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**OPENING STATEMENT OF JOSEPH C. BRANCH**  
**VICE PRESIDENT/SECRETARY – MILWAUKEE MUTUAL INSURANCE COMPANY**  
**PARTNER - FOLEY & LARDNER**

**MARCH 19, 2003**  
**MADISON, WISCONSIN**

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## **I. INTRODUCTION.**

Good afternoon. My name is Joe Branch. I am a Vice President and Secretary of Milwaukee Mutual Insurance Company, and I also sit on the Company's board of directors. In addition, I am the Company's outside legal counsel, and I appear before you today in my capacity as such. I am accompanied in that regard by Tom Hrdlick. We are both lawyers with the law firm of Foley & Lardner. Together we represent Milwaukee Mutual Insurance Company ("Milwaukee Mutual" for ease of reference) in connection with today's hearings and the subject matter thereof.

Today's events involve two hearings concerning the proposed restructuring of Milwaukee Mutual into a mutual holding company structure under Chapter 644 of the Wisconsin Insurance Code. The first – a class 1 contested case hearing – is the proceeding we are currently conducting and is the vehicle through which the Office of the Commissioner of Insurance ("the OCI," if I may) receives evidence from interested parties concerning the proposed restructuring and concerning whether the restructuring satisfies the statutory tests for approval by the OCI. The second – a public hearing – follows this contested case hearing and is the vehicle through which the OCI receives comments from the general public, or from insurance commissioners in other jurisdictions where Milwaukee Mutual is licensed to do business, regarding their views or opinions on the proposed restructuring.

Milwaukee Mutual is obviously one of the interested parties – and perhaps the only interested party – that will be submitting evidence to the OCI during this public hearing. Dan Doucette, the President and Chief Executive Officer of Milwaukee Mutual, will testify on behalf of Milwaukee Mutual in connection with this hearing. As you know, Mr. Doucette has already submitted pre-filed testimony in this matter in support of the proposed restructuring. However, I will shortly ask Mr. Doucette to take the stand to re-affirm his pre-filed testimony

under oath and to also give a short additional statement for the record. For my part, I submit this opening statement on behalf of Milwaukee Mutual and in conjunction with Mr. Doucette's pre-filed and live testimony. The purpose of my opening statement is to explain, based on the factual testimony of Mr. Doucette, how and why the Second Amended and Restated Mutual Holding Company Plan of Milwaukee Mutual satisfies the requirements of Chapter 644 and warrants the approval of the OCI.

## **II. BACKGROUND.**

Before discussing the issues involved in today's hearings, I'd like to take a few moments to set the stage. As Dan Doucette will testify, Milwaukee Mutual is a long-standing property and casualty insurance company domiciled in Wisconsin. It sells both personal and commercial lines coverages through independent agencies. It is licensed in 12 states (including Wisconsin) and over 90% of its insurance business is generated in the 5 states of Wisconsin, Illinois, Minnesota, South Dakota and Indiana. Its current A.M. Best rating is A, meaning excellent.

Since its initial incorporation in 1916, Milwaukee Mutual has been organized as a mutual entity. This means that it is a nonstock company owned at any given time by its existing policyholders. Milwaukee Mutual policyholders enjoy both the contractual rights of insurance coverage afforded them under their Milwaukee Mutual policies, as well as the equity rights afforded them as members of a mutual company. These equity rights include the right to elect the directors of the Company, the right to approve or disapprove proposed changes in the Company's articles of incorporation, the right to vote on any plan of conversion, voluntary dissolution, or other matters that come before the members of the mutual entity at an annual or special meeting of the members, the right to share in any distribution of remaining surplus in the

event of a dissolution or liquidation of the mutual entity, and the right to receive cash, stock or some other form of consideration in the event that the mutual entity demutualizes.

We are here today because the board of directors and management of Milwaukee Mutual believe the Company is facing competitive difficulties that present challenges to its basic structure as a mutual enterprise. These challenges place the Company at a crossroads. On the one hand, Milwaukee Mutual is committed to the mutual concept of ownership. As Dan Doucette will testify, the board of directors and management of Milwaukee Mutual believe that over time the mutual structure has established for the Company a corporate culture and reputation as a Company that places the interests of its policyholders first. The board and management believe that a significant portion of the Company's historical success stems from this inherent tendency to view its business operations and objectives from the unique perspective of the policyholder.

