ABC for Health Inc., Wisconsin AARP, and Wisconsin Coalition for Advocacy describe their interest generally as related to their respective missions. These are described as acting as advocates or providing services that relate to health care needs of some portion of the public, whether as a public interest law firm in the case of ABC for Health Inc., a protection and advocacy agency for the mentally ill and persons with other disabilities in the case of Wisconsin Coalition for Advocacy Inc. or as an association of older persons in the case of AARP. These movants argue that their substantial interests are threatened with injury in this proceeding because their missions relate to the health needs of sectors of the public, they may wish to obtain grants from funds made available through the results of the proceeding, and a number of members of the organizations are policyholders of BCBSUW.

It is difficult, from the assertions contained in the motions filed by these organizations, to conduct a thorough analysis of the degree of any threatened injury to their interests through this proceeding. However, their

interests are not of a "type recognized by statute." Section 611.76, Stats., instructs the Commissioner to apply a broad standard for approval or disapproval of a conversion. The statute gives wide discretion to the Commissioner to protect the "public interest." Its apparent that there are many, and varied, interests that may compete for a particular outcome of this proceeding. No interest was given a particular right to be weighed more heavily than any other under the statute. Rather the statute contemplates that the Commissioner, with the benefit of broad public discussion, should balance all the competing interests and make a determination of whether the proposed plan is not in the public interest.

This standard does not provide a specific zone of protection for the missions of the movant organizations. Rather it places all competing interests on an equal footing with no particular rights in this proceeding. (I also note that the Wisconsin Supreme Court has concluded that a private cause of action, that is independent standing to bring a civil action, is not provided for under the Wisconsin Insurance Code Kranzush v. Badger State Mutual Casualty Company, 103 Wis. 2d 56 (1981).)

This conclusion is reinforced by s. 611.76 (6) (c), Stats., that provides for a public, rather than a contested, hearing for policyholders. As noted earlier, the Office has extended this right to submit statements to the public at large. This recognizes that service insurance corporation policyholders, unlike a mutual insurer policyholders, do not have rights in the service insurance corporation.

Any other construction of the intent of the legislature would open the door to "permit hundreds of persons appearing in an agency proceeding to cross examine witnesses, to make opening statements, and to depose witnesses, would produce a chaotic, unmanageable and interminable proceeding." It would leave agency proceedings "vulnerable to deliberate obstruction." Wisconsin Environmental Decade Inc. v. Public Services Commission, 84 Wis. 2d. 504, 528 (1978). This is not the process contemplated by the legislature. It is not a precedent that the Office can accept.

The asserted interest of UW-Madison Medical School and Medical College of Wisconsin is obvious. Their respective foundations are the proposed beneficiaries of proceeds that may result from the BCBSUW conversion. However, they have no greater claim to a specific protected status than the other movants.

**Order**

I fully expect to make provision for further opportunity for these movants to participate in this proceeding, including after the conclusion of the proceedings today. However the motions to intervene as parties are denied.

Dated at Madison, Wisconsin, this 29th day of November, 1999.

Connie L. O'Connell
Insurance Commissioner

OFFICE OF THE COMMISSIONER OF INSURANCE (OCI) STATE OF WISCONSIN

In the Matter of
the Acquisition of Control Of Physicians Plus Insurance Corporation
by Iowa Health System,

Respondent

PREHEARING

CONFERENCE
MEMORANDUM AND ORDER
Case No. 13-C35798

Rebecca L. Easland, Hearing Examiner, Presiding

Appearances:

For the Office of the
Commissioner of Insurance:
Kristin Forsberg, Licensing Specialist
Richard Wicka, Legal Supervisor
Diane Dambach, Market Regulation Supervisor
Richard Hinkel, Financial Examinations Supervisor
125 South Webster Street
Madison, Wisconsin 53703

For the Petitioner:
Dennis Drake, Vice President, General Counsel and Compliance Officer
Ashley Dose, Attorney

representing:

Iowa Health System (d/b/a UnityPoint Health)
1776 West Lakes Parkway
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West Des Moines, IA 50266

William Toman
Gregory Everts
Cristina Choi
Margaret Utterback
Quarles & Brady LLP (External Legal Counsel)
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Madison, WI 53703

For the Wisconsin Insurer:
Kerra Guffey, Chief Information Officer
Tom Luddy, Vice President and Chief Sales and Marketing Officer
Eileen Mallow, Compliance Manager and Privacy Officer

representing:

Physicians Plus Insurance Corporation ("Physicians Plus")
2650 Novation Parkway
Madison, WI 53713

