

STATE OF WISCONSIN
OFFICER OF THE COMMISSIONER OF INSURANCE

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In the Matter of:

The proposed acquisition of
control of Physicians Insurance
Company of Wisconsin, Inc., by
American Physicians Capital, Inc.
and American Physicians Assurance
Corporation ("Applicants"),

Case No. 04-C29283

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TRANSCRIPT OF PROCEEDINGS

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Date: Tuesday, May 31, 2005

Time: 1:30 o'clock p.m.

Reported by NANCY L. DELANEY

PROFESSIONAL REPORTERS
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TRANSCRIPT OF PROCEEDINGS,
held in the above-entitled matter, at the Office of the
Commissioner of Insurance, 125 South Webster Street,
in the City of Madison, County of Dane, and State of
Wisconsin, on May 31, 2005, commencing at
1:30 o'clock p.m.

THE COMMISSIONER OF INSURANCE: Jorge Gomez
125 South Webster Street
Madison, Wisconsin

A P P E A R A N C E S

DAVID J. HANSON and WILLIAM J. ROBINSON,
MICHAEL, BEST & FRIEDRICH, LLP,
Attorneys at Law, 1 South Pinckney Street,
Madison, Wisconsin, appearing on behalf
of the applicants;

LORI McALLISTER,
DYKEMA GOSSETT, PLLC, Attorneys at Law,
124 West Alean Street, Suite 800,
Lansing, Michigan, 48933, appearing on
behalf of the applicants;

JOHN S. SKILTON and SARAH C. WALKENHORST,
HELLER EHRMAN, Attorneys at Law,
1 East Main Street, Suite 201,
Madison, Wisconsin, appearing on behalf of
PIC Wisconsin;

NOREEN J. PARRETT,
LaFOLLETTE, GODFREY & KAHN,
Attorneys at Law, 1 East Main Street,
Madison, Wisconsin, appearing on
behalf of PIC Wisconsin;

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A P P E A R A N C E S (Continued)

WALTER C. CARLSON,
SIDLEY, AUSTIN, BROWN & WOOD, LLP,
Attorneys at Law, Bank One Plaza,
10 South Dearborn Street, Chicago,
Illinois, 60603, appearing on behalf of
PIC Wisconsin;

ANN M. MAHER and ANDREW GUZIKOWSKI,
WHYTE HIRSCHBOECK DUDEK S.C.,
Attorneys at Law, 555 East Wells Street,
Milwaukee, Wisconsin, appearing on
behalf of Dean Health System;

THOMAS R. STREIFENDER,
HALL, RENDER, KILLIAN, HEATH & LYMAN,
Attorneys at Law, 441 East Wisconsin
Avenue, Suite 900, Milwaukee, Wisconsin,
appearing on behalf of the Monroe Clinic;

PETER L. GARDON,
REINHART, BOERNER, VAN DEUREN, S.C.,
Attorneys at Law, 22 East Mifflin Street,
Madison, Wisconsin, appearing on behalf
of the Wisconsin Medical Society;

FRED NEPPLE,
OFFICE OF THE COMMISSIONER OF INSURANCE,
125 South Webster Street, Madison
Wisconsin, appearing on behalf of the
Commissioner of Insurance.

ALSO PRESENT: DAVID MOSS, M.D.
PENNIE R. O'HARA
THOMAS N. KIRSCHBAUM
RALPH TOPINKA
ROBERT D. O'KEEFE
STEVE JUNIOR
TIM VANDE HEY

(There were no exhibits marked for identification)

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1 MR. GOMEZ: Well, first of all,
2 good afternoon to everyone who has come from
3 various parts of the state or other parts of the
4 nation. I'm Jorge Gomez, I'm the Commissioner of
5 Insurance for Wisconsin presiding over this
6 prehearing conference in the matter of -- I'll
7 read this verbatim -- the proposed acquisition of
8 control of Physicians Insurance Company of
9 Wisconsin, Inc. by American Physicians Capital,
10 Inc. and American Physicians Assurance
11 Corporation, known as the applicants, in case
12 number 04-C29283.

13 The hearing is being held on May
14 31, 2005 at our offices in Madison, Wisconsin.
15 This hearing is being held in accordance with
16 section 227, sub 4, sub A, of the Wisconsin
17 statutes and as was noted in a pre-trial or
18 prehearing notice, the purpose of today's hearing
19 is to sort of chart our way through a number of
20 issues over the course of the next several months
21 in what appears to be a relatively clearly
22 contested case situation.