On the other hand, Dan Doucette will also testify that the board and management believe that the most successful insurance companies in the future will be those with the greatest amount of structural, financial and strategic flexibility to respond to changes and opportunities in the marketplace. Specifically, in today's competitive environment, a Company's ability to achieve profitable, long-term growth will be very important for its continued success and viability as an insurance enterprise. Unfortunately, as Mr. Doucette's testimony will show, the current structure of the Company is less than optimal in this regard. As a strictly mutual enterprise, Milwaukee Mutual has limited means for raising capital and limited options for acquisition activity, particularly when compared to insurers organized as stock companies. Such limitations negatively impact the Company's prospects for profitable, long-term growth, and in today's competitive environment that is cause for significant concern.

Faced with such challenges, the board of directors began to explore options for restructuring the Company. After reviewing various options, the board unanimously decided to pursue a conversion to a mutual holding company structure. Dan Doucette will testify as to the various reasons supporting that decision, but they can best be summarized as follows: A mutual holding company structure is the only option that allows Milwaukee Mutual to retain its mutuality and thus its policyholder focus, while at the same time securing the corporate and operational flexibility enjoyed by a stock insurance company.

Having made the decision to convert to a mutual holding company structure, the board of Milwaukee Mutual took steps to implement that decision. Chapter 644 of the Wisconsin Insurance Code sets forth the procedures a company must follow to convert to a mutual holding company structure. Greatly simplified, the process calls for adoption of a mutual holding company plan by the company's board of directors, and subsequent review and approval of that Plan by the OCI and the company's policyholders.

As Dan Doucette will testify, Milwaukee Mutual's formal plan to convert to a mutual holding company structure went through a number of iterations. The board of Milwaukee Mutual unanimously adopted an initial mutual holding company plan on May 17, 2001. The board unanimously adopted an amended and restated version of the plan on October 18, 2002. And most recently, on February 13, 2003, the board unanimously adopted a second amended and restated version of the plan. It is this latest version of the Plan adopted on February 13, 2003 that is the subject of today's hearings.

Having settled on a final version of the mutual holding company plan, the board submitted that Plan to the OCI and to Milwaukee Mutual's policyholders for review and approval. Specifically, the board scheduled a special meeting of Milwaukee Mutual's

policyholders for 10:00 a.m. on March 31, 2003, at which time eligible policyholders will vote on the proposed Plan and the Company's corresponding amendments to its articles of incorporation. Before that meeting and vote can take place, however, Milwaukee Mutual needs to secure approval of the Plan by the OCI, which leads us back to the reason why we are assembled here today.

Under Chapter 644 of the Wisconsin Insurance Code, the OCI must conduct a hearing with regard to the mutual holding company plan of Milwaukee Mutual, during which members of the public and insurance commissioners from other states in which Milwaukee Mutual is licensed may express their views on the subject. That public hearing is scheduled to begin at 2:00 p.m. today, following this contested case hearing. In addition, to facilitate its review of the mutual holding company plan, the OCI is conducting this class 1 contested case hearing, during which it is receiving evidence on the subject of the proposed restructuring from interested parties.

### **III. DESCRIPTION OF THE PROPOSED RESTRUCTURING.**

I will begin my substantive presentation with a brief description of the mechanics of the proposed restructuring. On or before the effective date of the restructuring, Milwaukee Mutual will duly form and incorporate Mutual Insurers Holding Company – which I will refer to as MIHC – as a Wisconsin mutual holding company. As of 12:01 a.m. on the effective date, and in accordance with the terms of the Plan and Chapter 644 of the Wisconsin Insurance Code, the following will occur:

- The policyholders with membership interests in Milwaukee Mutual will immediately become members of MIHC.
- Milwaukee Mutual will convert to, and continue its corporate existence as, a Wisconsin stock property and casualty insurance company named Milwaukee Insurance Company, and which I will refer to as Milwaukee Insurance.

- MIHC will be issued 100% of the shares of stock of Milwaukee Insurance.
- All equity rights previously belonging to policyholders with membership interests in Milwaukee Mutual will be extinguished and replaced with equity rights in MIHC.

Milwaukee Insurance will be considered to have been organized at the time that Milwaukee Mutual was organized, such that the corporate existence of Milwaukee Mutual before, on and after the effective date shall continue without interruption in all respects and shall remain unaffected by the restructuring.

On the effective date of the restructuring, the articles of incorporation and bylaws of Milwaukee Mutual shall, without further act or deed, be amended and restated as “Amended and Restated Articles of Incorporation of Milwaukee Insurance Company” and “Amended and Restated Bylaws of Milwaukee Insurance Company,” as set forth in documents attached to the Plan on file with the OCI as Exhibits A and B, respectively. These revised articles and bylaws shall supersede in their entirety the current articles and bylaws of Milwaukee Mutual. On the effective date, the articles of incorporation of MIHC shall be as set forth in the articles of incorporation attached to the Plan on file with the OCI as Exhibit C, and the bylaws of MIHC shall be as set forth in the bylaws attached to the Plan on file with the OCI as Exhibit D.

