



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

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DATE: February 4, 2019

TO: Amy J. Malm, Hearing Examiner

FROM: Michael A. Mancusi-Ungaro
Steven J. Junior

SUBJECT: The Merger of Wilmington Insurance Company into National Insurance Company of Wisconsin; A Pre-Merger \$5.5 million Dividend Request; Name Change; Redomestication to Delaware and Issuance of a Wisconsin Certificate of Authority as a Foreign Insurer (Case No. 19-C42958).

Executive Summary

This Form A recommendation memo concerns the change in control of National Insurance Company of Wisconsin, Inc. and the merger of Wilmington Insurance Company (“WIC”) with and into National Insurance Company of Wisconsin, Inc. (“NICW”) (and together with WIC, the “Applicants”) and certain other pre and post-closing activities contemplated by the Applicants, specifically:

1. A pre-merger \$5.5 million dividend from National Insurance Company of Wisconsin, Inc. to National Services, Inc.;
2. A name change from National Insurance Company of Wisconsin, Inc. to Wilmington Insurance Company;
3. Redomestication of National Insurance Company of Wisconsin, Inc. (renamed Wilmington Insurance Company) to Delaware; and,
4. The issuance of a Wisconsin nondomestic certificate of authority to National Insurance Company of Wisconsin, Inc. (renamed Wilmington Insurance Company).

Each request will be specifically addressed below.

WIC is a Delaware stock insurance corporation owned by Wilmington Holdings Corporation, a Delaware corporation. NICW is a Wisconsin stock insurance corporation owned by National Services, Inc., a Wisconsin corporation. The Applicants want to merge WIC into NICW and then change the name of NICW to WIC. Complicating the transaction is the fact that NICW has ceded a block of long term care contracts to Ability Insurance Company (hereinafter also, “Ability”) via a 100% coinsurance agreement and established a trust at Bank of New York Mellon to handle recoverables due from Ability. In recent years, there has been a shortfall in payments to the trust account, resulting in a reduction in surplus of over \$500,000. In light of risks to Ability Insurance Company’s ultimate financial position and the possibility that Ability Insurance Company will not be able to honor its commitments when this block of long term care policies starts to file claims, NICW must recapture the previously ceded block of long term care policies prior to and as a condition of approval of the Form A. This recapture was completed on January 23, 2019 for effectiveness as of January 1, 2019. The difference between the reserve amount for the long-term care business agreed upon in the Recapture Agreement and the reserve amount calculated

by Wilmington Insurance Company's actuarial firm is \$268,001. Accordingly, the consideration that will be paid to National Services, Inc. will be reduced by \$268,001.

Looking at WIC's history of recent financial examinations, there are no major concerns mentioned and the most recent examination made no recommendations to management or adjustments to the financial statements.

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The Transactions

The Merger

On October 5, 2018 NICW, National Services Inc. (NICW's ultimate controlling entity), National Insurance Company of Wisconsin, Inc., Wilmington Insurance Company and Wilmington Holdings Corporation (WIC's ultimate controlling entity) agreed to enter into an Agreement and Plan of Merger (the "Merger Agreement"), attached at Exhibit A to the Form A filing.

According to the Merger Agreement, WIC will be merged with and into NICW and cease to have a separate existence and NICW will continue as the surviving corporation. NICW will also immediately change its name to Wilmington Insurance Company and redomesticate to Delaware. The bylaws and corporate charter of the surviving corporation will be amended as required by Delaware law. The bulk of the Merger Agreement is boilerplate and OCI has no objections or other specific comments.

The Name Change, Redomestication, and Issuance of a Nondomestic Certificate of Authority

As contemplated by the merger, Wilmington Insurance Company will be merged into NICW at closing and NICW will change its name to Wilmington Insurance Company. The company will redomesticate to Delaware, upon Delaware's approval of the redomestication. Finally, the company wishes to continue writing in Wisconsin and it is appropriate to issue the company a nondomestic certificate of authority upon the effective date of its redomestication to Delaware.