For Affiliate of Insurer:
James Woodward, President and CEO
Geoffrey Priest, Medical Director

representing:

Meriter Health Services, Inc.
202 S Park Street
Madison, WI 53715

For the Movant:

Frederick Nepple
Michelle Dama
David Hanson
Michael Best & Friedrich

representing:

Unity Health Plans Insurance Corporation ("Unity")

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This is a Memorandum summarizing a prehearing conference held pursuant to s. 227.44 (4), Wis. Stat., on December 18, 2013. This Memorandum becomes a part of the record in this matter and is binding on the parties unless otherwise ordered by the Hearing Examiner. This prehearing conference arises from Petitioner's application for change of control of Physicians Plus.

During the prehearing conference, the Hearing Examiner first heard arguments on Unity's motion to intervene. At the hearing, Unity was given the opportunity to provide oral arguments in support of their motion. Iowa Health System argued in opposition to the motion. After review of the briefs and consideration of the arguments, Unity's motion to intervene was denied. The Hearing Examiner in this memorandum and order will expand on the reasons given for the denial that were stated during the prehearing conference.

Pursuant to s. 227.46(1), Wis. Stat., a hearing examiner presiding at a hearing may regulate the course of the hearing, dispose of any procedural requests, and take any other action authorized by agency rule. Section Ins 5.19(2), Wis. Admin. Code, authorizes the presiding hearing examiner to determine motions to intervene and s. Ins 5.33(1), Wis. Admin Code, authorized the hearing examiner to determine prehearing motions, such as the one filed by Unity.

Section 227.44(2m), Wis. Stat., states that "[a]ny person whose substantial interest may be affected by the decision following the hearing shall, upon the person's request, be admitted as a party." The requirements for standing are similar to those for standing to challenge an administrative action in circuit court. "The first step under the Wisconsin rule is to ascertain whether the decision of the agency directly causes injury to the interest of the petitioner." *Waste Management of Wisconsin, Inc. v. DNR*, 144 Wis.2d 499, 505 (Wis. 1988). "While injury can be remote in time or occur as the end result of a sequence of events set in motion by agency action, the events themselves cannot be conjectural or hypothetical." *In re Incorporation of Lands Comprising the Delavan Lake Sanitary District*, 160 Wis. 2d 403, 413 (Wis.Ct.App. 1991) (Internal citations omitted).

The second step is to determine the question: "is the interest allegedly injured arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question?" *Waste Management*, 144 Wis.2d at 505. Petitioner has failed to meet either part of the test.

Unity contends that it will suffer injury to "the goodwill and prominence associated" with the Unity name if Physicians Plus associates itself with the "UnityPoint" name. The injury asserted is merely a hypothetical one. First, Iowa Health System has not filed to change Physician Plus's name and has indicated that it does not intend to use the word "UnityPoint" with regard to Physicians Plus's name. Therefore, there is no issue under s. 628.34(1), Wis. Stat., of an "*insurer* ... us[ing] a business name, slogan, emblem or related device that is misleading or likely to cause the ... *insurer* to be mistaken for another *insurer*." With regard to the claim that Unity will be injured if Physicians Plus markets on an affiliation with a UnityPoint-branded entity, that injury is hypothetical. Meriter will need to be rebranded with the UnityPoint name, Physicians Plus will have to market an affiliation to a UnityPoint branded entity, and consumers will need to be confused by that affiliation in order for Unity to suffer the injury it

claims. Whether Unity will be injured by Physician Plus marketing an affiliation to UnityPoint is purely speculative at this time[1].

Second, the agency's decision must have the potential to directly cause the injury to the interests of Unity. *Waste Management*, 144 Wis.2d at 505. Here OCI is deciding whether Iowa Health System should be allowed to acquire control of Physicians Plus. Approving an application for change of control does not preclude OCI from taking action against an insurer who is engaged in misleading marketing in the future. Thus, OCI has the authority to enforce any violation of the agency's unfair marketing laws regardless of the outcome of this proceeding and, therefore, the potential injury cited by Unity will not be the direct result of the agency's action in deciding the application for change of control.

Even assuming Unity had shown it may be injured by OCI's actions, it has also failed to show the second part of the test, that the alleged interest is within the zone of interests protected by the statute in question. The purpose of the hearing is to determine whether Iowa Health System should be allowed to acquire a controlling interest in Physicians Plus. The standards for determining approval and the grounds for disapproval are set forth in s. 611.72, Wis. Stat.