23 So before we get going here, let me
24 just say for the record that Mr. Nepple, who is
25 general counsel is seated to my right, Steve

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1 Junior and Tim Vande Hey behind me, along with
2 other representatives of this office, who are
3 going to be periodically, I know, over the course
4 of the next several months looking carefully at
5 this case, giving me advice and direction in
6 conducting our office's own independent due
7 diligence of this matter, as well as receiving
8 information that the parties are likely going to
9 provide to us for purposes of enhancing or
10 clarifying the record.

11 Just so it's really clear, earlier
12 in this -- in the proceedings, several months ago,
13 I think at the time of the Form A filing, there
14 was a letter that went out that described sort of
15 the process at OCI, what the expectations were of
16 the parties in terms of communicating with the
17 office. There's a history of very healthy
18 informality that takes place in this office.

19 You can virtually call anyone at
20 any time and get an answer, but for purposes of
21 this hearing, I would hope that the parties stay
22 focused in getting their comments and remarks
23 directly to Steve Junior, Tim Vande Hey or
24 comments from Mr. Nepple, because I attend quite a
25 few events and, you know, temptation is what it

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1 is. Over cocktails, people should just watch the
2 comments that they make and the context of what's
3 going on.

4 I will say for the record, there
5 have been a series of events I've been to in the
6 last six months where various folks, none of whom
7 are in this room, but particularly doctors, have
8 been interested in expressing their opinions of
9 this acquisition and I have kindly avoided any
10 conversations with them, including my wife, so
11 that's where this is today.

12 Just so I get who the parties are
13 here for, maybe just for making this a little more
14 expedition, for APC?

15 MR. HANSON: For American
16 Physicians Capital and American Physicians
17 insurance, David J. Hanson of Michael, Best &
18 Friedrich, Madison, Wisconsin and Lori McAllister
19 of Dykema Gossett, Lansing, Michigan. At this
20 early time, I would like to move Ms. McAllister's
21 admission for the purpose of participating in this
22 proceeding.

23 MR. GOMEZ: Sure. Is there any
24 objection to that?

25 MR. SKILTON: No objection.

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1 MR. GOMEZ: So ordered, that's
2 fine. And for PIC?
3 MS. PARRETT: Noreen Parrett,
4 LaFollette, Godfrey & Kahn and I have with me John
5 Skilton from Heller Ehrman and Walter Carlson from
6 Sidley Austin.
7 MR. SKILTON: And Mr. Commissioner,
8 I would like to move in Mr. Carlson for purposes
9 of participating in this proceeding as well.
10 MR. GOMEZ: Mr. Carlson?
11 MR. CARLSON: Yes, that's me.
12 MR. GOMEZ: Any objection?
13 MR. HANSON: No objection.
14 MR. GOMEZ: So done, so ordered.
15 Are there any other parties that are in the room
16 that would like to be noted for the record?
17 MR. GARDON: My name is Peter
18 Gardon from Reinhart Boerner and I'm appearing on
19 above of the Wisconsin Medical Society.
20 MR. GOMEZ: Are there any
21 objections to Mr. Gardon being present for today's
22 proceeding?
23 MR. HANSON: No.
24 MR. SKILTON: No.
25 MR. GOMEZ: Anyone else?

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1 MS. MAHER: Attorney Ann Maher and
2 attorney Andy Guzikowski, here on behalf of Dean
3 Health System.

4 MR. STREIFENDER: Tom Streifender
5 of the Hall Render law firm on behalf of the
6 Monroe Clinic. You may in your records have me at
7 the von Briesen & Roper law firm. That was true
8 up until about 12 days ago.

9 MR. GOMEZ: Well, I noted that you
10 were here, but I wasn't sure exactly why, but
11 welcome, all right, and thanks for putting your
12 names on the record. Are there any others?

