OFFICE OF THE COMMISSIONER OF INSURANCE — STATE OF WISCONSIN

In the Matter of the Acquisition of Stock of the St. Paul Companies, Inc., Including St. Paul Fire and Casualty Insurance Company, a Wisconsin Corporation, by Alleghany Corporation, a Delaware Corporation, and Whether the Acquisition Constitutes Acquisition of Control.

FINDINGS OF FACT, CONCLUSIONS OF LAW, FINAL DECISION, AND ORDER

Case No. 88-C20269

Alleghany Corporation, Petitioner.

BEFORE THE HONORABLE ROBERT D. HAASE, COMMISSIONER OF INSURANCE

APPEARANCES

For Alleghany Corporation:

Jeffrey B. Bartell
Donald K. Schott
William J. Toman
P. O. Box 2113
Madison, WI 53701-2113

For The St. Paul Companies, Inc.

Joseph C. Branch
Kathleen M. Rivera
Thomas C. Ewing
2100 Marine Plaza
Milwaukee, WI 53202

PRELIMINARY

Pursuant to a Notice of Hearing dated January 11, 1988, a class 1 hearing was held on February 9, 10, and 11, 1988, before Robert D. Haase, Hearing Examiner, at the Office of the Commissioner of Insurance, Madison, Wisconsin, to determine whether to approve the proposed plan of acquisition of control of up to 20% of the stock of The St. Paul Companies, Inc., including the St. Paul Fire and Casualty Company, a Wisconsin corporation, by Alleghany Corporation, a Delaware corporation.

The record in this matter consists of the following:

1. Wisconsin Exhibits W-1 to W-43. References to these exhibits are as follows: Exhibit W-1.

References to the transcript of the hearing in a related matter in the State of Minnesota (Exhibit W-43) are as follows: Minn. Tr. at (page number).

References to the transcript of the hearing in a related matter in the State of Indiana (Exhibit W-39) are as follows: Ind. Tr. at (page number).

Exhibits from the Minnesota hearing which are referenced in this Decision (Minn. Ex.) can be found in Exhibit W-1.

2. A transcript of the motion hearing held on February 9, 1988, consisting of 95 pages.

3. A transcript of the hearing held on February 10 and 11, 1988, consisting of 537 pages. References to this transcript are as follows: Tr. at (page number).

4. The Insurance Holding Company System Registration Statement filed by Alleghany Corporation with the Office of the Commissioner of Insurance of the State of Wisconsin on November 20, 1987 (Registration Statement), and attached Exhibits 1 to 6.

Based upon the record, the Hearing Examiner makes the following:

FINDINGS OF FACT

(1) St. Paul Fire and Casualty Insurance Company ("St. Paul Fire and Casualty") is a Wisconsin domestic property and casualty insurance company with its headquarters located at Waukesha, Wisconsin, and offices located in Madison, Appleton, and Milwaukee. Tr. at 314.

(2) St. Paul Fire and Casualty is a wholly owned subsidiary of St. Paul Fire and Marine Insurance Company, a Minnesota corporation, with headquarters located at 385 Washington Street, St. Paul, Minnesota ("St. Paul"). Tr. at 313. St. Paul is a wholly owned subsidiary of The St. Paul Companies, Inc., which is the holding company for one of the largest groups of property-liability insurance underwriters in the United States, and is also engaged through subsidiaries in investment banking and insurance and reinsurance brokerage activities. Minn. Ex. 2 (St. Paul Sept. 30, 1987, report); Minn. Tr. at 313.

(3) St. Paul has total assets of $8,308,440,00 and total shareholder equity of $1,735,334,000, as of September 30, 1987. It employs approximately 10,000 people nationwide. The common stock of St. Paul is traded nationally over-the-counter and is quoted on NASDAQ National Market System. Approximately 46,301,857 shares of St. Paul common stock are outstanding. Id. St. Paul has slightly over 35,000 Wisconsin policyholders. Tr. at 315. Its 1987 Wisconsin premium volume totaled $56,400,000. Of that, St. Paul Fire and Casualty wrote $33,700,000. Tr. at 316.

(4) Alleghany Corporation ("Alleghany") is a Delaware corporation with its headquarters at Park Avenue Plaza, 55 East 52nd Street, New York, New York. As of September 30, 1987, total assets of Alleghany and its subsidiaries equaled $1,499,49,000 and common shareholder equity was $517,123,000. Minn. Ex. 30.

(5) Approximately 38% of the common stock of Alleghany is held by and for members of the Kirby family, including Fred M. Kirby, Allan P. Kirby, Jr., Ann Kirby Kirby, and Grace Kirby Culbertson. The Kirbys control Alleghany. Tr. at 110. Fred Kirby has the power to vote approximately 800,000 shares, or 12.5%, of Alleghany common stock. Allan Kirby has the power to vote approximately 648,000 shares, or 10.1%, of Alleghany common stock. Id. Ann Kirby Kirby has the power to vote approximately 711,000 shares, or 11.1%, of Alleghany common stock. Grace Kirby Culbertson apparently has the power to vote less than 10% of Alleghany common stock. Ex. 4 to Registration Statement.

(6) As of January 29, 1988, Alleghany and its subsidiaries owned 4,035,000 shares, or approximately 8.7%, of the common stock of St. Paul. Ind. Tr. at 80-81. As of February 10, 1988, Alleghany and its subsidiaries owned 4,065,000 shares and paid an average price of $53 a share. Tr. at 88. Of the total St. Paul shares controlled by Alleghany, approximately 37% are held by Alleghany's subsidiaries. The holdings of St. Paul shares by the insurance subsidiaries are as follows: Chicago Title and Trust, 160,000; SAFECO Title Insurance Company, 100,000; and the Shelby Insurance Company, 100,000. Tr. at 192-193.

(7) On November 24, 1987, Alleghany filed with the Commissioner of Insurance for the State of Wisconsin ("Commissioner") an Insurance Holding Company Registration Statement purportedly in compliance with s. 617.12, Wis. Stat., seeking approval to acquire in excess of 10% of the common stock of St. Paul. Alleghany stated its then present intent was to acquire 3,101,580 shares of stock, which, together with the 3,890,000 shares currently owned, would result in Alleghany and its subsidiaries owning an aggregate of 6,991,580 shares, or approximately 15.1% of the outstanding stock. In addition, Alleghany management subsequently recommended, and its Board of Directors authorized, Alleghany to acquire a further 2,268,790 shares which would result in Alleghany and its subsidiaries owning an aggregate of 9,260,370 shares, or up to 20% of the stock. Exhibit W-6.