Unity contends that it is within the zone of interests protected by s. 611.72, Wis. Stat., because the acquisition would violate the law, specifically s. 628.34, Wis. Stat., and that it will lessen competition because Unity will be competitively disadvantaged. First, as discussed above, the Hearing Examiner is satisfied with Iowa Health System's representation that it does not intend to brand Physicians Plus using the UnityPoint name. Therefore, approval of the application with that stipulation will not result in a violation of s. 628.34, Wis. Stat.[2]

Second, Unity's argument that it will be competitively disadvantaged by an approval is not within the zone of interests protected by s. 611.72 Wis. Stat. OCI may disapprove an acquisition if the result would be to harm the public's interest in a competitive market. Whether Unity is citing the public's interest or its own interest in a competitive market, either argument fails to show standing. If Unity is asserting the public's interest, this is not an interest unique to Unity. The Commissioner has previously found that assertion of a potential injury to the public is insufficient to show standing[3].

To the extent Unity asserts its financial interest as a competitor, that, in and of itself, is not sufficient to show standing. A change in control of an insurer may be denied if it "substantially" lessens competition. A change in control will often times affect the level of competition in the market, for example the insurer being acquired may gain additional capital or change its business plan to expand into another area. OCI's review under s. 611.72, Wis.Stat., is to determine whether the change of control will harm the public's interest in a competitive market as a whole, not whether it will harm an individual insurer. Indeed, if a competitor could show standing simply because it may suffer a competitive disadvantage, it is hard to envision a situation where a competitor would not have standing[4]. This would turn the hearing on a change of control into a venue for insurer's to attempt to interfere in the business dealings of a competitor. Standing based on a competitor's financial interest alone is outside the zone of interests outlined in s. 611.72 Wis. Stat.

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[1] To be clear, OCI does have some concerns that there is a possibility that consumers could be confused by the similarities in the name Unity and UnityPoint. OCI addressed these concerns to its satisfaction at the hearing and in the proposed order on Iowa Health System's application.

[2] If such a violation should occur in the future, approval of the application for change of control will not preclude OCI from taking action against Physicians Plus to remedy such a violation.

[3] "The potential injury asserted by these parties is no different from potential injury to any member of the general public caused by the agency action or inaction. To allow standing in the instant case would establish a precedent for the agency to admit multiple parties in future proceedings each with a specific interest, which is one among many to be considered in determining the public interest. Therefore, I have denied their motions to intervene." *In the matter of Application for Conversion of Blue Cross & Blue Shield United of Wisconsin,* Case No. 99-C26038, Transcript of Nov. 11, 1999 Hearing, p. 6, lines 6-15.

[4] This is not to say that competitors could never show standing; only that their interest must derive from more than their position in the market as competitors.

Third, OCI has no authority to regulate the marketing names and branding of health care providers. In this regard, Iowa Health System could market a healthcare provider in Wisconsin under the UnityPoint name even if OCI were to deny Iowa Health System's application for change in control. This dispute is only before OCI because Iowa Health System is also acquiring an insurer. Whether or not Iowa Health System markets under the UnityPoint brand in Wisconsin will not be determined by the outcome of this hearing.

Finally, a hearing over an application for change of control is not the proper venue to argue Unity's dispute with Iowa Health System over the use of the UnityPoint name. Unity has filed a federal trademark action against Iowa Health System and that is the proper venue for Unity's claims, not a hearing on an application for change of control.

For these reasons and those stated during the hearing, Unity's motion to intervene is denied. Because the authority to dispose of procedural motions is given to the Hearing Examiner pursuant to s. 227.46, Wis. Stat., and s. Ins 5.19 and Ins 5.33 Wis. Admin. Code., the order denying the motion to intervene is final, not proposed, and therefore, there is no right to file objections with the commissioner pursuant to Ins 5.43, Wis. Admin. Code.

Though Unity was not permitted to intervene as a full party, Unity was encouraged to voice their concerns during the hearing as an interested party.

IT IS ORDERED:

(1) That Unity's motion to intervene as a full party is denied. As a result, Unity's motions for discovery, to delay the proceedings, and to produce the unredacted Form A filing to Unity under a protective order are also denied.

(2) That the above-entitled matter proceed to hearing following this prehearing conference.

(3) That, pursuant to the parties' stipulation, the reading of the exhibits is waived and the exhibits on the prehearing list of exhibits are entered into the record.

Dated at Madison, Wisconsin, this 20th day of December, 2013.