13 MR. O'KEEFE: Bob O'Keefe here on
14 behalf of Aurora Health Care.

15 MR. GOMEZ: All right, anyone
16 else?

17 MR. TOPINKA: Ralph Topinka,
18 general counsel at Mercy Health System.

19 MR. MOSS: And David Moss on behalf
20 of myself, I'm one of the sellers.

21 MR. NEPPLE: Can I ask if you could
22 provide business cards at the conclusion of the
23 hearing, thank you.

24 MR. KIRSCHBAUM: Tom Kirschbaum,
25 general counsel, Dean Health System.

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1 MR. GOMEZ: Let me ask, I'll go
2 first to the left side of my table here.
3 Mr. Hanson, do you have any opinion or objection
4 to these additional parties participating in the
5 proceeding?

6 MR. HANSON: Well, I think we have
7 some questions about PIC's standing in this
8 proceeding and it's not entirely clear to us how
9 PIC Wisconsin qualifies under the statute and as a
10 result, we'd, I think, be interested in hearing
11 from PIC Wisconsin regarding their claim to
12 standing in this proceeding.

13 MR. GOMEZ: Do you have any
14 challenges to the claims of standing by the other
15 representatives of, for example, Dean or the
16 individual representative as a seller?

17 MR. HANSON: Not at this point,
18 although I think I might want to raise a question
19 later, but my focus is on PIC's standing.

20 MR. GOMEZ: And does someone from
21 PIC want to briefly address that question?

22 MR. SKILTON: Yeah, I think there
23 isn't any doubt about us being interested under
24 the Administrative Procedure Act as a party or
25 person interested, and a grieved standing is

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1 relatively easily afforded us. In addition, of
2 course, we're the target of the offer here and of
3 the entire proceeding and it would be, I think, an
4 injustice to prevent our participation as a party
5 in order to be heard, in order to express our
6 views as to whether or not this Form A qualifies
7 under the standards of the statute that the
8 Commissioner will be reviewing it under.

9 MR. GOMEZ: And Mr. Hanson, do you
10 have any interest in addressing this formally in
11 some written documentation, some sort of
12 memorandum?

13 MR. HANSON: I'm actually prepared
14 to address it at least briefly today and if the
15 Commissioner has any doubts about the question,
16 we'd be prepared to file a short letter brief.
17 First, I think this is a proceeding in which there
18 are some very specific statutory tests for
19 approval and/or disapproval of this transaction.

20 As a result, in most of these types
21 of proceedings, the Commissioner's office itself
22 asks questions of the parties, determines what's
23 relevant and of concern to the office and the
24 parties respond, creating a record which allows a
25 decision to be made. I'm not sure that under

1 these circumstances and in this case, with the
2 statutory tests which are to be applied, PIC's
3 participation has any significant value with
4 respect to this transaction.

5 More importantly, it's hard to see
6 how PIC is adversely affected by a decision in
7 these circumstances to permit American Physicians
8 Assurance to own slightly less than 24 percent.
9 That is, in part, because PIC Wisconsin has in
10 these circumstances enacted both shark repellent
11 and a poison pill, making it difficult for us to
12 see how PIC would be injured by our participation
13 as a shareholder in the corporation.

14 As a result, until we're more clear
15 about the issues which PIC thinks are issues in
16 this proceeding. We find it hard to understand
17 why in the language of the statute they would be
18 adversely affected by a decision permitting this
19 transaction to go forward, so generalities about
20 how PIC has an interest in the proceeding do not
21 go directly to the statutory tests in these
22 circumstances.

23 MR. SKILTON: A quick response, and
24 that is to say that this is an attempt to acquire
25 24 percent of the outstanding shares. It should

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1 be viewed as hostile. We are concerned about the
2 effect of that acquisition on the management and
3 the control of PIC Wisconsin. We are concerned
4 that PIC will be jeopardized as one of the primary
5 providers of healthcare, that our insureds will be
6 adversely affected by this.

7 We are concerned about issues that
8 have been raised in the Form A filing, issues
9 relating to the ratings of APA and other issues
10 that are crucial to the long-term question of PIC
11 Wisconsin's health as a healthcare provider. All
12 of those things are directly of interest to us.
13 This proceeding goes to the heart of our corporate
14 existence and our purpose as an insurance carrier
15 in the State of Wisconsin.

16 I cannot imagine any set of
17 criteria that would not permit our participation
18 in this very crucial proceeding.

19 MR. GOMEZ: Okay. Well, a major
20 preliminary question, I guess what I'd like to
21 have from both parties, Mr. Hanson, if you want to
22 move first, maybe get to us your memorandum in the
23 next couple weeks and allow PIC some time to do
24 that also. I don't have a calendar in front of
25 me, I should have brought a calendar.