(8) Alleghany also purports to "reserve the right to change such current intentions . . ." Registration Statement at 16.

(9) The Minnesota Department of Commerce approved, in part, Alleghany's proposed acquisition, but prohibited Alleghany from acquiring more than 20% of the common stock of St. Paul without additional review and approval by the Department. Exhibit W-5. St. Paul appealed that decision to the Minnesota district court under a statute requiring de novo review. Alleghany filed a cross-appeal in the state action, and a direct appeal to the Minnesota Court of Appeals. Both challenge the Minnesota commissioner's authority to prohibit Alleghany from acquiring more than 20% of the St. Paul stock.

(10) On March 25, 1988, the Indiana Commissioner of Insurance denied Alleghany's application for approval of its proposed acquisition of control of St. Paul Indemnity Insurance Company, an Indiana insurance company.

(11) On March 29, 1988, the North Dakota Commissioner of Insurance disapproved Alleghany's application and ordered that Alleghany cannot acquire more than 10% of the common stock of St. Paul.

(12) Texas has held a hearing in a related matter, but has not yet issued a decision.

St. Paul Operations

(13) St. Paul's insurance operations are focused on the commercial property and casualty lines. A major component of that business is medical malpractice insurance. In 1986, St. Paul was the nation's largest medical malpractice primary insurance underwriter with $715 million in written premiums. St. Paul's insurance business also includes personal lines, reinsurance, specialty risks, and surplus lines, and fidelity and surety bonds. Minn. Ex. 20.

(14) St. Paul Fire and Casualty, the domestic insurer involved in this proceeding, is involved in the commercial business and professional liability lines of insurance in Wisconsin and Georgia including commercial, general liability, medical malpractice for hospitals, nursing homes, physicians and surgeons, and nonmedical professional liability including errors and omissions, lawyers malpractice, and directors and officers liability. Tr. at 316. St. Paul Fire and Casualty insures 47 hospitals in Wisconsin, 559 physicians and surgeons, and 36 nursing homes. Tr. at 317-319. In 1986, St. Paul Fire and Casualty wrote just under $12.5 million in medical malpractice premiums and had 4,700 medical malpractice policyholders. Tr. at 319.

(15) St. Paul is one of only a few insurance companies that write medical malpractice insurance in Wisconsin, because the "long tail" for claims in this line of insurance makes it difficult to properly price and underwrite the product. Its expertise in risk assessment and claims handling enables it to properly price this product. Tr. 316-317.

(16) A number of insurance companies have withdrawn from writing medical malpractice insurance in Wisconsin within the past ten years. The withdrawal of these companies has lessened the availability of medical malpractice insurance in Wisconsin. Tr. at 323-324.

(17) St. Paul Fire and Casualty continues to renew existing medical malpractice policies and to write new policies for current insureds even though it has a moratorium on other new medical malpractice insurance. This moratorium has allowed St. Paul Fire and Casualty to stay in the medical malpractice market rather than withdraw from the market. Tr. at 326-329.

(18) St. Paul Fire and Casualty writes directors and officers liability insurance for financial institutions in Wisconsin, providing coverage primarily for small rural banks and savings and loans of under $250 million in deposits or assets. Tr. at 319-320.

(19) St. Paul Fire and Casualty writes directors and officers liability insurance for 51 financial institutions in Wisconsin. In 1987, St. Paul Fire and Casualty wrote approximately $500,000 in premiums for directors and officers liability in Wisconsin. Tr. at 321; Exhibit W-29.

(20) Directors and officers liability insurance for financial institutions is difficult to underwrite in Wisconsin because of its agricultural economy and the number of agricultural loans made by the small, rural financial institutions. Tr. at 320.

(21) Within the past ten years, a number of other insurance companies have withdrawn from writing directors and officers liability insurance for financial institutions in Wisconsin. Tr. at 323.

(22) St. Paul Fire and Casualty writes general liability for villages, towns, and sanitary districts in Wisconsin. Tr. at 321-322.

(23) St. Paul Fire and Casualty insures approximately 550 towns and other governmental units in Wisconsin. In 1987, it wrote $1.1 million in premiums in general liability insurance for governmental entities in the state. Tr. at 322; Exhibit W-26.

(24) General liability insurance for governmental units is difficult to underwrite. Not many insurance companies provide this kind of insurance for governmental entities due to the variety of their operations and their accountability to the public for health and safety. For example, the towns in Wisconsin are responsible for maintaining approximately 62,000 miles of the 110,000 miles of roadways in Wisconsin. Tr. at 334.

(25) St. Paul Fire and Casualty has continued to write this line of coverage while a number of other insurance companies have withdrawn from writing general liability insurance for towns in Wisconsin. Tr. at 323.

(26) If Alleghany were permitted to gain control of St. Paul Fire and Casualty, legitimate concerns would arise regarding the ability or commitment of St. Paul Fire and Casualty to continue to write difficult lines of insurance in Wisconsin, such as medical malpractice, directors and officers liability for financial institutions, and general liability for units of government. Tr. at 324-325.

(27) Swett & Crawford Group, a St. Paul subsidiary, is the largest wholesale insurance broker network in the United States. It operates 50 offices in 30 states. Swett & Crawford is a wholesale distributor of surplus lines and specialty risk products. Minn. Exs. 20 and 22.

(28) St. Paul also owns 26% of the equity of the London-based Minet Holding PLC, one of the largest insurance brokers in the world. St. Paul recently agreed to acquire the remaining outstanding shares of Minet that are not already owned by St. Paul. Tr. at 234. That agreement was reached without regard to Alleghany's proposed control of St. Paul. Ind. Tr. at 267-268.

(29) Another St. Paul subsidiary is John Nuveen & Co., Inc., an investment banking company. Nuveen is the oldest and largest investment banking firm specializing in underwriting, trading, and marketing municipal bonds, tax-exempt unit trust funds, and tax-free mutual funds. It is headquartered in Chicago, has a principal office in New York, and has branches in 13 U.S. cities. Minn. Exs. 20 and 22.

