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OFFICE OF THE COMMISSIONER OF INSURANCE

STATE OF WISCONSIN

In the Matter of Application
for Conversion of Blue Cross & Blue Shield United of Wisconsin — Case No. 99-C26038

PREHEARING CONFERENCE

Proceedings had and evidence taken before Connie L. Connell, Commissioner of Insurance, on the 25th day of February, 2000, at the Holiday Inn, 3871 East Washington Avenue, Madison, Wisconsin, commencing at 9:30 a.m.

APPEARANCES:

State of Wisconsin
Office of the Commissioner of Insurance
121 East Wilson Street
P.O. Box 7873
Madison, Wisconsin, 53707-7873
by MR. FRED NEPPLE, General Counsel

Blue Cross & Blue Shield United of Wisconsin
401 West Michigan Street
Milwaukee, Wisconsin, 53203
by MR. STEPHEN E. BABLITCH, on behalf of Blue Cross.

Foley & Lardner
777 East Wisconsin Avenue
Milwaukee, Wisconsin, 53202
by MR. JOSEPH C. BRANCH, MR. BARTHOLOMEW F. REUTER and MR. THOMAS M. ROSE, on behalf of Blue Cross.

APPEARANCES: Cont'd
Advocacy & Benefits Counseling for Health
152 West Johnson Street, Suite 206
Madison, Wisconsin, 53703-2213
by MR. WADE M. WILLIAMS, on behalf of ABC for Health, Wisconsin AARP, and Wisconsin Coalition for Advocacy.

Quarles & Brady
411 East Wisconsin Avenue
Milwaukee, Wisconsin, 53202
by MS. VALERIE L. BAILEY-RIHN, on behalf of Medical College of Wisconsin.

University of Wisconsin-Madison
361 Bascom Hall
500 Lincoln Drive
Madison, Wisconsin, 53706-1380
by MS. HELEN H. MADSEN, on behalf of UW-Madison Medical School.

E X H I B I T S

EXHIBIT NO.:		MARKED	ID'D	OFF'RD
B-15	12-13-99 document signed by Cowan and McLoughlin	16	17	--
B-16	Series of letters	16	20	--

(The original exhibits were retained by Commissioner O'Connell.)

(The original transcript was sent to Commissioner O'Connell.)

P R O C E E D I N G S

COMMISSIONER O'CONNELL: Good morning. I'm Connie O'Connell, Commissioner of Insurance, and I am presiding over Case No. 99, dash, C26038 concerning Blue Cross and Blue Shield United of Wisconsin application for conversion.

This prehearing conference is being held at the Holiday Inn in Madison, Wisconsin, at 9:30 a.m. on February 25th, 2000. In addition to myself, present is Fred Nepple, OCI general counsel.

This prehearing and the hearing will be recorded and transcribed by Halma-Jilek Reporting. I understand that the applicant has agreed to provide a copy of the transcript of the prehearing and hearing to the Coalition.

Each other movant must make its own arrangements to obtain a copy of the transcript. At this time I'd like to note that all of the microphones are turned off and so before you speak, please turn your microphone on.

Now I'd ask each party to present the name of the party and its legal representative. We'll start with Blue Cross.

MR. BABLITCH: Blue Cross/Blue Shield

United of Wisconsin appears by general counsel Stephen Bablitch, Joe Branch from Foley & Lardner, Bart Reuter and Tom Rose from Foley & Lardner.

MS. BAILEY-RIHN: The Medical College of Wisconsin appears by its counsel Quarles & Brady, Valerie L. Bailey-Rihn.

MS. MADSEN: The University of Wisconsin Medical School appears by its counsel Helen Madsen.

MR. WILLIAMS: ABC for Health, a member of the Coalition consumer groups, Wade Williams appearing for ABC for Health. We're the representatives from AARP, and Wisconsin Coalition for Advocacy could not attend this morning due to a scheduling conference.

COMMISSIONER O'CONNELL: Thank you. The purpose of today's prehearing conference is to discuss the procedure for continuation of the contested case hearing in the matter of Blue Cross/Blue Shield United of Wisconsin, application for conversion.