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1 MR. HANSON: We'd be happy to do
2 that within a week.

3 MR. GOMEZ: Within a week, okay.
4 So I'm trying to gauge when I'd be happy to read
5 it. So you could have this to us by --

6 MR. HANSON: The close of business
7 on the 6th.

8 MR. GOMEZ: All right. And does
9 PIC think it could have a response of some sort by
10 say the end of the week, the 10th or maybe the
11 following week? How about the close of business
12 on the 13th?

13 MR. SKILTON: Yes.

14 MR. GOMEZ: Do you anticipate a
15 need for rebuttal on this, Mr. Hanson, or any need
16 to respond should issues come up?

17 MR. HANSON: Three days should be
18 plenty.

19 MR. GOMEZ: We'll make that the
20 16th, all right. I noticed in some of the
21 responses there was a request for discovery by PIC
22 Wisconsin. Just maybe give me some idea as to why
23 you think discovery is necessary.

24 MR. SKILTON: Well, first of all,
25 the issue relates to what I consider to be

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1 untested allegations, assertions of fact of status
2 of the health of APA, issues relating to the
3 strength of their reserves, issues relating to
4 various and sundry affirmative representations. I
5 think for the Commissioner here to proceed, he has
6 to decide whether to permit full testing of
7 relevant issues under the statute.

8 Our view is that the only way to
9 test those issues is to permit discovery, to
10 permit this to be a contested case with
11 adversarial implications, such as written requests
12 for documents and oral depositions. I think what
13 I believe the Commissioner is setting out to do is
14 to make a fair and balanced decision as to whether
15 this Form A should be approved.

16 Our suggestion is that as part of
17 that process, you should be willing and anxious to
18 hear how these assertions bear out under
19 cross-examination as well as document production,
20 so our view is discovery is essential to the
21 process in this case. There is no other way to
22 appropriately test what are otherwise untested
23 assertions of fact.

24 MR. GOMEZ: Mr. Hanson?

25 MR. HANSON: It's interesting,

1 because in this case, there have been filings by
2 the applicant certified to by officers of the
3 applicant with the Commissioner. This has been
4 out there since last September. There have been a
5 lot of unsubstantiated allegations, but they've
6 come largely from PIC Wisconsin and if what
7 they're saying to you now is now that we've had
8 nine months to think about this, now we want
9 discovery so that we can go fishing for things
10 that might or might not be directly relevant to
11 this proceeding, I think that's a serious
12 problem.

13 American Physicians Capital is a
14 publicly traded, SEC regulated company. It files
15 its regular reports. They are available and I'd
16 be happy to give you the internet site. I'm sure
17 you know it. There is a considerable amount of
18 material that's filed and has now been
19 supplemented by amendment to the Commissioner's
20 office. Their audited financials are certified to
21 and are on file with this Commissioner's office.

22 American Physicians Assurance, the
23 acquiring entity, directly acquiring entity, is
24 regulated by various state commissioners, but
25 principally in Michigan, its home state. It is

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1 examined financially, including full financial
2 review and to suggest at this point that there's
3 some kind of undifferentiated concerns out there
4 which are going to be dealt with by discovery is
5 nothing more, in our view, than a request for a
6 fishing expedition.

7 My proposal or our proposal in
8 connection with the discovery issue is that if
9 parties want discovery, they should address that
10 discovery to your office and the other parties,
11 give the other parties an opportunity for comment
12 and then have a ruling on whether that discovery
13 is relevant to the issues in this case or has some
14 expectation of providing material evidence in the
15 case.

16 I think to do otherwise is simply
17 to open this up to the kind of fishing expedition
18 that's being suggested here, so I'm not sure
19 there's any discovery needed in this case, but if
20 there is, I believe that it ought to be limited
21 and that the burden ought to be on the proponent
22 tonight show that it's directly relevant to the
23 proceeding.

24 MR. GOMEZ: Any brief response
25 you'd like to make?

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MR. SKILTON: A brief response.

First of all, this is an argument that's as old as whether discovery is a beneficial aspect of a litigation and it is. That is to say that in order to test self-serving and/or even certified statements, one has to have the basis of information to test it from the files of that person asserting it.