(30) The insurance industry is highly cyclical. Tr. at 372, 450. St. Paul is unique in the insurance industry because it is so heavily involved in medical malpractice coverage. Tr. at 391-392. This coverage involves claims that are ultimately resolved years after the policy is priced and sold with resulting increased risk of error in estimating the costs to the insurer at the time the policy is written. The combination of general industry cyclicality and unique emphasis on "long-tail" lines requires that St. Paul be operated in a very conservative manner. In particular, reserves and surplus must be abundant relative to those of other insurance companies to allow for errors in estimating the frequency and extent of claims that may be settled long after the policy is written. Tr. at 392-395. Major changes in legal climate and in interpretation of medical standards or policy terms make conservative underwriting necessary. Tr. at 392-395. More important, adequate surplus to withstand periods of adversity is essential for the survival of the company. Tr. at 377-379, 392-397; Minn. Tr. at 417-19.

Alleghany's Officers, History, and Operations

(31) Alleghany's officers include Fred M. Kirby, Chairman and Chief Executive Officer; John J. Burns, Jr., President, Chief Operating Officer and Chief Financial Officer; David B. Cuming, Vice President with responsibility for financing, strategic planning, and investments; and Theodore E. Somerville, Vice President and General Counsel. Tr. at 53. Alleghany is controlled by the Kirby family, which owns approximately 38% of the voting shares of the common stock of Alleghany.

(32) Alleghany was formed in the 1920s as a railroad holding company. Since its formation, Alleghany has bought and sold substantial minority positions in several companies. Tr. at 76; Ex. 1 to Registration Statement.

(33) By 1974, Alleghany had sold the last of its railroad holdings. Tr. at 44. Fred Kirby was on the Board of Penn Central until just before its announcement in 1970 that it could not meet its financial obligations. Minn. Tr. at 202. In 1984, Alleghany attempted to reenter the railroad industry, seeking approval to acquire Conrail from the United States Government. Alleghany's bid was not accepted. Minn. Tr. at 97-100.

(34) In 1949, Alleghany acquired a controlling minority interest in Investors Diversified Services, Inc. ("IDS"). Alleghany controlled IDS with minority shareholding until 1979 when it bought out of the rest of the shareholders, increasing its own holding to 100%. Minn. Tr. at 24; Tr. at 51. This buyout resulted in shareholder litigation against Alleghany, which Alleghany settled for $4 million in cash and $45 million face-value in securities. Minn. Tr. at 93-94. In 1984, Alleghany sold IDS to American Express for approximately $800 million, largely in exchange for American Express stock. Tr. at 64. Alleghany became the largest stockholder of American Express. Tr. at 43. Through this sale, Alleghany acquired a pool of capital available for major investments.

(35) In 1969, Alleghany acquired a truck company, Jones Motors. After deregulation of the trucking industry, Alleghany sold Jones Motors to its management in 1983. Tr. at 44.

(36) In 1974, Alleghany purchased MSL, a steel products company based in Chicago. It held MSL until June 1987, when it spun off the manufacturing assets of MSL to its stockholders using that as a base for them to acquire the Cyclops Steel Company of Pittsburgh. Tr. at 44.

(37) In June 1985, Alleghany acquired Chicago Title and Trust Company and its subsidiary, Chicago Title Insurance Company, from Lincoln National Corporation. Ex. 1 to Registration Statement; Tr. at 44.

(38) In 1986, Alleghany purchased a minority interest in Beneficial Corporation, made a Hart-Scott-Rodino filing, and informed Beneficial management. Beneficial made the acquisition public, essentially putting the company "in play," and the stock price increased from $46 to more than $70 a share in one day. Alleghany promptly sold out for a profit of approximately $43 million. Tr. at 76-78.

(39) Alleghany also held investments in Colonial Penn which it sold for a profit. Tr. at 76.

(40) Over a nine-month period in 1987, Alleghany acquired a minority position in Transamerica Corporation, a financial services company. The price of the stock increased rapidly and Alleghany sold out its interest at a substantial profit. Tr. at 76; Minn. Tr. at 102.

(41) In December 1986, Alleghany acquired all of the common shares of The Shelby Insurance Company. Shelby became a subsidiary of Alleghany upon Shelby's demutualization. Tr. at 44-45.

(42) At the end of 1986, Alleghany undertook a liquidation and reorganization for tax and other reasons, and distributed a large cash dividend to its shareholders of approximately $43 per share. Tr. at 71-73.

(43) In January 1987, Chicago Title and Trust acquired SAFECO Title Insurance Company. Ex. 1 to Registration Statement; Tr. at 44.

(44) In June 1987, the new Alleghany spun off its steel manufacturing assets to a newly created subsidiary, Cyclops, which, pursuant to a deal with a U.K.-based company, shared in the purchase (through Cyclops' own subsidiary) of the Pittsburgh-based Cyclops Corporation. Tr. at 83-84. Alleghany caused its subsidiaries to purchase approximately $10 million of Cyclops preferred stock from Alleghany. Tr. at 202. The interest rate was 12-3/4%, probably as a result of the capital structure of Cyclops. Tr. at 201.

(45) Alleghany is currently engaged through its subsidiary, Chicago Title and Trust Company, an Illinois corporation, and its subsidiaries, including SAFECO Title Insurance Company, a California corporation, and Chicago Title Insurance Company, a Missouri corporation, in the sale and underwriting of title insurance. Alleghany is also engaged through its ownership of all of the common shares of The Shelby Insurance Company, an Ohio corporation, in the property and casualty insurance business. Ex. 1 to Registration Statement.

(46) In its most recent strategic plans, Alleghany has indicated that it will seek a major acquisition of an operating company. Minn. Ex. 24 at 14. Alleghany believes that available capital is sufficient to support an acquisition possibly in the one-to-three billion dollar range.

(47) Alleghany believes that the market crash improved the price level of its acquisition and investment opportunities, including St. Paul. Tr. at 146-147.

(48) Alleghany believes that investing its capital in controlling equity positions can be advantageous by acquiring stock positions without paying substantial premiums to obtain control. Minn. Ex. 24 at 13. Alleghany believes that its declared interest in the possible acquisition of a company can elicit competitive responses that will generate a profit for Alleghany. Minn. Ex. 24 at 14.

(49) Alleghany's investment philosophy is to invest its capital base in a portfolio of controlling equity positions. Minn. Ex. 24 at 13. Alleghany owns 100% of Shelby and 100% of Chicago Title. Tr. at 191. It also owned 100% of IDS. Tr. at 51.