Rebecca L. Easland

Rebecca L. Easland
Hearing Examiner

In the Matter of the Acquisition of Control of
Humana Insurance Company,
HumanaDental Insurance Company,
Humana Wisconsin Health Organization Insurance Corporation, and
Independent Care Health Plan
(Collectively, the "Domestic Insurers")

by

Aetna Inc.

Petitioner

Case No. 15-C40896

## Procedural History

On March 15, 2016, a pre-hearing conference was held in the matter to address any procedural matters in advance of the hearing scheduled for March 30, 2016. Immediately prior to the pre-hearing conference, Attorney David Balto, on behalf of Service Employees International Union Health Care Wisconsin and Citizen Action Wisconsin (the "Movants") [1], filed a motion to intervene as a party in this matter for the purpose of asking six questions that are listed in Attorney Balto's March 15, 2016 letter. During the prehearing conference, the hearing examiner asked Aetna and Humana if they would be willing to answer the six questions posed if the movants withdrew their motion to intervene. Aetna and Humana indicated that they would be willing to answer these questions at the hearing. The offer was presented to Movants who indicated they would not agree to withdraw their motion even if the six questions were answered by Aetna and Humana. As such, a briefing schedule on the motion was set with Aetna and Humana agreeing to provide a response to the motion to intervene and the Movants agreeing to provide additional material in support of their motion by March 21, 2016. The Movants also agreed to file any response to Aetna and Humana's filing by March 22, 2016. The hearing examiner indicated that he would issue a decision on the motion to intervene by March 25, 2016 and the Movants agreed that this would be sufficient time for them to prepare for the hearing on March 30, 2016 if their motion to intervene was granted.

## Discussion

Pursuant to s. 227.46(1), Wis. Stat., a hearing examiner presiding at a hearing may regulate the course of the hearing, dispose of any procedural requests, and take any other action authorized by agency rule. Section Ins 5.19(2), Wis. Admin. Code, authorizes the presiding hearing examiner to determine motions to intervene and s. Ins 5.33(1), Wis. Admin Code, authorized the hearing examiner to determine prehearing motions, such as the one filed by the Movants.

Section 227.44(2m), Wis. Stat., states that "[a]ny person whose substantial interest may be affected by the decision following the hearing shall, upon the person's request, be admitted as a party." The requirements for standing are similar to those for standing to challenge an administrative action in circuit court. "The first step under the Wisconsin rule is to ascertain whether the decision of the agency directly causes injury to the interest of the petitioner." *Waste Management of Wisconsin, Inc. v. DNR*, 144 Wis.2d 499, 505 (Wis. 1988). "While injury can be remote in time or occur as the end result of a sequence of events set in motion by agency action, the events themselves cannot be conjectural or

[1] Attorney Balto has submitted comments on the proposed merger on behalf of a larger group of organizations but it is the hearing examiners understanding that he is only moving for intervenor status on behalf of SEIU Healthcare Wisconsin and Citizen Action of Wisconsin.

hypothetical." *In re Incorporation of Lands Comprising the Delavan Lake Sanitary District*, 160 Wis. 2d 403, 413 (Wis.Ct.App. 1991) (Internal citations omitted).

The second step is to determine the question: "is the interest allegedly injured arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question?" *Waste Management*, 144 Wis.2d at 505. Movants have failed to meet either part of the test.

The first step to determine is whether Movants will suffer a direct injury as a result of OCI's decision. In its March 15, 2016 letter seeking intervention, the Movants argued that there interests would be affected by the proposed merger as there would be a significant consolidation of the "administrative-services-only" ("ASO") market, there will be decreased competition in the Medicare Advantage product area, and that business practices that led to Humana and Aetna being fined by the Centers for Medicare and Medicaid may not be corrected if the merger were to be approved. In its March 22, 2016 letter responding to Aetna's and Humana's March 21, 2015 joint response to the motion, Movants also indicated they would have "real and immediate risk of suffering from increased monthly premiums, reduced quality of care, reduced access, diminished innovation, and reduced choice."

Aetna and Humana contend that the Movants cannot establish direct injury. Aetna and Humana note that the Movants stated that they "may" be affected by OCI's decision and that the injuries they are alleging are merely conjecture and hypothetical. Further, they argue that Movants have not alleged direct injury but only injuries to consumers and the public generally.

Movants have failed to meet the first prong of the test because the injuries alleged are hypothetical and they have not alleged any direct injuries specific to their interests. Movants cite a litany of hypothetical injuries that could occur as a result of the approval of the merger including increased premiums, reduced quality of care, reduced access and diminished innovation[2]. Petitioner has failed to establish that these injuries will occur or are likely to occur as a direct result of the merger being approved. Movants have only asserted that such injuries occur with all mergers and have failed to provide a sufficient basis for the hearing examiner to determine that such claims are more than just conjecture. Movants alleged injuries are hypothetic which the Wisconsin courts have found are insufficient to confer standing.