One example, that's a protestation that we have no intent to any way change PIC Wisconsin, that we have no intent of acquiring more shares, that we have a passive investment and the St. Paul case, well known to the Commissioner, is an example where the Commission said basically we've not going to accept that kind of self-serving representation.

It is a matter of burden of proof being on the side of the party asserting that and furthermore, it should be tested. Likewise, statements of the health of an entity or the status of reserves may have been certified, maybe not, but maybe the issues that relate to this proceeding in terms of how it will affect the operations of PIC Wisconsin and how our, if you will, incorporation into this entity may or may

1 not be abusive to the policyholders of PIC
2 Wisconsin, are issues that have to be specifically
3 probe in context, not in terms some of sort of
4 generalized filings made for purposes of
5 attempting to have your financial statements
6 certified.

7 So I suggest strongly to the
8 Commissioner that it is impossible for the
9 commission here to properly do its duty without
10 permitting relevant discovery. I have no
11 objection, per se, to a process that builds in
12 relevance and I'm not suggesting, nor would I
13 ever, a fishing expedition. If the commission
14 feels that some involvement of the commission in
15 terms of controlling and/or obtaining the scope of
16 this discovery is appropriate, we will certainly
17 abide by that.

18 But the context and the concept
19 that discovery is inappropriate here is, in my
20 judgment, not well founded.

21 MR. GOMEZ: Just a quick question
22 on the question of scope. Assuming discovery or
23 some amount of discovery went forward, what type
24 of scope are we looking at here, how many
25 depositions, interrogatories, how much time, just

1 generally?

2 MR. SKILTON: Let me give you some
3 roughshod proposals. I think that they're within
4 reason, given the complexity of the case. We felt
5 that an initial batch of written discovery can and
6 should be immediately served, and by that I mean
7 within the next three or four days, for response
8 within 30.

9 We are probing issues under the
10 statutory standards which include, by the way,
11 whether or not the conduct that was undertaken to
12 acquire the shares was lawful, that's I believe
13 part of the statutory scheme anticipated by the
14 statute in question. In any event, we're willing
15 to put out that written discovery immediately.

16 We would ask then for some time,
17 depending upon the scope and the volume and the
18 good faith nature of the production, to analyze
19 the results of that and roughly, we're talking
20 about a 30-day period following that, assuming a
21 fairly complete production and then we would ask
22 for the opportunity to take oral depositions,
23 probably in the range of 10 to 15, total, in the
24 month of August, so as to complete fact discovery
25 essentially by Labor Day.

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1 MR. GOMEZ: After which I'm
2 assuming there would be some --

3 MR. SKILTON: After which I think
4 we're getting ready for the hearing, including, I
5 might add, if there are experts and I'm not
6 talking about necessarily anything more than
7 expert reports. I'm not here asking for discovery
8 of experts, but rather to have the experts then
9 opine on the results here and then going to
10 hearing sometime at the Commissioner's discretion
11 in the October, early November period.

12 MR. GOMEZ: Mr. Hanson?

13 MR. HANSON: Well, I continue to
14 think this is a fishing expedition, particularly
15 where there have been some very, very strong
16 statements in the public and so forth by PIC about
17 its view of this transaction and its view of the
18 acquiring parties. I will say, for example, that
19 on the question of American Physicians Capital and
20 American Physicians Assurance financial strength,
21 that is an issue which is essentially a red
22 herring in this proceeding, because the financial
23 strength or condition of the current shareholders
24 is not an issue.

25 And the reason it's not an issue is

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1 because it can't affect the position of PIC
2 Wisconsin. PIC Wisconsin's position before and
3 after this transaction will remain identical to
4 the financial condition it displays today, both
5 from a regulatory and a shareholder standpoint.
6 You could only conclude that the financial
7 condition of American Physicians Assurance or
8 American Physicians Capital would have an effect
9 on PIC Wisconsin.

10 If you were to assume that the one
11 board seat which is now talked about in the
12 application somehow would cause PIC to change
13 either its management structure or its financial
14 condition, and I think that's a non starter from
15 the beginning, so that's an example of why some of
16 this kind of stuff, for whatever interest it may
17 have in terms of delay, or whatever interest it
18 may have in throwing some more mud in the
19 direction of the applicants, I think it's just
20 plain not relevant to this proceeding.