#### **IV. STATUTORY STANDARD OF REVIEW.**

I move now to a brief recitation of the OCI’s standard of review. In short, under Section 644.07(7) of the Wisconsin Insurance Code, the OCI must approve the mutual holding company plan of Milwaukee Mutual unless the OCI finds that the Plan “violates the law, is not fair and equitable to policyholders or is contrary to the interests of policyholders or the public.” When considering the Plan under this standard, the OCI is directed to “consider whether the restructuring would be detrimental to the safety and soundness of the converting insurance



company or the contractual rights and reasonable expectations of the persons who are policyholders on the effective date of the restructuring.” Allow me to briefly explain how each element and component of the statutory test is met, based upon facts Dan Doucette will attest to in his pre-filed and live testimony.

## **V. APPLICATION OF THE STATUTORY STANDARD.**

### *A. The Plan Does Not Violate the Law.*

The first element is that the Plan must not violate the law. As Dan Doucette will explain in his testimony, Milwaukee Mutual is carefully complying with all statutory and corporate procedures applicable to the proposed restructuring.

Specifically, the board of directors adopted the current version of the mutual holding company plan on February 13, 2003 and filed that Plan with the OCI that same day, along with various other documents required under Chapter 644 of the Wisconsin Insurance Code.

The board, through a unanimous written consent action, scheduled a special meeting of policyholders to take place on March 31, 2003 for purposes of voting on that Plan and established February 13, 2003 as the record date for purposes of determining which policyholders are entitled to receive notice of, and to vote at, that special meeting.

Language in Milwaukee Mutual’s current articles of incorporation requires any amendments to those articles to be approved by a two-thirds majority of the policyholders voting at an annual or special meeting of policyholders concerning the same. Arguably, this requirement is overridden by the statutory requirement that the Plan – which includes the amendments to the Company’s articles of incorporation proposed in connection with the Plan – be approved by a simple majority of the Company’s policyholders. However, in an abundance of caution, the board of directors decided to ask the Company’s policyholders to vote separately

on the mutual holding company plan and on the amendments to the Company's articles of incorporation proposed in connection with the Plan, and also to enforce the different voting thresholds governing approval of each.

Acting through a mailing agent and its outside legal counsel, Milwaukee Mutual mailed the requisite notices of the public hearing and the special meeting of policyholders to all eligible policyholders of Milwaukee Mutual and to the insurance commissioners of every jurisdiction in which Milwaukee Mutual is licensed to do business. The substance of these notices was reviewed and approved by the OCI before they were mailed. As authorized under Section 644.07(8) of the Wisconsin Insurance Code, both notices were sent to the eligible policyholders in a joint mailing sent on February 28, 2003 and March 1, 2003. The notices were sent to the relevant insurance commissioners on February 28, 2003 and – in the case of the Wisconsin Commissioner – March 4, 2003. In each case, the notices complied with the minimum notice requirements of both the Wisconsin Insurance Code and the current articles of incorporation and bylaws of Milwaukee Mutual.

Milwaukee Mutual has also retained the services of a tabulation agent, who will receive and tabulate all proxies and ballots submitted in connection with the Plan pursuant to voting protocols established by the Company and approved by the OCI. The tabulation agent shall certify the results of the vote to the Company, and the Company shall file an affidavit with the OCI attesting to the same.

Based on the foregoing, I submit that Milwaukee Mutual's proposed restructuring clearly does not violate the law.

*B. The Plan Is Fair And Equitable To The Policyholders.*

The second element is whether the Plan is fair and equitable to the policyholders of Milwaukee Mutual. Here it makes sense to also consider the sub-element of whether the Plan

is detrimental to the contractual rights and reasonable expectations of the persons who are policyholders of Milwaukee Mutual on the effective date of the restructuring.

The Second Amended and Restated Mutual Holding Company Plan clearly is not detrimental to the contractual rights and reasonable expectations of the policyholders of Milwaukee Mutual. As explained in the Plan and as Dan Doucette will testify, the contractual rights and obligations of Milwaukee Mutual's policyholders – meaning the premiums, policy terms, insurance benefits and company services afforded to or required of the policyholders under their respective policies – will not change as a result of the Plan, except that in the future they will be provided or required by a stock company as opposed to a mutual company.