The continued hearing is scheduled pursuant to my decision on November 29th, 1999, at which time I denied the movants' motions to intervene as parties but stated that I would use the discretion

afforded me by the applicable statutes to allow the movants additional participation in this proceeding.

This morning I would like to share my thoughts on how I envision the continuation of the hearing to proceed. I will entertain comments from the movants and the applicant regarding the procedure for the continued hearing.

The hearing, as noticed, will be conducted between 10:30 a.m. to 12 p.m. for the examination of Miss Gail Hanson, vice president, Blue Cross and Blue Shield United of Wisconsin and Mr. Thomas Johnson, managing director, Deutsche Bank Securities, Inc.

The hearing is scheduled to continue on March 10th during which time movants may call witnesses and provide testimony subject to my approval.

However, in keeping with the fact that the additional hearing dates are being held to aid the office, I will during the hearing limit or exclude testimony or questioning that is argumentative, repetitive or previously offered testimony, testimony that relates to areas already fully developed in the record of the proceeding,

testimony that relates to the proprietary or trade secret material that is more appropriately dealt with the office directly, questions that call for attorney work product or attorney/client privileged communications, testimony that is outside the scope of questioning that I approve today and will memorialize in the status conference memorandum, cross-examination or redirect that is outside the scope of examination.

I also intend to limit direct, cross and redirect of witnesses as necessary to ensure that the hearing proceeds on a timely basis. In fairness to the witnesses, I will permit only one attorney from each movant or applicant to examine any one witness.

The applicant or movant may make any evidentiary objections. The normal rules governing a contested case hearing -- contested case proceeding will apply including evidentiary privileges and principles of relevance and materiality.

The movant should confine -- confine themselves to matters that develop facts. To facilitate the smooth process let me explain how I

think the procedure for the hearing should be.

First, ABC for Health, Wisconsin Coalition for Advocacy and Wisconsin AARP, collectively the Coalition, will make its evidentiary showing as follows:

Representatives of the Coalition will call its witnesses and then the Medical College of Wisconsin may question each witness called by the Coalition on a limited basis.

The University of Wisconsin Medical School may question each witness called by the Coalition on a limited basis. Blue Cross Blue Shield United of Wisconsin may question each witness on a limited basis.

Then the Coalition may redirect the witness on a very limited basis. A similar sequence will be followed with the Medical College of Wisconsin followed by the University of Wisconsin School of Medicine if they choose to offer rebuttal testimony. At any time I or Mr. Nepple may ask questions of the witnesses.

Regarding briefs, the movants and the applicant may file simultaneous briefs on any issue related to the application by close of business on March 10th, 2000.

The movants and the applicant may file simultaneous supplemental and reply briefs by close of business on March 17th, 2000. Each brief should be filed with the office and served on every other movant and the applicant.

I will issue a final decision and order after I have received and considered the briefs. Would any party or movant care to make any comment at this time?

MR. BABLITCH: With respect to the Rules of Evidence, do you anticipate hearsay objections will apply?

COMMISSIONER O'CONNELL: I would assume that they would apply, yes.

MR. BABLITCH: Okay.

MR. WILLIAMS: Ms. O'Connell, I noted that the Coalition witnesses will be cross-examined by MCW, UW Hospital or Med. School and Blue Cross/ Blue Shield. When will the -- the other movants present their witnesses? Did I miss something?

COMMISSIONER O'CONNELL: They will -- They will have an opportunity to offer witnesses following the Coalition if they have any.

MR. WILLIAMS: After their crosses and our redirect, then MCW then UWM, then Blue Cross.

COMMISSIONER O'CONNELL: Right. Well, for the -- for the other movants not -- not Blue Cross.

MR. WILLIAMS: Oh, okay.

MR. BABLITCH: Could you clarify for me? Will we have an opportunity to offer rebuttal witnesses at the -- after the movants have offered their testimony? I'm not sure that we intend to offer any, but I certainly would like to --

MR. NEPPLE: I don't believe you requested rebuttal witnesses, and you also did not request an opportunity for rebuttal hearing.