21 So I think what I'd like to see is
22 the schedule Mr. Skilton talked about compressed
23 substantially, with the opportunity, as I
24 suggested, for PIC Wisconsin to object to any
25 discovery we might propound and we have the same

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1 opportunity to object to their discovery, because
2 I think there will be some objections here and
3 they will be well-founded.

4 MR. GOMEZ: Well, why don't we
5 stagger a few events. I guess would I expect from
6 PIC to file with this office a motion for leave to
7 conduct discovery, focusing on what PIC believes
8 to be the narrow issues of concern that are
9 relevant for disposition with supportive briefs.

10 We already have a standing motion
11 out there, but if the parties seem to be geared up
12 the way they are currently to look at this
13 question, I would ask that briefs and motions be
14 filed no later than the 17th of June. Objections
15 from AP Capital, if this is doable, Mr. Hanson,
16 within, I mean, a week or ten days.

17 MR. HANSON: I would think ten days
18 and I'm wondering if these discovery requests
19 couldn't come by the 6th.

20 MR. GOMEZ: Okay.

21 MR. HANSON: We've taken care of
22 the ones for PIC, we've got the burden on the
23 prior motion which we will file if they file
24 theirs. Then we'll begin an exchange.

25 MR. GOMEZ: Well, let's get the

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1 responsive brief back to us by -- let's make it
2 the 28th of June and in the interim, the -- you're
3 requesting the interrogatories and such be served
4 ahead of time, by the 6th of June?

5 MR. HANSON: No, I'm requesting
6 that the interrogatories along with a supporting
7 brief to the Commissioner as to why they're
8 necessary be filed by the 6th and then we'll
9 respond within ten days after that.

10 MR. GOMEZ: How does that meet with
11 your schedule, does that work?

12 MR. SKILTON: Since there's a brief
13 requirement, if we could have -- I don't want to
14 delay it, but if we could have say until the 8th,
15 that would be helpful. I don't have a problem
16 with moving it up.

17 MR. GOMEZ: The 8th of June then is
18 fine.

19 MR. HANSON: And we'll respond
20 within ten days of it.

21 MR. GOMEZ: Okay.

22 MR. HANSON: And if we have
23 discovery, we will likewise file it by the 8th
24 with supporting --

25 MR. SKILTON: With a motion and

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1 brief.

2 MR. HANSON: Motion and probably a
3 letter brief, yes.

4 MR. GOMEZ: Do you think we're
5 going to need rebuttal briefs in this, reply
6 briefs sometime by the end of the month then?

7 MR. HANSON: I'm not sure we need
8 them.

9 MR. GOMEZ: Let's hope not.

10 MR. SKILTON: I think we would like
11 it and I don't want to hold it up, say four-day
12 response.

13 MR. GOMEZ: Four-day response?

14 MR. HANSON: Okay.

15 MR. GOMEZ: Is somebody getting
16 these dates down accurately, Fred.

17 MR. NEPPLE: I'm taking notes.

18 MR. JUNIOR: We have the parties
19 submitting their initial briefs on June 8, filing
20 their objections, if any, on June 18 and the reply
21 brief on June 22.

22 MR. GOMEZ: Okay.

23 MR. NEPPLE: And we're assuming no
24 oral argument.

25 MR. GOMEZ: There won't be a need

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1 for oral argument, but if I draft an answer, it
2 will be in writing.

3 MR. JUNIOR: June 18 won't work
4 out, though, that's a Saturday.

5 MR. GOMEZ: Mr. Hanson, the 18th is
6 a Saturday, can we say the 17th then?

7 MR. HANSON: Sure. There was one
8 other thing that I wanted to bring up, given the
9 nature of these proceedings, and that is a
10 confidentiality agreement.

11 MR. SKILTON: Why don't you,
12 Mr. Hanson, if you would, send to me as soon as
13 possible a proposed confidentiality agreement and
14 we'll undertake to get it done as soon as
15 possible. We agree that it's appropriate.

16 MR. GOMEZ: Mr. Hanson, there's one
17 other outstanding question. We moved through to
18 discovery, but there was still some outstanding
19 issues about the standing of other parties to
20 participate, which we just kind of glanced at.

21 Do you want to be heard on that now
22 or can we reserve that for another time? My own
23 view would be to think about that and under
24 advisement, I'll issue a decision based on what I
25 think is appropriate under our laws and let the

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1 parties know in our order what I view the
2 participation in this proceeding to be.

