

CF

In the Matter of the Restructuring of
EMPLOYERS INSURANCE OF WAUSAU A Mutual Company
by EMPLOYERS INSURANCE OF WAUSAU A Mutual Company
and Liberty Mutual Insurance Company

FINAL DECISION
AND ORDER

Case No. 00-C26776

Petitioners.

Matthew C. Mandt, Hearing Examiner, Presiding

APPEARANCES

For the Petitioners: Noreen J. Parrett
LaFollette, Godfrey & Kahn
One East Main Street
Madison, Wisconsin 53701

Robert J. Sullivan
Skadden, Arps, Slate, Meagher & Flom LLP
4 Times Square
New York, NY 10036-6522

Edward P. Welch
Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
Wilmington, DE 19801

Other appearances: None

PRELIMINARY

Pursuant to a Notice of Hearings and Invitation for Public Comment dated August 21, 2001, a class 1 contested case administrative hearing was held at 1:00 p.m. and a public hearing was held at 2:00 p.m., both on October 16, 2001, to determine whether the Petitioners' application for approval of the plan should be granted. Based on the record, the Hearing Examiner makes the following:

FINDINGS OF FACT

(1) EMPLOYERS INSURANCE OF WAUSAU A Mutual Company, 2000 Westwood Drive, Wausau, Wisconsin 54401, is a mutual insurance company organized and domiciled in Wisconsin (hereinafter also, "EIOW").

(2) Liberty Mutual Insurance Company, 175 Berkeley Street, Boston, Massachusetts 02116 (hereinafter also, "Liberty Mutual"), a mutual insurance company organized and domiciled in Massachusetts, exercises control of EMPLOYERS INSURANCE OF WAUSAU A Mutual Company, as "control" is defined by s. 600.03(13), Wis. Stat., through the operation of a plan of affiliation approved by OCI on December 17, 1998, which became effective on December 31, 1998.

(3) Liberty Mutual prepared and made representations in support of the plan orally and in writing, and its officers and employees provided testimony during the hearing.

Employers Insurance Of Wausau A

CLOSED: 11/28/2001

00-C26776

ATTY: Nepple

EX: Junior

(4) Based on its exercise of control over EIOW and its role in support of the plan, Liberty Mutual is a co-petitioner with EIOW in this Case No. 00-C26776.

(5) The Petitioners filed with the Commissioner of Insurance (Commissioner) a mutual holding company plan (plan). This plan includes, among other matters, the formation of a Wisconsin-domiciled mutual holding company to be known as Employers Insurance of Wausau Mutual Holding Company (hereinafter also, "EIOW MHC") and conversion of EIOW into a stock insurance corporation to be known as Employers Insurance Company of Wausau. It is intended that EIOW MHC will be merged into Liberty Mutual Holding Company, a Massachusetts-domiciled mutual holding company that has yet to be formed through a restructuring by Liberty Mutual Insurance Company (hereinafter also, "MHC Merger").

(6) The Petitioners were served with the Notice of Hearings and Invitation for Public Comment dated August 21, 2001.

(7) The Petitioners fulfilled the filing requirements of s. 644.07, Wis. Stat.

(8) The plan will not violate the law or be contrary to the interest of the insureds of EMPLOYERS INSURANCE OF WAUSAU A Mutual Company, the Wisconsin insureds of any participating nondomestic corporation, or of the public.

(9) The plan will not be unfair or inequitable to the policyholders of EMPLOYERS INSURANCE OF WAUSAU A Mutual Company with respect to their membership interests or rights in surplus.

(10) The restructuring proposed by the plan would not be detrimental to the safety and soundness of the converting insurance company, EMPLOYERS INSURANCE OF WAUSAU A Mutual Company, or to the contractual rights and reasonable expectations of its policyholders on the effective date of the restructuring.

(11) After the restructuring, EMPLOYERS INSURANCE OF WAUSAU A Mutual Company will be able to satisfy the requirements for the issuance of a license to write the lines of insurance for which it is presently licensed.

(12) The effect of the restructuring will not be to create a monopoly or substantially to lessen competition in any type or line of insurance in Wisconsin.

(13) The Petitioners have no plans or proposals to liquidate EMPLOYERS INSURANCE OF WAUSAU A Mutual Company following its conversion to a stock insurance company, to sell its assets (other than investment portfolio transactions in the ordinary course of business), to consolidate or merge it with any other person, or to make any other material change in its business, corporate structure, or management other than described in the Policyholder Information Statement that was approved on behalf of Wisconsin's Commissioner of Insurance and distributed to EIOU's policyholders.

(14) The competence and integrity of the persons who will control the operation of the restructured domestic stock insurance corporation, Employers Insurance Company of Wausau, and other entities in the succession of ownership control of Employers Insurance Company of Wausau, are such that it will be in the interest of the policyholders and the public to permit the restructuring, including the formation of a mutual holding company.