MR. BABLITCH: No, I think we did. I refer to our February 22nd letter. At the bottom of page one though we noticed that the notice was silent with respect to our participation and that we do not presently anticipate calling witnesses during these continued hearings, we reserve the right to call rebuttal witnesses, if necessary, with the appropriate cite to 227.44 sub three, and at the time that we submitted this letter, of course, we didn't have the -- the Coalition's list of witnesses, so we also noted that and noted the difficulty in predicting the extent of our questioning and also who we intend to call.

It was kind of like shooting at the dark, so all we did was reserve our appeal record, and, like I say, I don't know that we're going to call anybody, but I don't -- I don't want to give it up.

COMMISSIONER O'CONNELL: There's nothing that precludes your calling of rebuttal witnesses at this point.

MR. BABLITCH: Okay. Thank you.

MS. BAILEY-RIHN: Ms. O'Connell, I have two brief questions. The one is the opportunity to file briefs. Is there any area that the Commissioner is anticipating the briefs will cover such as the testimony from the March 10th time or the briefs up to the -- the -- opportunity to make a decision of the movants Blue Cross/Blue Shield?

COMMISSIONER O'CONNELL: It's anticipated that any supplemental briefs would address the information from the hearing on the March -- on the March 10th hearing.

MS. BAILEY: Okay. Thank you. And the other question I have, which was also raised by Blue Cross I believe in their papers, do we have the opportunity to perhaps depose some of the Coalition's witnesses prior to the hearing so we

have some idea of what their testimony is going to be in light of the fact that their submission was somewhat incomplete as far as they didn't have all the information at the time?

MR. BABLITCH: For the record we join in that request.

COMMISSIONER O'CONNELL: We haven't anticipated any opportunity for such.

MR. BABLITCH: It would be our intention to -- depending upon what the commissioner's ruling is today with respect to the list of witnesses provided by the Coalition, it would be our intention that if you do allow some or all of their witnesses that those that have not already testified which is really limited to one, we would intend to notice up a deposition. We have that right under 227.

COMMISSIONER O'CONNELL: We will be discussing the finalizing the list of witnesses for the March 10th hearing, but in a Class I hearing the -- it is the discretion of the Commissioner to determine the amount of discovery, so if you'd like to file a motion to that effect, I would be happy to consider it.

MR. BABLITCH: Okay. We'll do that.

MS. BAILEY-RIHN: Thank you.

MR. BABLITCH: With respect to the pretrial conference that we're now in, do you -- will we have an opportunity to discuss the movant's witness list with respect to what we perceive to be deficiencies so that we can make our record?

COMMISSIONER O'CONNELL: Yes. In fact, this would be an appropriate time to raise those concerns.

MR. BABLITCH: Okay. And also for the record I just want to note that we did send to the Commissioner a letter dated February 22nd of this year which was before the witness list was supplied to us noting some of our objections and concerns and without going into those orally unless you want me to --

I would just like to note that that's in the record, and we want to make sure that that becomes a part of the record so as to preserve our appeal rights if needed.

COMMISSIONER O'CONNELL: I will -- I will note for the record that the applicant has a continuing objection to the hearing and also that the continued hearing was scheduled at a date after the adoption of the appraisal committee

report at the request of the Coalition.

MR. BABLITCH: Yeah, and I think given your ruling already on attorney/client privilege, I think I feel comfortable with the Commissioner's ruling that if I am called to testify that there might be objections to attorney/client privilege.

COMMISSIONER O'CONNELL: Mm-hmm.

MR. BABLITCH: Just so you know that. The other issue that we raised was just for the record it was more or less a legal accuracy issue with respect to Wisconsin AARP.

We noted that in our letter as far as we know there is no identity -- entity as such and just for our own edification, I guess, if there is such an entity, if you can let us know.