(50) Alleghany prefers an active rather than a passive investment strategy. Minn. Ex. A at 16; Tr. at 129-130. Alleghany prefers to manage its own assets on a day-to-day basis rather than place its fortunes largely in the hands of others. Id.

(51) Alleghany has exhibited interest in the property and casualty insurance industry in recent years. Alleghany believes that the ownership and management of the assets of a property/casualty insurance would allow Alleghany to acquire an operating company that, unlike a life insurance company, may invest a large portion of its reserves and surplus in a portfolio of equity securities. Minn. Ex. A at 11.

(52) One of the reasons Alleghany was interested in St. Paul was because it appeared to have substantial excess surplus. Tr. at 167.

Alleghany's Activities With Respect to St. Paul

(53) Alleghany first gave serious consideration to taking a position in St. Paul in July 1987. Tr. at 161. On July 16, 1987, Burns wrote a memo to Kirby stating "I like this STPL [St. Paul] idea. Have no real concept of end game right now, but: — I didn't on TA [Transamerica] — there most certainly is one." Burns considered St. Paul a "very vulnerable acquisition candidate because the property-casualty operation can be purchased very cheaply assuming use of hidden assets." Minn. Ex. B; Minn. Tr. at 128.

(54) On July 20, 1987, Kirby responded to Burns' July 16 memo stating that he "ha[d] no problem with the enclosures" except for an arithmetical error insignificant for these purposes. Minn. Ex. B; Tr. at 168.

(55) In July 1987, Cuming did a preliminary LBO calculation for the St. Paul Companies. Encouraged by the preliminary results, Alleghany asked its investment broker, Merrill Lynch Capital Markets ("Merrill Lynch"), to assist in preparing an analysis of St. Paul. Tr. at 160-161; Minn. Tr. at 134-35. Alleghany advised Merrill Lynch that it thought that St. Paul's stock was undervalued and asked Merrill Lynch to evaluate the attractiveness of an investment in St. Paul. Merrill Lynch gave St. Paul the code name "Santa Claus" for purposes of its confidential analysis and discussions with Alleghany. Cuming conceded that Merrill Lynch performed an acquisition analysis of the St. Paul. Tr. at 158. An acquisition analysis is an expensive process and is generally done when an investor is considering buying an entire company, whereas a valuation analysis is generally done when the investor is interested only in a noncontrolling stock position. Tr. at 367, 405. From July to October of 1987, Alleghany officers met with Merrill Lynch representatives several times to discuss the Merrill Lynch analyses. Tr. at 160. Burns and Cuming discussed whether St. Paul was a good acquisition for Alleghany. Tr. at 165.

(56) On July 31, 1987, Merrill Lynch provided Alleghany with a "Summary Pre-Tax Break-Up Valuation" of St. Paul. Merrill Lynch analyzed the break-up value of St. Paul and also analyzed an acquisition of 5% of the shares of St. Paul in the open market followed by a business combination for the remainder of all the shares. Minn. Ex. C; Minn. Tr. at 139.

(57) On August 6, 1987, Burns sent a memo (Minn. Ex. D) to the executive committee of Alleghany reporting that Alleghany and its subsidiaries owned over 600,000 shares of St. Paul common stock (approximately 1.2%). Burns also recommended that the executive committee authorize the purchase of up to 5% of St. Paul stock. The management of Alleghany is authorized to purchase up to $30 million of stock before obtaining board approval. Minn. Ex. D; Minn. Tr. at 142.

(58) On August 11, 1987, Merrill Lynch sent Burns a "preliminary financing analysis" of St. Paul. The contemplated hypothetical transaction involved a tender offer for all of the stock of St. Paul, the merger of St. Paul and a subsidiary of Alleghany, and the withdrawal of what Merrill Lynch and later Alleghany referred to as "excess capital" from St. Paul's insurance companies. Minn. Ex. F; Minn. Tr. at 148.

(59) On August 12, 1987, the Alleghany Executive Committee met by telephone and authorized the purchase of up to 2.5 million shares (4.9%) of St. Paul stock. Minn. Ex. 5; Tr. at 178.

(60) On or before August 12, 1987, Merrill Lynch sent Alleghany a 24-page booklet entitled "Santa Claus - preliminary LBO Analysis," which analyzed a 100% leverage buyout of St. Paul, including post-acquisition extraction of excess surplus ($335 million), improvements in bond portfolio income ($220 million), and the sale of three assets of St. Paul: Nuveen, Swett & Crawford, and Minet ($752 million pre-tax). Minn. Ex. E; Minn. Tr. at 147.

(61) Also on August 12, 1987, Burns wrote a memo to Kirby describing the Merrill Lynch LBO plan as "a very aggressive and detailed plan which looks very attractive. While the plan involves a large amount of leverage it seems

handleable even under a difficult worst case scenario." Tr. at 179. Burns considered the plan "venturesome" but thought "it might be the right time for us to consider a more aggressive approach with the remaining Alleghany assets." Minn. Ex. G; Minn. Tr. at 152; Tr. at 179.

(62) On August 13, 1987, Burns wrote a memo to Kirby summarizing the Santa Claus document, outlining a $3.2 billion price for the purchase of St. Paul, to be financed in part by selling three St. Paul assets, increasing bond portfolio revenue, and extracting surplus Alleghany considered to be "excess" as well as equity capital of Alleghany, in combination with debt financing. Minn. Ex. H; Minn. Tr. at 154.

(63) On August 17, 1987, Kirby responded to Burns' August 12 memo stating that he was "in accord with most of the things you have said," and specifically agreeing to Burns' statement that "it might be the right time for us to consider a more aggressive approach with the remaining Alleghany assets." Minn. Ex. G at 3; Tr. at 179-180. Kirby did not at this time halt the continuing work on the acquisition analysis being done by Cuming, Burns, and Merrill Lynch, though he was obviously aware of it.

(64) In the period following Kirby's August 17 response, from August 17 to September 14, 1987, Alleghany and its subsidiaries purchased approximately 1,100,000 additional shares (2.4%) of St. Paul stock.

(65) On September 15, 1987, the Alleghany Board of Directors met and authorized the purchase of up to 4.5 million shares (9.9%) of St. Paul stock. Minn. Ex. 6.