The Insurers

National Insurance Company of Wisconsin, Inc. ("NICW") was originally organized in 1895 as a town mutual insurance company under the name of Campbellsport Mutual Insurance Company. In 1976, the Company became a domestic mutual insurance company and changed its name to Camco Insurance, a mutual company. In 1980, the company converted to a stock insurance corporation and changed its name to Wisconsin Employers Indemnity Company. The company was sold as an inactive shell corporation to National Services, Inc. in February, 1989, and the current name of National Insurance Company of Wisconsin, Inc. was adopted.

The company primarily wrote group long-term disability insurance for school districts and municipalities. The company also wrote a small volume of group short-term disability insurance. The business was marketed through an affiliated managing general agent, National Insurance Services of Wisconsin, Inc. (NIS). Prior to January 1, 1997, the long-term disability business was ceded to American United Life Insurance Company (hereinafter also, "AUL") but that block was put in runoff on January 1, 1997. On July 1, 1997, ReliaStar Life Insurance Company replaced AUL as NICW's reinsurer for long-term disability business, and this agreement was discontinued regarding new business and put in runoff effective July 1, 1999.

Previously, NIS sold long-term disability policies for NICW, Lafayette Life Insurance Company, and Madison National Life Insurance Company. Madison National Life Insurance Company retroceded 10% of its NIS produced business to NICW on a funds withheld basis. Lafayette Life Insurance Company ceded 100% of its NIS-produced long-term disability business to Hartford Life and Accident Insurance Company. Hartford Life and Accident Insurance Company retroceded the long-term disability business 50% (<1000 life groups) or 25% (>1000 life groups) to NICW on a funds withheld basis.

In 2002, National Insurance Company of Wisconsin, Inc. partnered with LifePlans, Inc. to offer long-term care insurance, which was 100% ceded to Munich American Reassurance Company. Munich American Reassurance Company ceased writing long-term care insurance in 2010. Effective February 1, 2011, the sale of long-term care insurance in partnership with LifePlans, Inc. was resumed, with 100% of the business ceded to Ability Insurance Company. On December 12, 2012, Ability Insurance Company was placed under a supervisory order by the Nebraska Department of Insurance. This supervisory order was terminated effective July 2, 2014. In February 2013, NICW decided to exit the long-term care market.

During 2015, the NICW's shareholders decided to sell the company. The company began preparations to sell the company as a shell along with the block of fully-reinsured individual long-term care business. The group long-term disability policies were all moved to Madison National Life Insurance Company (MNL) on July 1, 2015 and the reinsurance contract with MNL was terminated as a result. The company contracted with MNL on October 1, 2015 to administer the direct long-term disability claim run-off and plans to ultimately sell the remaining direct reserves to MNL. In addition, the company completed reserve buyouts relating to the closed assumed blocks with American United Life Insurance Company and Lafayette Life Insurance Company. As of December 31, 2015, the company no longer held any assumed business. The company is currently investing in investment-grade securities with staggered maturities to fund its projected future liabilities as the company runs off its remaining policies.

The company is licensed in the following 20 states: Alabama, Colorado, Delaware, Georgia, Idaho, Illinois, Indiana, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Dakota, South Dakota, Washington, Wisconsin and Wyoming. The company is currently not writing any new business.

Wilmington Insurance Company was incorporated in August, 1995, and received its Certificate of Authority from the Delaware Department of Insurance in January, 1997. WIC is a wholly owned subsidiary of Wilmington Holdings Corporation (hereinafter also, "WHC") whose parent company and ultimate controlling person of the holding company system is Gearson Partners Fund LP, which purchased Wilmington Holdings Corporation and Wilmington Insurance Company from Trident Commercial Corporation in 2017. WIC is a privately-held middle market property and casualty insurance company, domiciled in Delaware, which currently writes business only in Delaware. All underwriting and claim processing are performed in the Wilmington, Delaware office. WIC has an affiliated sister company, Wilmington Insurance Agency. The company's principal lines of business are homeowners,

commercial multi-peril and fire. WIC predominately writes residential and business exposures located along the Delaware shoreline. The company is also licensed in North Dakota and the District of Columbia and is seeking admission to Maryland in order to write similar exposures along that state's Atlantic shoreline. A review of complaint history on NAIC's I-Site indicates an insubstantial level of complaints.