Movant have also failed to show direct injury to their interests. Movant's have alleged no direct injury but instead claim injury to the consumers who are members or are represented by their organizations. Movants are asserting a general harm to consumers and not a harm specific to their organizations. Thus, Movants have failed to show that approval of the merger would cause direct harm to their interests.

Movants also cannot meet the second part of the test for standing. The second step to determine is whether the interest allegedly injured is in the zone of interest protected by the statute. The Movants contend that among the zone of interests protected by the statute are those of the insureds of the domestic insurers and the public. Movants assert that they "are the public and the insureds." Aetna and Humana argue that Movants have failed to identify an interest protected by law and that OCI has previously rejected motions to intervene from parties who are "merely advocates for the interests of Wisconsin consumers."

Movants have failed to identify interests within the zone of interest protected by the statute. Petitioner seeks to advance one of many interests on behalf of the public and the insureds of

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[2] Movants have also alleged consolidation in the ASO and Medicare Advantage markets as an injury. Consolidation will occur, to some degree, in any merger of competitors and is not, in and of itself, an injury. Movants also note compliance actions against the two companies brought by CMS. Movants fails to establish how approval or disapproval of this merger would have any effect on the companies' future compliance with CMS requirements or how this results in injury.

the domestic insurers. Section 611.72, Wis. Stat. gives the Commissioner broad discretion to determine whether the merger would be in the interests of the insured and whether it would substantially injure the state's competitive market and by extension consumers. It is self-evident that insureds and the broader public are not monoliths and that there are many interests that compete for a particular outcome in a proceeding. As with the statute at issue in the BlueCross-BlueShield case, "[n]o [public] interest was given a particular right to be weighed more heavily than any other under the statute."[3] For this reason, OCI has previously found that assertion of injury to the public interest was insufficient to meet the test for standing[4]. OCI has also previously denied a motion to intervene based, in part, on the assertion of the public's interest in a competitive market[5].

Movants have alleged standing as representatives of consumers and the public interest. If assertion of representation of the public interest were sufficient to grant standing, then arguably any person or group could obtain standing. OCI's has an interest in an orderly proceeding and providing standing to any party claiming to represent the public would create an unmanageable process. Further, a common sense reading of legislative intent leads to the conclusion that the legislature intended a procedure for public input and did not intend for any person or group claiming to represent the public interest to be made a party and be granted the rights to discovery, deposing witnesses, cross-examination and all other rights party-status entails. Movants claim of standing based on the public interest requires a finding that they have failed to establish that their interests are within the specific zone of protection of the statute at issue. For all the reasons described, Movants have failed to establish grounds for standing and their motion is denied.

This conclusion does not prevent movants from being heard in this matter and they need not be granted standing for their comments to be considered. Movants have already filed written comments which will be weighed in making a determination in this matter and made part of the record in these proceedings. Movants are also encouraged to provide any additional comments they would like to make at the March 30, 2016 hearing.

To be clear, because Movants' motion to intervene has been denied, Aetna and Humana may, but are not required to, respond at the hearing to the six questions posed in the Movants' March 15, 2016 letter. To the extent Aetna and Humana do respond to these questions, Movants will not be allowed to cross-examine the witnesses from Aetna and Human providing the response.

IT IS ORDERED:

(1) That Movants' motion to intervene as a full party is denied.

Dated at Madison, Wisconsin, this 25th day of March, 2016.

James C. Boll
Hearing Examiner

[3] *In the matter of Application for Conversion of Blue Cross & Blue Shield United of Wisconsin,* Case No. 99-C26038, Decision on Motion to Intervene, p.5.

[4] "The potential injury asserted by these parties is no different from potential injury to any member of the general public caused by the agency action or inaction. To allow standing in the instant case would establish a precedent for the agency to admit multiple parties in future proceedings each with a specific interest, which is one among many to be considered in determining the public interest. Therefore, I have denied their motions to intervene." *In the matter of Application for Conversion of Blue Cross & Blue Shield United of Wisconsin,* Case No. 99-C26038, Transcript of Nov. 11, 1999 Hearing, p. 6, lines 6-15. See also

[5] *See In the Matter of the Acquisition of Control Of Physicians Plus Insurance Corporation, Case No. 13-C35798,* Prehearing Conference Memorandum, p.3.