3 MR. HANSON: Okay, that's fine.

4 MR. GOMEZ: But I want to give you
5 a chance to at least respond to it.

6 MR. HANSON: I had said before I
7 had nothing at this time in connection with the
8 participation of the State Medical Society or the
9 sellers.

10 MS. McALLISTER: Mr. Commissioner,
11 I believe Dr. Moss had not previously filed a
12 petition, but he is interested as well in
13 participating as a party. I don't know if you
14 want to hear from him or have him file something
15 in writing.

16 DR. MOSS: I have something in
17 writing with me today.

18 MR. GOMEZ: We'll take that up with
19 you, Dr. Moss and you can file that today. Just
20 for purposes of this record, I'm assuming
21 everybody is willing to stipulate that this is a
22 contested case proceeding under 227 and all the
23 rules of 227 apply?

24 MR. HANSON: We stipulate that it's
25 a class 1.

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MR. GOMEZ: And a class 1.

MR. SKILTON: We so stipulate as well.

MR. GOMEZ: Just for purposes of putting some scope on this entire process, our office has received, you know, and it's available publicly, a number of letters in support and in opposition, some cogent, some less cogent. In any event, it's a broadening record and I anticipate that over the course of the next several months, this is assuming discovery is well tailored and the parties can work out major differences of opinion on the scope, but there are going to be a number of parties that are going to probably be interested in participating at some juncture in this proceeding.

I guess just for purposes of making our record clear, I'm going to have Mr. Nepple hand out what I think is really the punch list of considerations under 61172 which are really going to be the criteria we're going to be looking at, along with some potential other closely related criteria as to whether or not this acquisition or this purchase will go through. Do you want to go through this?

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1 MR. NEPPLE: Sure. I won't read
2 everything verbatim, but I think those of you who
3 have participated in proceedings similar to this
4 before the office are familiar with the statutory
5 criteria. This is a proposed statement of the
6 issues to be considered in this proceeding.

7 A and B are essentially who the
8 applicants are, interrelationships of the
9 applicants. C are the criteria under section
10 61172. I would call your attention to paragraph
11 number five. One through six, I think, are
12 generally the standard lifted out of the statute.

13 Please note in paragraph 5 that
14 there is a bit of an expansion on the statutory
15 criteria, I guess I'd characterize it as an
16 explanation of where the office would like to see
17 some additional or some direction with respect to
18 the record made in this proceeding. I'll just
19 read that sentence.

20 "This includes an evaluation of the
21 effect of the proposed plan on the history and
22 purpose of PIC of Wisconsin, including the extent
23 to which the stock is or was intended or expected
24 to be transferable and the contribution of PIC of
25 Wisconsin to the Wisconsin insurance

1 marketplace." I think you'll probably appreciate
2 that that's largely encompassed in the statutory
3 criteria, but we did want to give some direction
4 to the parties on issues that the office would
5 like to see addressed.

6 Other than that, D is simply a
7 reference to the question of whether the
8 prescribed filing requirements have been met.

9 MR. GOMEZ: Do either of the
10 parties have any questions about the punch list
11 that's just been handed out, from PIC?

12 MR. HANSON: I have some questions
13 about the last sentence in paragraph 5. To the
14 extent that this is encompassed in -- with respect
15 to the interests of the insureds, for example, I
16 can understand some examination of these issues.
17 On the other hand, I think the direct relevance to
18 the statutory standards is not clear until we see
19 what evidence is presented, and even then may not
20 have much effect.

21 So I'd simply reserve that point in
22 terms of what ultimately may be presented in
23 either objections to particular testimony or
24 briefs.

25 MR. GOMEZ: That's fine, and I'm

1 just going to put our cards on the table in this
2 particular question. Not having been here at the
3 time that these entities were formed, and
4 especially PIC, I think it's very important for
5 the record to be clear that despite the fact that
6 there's been some relatively informal ability to
7 transfer or sell stock, I think it's important for
8 this record to at least clarify that those
9 transfers were appropriate and that this potential
10 transfer is appropriate as well.

11 There is history to the manner in
12 which this entity was formed, the purpose for
13 which it was formed and at the end of the day, I
14 think I'm going to want to know a pretty good
15 answer to what the bigger picture was sometime
16 back in order for us to assess what the market may
17 be like in the future.

