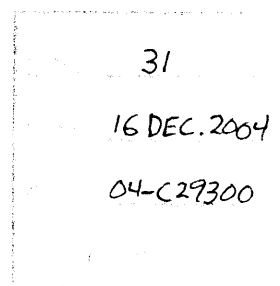


December 16, 2004

Roger A. Peterson  
Hearing Examiner  
Office of the Commissioner  
of Insurance  
125 Webster Street  
P.O. Box 7873  
Madison, WI 53707-7873  
Office of the Commissioner of Insurance



Re: Case No. 04-C29300  
HMO-W, Incorporated's Petition to be Admitted as a Party to Form A Hearing  
("Petition")

Dear Mr. Peterson:

We write to comment on the Petition. Wisconsin Statute § 227.44 provides that "...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... in a contested case." Wis. Stat. § 227.44(2m). Whether a petitioning person has "substantial interest" requires the party to have some direct connection to the issue before the agency. *See, Wisconsin Environmental Decade v. Pub. Serv. Comm'n.*, 84 Wis. 2d 504, 526, 267 N.W.2d 609 (1978) (hereinafter "*WED*"). The affidavit alleges stock ownership and recites that "such interested may be affected...". There is no factual showing in support of the substantial interest other than ownership. HMO-W, Inc. is a shell corporation and not a market participant.

The issues in this case have been set by the Notice of Hearing. They relate to the § 611.72(3) tests for disapproval of a Form A Application. The question of how HMO-W's alleged "substantial interest" would be affected by the ultimate decision on those statutory tests and an approval of the transaction is unstated and unclear. The Hearing Examiner should not be forced to speculate on the connection.

For example, assume the Commissioner's Order approves the transaction and further that the conclusions of law are that the proposed transaction meets the statutory tests. Does HMO-W have anything to offer in this proceeding which addresses the analysis of the transaction under the standards in Wis. Stat. § 611.72(3)?

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Assume, to the contrary that, petitioner's interest is in a contractual rights claim under the joint venture which relate to compliance with the joint venture, closing conditions or contractual remedies. Those matters are not addressed in the issues noticed for this hearing. The test of "substantial interest" that such interest must be more than a generalized interest. *WED* at 526-529.

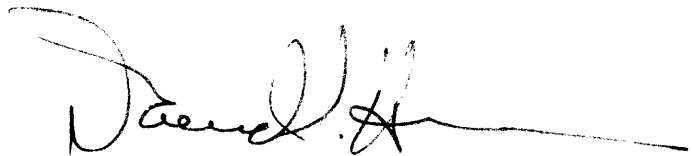
Second, is the petitioner's interest likely to be "affected" by an Approval following the Form A hearing? Petitioner's rights may be "affected" by the joint venture agreement and related agreements which are part of the Form A filing. But the interpretation or enforcement of those provisions is not one of the issues in the Notice of Hearing. Rather, the Notice of Hearing is directed to the Applicant's compliance with the statutory tests which would result in an Approval permitting the parties to close.

Third, based on conversations with Petitioner, we understand that they do not intend to offer testimony or cross-examine Applicant's witnesses. In these circumstances, we see no benefit to their Admission as a Party. Should something adverse to Petitioner occur in the Approval, their right to appeal would be tested under the independent standards applicable to parties for judicial review under § 227.53(b).

In summary, there is no reason to believe that the petitioner's substantial interest will be affected by any decision which may be reached in the course of these Form A proceedings.

Sincerely,

**MICHAEL BEST & FRIEDRICH LLP**



David J. Hanson  
Richard M. Seligman  
Brian J. Rybarik

DJH:cac