(66) On September 28, 1987, Cuming prepared a memo entitled "St. Paul Strategy: Steps." This two-page memo described in some detail potential steps to follow in the St. Paul acquisition. Minn. Ex. 2; Tr. at 181-184. The memo is reproduced in full as follows:

<u>St. Paul Strategy</u>

1. Acquire 4.9%. Prepare 13D filing.

2. Cross the 5% threshold and use the next ten days before the 13D must be filed to add stock up to 9.9% for investment purposes. The 13D filing does not require any halt in stock purchases, and Alleghany may continue to purchase up to 9.9% after filing, if not already achieved.

3. Crossing the 10% threshold requires:

    a. Permission from the Insurance Commissioner that could take four months to obtain.

    b. A Hart-Scott-Rodino filing (takes 30 days).

c. Should Alleghany's intentions change from investment to merger, acceptance from the company of Alleghany as an "approved buyer" under the Minnesota anti-takeover statute, permitting a merger.

d. Probably (though not necessarily) some form of contact with the company regarding Alleghany's intentions.

4. If Alleghany's investment intentions were to change and if a 100% leverage buyout were acceptable to the target, it would probably happen at this point.

5. After Insurance Commission approval to exceed 10%, preferably without an upper limit, but at least with authorization to go to 20%, Alleghany would continue to buy.

6. At 20%, Alleghany would be the dominant stockholder and eligible for equity accounting, whether or not the company management looked on Alleghany in a friendly manner.

7. At this point (above 10%) any possibility of a future merger is precluded for five years by the Minnesota anti-takeover statute, and Alleghany should only push ahead to this 20% investment level if it intends, through friendly or unfriendly means (i.e., with company support or through a successful proxy fight to control the board) to fully implement the following actions:

   a. The divestiture of certain saleable assets, such as:

Assets	Suggested After-Tax Proceeds
Nuveen	$391
Minet	112
Swet [sic] & Crawford	132
	$635

   b. The use of these and other proceeds (cash and excess surplus) to shrink the capitalization by 15mm shares to, say, 33MM shares of which Alleghany, with 10mm shares, would own 30%.

c. A substantial increase in the yield on the $6+ billion portfolio, with a target after-tax improvement of 2% or $120 million, equal to $3.60 per St. Paul share. A combination of a stock shrink and a 2% after-tax yield improvement produces approximately $15 per share, Alleghany earnings from its 100mm share holding of St. Paul.

8. Alleghany's position as a 30% stockholder with effective control of the board makes it easier to determine and establish the "end game." Among the possible choices are:

   a. Acquire 100% thorough a leverage buyout.

   b. Acquire 80%, allowing financial consolidation, also with substantial leverage.

   c. Acquire 51% to assume continued control, requiring Alleghany to incur large borrowing.

   d. Remain at 30% exercising effective control.

   e. Merge Alleghany and St. Paul.

(67) Cuming's September 28, 1987, memorandum was prepared without the advice of legal counsel. It accurately reflects Cuming's opinions as of September 28 and October 7, 1987. Tr. at 183, 189.

(68) On September 29, 1987, Burns sent a memo to Kirby regarding, among other things, the St. Paul acquisition. Burns attached Cuming's September 28 memo which he described as "current strategy and strategic options." Burns characterized the memo as "a pretty good summary" but indicated that "it's probably not wise to go into any greater detail right now." Burns also stated that, "if done according to plan," St. Paul was a "better deal" than any other deals they were considering. Minn. Ex. 3; Tr. at 184-186.

(69) On October 1, 1987, Burns sent Kirby a memo describing his half-day meeting with Merrill Lynch in which they reviewed St. Paul "from stem to stern, concentrating on management, their specific capabilities, the business mix, etc." Ind. Tr. at 188.

(70) On October 5, 1987, Alleghany surpassed the 5% ownership level in St. Paul stock and thus triggered the requirement to file a Schedule 13D with the federal Securities and Exchange Commission (SEC) within ten days. Alleghany's general counsel, Somerville, was responsible for preparing the 13D filing. Minn. Tr. at 382.

(71) On October 8, 1987, Kirby sent Burns a memorandum responding to the September 29 memo. Minn. Ex. 1. Kirby's memorandum stated that:

> [I]t looks as though you [Burns] and Dave [Cuming] may have got well out in front of me with your thinking on STPL, or so it would seem from the above [September 29 memo] and Dave's September 28 memo regarding 'Strategic Options.' We not only don't need any more detail on most of what Dave has outlined, but I consider most of what he has posed quite fanciful. All our Board has approved and all we intend to acquire, for investment, is something less than 10% of STPL's outstanding common.

(72) Kirby's October 8, 1987, memo was prepared with the advice of general counsel Somerville, who suggested changes to the memorandum. Minn. Tr. at 389.

(73) On October 15, 1987, Alleghany filed a Schedule 13D with the SEC, disclosing that it owned approximately 8% of the shares of St. Paul. Minn. Ex. 14; Minn. Tr. at 159.

(74) On October 21, 1987, the Alleghany Board of Directors met and authorized the purchase of 15.1% of the common stock of St. Paul. Minn. Ex. 7; Minn. Tr. at 158.

(75) On November 12, 1987, Alleghany filed with the Minnesota Department of Commerce its Form A statement, stating that it proposed to acquire 15% of the outstanding stock of St. Paul. Minn. Ex. 8 at 14.

(76) On November 19, 1987, Alleghany filed an amendment to its Minnesota Form A which included a statement that Alleghany's management intended to seek authority from the Alleghany Board of Directors to acquire up to 20% of the outstanding stock of St. Paul. Minn. Ex. 10 at 14-15.

(77) On December 16, 1987, the Alleghany Board of Directors approved the acquisition of up to 20% of the common stock of St. Paul. Ind. Tr. at 98-99.

Alleghany's St. Paul Acquisition Plans and Proposal

(78) Alleghany's stated plans with regard to St. Paul are to acquire up to 20% of the common stock of St. Paul, which would require approximately 100% of Alleghany's net worth, and to remain as a passive investor in the company. Tr. at 114-116, 118, 131. According to Alleghany, a 20% investment is desirable because it will permit the use of equity accounting, reflecting St. Paul's income pro rata on Alleghany's income statements. Tr. at 106-107. Alleghany states that it has no present plans to alter or attempt to alter anything about St. Paul, including its assets, investment policy, corporate organization, business, or management. Tr. at 116.