Of course, it is true that the current equity rights in Milwaukee Mutual enjoyed by the policyholders of Milwaukee Mutual will be extinguished as a result of the Plan. However, as Dan Doucette will testify, these equity rights will be replaced by identical equity rights in MIHC, the mutual holding company created as a result of the Plan. MIHC will in turn initially own 100% of the stock of Milwaukee Insurance, the successor to Milwaukee Mutual. I submit to the OCI that this is a fair and equitable exchange of equity rights for the policyholders of Milwaukee Mutual.

Finally, the Plan cannot go into effect unless the Plan and the amended articles of incorporation proposed in connection therewith are approved by the requisite majorities of the Company's eligible policyholders upon due notice of a special meeting of policyholders called for that purpose. As the OCI is aware from its copy of the notice and from the exhibits compiled by the OCI in advance of this hearing, the notice that was given to the policyholders in this regard included a detailed Policyholder Information Statement – reviewed and approved by the OCI – explaining the motivations for and the technical details of the proposed restructuring.

This Policyholder Information Statement also set forth in detail the various voting considerations, risks, alternatives and other matters reasonably to be considered by the policyholders in deciding if and how to vote on the Plan.

Based on the foregoing, I submit that Milwaukee Mutual's proposed restructuring is fair and equitable to the policyholders of Milwaukee Mutual.

*C. The Plan Is Not Contrary To The Interests Of The Policyholders Or Of The General Public.*

The third and final element is that the Plan cannot be contrary to the interests of the policyholders of Milwaukee Mutual or of the general public. Here it makes sense to also consider the sub-element of whether the Plan is detrimental to the safety and soundness of Milwaukee Mutual. Several practical and strategic considerations that will be explained in detail in Dan Doucette's testimony support a conclusion that the proposed restructuring satisfies these requirements. I will summarize those here.

First, the Company expects that its A.M. Best rating will not change as a result of the restructuring, and the Company's policyholder surplus will remain more than sufficient to cover its current and future liabilities.

Second, there are many challenges facing Milwaukee Mutual in today's highly competitive U.S. property and casualty insurance industry. The board of directors of Milwaukee Mutual believes that the most successful insurance companies in the future will be those with the greatest structural, financial and strategic flexibility to respond to changes in the marketplace. Such flexibility is critical to achieving profitable, long-term growth, and in today's competitive environment, profitable, long-term growth is the most reliable means of ensuring the future safety and soundness of Milwaukee Mutual as an insurance enterprise and therefore is in the best interests of Milwaukee Mutual's policyholders and the public in general. However, Milwaukee

Mutual's current structure as a mutual insurance company – while desirable from the standpoint of maintaining the Company's culture and reputation as a policyholder-focused organization – nonetheless limits the Company's organizational flexibility. Specifically, it hinders the Company's prospects for profitable, long-term growth, particularly with respect to raising additional capital and growing through acquisitions of other insurance companies or non-insurance entities.

Third, in light of the foregoing challenges, the board of directors decided to pursue the proposed restructuring to a mutual holding company structure. The board believes the proposed restructuring is preferable to the alternatives of maintaining the status quo or demutualizing the Company, precisely because it allows the Company to obtain the capital-raising and acquisitional flexibility of a stock company while still maintaining the organization's policyholder focus as a mutual entity.

For the foregoing reasons, I submit – and Dan Doucette will testify – that Milwaukee Mutual's proposed restructuring is not only not *contrary* to the interests of the policyholders or the public, it is actually in the *best interests* of both, because it maximizes the Company's ability to achieve profitable growth within the context of remaining a mutual enterprise.

## **VI. CONCLUSION.**

In closing, I submit to the OCI that Milwaukee Mutual's proposed restructuring – as set forth in the Second Amended and Restated Mutual Holding Company Plan of Milwaukee Mutual on file with the OCI – satisfies the statutory criteria for approval by the OCI. I therefore respectfully ask that the OCI approve the Plan and thereby allow it to go to a vote of the policyholders on March 31, 2003.

Before I conclude my remarks and call Mr. Doucette to the witness stand, I want to express to the OCI and the staff my sincere gratitude and respect for the professional and thoughtful manner in which it has exercised its regulatory function with respect to the proposed restructuring. Your diligence and hard work in this regard is not surprising – as it has come to be recognized and expected by the Wisconsin insurance industry as the norm – but I want you to know that it is also very much appreciated. Thank you.

And now I would like to call Dan Doucette as my first and only witness.