Otherwise, just for pure legal accuracy sake, you know, they're not defined as a person under the statutes, but we just -- While we welcome their commentary, and we always have, we just wanted to note that for the record, and other than that I think that covers our letter, and I'd like to move on to the movant's witness list.

COMMISSIONER O'CONNELL: I'll note that the February 22nd letter will be added to the record.

MR. BABLITCH: Thank you. We received the

movant's witness list I believe on Wednesday. There's a number of issues in there that I think need either some clarification and just to preserve our appeal rights and to preserve the record I'd like to address them at this time.

Some of them are minor and some of them are a little bit more important to us. The -- The first item is kind of in the minor category and that is with respect to the opening and closing statements, the movant wanted to reserve a bunch of time for that.

It looks to me like it's well over an hour. My only suggestion there is if we're going to be filing simultaneous briefs, I just question whether or not there's a need for a formal oral test -- oral opening and closing statement.

Just in terms of expediency sake if we're going to be filing briefs, you know, a brief might cover that, so, I just note that for -- for what it's worth.

I guess I would prefer if we're going to be calling witnesses to use the limited time we have for witnesses.

The next item that I have in terms of kind of a scheduling is Mark Orloff who's the deputy

legal counsel at Blue Cross and Blue Shield Association is out of town, and he's the primary staff attorney to the Blue Cross Association board of directors, and they have their first quarterly meeting on March 10th; and while we are bringing back Mr. Hefty to testify that day -- he's a board of director for that association.

I think it's going to be difficult to get Mr. Orloff here, so what I've talked to counsel about for the Commissioner is to arrange for maybe a telephone conference at the time of the hearing, and I think he'd be available for that, although I haven't specifically discussed the time with him, but if that's okay with you, that would be our preference.

COMMISSIONER O'CONNELL: A telephone conference would be appropriate.

MR. BABLITCH: Okay. Good. Thanks. In terms of the witnesses for today, Gail Hanson is here and she'll be prepared to testify. Then on to other matters, with respect to the witnesses that we want for March 10th myself, we talked about Mr. Orloff, I'll be here, Mary Traver will be available and Thomas Hefty will be available.

On to their witness list, we have a number

of concerns. Given that the Commissioner's already ruled that you don't want to seek cumulative testimony, we would make objections to the following people: Deborah Cowan is listed as the project director for community health assets project Community Catalyst.

I'm sure that the Commissioner is well aware that Ms. Cowan together with Consumers Union has submitted to the Commissioner a rather extensive statement that was filed after the hearings and I would --

I know it's in the record, but I would get the -- that statement marked and move it into the record. As you can see, it's a rather lengthy document. She had a full opportunity to testify in that -- in that document.

MR. NEPPLE: Can we go off the record a minute?

(Discussion off the record.)

(Exhibits B-15 and B-16 were marked for identification.)

COMMISSIONER O'CONNELL: Let's go back on the record.

MR. BABLITCH: Okay.

COMMISSIONER O'CONNELL: You may continue,

Mr. Bablitch.

MR. BABLITCH: Thank you, Commissioner. I'd also like to further note we note with respect to Exhibit B-15 that it is signed by Deborah Cowan and Francis A. McLoughlin, Jr. of Community Catalyst of Boston, Massachusetts and it is dated December 13th, 1999, which was the due date for any additional testimony, so given the fact that this is dated that date and offered that as testimony based on that reason alone it should be excluded, however, the further reason for its -- for Ms. Cowan's exclusion is that Francis A. McLoughlin, Jr. of Community Catalyst who signed the document testified at the public hearings both in Milwaukee and in Stevens Point as a member of Community Catalyst.

Ms. Kim who also signed that document from Consumers Union testified at both the Stevens Point hearing and the Milwaukee hearing, and Ms. Kim in her testimony referred to her partnership with Community Catalyst specifically and noted that, quote, Frank is with Community Catalyst, our partner organization in Boston.

That appears at the public hearing of November 30, 1999, page 95, of the transcript.