(79) Alleghany will not exclude from consideration any possible courses of action with regard to St. Paul. It "reserves the right to formulate such plans or proposals, and to take such action, as may seem appropriate in the circumstances existing at any future date." Registration Statement at 17. Though "passive," Alleghany still intends to vote its 20% stock as a means of influencing management. Tr. at 131.

(80) Alleghany does not want to be limited to 20%. Tr. at 120. Furthermore, Alleghany does not rule out going beyond 20%. Tr. at 121-122, 141.

(81) Alleghany always seeks to maximize the value of its shares and will consider pursuing any legitimate course of action that it believes will increase its value to its shareholders. Ind. Tr. at 163, 194.

(82) Alleghany's present plans include at least the following:

(a) Acquire up to 20% of the stock of St. Paul.

(b) Utilize equity accounting.

(c) Conduct continual review to determine what, if any, action would increase the value of its investment to Alleghany shareholders.

(83) Alleghany has considered several proposals with regard to St. Paul's operations, including the following:

(a) Extracting surplus from St. Paul that Alleghany considers "excess," or beyond what is necessary to sustain the company. Minn. Exs. 2, E, G, and H.

(b) Selling certain St. Paul assets, such as Minet, Swett & Crawford, and Nuveen, and using the funds in more profitable investments. Id. Alleghany does not consider these subsidiaries of St. Paul as attractive segments of the business. Tr. at 172-173. Burns and Cuming have discussed the possible sale of those subsidiaries. Tr. at 165.

(c) Having St. Paul buy back up to 15 million shares of its own stock using what Alleghany considers "excess" capital. Minn. Ex. 2.

(d) Increasing the after-tax yield on the bond portfolio by 2%. Id.

DISCUSSION AND ANALYSIS

Equity Accounting

Alleghany states that equity accounting is one rationale for its desire to acquire 20% of St. Paul. Equity accounting may result in an increase in the price of Alleghany stock, by increasing the reported earnings per share of Alleghany stock by reflecting nondividend income of St. Paul. Tr. at 99-104. The issue of equity accounting is important only as it bears on Alleghany's credibility as to whether, in fact, Alleghany intends to be a passive investor. The Cuming memo (Minn. Ex. 2) recommends that Alleghany should push ahead to the 20% investment level only if it intends, through friendly or unfriendly means (i.e., with company support or through a successful proxy fight to control the board) to fully implement certain actions including a sale of St. Paul's subsidiaries and shrinking the capitalization of St. Paul, thereby increasing Alleghany's position in St. Paul to 30% in order to be in a position to "establish the end game," e.g., an LBO. Alleghany used equity accounting as the explanation for its decision to acquire 20% of St. Paul. In the Minnesota proceeding, Kirby testified that equity accounting was the major reason for acquiring 20%. Tr. at 150, Minn. Tr. at 322. In Wisconsin, Cuming testified that it is merely an "added benefit." Tr. at 109. Alleghany would probably acquire 20% even if equity accounting were not available. Tr. at 151. This inconsistency sheds doubt on Alleghany's credibility.

As Howard Carver testified, whether equity accounting is available depends upon the ability of the investor to influence management. Tr. at 344, 346. Equity accounting is used at 20% because there is a rebuttable presumption that the investor can influence management. Exhibit W-24. Mr. Cuming has denied the ability of Alleghany to influence management at 20%. Tr. at 115, 122. It is inconsistent for Alleghany to claim it cannot influence management and yet contend that it intends to use equity accounting. Tr. at 364. Indeed, Howard Carver opined that equity accounting would not be available to Alleghany based in part on Alleghany's statement that it cannot influence management. Tr. at 350.

In addition, because of the magnitude of the investment in St. Paul, i.e., 100% of Alleghany's net worth, one would expect Alleghany to seek some assurances that equity accounting would be available, if the ability to use it is really a major reason for acquiring 20%. Tr. at 348-350, 358.

It is not clear that equity accounting would produce any increase in the value of Alleghany stock, merely by altering its status under an income reporting rule. Tr. at 402-404; Ind. Tr. at 263, 291. Indeed, the fact that 100% of Alleghany's net worth is invested in a passive minority position in St. Paul may produce a discounting of the value of Alleghany stock. Tr. at 400; Ind. Tr. at 264. These factors cast doubt on the credibility of Alleghany when claiming that a major reason to purchase 20% of St. Paul is to utilize equity accounting.

Passive Investment

A 20% passive stake is not a likely long-term position for Alleghany, in view of circumstances surrounding Alleghany's investment. Tr. at 399-401, 448-449, 456-458. The more persuasive testimony is that of Joseph Dowling who testified that, in his opinion, it is unreasonable to expect Alleghany to sit indefinitely as a passive 20% investor. Neither Alleghany's history nor its responsibilities to its own shareholders suggest that it would remain at 20%. Tr. at 399-401. The record clearly indicates that present Alleghany management is a proactive group. They buy and sell companies, spin off assets, and otherwise do what it takes to maximize return for the stockholders, primarily the Kirbys. This was confirmed by Dowling who knows Alleghany management. Tr. at 401-402, 448-449.

Were Alleghany to remain passive, as it claims it plans to do, Dowling has stated that "it would be the only company in the United States that ever invested 100% of its net worth in another company and remained so passive." Ind. Tr. at 285.

It is not credible that Alleghany would propose this large an investment (100% of its net worth) and yet not have any plans or proposals for future action beyond a passive investment of indefinite duration, especially in light of the very specific and comprehensive strategic five-year plans developed annually by Alleghany. At the very least, Alleghany plans a continual review of its position and its options to evaluate how best to maximize the value of its massive investment.

Several options are available to a 20% investor such as Alleghany, should it choose not to remain passive. As a matter of statutory presumption, Alleghany will have the power to direct the management and policies of St. Paul as a 20% investor. If it chooses to exercise that power, there are several possible actions it could pursue. Tr. at 397-399. Alleghany could cause St. Paul to shrink its stock, thus increasing Alleghany's share in the company at no cost to itself. In fact, Cuming testified that this was his recommendation since those actions would make the Alleghany stock "more valuable or more secure." Tr. at 183-184, 189.

Combination with a few other investors is also possible to force some of the more drastic restructurings of St. Paul. Many of these options can be accomplished without regulatory approval from a 20% base of ownership.