NICW's Financial Snap shot:

	2017	2016	2015	2014	2013
Total Admitted Assets	13,591,216	13,812,393	20,893,022	43,508,755	45,392,987
Total Liabilities	1,634,645	1,669,044	3,407,932	23,860,901	25,719,660
Surplus	11,956,571	12,143,350	17,485,091	19,677,858	19,673,328
Net Underwriting Gain (Loss)	-484,557	615,243	-1,028,129	1,270,294	594,164
Net Income (Loss)	-94,347	1,151,410	-177,721	1,880,051	1,463,187
RBC	5186%	5978%	2802%	947%	910%
Excess Compulsory Surplus	9,956,571	10,143,350	15,485,090	17,677,854	17,673,327
Excess Security Surplus	9,156,571	9,343,350	14,685,090	16,877,854	16,873,327

WIC's Financial Snap shot:

	CURRENT PERIOD	PRIOR YEAR END
Capital & surplus	\$3,370,381	\$3,455,862
Underwriting gain (P&C)	(\$232,395)	\$427,072
Net income	(\$44,929)	\$413,787
RBC	682.3%	2,983.8%

The Identity and Background of the Applicants

The name and current business address of each Applicant:

Wilmington Insurance Company: 1403 Silverside Road, Suite 3B, Wilmington, Delaware 19810

National Insurance Company of Wisconsin, Inc.: 250 S Executive Drive, Suite 300, Brookfield, Wisconsin 53005

Directors and Officers of Wilmington Insurance Company:

Name	Position
Daniel Koch	Director, President and Chief Executive Officer
David Gearhart	Director
Clifford Thompson	Director
Marshall Schutt	Director
Brad Hogan	Director

Scott Foltz
Kate Wright Menase

Senior Vice President and Secretary
Chief Financial Officer and Treasurer

Directors and Officers of National Insurance Company of Wisconsin:

Terry Briscoe	Chairman and Chief Executive Officer
Thomas Ehram	Vice Chairman and Chief Operating Officer
Bruce Miller	President
Scott Briscoe	Executive Vice President and Secretary
David Norton	Vice President and Treasurer

A review of the confidential biographical affidavits for the above listed officers and directors did not raise any concerns.

Nature, Source and Amount of Consideration

Per Section 1.7 of the Agreement and Plan of Merger between National Insurance Company of Wisconsin, Inc., National Services, Inc., Wilmington Holdings Corporation, and Wilmington Insurance Company, Inc., certain payments are to be made immediately prior to closing and at closing.

The first payment, to be made immediately prior to closing, is NICW's \$5.5 million dividend to National Services, Inc. At closing, Wilmington Holdings Corporation will pay \$3,000,000 to National Services, Inc., minus any transaction expenses and the aforementioned \$268,001 long-term care recapture adjustment.

The 611.72(3) Standard

Wisconsin Statute s. 611.72(3)(am) creates a five part test to for the Office of the Commissioner of Insurance to use when evaluating the merger or acquisition of a domestic stock insurance company. It reads, in relevant part:

(am) The commissioner shall approve the plan if the commissioner finds...that it would not violate the law or be contrary to the interests of the insureds of any participating domestic corporation or of the Wisconsin insureds of any participating nondomestic corporation and that:

1. After the change of control, the domestic stock insurance corporation or any domestic stock insurance corporation controlled by the insurance holding corporation would be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;
2. The effect of the merger or other acquisition of control would not be to create a monopoly or substantially to lessen competition in insurance in this state;
3. The financial condition of any acquiring party is not likely to jeopardize the financial stability of the domestic stock insurance corporation or its parent insurance holding corporation, or prejudice the interests of its Wisconsin policyholders;

4. The plans or proposals which the acquiring party has to liquidate the domestic stock insurance corporation or its parent insurance holding corporation, sell its assets, merge it with any person or make any other material change in its business or corporate structure or management, are fair and reasonable to policyholders of the domestic stock insurance corporation or in the public interest; and
5. The competence and integrity of those persons who would control the operation of the domestic stock insurance corporation or its parent insurance holding corporation are such that it would be in the interest of the policyholders of the corporation and of the public to permit the merger or acquisition of control.