Given the Commissioner's ruling that you don't want repetitious or cumulative testimony and based upon the rather scant scope identified in movant's document, I see no reason why we should allow yet another time for this kind of testimony.

I will make a motion at the conclusion of my remarks as kind of a grouping. I next move on to Peggy Hintzman, president of Wisconsin Public Health Association who is identified as a state-level expert on public health priorities with a duration of approximately 30 minutes.

I would note again along the same lines of cumulative testimony that Peggy Hintzman testified on November 30th, 1999, at page 125 again representing Wisconsin Public Health Association and at page 125 is the reference is the transcript.

She again submitted a written submission to the Commissioner on the following dates: September 11th, 1999, November 6th of 1999, November 30th, 1999, December 3rd, 1999, and December 10, 1999.

With respect to Doug Mormon, again noticed by -- in movant's documents as public health officer with the scope identified as public health

foundation with a duration of 30 minutes, I would note that Mr. Mormon testified on November 30th, 1999, identifying himself as the director of the LaCrosse County health department, and that reference is to the November 30, 1999, hearing transcript, page 141.

He then also submitted a written document on November 30th of 1999. Again, it seems to me that those people unless there's something else that I don't see here it's cumulative, then I would move that the Commissioner pursuant to her previous ruling on cumulative testimony strike them from the witnesses list of experts.

The next concern I have is there -- there are three not yet named experts, national expert on philanthropic foundations, that the expert on public health priorities and a state-level expert on philanthropic foundation issues.

They're not yet confirmed, and the -- the reason given according to the February 22nd letter from Robert Peterson, Jr. is that, quote, due to scheduling difficulties with our expert candidates we're unable to provide complete information about each one of our intended witnesses, end quote.

My concern with this is that we were all

given a scheduling deadline. The scheduling deadline was Wednesday this past week, the 22nd at noon to name witnesses and to otherwise make our objections known, and to not have these people in -- in the movant's documents seems to me it's just kind of too late.

And in that regard I believe that I had marked another exhibit which is a series of letters and I believe that's B-16?

MR. ROSE: It will be B-17.

MR. BABLITCH: B-17? He'll give one to -- Do you have the -- the marked document? Exhibit B-16. These are a series of letters going back to the spring of 1998.

The first one is dated May 21, 1998, to the attorney general and assistant attorney general from -- on Consumers Union letterhead signed by both Consumers Union, Robert A. Petterson executive director for ABC for Health and Frank McLoughlin staff attorney Consumer Catalyst.

It's close -- it's almost two years ago, and then there's the Consumers Union, and I should note that in the context without going through that -- that full letter, it is a very lengthy

discussion regarding questions that have been raised in the context of this hearing by the Coalition with considerable research on both Blue Cross/Blue Shield United of Wisconsin and what they had been alleging at the time and continue to allege throughout the hearings was a de facto conversion of Blue Cross, so considerable research have been done going back two years.

Further, there’s a memo to interested parties from Diana Bianco who is with Consumers Union, on Consumers Union, May 1998, and that document is tantamount to a legal brief five pages long going into the history of Blue Cross and United Wisconsin Services, financial transactions overlap between Blue Cross Blue Shield and employee and employee contributions and a number of questions raised at that time which have been all raised in the context of this hearing.

Further, there’s a letter from Consumers Union to Randy Blumer (phonetic), again signed by Diana Bianco of Consumers Union and Robert Peterson executive director ABC for Health again raising a lot of the same issues that have been raised in the context of this hearing.

The next document is a flyer or essentially

a page out of the State Bar summer program that was held this past year in Green Bay in which the public interest law section held a two-hour discussion on, quotes, crossing the thin blue line, examination of health care conversions around the country and the status of Wisconsin Blue Cross and Blue Shield again with Consumers Union, and there is attached to that a letter to me from Mr. Peterson who was the public interest section chair at the time -- I believe he still is -- who was seeking to get Mr. Hefty to testify or to present at that hearing. All showing quite a bit of preparation in this regard.