CONCLUSION OF LAW

(15) The proposed findings of fact set forth above establish that the requirements of chs. 227 and 644, Wis. Stats., have been satisfied and approval of the plan should be granted.

(16) The plan does not violate the law, and is not unfair or inequitable to policyholders with respect to their membership interests, rights in surplus, or otherwise. The plan is neither detrimental to the safety and soundness of the insurer nor the contractual rights and reasonable expectations of the persons who are policyholders, nor to the public interest.

ORDER

NOW, THEREFORE, based upon the findings of fact and conclusion of law, I hereby order that:

(17) The Petitioners' request for approval of the plan of restructuring, including the formation of a mutual holding company, is approved, subject to the following conditions:

- (a) Petitioners consent to an order issued by the Commissioner under s. 601.41, Wis. Stat., which shall, at a minimum, require that the plan be implemented in accordance with its terms and the Stipulation and Order in Case No. 01-C27308.
- (b) No vote by members of EIOW MHC shall be required as a condition to the consummation of the MHC Merger; provided, however, a majority of the members of EIOW MHC shall be required to approve the merger of EIOW MHC at a special meeting called for such purpose (i) if EIOW MHC intends to merge with an entity other than Liberty Mutual Holding Company or a mutual holding company resulting from Liberty Mutual's reorganization; or (ii) if there is a material difference in the Agreement and Plan of Merger disclosed to EIOW policyholders as part of its Policyholder Information Statement relating to the restructuring and the merger agreement that is ultimately negotiated.
- (c) EMPLOYERS INSURANCE OF WAUSAU A Mutual Company and its successors in interest shall ensure that voting procedures with respect to the mutual holding company plan and, if applicable under paragraph 17(b) of this Order, the subsequent merger of Employers Insurance of Wausau Mutual Holding Company into Liberty Mutual Holding Company, are in accordance with the voting protocol approved by the Wisconsin Commissioner of Insurance on August 30, 2001, or such other voting protocols as may be approved by Wisconsin Commissioner of Insurance. EIOW shall retain the services of a nationally significant tabulation agent to assist EIOW in the receipt, custody, safeguarding, verification and tabulation of proxy forms and ballots. EIOW shall also retain the services of an independent public accounting firm to test and verify such process.
- (d) Until the proposed transaction is consummated, the OCI shall have the right to alter, suspend, or withdraw its approval should any material interim development warrant such action.
- (e) EIOW and its successors in interest shall comply with the plan as approved by the Commissioner herein.
- (f) The plan may not be amended without the advance written consent of the Commissioner.

NOTICE OF APPEAL INFORMATION

(Notice of rights for rehearing and judicial review,
the times allowed for each, and the identification
of the party to be named as respondent)

The following notice is served on you as part of the Final Decision:

1. Rehearing.

Any person aggrieved by this Final Decision may petition for a rehearing within 20 days after the service of this Final Decision, as provided in s. 227.49, Wis. Stat. A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

A petition for rehearing must be filed with the Commissioner at the address below.

2. Judicial Review.

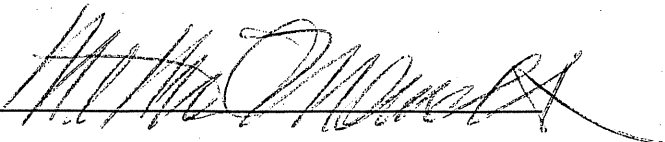
Any person aggrieved by this Final Decision has a right to petition for judicial review of this Final Decision as provided in s. 227.53, Wis. Stat. The petition must be filed in circuit court within 30 days after service of this Final Decision if there has been no petition for rehearing, or within 30 days after service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

A petition for judicial review must be served on, and name as the Respondent:

Commissioner of Insurance, Respondent
Office of the Commissioner of Insurance
P. O. Box 7873
Madison, Wisconsin 53707-7873

A copy of the relevant statutory provisions is attached.

Dated at Madison, Wisconsin, this 9th day of November 2001.



Matthew C. Mandt
Hearing Examiner

WISCONSIN STATUTES

At all times material, the relevant parts of s. 227.49, Wis. Stat., read as follows:

227.49 PETITIONS FOR REHEARING IN CONTESTED CASES. (1)

A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. . . .

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. . . .

At all times material, the relevant part of s. 227.52, Wis. Stat., read as follows:

227.52 JUDICIAL REVIEW; DECISIONS REVIEWABLE.

Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter. . . .

At all times material, the relevant parts of s. 227.53, Wis. Stat., read as follows:

227.53 PARTIES AND PROCEEDINGS FOR REVIEW. (1)

Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. . . .

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. . . .

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. . . .

(d) The agency . . . and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. . . .