These five requirements are analyzed below.

s. 611.72(3)(am)1: After reviewing the documents provided by the Applicant in their Form A filing, OCI Staff believes that the Applicant is able to satisfy s. 611.72(3)(am)1. To reach this conclusion, OCI Staff has relied heavily on the proposed business plan.

s. 611.72(3)(am)2: It is OCI's opinion that a Form E analysis is not necessary as this proposed merger involves operations that have not written business in Wisconsin for some time and involved lines of business that are subject to robust competition and an operation that is not expected to write substantial premium in limited geographic areas. As such, the risk that this transaction would reduce competition for P&C or workers compensation insurance in Wisconsin specifically or the nation generally is nonexistent. OCI's review of the potential competitive effects concluded that approving the acquisition would not violate the competitive standards set forth in s. Ins 40.025(4), Wis. Adm. Code.

s. 611.72(3)(am)3: Paragraph 3 requires that the financial condition of any acquiring party is not likely to jeopardize the financial stability of the domestic insurance corporation or its parent insurance corporation, or prejudice the interest of its Wisconsin policyholders. After reviewing the documents provided by the Applicants, the concern that affiliated non-insurance operations would jeopardize the financial condition of Wilmington Insurance Company is deemed minimal. OCI, however, will monitor the post-merger insurer's financial condition going forward.

s. 611.72(3)(am)4: Paragraph 4 requires that the post-transaction plans to change the business structure be "fair and reasonable to policyholders of the domestic stock insurance corporation or in the public interest." Here, the issue is the treatment of the block of long term care policies to be recaptured from Ability Insurance Company. Looking at the projections and the fact that Wilmington Insurance Company has already provided for the improved, more conservative reserving of the long term care business, as discussed above, leads OCI to believe that the post-transaction change to the business is in the best interest of the policyholders. OCI Wisconsin's review of the Form A and its supporting documents raise no concerns that certain policyholders would be prejudiced by the proposed transactions. Compliance with s. 611.72(3)(am)4, Wis. Stat., is expected.

s. 611.72(3)(am)5: Paragraph 5 requires that OCI review the biographical affidavits of the proposed officers and directors of the Applicants and this review did not raise serious concerns.

Conclusion

The plan for the acquisition of control of National Insurance Company of Wisconsin, Inc. and merger of Wilmington Insurance Company with and into National Insurance Company of Wisconsin, Inc. should be approved, subject to the following conditions subsequent:

1. The payment by National Insurance Company of Wisconsin, Inc. of an extraordinary dividend in the amount of \$5,500,000 to National Services, Inc. immediately prior to the consummation of the Plan for Acquisition of Control and Merger is hereby approved. National Insurance Company of Wisconsin, Inc. shall provide the OCI with written notice of the amount and payment date of this extraordinary dividend within three (3) business days of the actual payment. Should the Plan for Acquisition of Control and Merger not be consummated, the entire amount of this dividend must be repaid to National Insurance Company of Wisconsin, Inc. within three (3) business days following termination of the Plan for Acquisition of Control and Merger.
2. Amended and Restated Articles of Incorporation and Amended and Restated Bylaws, which change the name of National Insurance Company of Wisconsin, Inc. to Wilmington Insurance Company, shall be filed within ten (10) calendar days of the consummation of the Plan for Acquisition of Control and Merger.
3. The redomestication of National Insurance Company of Wisconsin, Inc., renamed Wilmington Insurance Company, from Wisconsin to Delaware is hereby approved. The redomestication shall be recorded in Wisconsin as of the effective date in Delaware upon (i) receipt of a copy of the Delaware Department of Insurance's approval of the redomestication certified by the corporation's Secretary or Assistant Secretary; (ii) receipt of amended and restated articles of incorporation, reflecting the redomestication as recorded by Delaware, certified by the corporation's Secretary or Assistant Secretary; and (iii) receipt of amended and restated bylaws, reflecting the redomestication as recorded by Delaware, certified by the corporation's Secretary or Assistant Secretary.
4. Upon the recording of the redomestication of National Insurance Company of Wisconsin, Inc., renamed Wilmington Insurance Company, to Delaware, the OCI shall issue a nondomestic certificate of authority, as of the effective date of the redomestication in Delaware, which includes all the lines of authority that the corporation has upon the effective date of the Final Decision in this Case No. 19-C42958.