Then there's the -- The next page is a document which is entitled "Don't let this one get away". It's a workshop that was put on by ABC for Health and the Coalition on three dates in November, and, finally, there's a letter to the Commissioner dated November 17th of 1999 asking you to schedule other supplementary hearings and talking about the need to do that and then going into state-by-state analysis.

The purpose of this exhibit, Commissioner, is that with respect to not naming any of those three witnesses yet, I would submit that it's kind

of too late.

They've had two years to examine us and, in fact, have examined us quite extensively. They had the same deadline we did, and I see no reason why they couldn't name those people at the appropriate time as we were ordered to do so.

Finally, they've named a national -- quote, national expert on conversion transactions and valuation issues, Gerald F. Kaminski, Ph.D. Associate professor of health services at UCLA School of Public Health.

We -- We've received this vitae from Mr. Williams and we've reviewed it, and with respect to, you know, just the basics of qualification of expert witnesses, I don't see anything in his vitae -- and maybe Mr. Williams can enlighten us as to how his testimony would relate to this transaction specifically and what his expertise really is because, as I look at it, it says Dr. Kaminski's research focuses on evaluating the cost and cost effectiveness of medical programs and technologies with a particular emphasis on Medicare payment policies for hospitals and physicians.

I have, you know, no problems with the fact

that he's probably an expert in that area. He's written extensively on Medicare. Looking at his vitae he is quite a prolific writer, but it's really on Medicare and DRG's and -- and the like, and so I guess my concern rather than an objection on Mr. Kaminski because my objection may be premature is to hear --

I think we need a little bit more information as to what he's going to say and what his qualifications are as an expert as that's defined in the Code of Evidence because based upon what I see here and what's noted in a very cryptic statement in the movant's document, I -- I just don't see the connection, so I'll reserve my motion on Mr. Kaminski until I guess the record is fuller with respect to what he has to offer in this context.

I -- I would also add as a side note that given the -- the information that we have here, this is one of the reasons why we wanted to reserve our right to do a deposition because I don't want to -- like in any hearing, you know, it would be nice to know what Mr. Kaminski is going to say before he gets on the witness stand.

So I guess I would sum up by saying that I

think Ms. Cowan and Mr. Mormon may well have good and valuable things to say and have said them and as we've said before, we welcome them.

I think given the Commissioner's exclusion of testimony on repetitiveness and cumulative testimony, that they -- they've had their opportunity for all the reasons I've stated and also Peggy Hintzman.

I'd also again just note that we -- they've had plenty of time to name their national and state-level experts. I think they missed the deadline, it's too late, and they've had plenty of opportunity to come up with those names, so that's my comment and objections with respect to movant's document.

COMMISSIONER O'CONNELL: We will continue. Miss Bailey-Rihn, do you have any comments or concerns on behalf of the Medical College of Wisconsin?

MS. BAILEY-RIHN: Basically my comments are identical or close to what Blue Cross and Blue Shield has already presented, so in light of saving time, I will echo their -- their comments and their motions.

COMMISSIONER O'CONNELL: Ms. Madsen?

MS. MADSEN: I have no further comment.

COMMISSIONER O'CONNELL: Mr. Williams?

MR. WILLIAMS: Yes, in response to Blue Cross's objections --

COMMISSIONER O'CONNELL: I don't know that --

MR. WILLIAMS: Can -- Pardon?

COMMISSIONER O'CONNELL: What I'd like to hear initially is rather than respond to those objections if you have any comments or concerns regarding the -- the proposed witness lists or -- or the structure.

MR. WILLIAMS: No, I don't have any problems with the witness lists that were proposed by the other movants.

COMMISSIONER O'CONNELL: Okay. Thank you. What I'd like to do -- and I'd be happy to have your comments on the record, but there does appear to be some redundancy, and it may be best if the parties are able to work out a witness list, and so what I would ask that we do is we go off the record and have an opportunity for the movant and the applicant and my office to review the witness list and to discuss how to proceed.

In light of that I'm happy to hear your

comments and concerns, but I wanted you to know that that would be the step following your -- your making your response.

