
In the Matter of the Acquisition of Control
of Physicians Insurance Company of Wisconsin, Inc.
by ProAssurance Corporation,

BRIEF IN SUPPORT OF
REQUEST FOR ADMISSION
AS A PARTY
Case No. 06-C29893

Petitioner.

Physicians Insurance Company of Wisconsin, Inc. ("PIC Wisconsin") filed a request for admission as a party in this proceeding on January 10, 2006 along with the supporting affidavit of William T. Montei, President and Chief Executive Officer of PIC Wisconsin. ProAssurance Corporation ("ProAssurance"), the only current party to the proceeding, supports this request. This brief in support of the request is filed pursuant to the Commissioner's Notice of Pre-Hearing Conference and Scheduling Order dated April 7, 2006.

Background

PIC Wisconsin is a Wisconsin insurer principally engaged in the business of providing professional health care liability insurance and related products and services. PIC Wisconsin was founded in 1986 in cooperation with the Wisconsin Medical Society. The Wisconsin Medical Society and Wisconsin health care providers capitalized PIC Wisconsin, and continue to constitute a large majority of its shareholders.

The proposed merger of PIC Wisconsin with a subsidiary of ProAssurance would alter this ownership structure by making PIC Wisconsin part of a group of medical liability insurance companies with similar origins and governance owned and operated by the nation's fourth largest medical malpractice insurer. The transaction also would provide liquidity for PIC Wisconsin shareholders, many of whom have held their investment in the company for nearly 20 years. The Board of Directors of PIC Wisconsin has approved the merger.

Discussion

I. The standard for admission as a party in this proceeding is whether a substantial interest of the person requesting admission may be affected by the decision in the proceeding.

As recognized by the Commissioner in his Decision on Standing and Discovery dated July 20, 2005 (the "Decision") in the proceeding entitled In the Matter of the Acquisition of Control of Physicians Insurance Company of Wisconsin, Inc. by American Physicians Capital, Inc. and American Physicians Assurance Corporation, the applicable statutory standard for participation as a party in a Form A proceeding is set forth in Wis. Stat. § 227.44(2m): "Any person whose substantial interest may be affected by the decision following the hearing shall, upon the person's request, be admitted as a party."

As the Commissioner also recognized in that Decision, the “courts have not construed this provision, but have addressed the closely related standards for a ‘person aggrieved’ under s. 227.53, Stat. The Wisconsin Supreme court describes that standard as follows:

“The first step under the Wisconsin rule is to ascertain whether the decision of the agency directly causes injury to the interest of the petitioner. The second step is to determine whether the interest asserted is recognized by law. This approach is similar to the two-pronged standing analysis outlined by the United States Supreme Court . . . as follows: (1) Does the challenged action cause the petitioner injury in fact? and (2) is the interest allegedly injured arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question?” Waste Management of Wisconsin, Inc. v. Department of Natural Resources, 144 Wis. 2d 499, 505 (1988).”

Applying this after-the-fact “person aggrieved” standard to an analysis of the before-the-fact “substantial interest” standard, the following questions must be answered in the affirmative before a person may be admitted as a party in an administrative proceeding:

First, may the potential actions of the agency in the proceeding cause the person injury in fact?

Second, are the interests that may be injured within the zone of interests to be protected or regulated by the statute in question?

As demonstrated below, both questions must be answered in the affirmative with respect to PIC Wisconsin.

II. PIC Wisconsin has a substantial interest that may be affected by the decision in this proceeding.

A. The potential actions of the Commissioner in this proceeding may cause PIC Wisconsin injury in fact.

ProAssurance commenced this proceeding by filing a Form A under Wis. Admin. Code § Ins 40.02 in order to obtain the Commissioner’s approval under Wis. Stat. § 611.72(2) for the proposed merger with PIC Wisconsin. Failure of the Commissioner to approve the proposed merger would injure PIC Wisconsin in at least the following respects:

1. Without the financial security and economies of scale that a partnership with ProAssurance will bring, it will be much more difficult for PIC Wisconsin to operate successfully as a regional medical liability insurer.
2. Without giving PIC Wisconsin shareholders a liquidity option – the choice to continue their investment in PIC Wisconsin (through its parent), the choice to sell their investment for cash, or the choice to contribute their shares to a charitable or non-profit organization – PIC Wisconsin will continue to be vulnerable to unwelcome acquisition attempts like the one commenced by American Physicians Capital, Inc. in September 2004. The distractions and threats to PIC Wisconsin’s well being caused by this vulnerability include:

- a. Inability to honor PIC Wisconsin's history as physician-founded and -focused health care liability insurer;
- b. Inability to continue PIC Wisconsin's commitment to defending the practice of medicine by providing its insureds with the finest insurance, services, claims defense, and other advocacy, thus helping to ensure a stable health care liability insurance marketplace in Wisconsin and other jurisdictions in which PIC Wisconsin operates;
- c. Inability to help preserve a robust, competitive market for health care liability insurance in Wisconsin and other jurisdictions in which PIC Wisconsin operates; and
- d. Inability to maintain PIC Wisconsin's commitment to financial stability and the competence and integrity of management.

B. The PIC Wisconsin interests that may be injured are within the zone of interests to be protected or regulated by § 611.72.

Under § 611.72(3), the Commissioner must approve the proposed merger if he finds, after a hearing, that it would not violate the law or be contrary to the interests of the insureds of PIC Wisconsin or of the Wisconsin insureds of any participating nondomestic corporation and that:

- (a) After the merger, PIC Wisconsin 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;
- (b) The effect of the merger would not be to create a monopoly or substantially to lessen competition in insurance in this state;
- (c) The financial condition of ProAssurance is not likely to jeopardize the financial stability of PIC Wisconsin, or prejudice the interests of its Wisconsin policyholders;
- (d) Any plans or proposals ProAssurance has to make any material change in PIC Wisconsin's business or corporate structure or management, are fair and reasonable to PIC Wisconsin's policyholders or in the public interest; and
- (e) The competence and integrity of those persons who would control the operation of PIC Wisconsin are such that it would be in the interest of PIC Wisconsin's policyholders and of the public to permit the merger.

As the Commissioner stated in the Decision, PIC Wisconsin "undoubtedly has a unique and specific interest in each of these statutorily protected zones of interests." As shown above, the injuries to PIC Wisconsin should the Commissioner fail to approve the proposed merger coincide exactly with the zone of interests covered by § 611.72.

Conclusion

In sum and as the Commissioner stated in the Decision, it is clear that PIC Wisconsin "is a person 'whose substantial interest *may be* affected' [s. 227.44 (2m), Stat., emphasis added] by the decision in this case." Therefore, PIC Wisconsin should be admitted as a party in this proceeding.

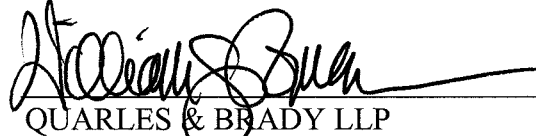
Respectfully submitted this 21st day of April, 2006.

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