No significant external forces will compel Alleghany to remain passive at 20%. As suggested by Dowling and by internal Alleghany correspondence, approval at 20% may only be an intermediate target. Tr. at 208, 401. It is likely, therefore, that as a 20% shareholder, Alleghany will consider and may well implement some or all of its proposals, unless restricted by regulatory authorities. This might include a proxy fight (Tr. at 405-406) and a stock buyback which could have the effect of raising Alleghany's holdings of St. Paul from 20% to 30% without buying another share. Tr. at 176. Virtually all of these alternatives will have a tendency to contract St. Paul's capital and thereby reduce its ability to write the lines of insurance it currently writes with the same degree of safety.

Effects on Policyholders

The mere presence of a 20% investor will cause concern among St. Paul's reinsurers and may, therefore, limit the amount of business St. Paul and St. Paul Fire and Casualty can write. Tr. at 301-304.

By becoming a 20% investor in St. Paul, Alleghany would undergo a very significant decrease in liquidity. This would adversely affect Alleghany's ability to withstand downturns in the insurance industry. Minn. Tr. at 413, 429. As Dowling testified, "I would disagree with the probability that [Alleghany's remaining passive at 20% and letting St. Paul manage itself] would occur, because this business is extremely cyclical. I disagree that management would find it pleasant, pleasurable or even tolerable to sit through a deep underwriting cycle and let The St. Paul continue to offer med mal business." Tr. at 450.

If Alleghany, as a 20% owner, carried out its proposals to divest certain assets of St. Paul and buy back 15 million shares of St. Paul stock, and if St. Paul then experienced a year like 1984, St. Paul could end up with dangerously high ratios — a premium to surplus ratio of 3.6x and a reserve to surplus ratio of 7.6x. These ratios would require management to reduce net written premium by approximately $600 to $700 million in the most volatile line of business, probably medical malpractice. Tr. at 378. These ratios would also reflect a financial condition of St. Paul that would seriously threaten the interests of St. Paul policyholders. Tr. at 375-380; Exhibit W-20.

The proposal to alter St. Paul's bond portfolio to include higher-yield, higher-risk securities would, if implemented, decrease the stability of St. Paul and its ability to weather difficult years, thus threatening the interests of the policyholders. Ind. Tr. at 262.

The presence of a 20% investor whose preeminent goal is to maximize value to its shareholders will conflict with the interest of policyholders of St. Paul. The short-term benefits that may be available to Alleghany shareholders through restructuring St. Paul, divesting assets, and reducing surplus are threatening to the long-term interests of St. Paul policyholders. Minn. Tr. at 431, 518-19. The risks to St. Paul policyholders are exacerbated by the volatile lines of insurance that St. Paul writes.

By their own admission, Alleghany management does not have the skill, capability, or time to run St. Paul. Tr. at 54. While Alleghany states that it has no intention of replacing St. Paul management, Alleghany did replace management when it acquired Shelby. Tr. at 59. As indicated by the testimony of Haugh and Dowling, there is a likelihood that upper management of St. Paul would leave or be replaced in the event of a change in control of St. Paul. Tr. at 232, 411-413. While Shelby may have experienced a turnaround when acquired by Alleghany, as noted by Spencer L. Kimball, that turnaround may depend upon Alleghany's initial willingness to pour money into it. The test of time will determine Alleghany's competence to manage Shelby. One year is not sufficient. Tr. at 504-505.

Ownership of St. Paul by a noninsurance interest, such as Alleghany, creates the potential for conflict between the long-term interests of St. Paul's policyholders and the short-term profit interests of Alleghany shareholders. Tr. at 413-421.

In the California decision in a related matter, the Insurance Department wrote as follows:

> "[T]he applicant has explored various strategies with regard to its interest in St. Paul, which strategies include both internal reviews as well as analyses prepared by Merrill Lynch. The strategies have been submitted to and reviewed by this Department.

> In accordance with the determinations to be made pursuant to [California Insurance Code] Section 1215.2, this Department has found that the strategies contained in those analyses would be unfair and unreasonable to the policyholders and would result in the financial condition of the acquiring person jeopardizing the financial stability of the insurer.
>
> "For example, the insurance subsidiaries of The St. Paul Companies, Inc. write a substantial book of medical malpractice insurance. That business is a 'long-tail' liability line which must be supported by prudent investment management and conservative investments which are properly matched to the duration of its liabilities. According to the various plans, strategies and analyses which have been prepared by or for Alleghany, if Alleghany chose to continue acquiring the common stock of The St. Paul Companies beyond 20%, it would do so through the increased use of leverage. The debt service for the leverage of Alleghany would be met, in part, by asset sales and the turnover of the insurers' investment portfolios into higher yielding securities of lesser quality. The potential action is deemed hazardous and prejudicial to policyholders." California Department of Insurance decision at p. 2.
>
> The California decision goes on to state that:
>
> "The applicant states that its only present plan is to purchase up to 20% of the outstanding shares. . . . [T]his Department can only make a determination with regard to the information before it." Id.

California concluded that as long as Alleghany said its present plans are to acquire only 20% of the stock, it would not look beyond this bare statement and, therefore, it approved that limited acquisition, despite the perceived detrimental effect on the policyholders.

I would ask what the California Department would do if a year from now Alleghany came back asking to acquire another 20% or 30%? I would have to assume that so long as Alleghany stated that it had "no [present] plans . . . with regards to the liquidation, sale of assets, mergers, changes in boards of directors or changes in executive officers," but that "Alleghany intends to continue to review its equity interest in St. Paul and reserves the right to formulate such plans or proposals, and to take such action, as may seem appropriate in the circumstances existing at any future date" (Id.) that the Department would feel obliged to reach the same conclusion.

At what point, then, would California decide that Alleghany had acquired enough stock to be able to change the character of St. Paul's business and investment philosophy so as to be detrimental to the interests of its policyholders to the extent that the proposal should be denied?

I believe that there is sufficient information to make that determination now.

The North Dakota Commissioner reached the opposite conclusion and denied Alleghany's application, finding that:

(a) Alleghany's plans to extract surplus capital from St. Paul may well endanger its policyholders who depend on those assets to satisfy claims.

(b) The policyholders would bear the risk of loss if Alleghany's plans for a possible leverage buyout were to fail.

(c) Alleghany's plans to accomplish an after-tax increase in yield of at least 2% would require a riskier investment than St. Paul's present conservative management. North Dakota decision at 40-43. I concur with the North Dakota Commissioner's concerns.