MR. WILLIAMS: Sure.

COMMISSIONER O'CONNELL: So if you'd like to make any comments or concerns known for the record in anticipation of that, please do at this time. Otherwise, we will go off the record and I will leave the applicants and the movants to discuss the witness list and how to proceed.

There does appear to be some redundancy. We do have some time constraints that we need to deal with, and so it would be best if the movants and the applicant could agree upon a witness list and if the -- our office could because we'll have brief recess and let the participants discuss this matter.

MR. WILLIAMS: Okay. My comment would be that speaking of time constraints, we have been forced to hurry through our witness obtaining, and that's the reason why we haven't fully fleshed out our list of witnesses, and we just reserve the -- the time and the scope of what those examinations would include.

I have trimmed it back based on the -- the

witness list provided by MCW and UW Med. School and Blue Cross as well to allow them time for cross-examination and presentation of rebuttal witnesses, if necessary, so we have trimmed -- trimmed back the amount of time from about six hours to about four and a half hours.

You know, I don't -- I don't know why Blue Cross would object to hearing what our experts have to say. If, indeed, they're -- they're open to public input on this matter, I -- I'm not sure why -- why they would object to hearing a -- a business professor's opinion on valuation methods or a Wisconsin public health expert on funding priorities and how the predistribution of the funds to the med. schools would be affected by that, so with that I think we can go off the record.

MR. BABLITCH: Just so the record is clear I haven't stated an objection to Mr. Kaminski yet. I need to know more of what he's -- intends to say. With respect to the other people, we heard them already.

COMMISSIONER O'CONNELL: At this time we will go off the record to discuss the witness list and I will allow the participants to have that

discussion. Just to note for the record that it's 10:17.

(A recess was taken.)

COMMISSIONER O'CONNELL: Let's go back on the record. Mr. Bablitch has made a motion. Mr. Williams has responded. There's been some discussion.

I understand that there has been no agreement reached between the applicant and the movants, but the issues have been narrowed, and I will ask at this time that Mr. Nepple summarize what will be included in the prehearing memorandum in my decision.

MR. NEPPLE: Thank you. Commissioner, we did have some brief discussion off -- off the record, and this is my understanding of what will be included in the prehearing memorandum, and I'll ask Mr. Williams to help me with some aspects of this.

The prehearing memorandum will note that four and a half hours will be reserved for the Coalition and the balance of the allotted time on March 10th will be reserved for possible rebuttal witnesses by the applicant or the other movants.

The Coalition has volunteered to provide

written outlines and the prehearing memorandum will provide that they must be made available to all the movants and the applicant by close of business on March 3rd and the --

It's expected those outlines will include the major points to be covered in the testimony by the Coalition witnesses. The prehearing memorandum will note that some of the witnesses that are included on the list have testified previously.

However, it's expected their testimony will focus on areas not fully developed previously and to the extent -- I guess it's me -- and to the extent that it's -- that it is redundant, all parties are on notice that the Commissioner will discount or treat the testimony appropriately.

In terms of witnesses the Commissioner is accepting the witness list of the Coalition as proposed to the extent of Mr. Thomas Johnson, Ms. Gail Hanson, the witnesses from Blue Cross, Mr. Stephen Bablitch, Mr. Mark Orloff, and we will arrange for teleconference for Mr. Orloff to provide his testimony -- Mary Traver and Thomas Hefty.

In terms of nonBlue Cross witnesses, the

witness list will consist of Mr. Williams' proposed witness on the National Conversion Foundation Deborah Cowan. Commissioner understands the concern regarding redundancy there, but we believe the Coalition does as well.

A national expert on public health philanthropic foundations which I will ask Mr. Williams to name for the record.

MR. WILLIAMS: Miss Lauren Leroy, executive director of Grantmakers and Health.

MR. NEPPLE: And then a state expert on public health priorities who may be either Peggy Hintzman or Doug Mormon, and the prehearing memorandum will provide that Professor Kaminski may file a written submission and any movant or the applicant may object to that written submission, and that date for filing of that written submission would be by March 3rd as well.

And I think, Mr. Williams, you've acknowledged that at this point since you're not prepared to name the other witnesses for which you reserve slots that it's not appropriate to include them on the witness list?

MR. WILLIAMS: We would like to have the opportunity to present those issues, but, no, we

ask that you would, but if you don't, you don't.

MR. NEPPLE: Okay. We -- given -- we -- We did extend the time from Wednesday noon to today, and in view of that, the Commissioner will -- will deem it must be be excluded and the Commissioner would encourage you, if necessary, to include any points that they might make in your brief.

I believe that covers all the topics that were discovered -- discussed off the session. Would anyone care to add to that?

(No response.)

MR. NEPPLE: I think that includes the description of what will be contained in the prehearing memorandum.

MR. BABLITCH: We'd just like to note our continuing objection as stated previously; however, we understand the Commissioner's ruling. We'll take a look at the outlines, and if the outlines appear to be cumulative or redundant, we'll make our objections in writing. Otherwise, we just preserve our record.

COMMISSIONER O'CONNELL: Your objections are noted. Your objections are noted. Are there any questions?

MR. WILLIAMS: With respect to Mr. Bablitch's objection to his testimony and in terms of attorney/client privilege, I just wanted to -- to clarify that what's already in the public domain is -- is not privileged anymore, so we would still like to call you as a witness.

MR. BABLITCH: If it's in the public domain, it may be cumulative, but my only concern with that is, you know, obviously attorney/client privileged communication I'm not going to answer. Mr. Branch will make the appropriate objections.

COMMISSIONER O'CONNELL: And during the hearing I would indicate that the witness should not respond if to do so would reveal any communication that is attorney/client privileged but that the witness should respond to the extent that he can without revealing that.

MR. BABLITCH: I'm well aware of the rule and I will -- of 905, and I'll comply with that. Mr. Branch, I'm sure, will protect that as well.

COMMISSIONER O'CONNELL: Ms. Madsen?

MS. MADSEN: Yes. I'd just like to comment that this movant understands that the point to be presented in writing by March 3rd by the movant, the Coalition, will be in sufficient detail to

allow the movants to prepare their rebuttal testimony.

In other words, that we get notice of -- of sufficient specificity that we can prepare to respond to those.

MR. NEPPLE: As I indicated, the prehearing memorandum will indicate that the outline should include all major points.

MS. BAILEY-RIHN: And one last point, Commissioner. I'm assuming then the issue of opening and closing statements has gone away since you've requested briefs in lieu of opening and closing statements?

MR. NEPPLE: No, I -- I didn't address that. I think the Commissioner's memorandum will indicate that the total time allotted for the Coalition will be four and a half hours and any opening and closing statements must be incorporated in that time.

MS. BAILEY-RIHN: And, similarly, for the -- the remainder of the movants? In other words, if we want opening and closing statements that they would be included in our rebuttal time?

MR. NEPPLE: That's correct.

MS. BAILEY-RIHN: Thank you.

COMMISSIONER O'CONNELL: If there is no further questions, the status conference is concluded. We will prepare and issue a prehearing memorandum that we will submit as soon as possible.

We had hoped to have it prior to the commencement of the contested Class I case hearing. Given the late time that is not possible at that point, but we will be making that available to the applicant movants as soon as possible. It is now 10:55 and we will conclude this hearing.

(The hearing concluded at 10:55 a.m.)

STATE OF WISCONSIN)
) SS:
COUNTY OF MILWAUKEE)

I, KELLY L. PIERCE, a Registered Professional Reporter, with the firm of Halma-Jilek Reporting, Inc., 225 East Michigan Avenue, Suite 404, Milwaukee, Wisconsin, 53202, do hereby certify that I reported the foregoing proceedings had on February 25, 2000, and that the same is true and correct in accordance with my original machine shorthand notes taken at said time and place.

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Kelly L. Pierce
Registered Professional Reporter

Dated this 3rd day of March, 2000
Milwaukee, Wisconsin