Effect on Competition

Wisconsin is more fortunate than many states in that it still has a significant number of companies that sell medical malpractice insurance in the state. St. Paul is one of those companies. Its share of the market is over 15% and it is one of the top five companies in that market. Should Alleghany, as a controlling stockholder of St. Paul, take the actions it has identified which may reduce the viability of the company in this limited market, there is a real possibility that competition in the medical malpractice insurance business would be substantially lessened.

Legislative Interest

In the original 611.72 (3), Wis. Stat., the Wisconsin Legislature mandated that "The commissioner shall approve the plan of merger unless he finds, after a hearing, that it would violate the law or be contrary to the interests of the insureds of any participating domestic corporation or the Wisconsin insureds of any participating nondomestic corporation."

Now, in 611.72 (3), Wis. Stat., the Legislature mandates that "The commissioner shall approve the plan if the commissioner finds, after a hearing, that it would not violate the law or be contrary to the interests of the insureds. . . ." Certainly, the commissioner must give some significance to this change in language.

In the original statute the commissioner had no discretion to disapprove a plan unless he found that it would be contrary to the interests of the insureds. In the event of an unfriendly takeover, this statutory language would clearly place a burden upon the company objecting to the takeover to come forth with evidence to show that the plan would, in fact, be contrary to the interests of the insureds. Failing this, it would seem the commissioner has no choice but to approve the plan.

However, with the current statutory language, it would appear that the burden shifts to the company proposing the takeover to bring forth evidence to show that the plan will not, in fact, be contrary to the interests of the insureds.

Thus, the question that must be answered is: Are the facts such that the commissioner must find that the plan will not violate the law or be contrary to the interests of the insureds?

Alleghany's answer to this question is: It will not violate the law or be contrary to the interests of the insureds because they do not intend in their present plan to change anything. However, it reserves the right to request modification of the plan at any time in the future.

Alleghany twice stated, once at the pre-hearing, and at the hearing itself, that it chose not to dispute nor defend against the presumption in s. 600.03 (30), Wis. Stat., that acquiring 10% of a corporation's stock constitutes acquisition of control.

Therefore, I believe that I must proceed on the assumption that the purchase of 20% of St. Paul's stock does give Alleghany control of St. Paul, thus negating any bare statement that Alleghany has no plans <u>at this time</u> to effect any changes, especially when they further state that they reserve the right to ". . . formulate such plans or proposals, and to take such action, as may seem appropriate in the circumstances existing at any future date."

It would be at best a remarkable set of circumstances to have an investment company invest almost all of its assets in an insurance company and just sit back and receive such dividends as the insurance company would declare. It is ludicrous to expect someone to believe that set of circumstances will actually occur, as set forth in Alleghany's application.

Alleghany cannot survive if its only income from its assets is a dividend paid by St. Paul. It will have to try to improve its income through active management of St. Paul and its subsidiaries.

<u>Constitutional Issues</u>

Alleghany contends that s. 611.72, Wis. Stat., is unconstitutional because it conflicts with the Commerce Clause of the U.S. Constitution and with the Williams Act, 15 U.S.C. s. 78m (d) and (e) and 78n (d) to (f). Both assertions ignore the McCarran-Ferguson Act, 15 U.S.C. ss. 1011-1015.

"The McCarran-Ferguson Act permits the states to regulate the 'business of insurance' and removes all Commerce Clause limitations upon this authority. . . . The McCarran-Ferguson Act also bars conflicting federal regulation of insurance." <u>Professional Investors Life Insurance Co. v. Roussel</u>, 528 F. Supp. 391, 400 (D. Kan. 1981).

"The . . . regulations merit McCarran-Ferguson protection because they protect the security of policyholders." <u>Professional</u>, supra, at 402. See also <u>John Alden Life Insurance Co. v. Woods</u>, Fed. Sec. L. Rep. (CCH) s.98,617 (D. Idaho Dec. 19, 1981).

CONCLUSIONS OF LAW

(84) Alleghany has the burden of proof in this proceeding to show by a preponderance of the evidence that its plan of acquisition is not contrary to the interests of the insureds of any participating domestic corporation or of the Wisconsin insureds of any participating nondomestic corporation and that the five criteria specified under s. 611.72 (3) (a) to (e), Wis. Stat., are fulfilled.

(85) Alleghany's plan of acquisition is contrary to the interests of the insureds of St. Paul Fire and Casualty, the Wisconsin insureds of St. Paul, and the public.

(86) Alleghany has failed to sustain its burden to show that the effect of the acquisition of control would not be to create a monopoly or substantially to lessen competition in insurance in this state.

(87) Alleghany has failed to sustain its burden to show that its financial condition 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.

(88) Alleghany has failed to sustain its burden to show that the plans or proposals which it has to liquidate the domestic stock insurance corporation or its parent insurance holding corporation, sell its assets, or consolidate or 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.

(89) Alleghany has failed to sustain its burden to show that 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 acquisition of control.

(90) The Commissioner has the authority under the McCarran-Ferguson Act, 15 U.S.C. ss. 1011-1015, to deny Alleghany's petition.

ORDER

IT IS HEREBY ORDERED THAT:

Alleghany Corporation's application for approval of its proposed acquisition of control of The St. Paul Companies, Inc. including the St. Paul Fire and Casualty Company, a Wisconsin corporation, is denied.

Robert D. Haase
Commissioner of Insurance

Section 227.48 (2), Wis. Stat., requires the agency to notify you that you have the right to petition for rehearing pursuant to section 227.49, Wis. Stat., or to seek judicial review of this decision pursuant to section 227.53, Wis. Stat.

These petitions should be addressed to or served on:

Commissioner of Insurance, Respondent
Office of the Commissioner of Insurance
123 West Washington Avenue
Madison, Wisconsin 53702

At all times material, the relevant part of s. 227.49 (1), Wis. Stat., reads as follows:

> "227.49 <u>PETITIONS FOR REHEARING IN CONTESTED CASES.</u> (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. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case."

At all times material, the relevant part of s. 227.53 (1), Wis. Stat., reads as follows:

> "227.53 <u>PARTIES AND PROCEEDINGS FOR REVIEW.</u> (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

3473122

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.

Dated at Madison, Wisconsin, this 7th day of April, 1988.

Robert Haase

Robert D. Haase
Commissioner of Insurance

3473123