18 So that may sound vague at the
19 moment, but that's sort of what I'd like to know,
20 what authority exists for the transfer of the
21 stock in the first place and so that would be
22 helpful. That question is prompted simply by the
23 fact that I've had a number of very interesting
24 letters come my way and I read them and I think
25 there are going to be people who are going to be

1 entitled to an answer to that question.

2 If I don't have the answer, then
3 the record is not going to be as complete as it
4 should otherwise be. Assuming the well focused
5 and honed down discovery proceeds, will there be
6 some interest in filling dispositive motions by
7 either party?

8 MR. NEPPLE: I think we had some
9 indication --

10 MR. HANSON: Yes, I think we are
11 considering raising a motion as to whether this is
12 actually effectively a change of control and in
13 order to sharpen that issue, although there is a
14 presumption under the statute at the ten percent
15 level, the fact that PIC has enacted certain
16 poison pill and shark repellent provisions leaves
17 us in a position, even though we are seeking a
18 board seat, with a significant question whether
19 under all the circumstances this actually amounts
20 to a change of control.

21 I think I do not want to suggest
22 that that ought to in any way derail setting a
23 schedule here, but I do think that that issue is
24 one that ought to be considered and I do not
25 believe it's a fact based issue. That is to say,

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1 I think filing certain documents which are a
2 matter of public record and making argument to
3 that effect could be done in advance of any
4 discovery.

5 MR. SKILTON: We certainly have in
6 mind filing dispositive motions to some extent.
7 We would like to have the opportunity to do the
8 discovery first and then to advise which motions
9 we will pursue as a matter of law, as distinct
10 from at the hearing.

11 MR. GOMEZ: Part of my consultation
12 up here is when we're going to be able to do the
13 work and look at all this stuff, so bear with us,
14 as the burden falls on the shoulders of the people
15 to the left and to the right of me. I think the
16 parties can be safe in assuming that some measure
17 of discovery is going to go forward.

18 To what extent, I'm not entirely
19 sure. I'm not showing all my cards, I'm not
20 entirely sure what I'm going to see in all these
21 motions, but with that said, I could see a
22 realistic dispositive motion date sometime shortly
23 after discovery should be completed, which would
24 be no later than the end of July, so potentially
25 we could have dispositive motions filed sometime

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1 by the second week of August.

2 I guess for timing purposes, that's
3 what I'd like to see, if that works with the
4 parties. I understand everybody is kind of
5 anxious to move forward quickly now that we've set
6 this matter in motion, but August is right around
7 the corner, as far as this agency is concerned,
8 with our own deadlines on other matters that are
9 currently pending before us.

10 I don't want to give this short
11 shrift in order to accommodate a scheduling
12 process that's not realistic and won't give us the
13 opportunity really to look at these issues,
14 particularly if the parties can't come to some
15 agreement on discovery issues as well, because I
16 think we should be available to deal with those
17 problems as they come up.

18 So if we can make the dispositive
19 motions due by say like the 8th of August, which
20 is a Monday and any replies by either party due by
21 the 15th of August. I'm hopeful that will work.
22 If you need more time, let us know, or if you need
23 less, you know.

24 MR. SKILTON: Mr. Commissioner, if
25 I may, I think the schedule is realistic on the

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1 assumption that the approved discovery is given,
2 that we have access to what we're permitted to
3 have access to. Where I see some possible lapse
4 would be in that assumption breaking down, that we
5 don't have what we need, which raises the issue of
6 how we get promptly to the commission any
7 discovery disputes that may be material,
8 particularly on the issue of dispositive motions.

9 I believe that Mr. Hanson and I can
10 and will work cooperatively on a meet and confer
11 basis. I have every reason to believe based on
12 past experiences with him that we'll do that, but
13 inevitably, there are going to be points of
14 disagreement and I think I am suggesting that to
15 move the schedule with this speed, we'll need to
16 get resolution of those points of disagreement
17 relatively promptly.

18 MR. GOMEZ: And if that comes up,
19 I'll make sure that I'm available to do a hearing,
20 if not in person, by phone, at the very least, if
21 we get to that conclusion, if it gets really
22 contentious. I hope it doesn't, but I'll schedule
23 times to have the sessions to get through this and
24 it may not be to everyone's convenience, but my
25 staff's or mine.

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1 So I'm hopeful that people will
2 work their issues out without doing that, because
3 I mean, I do intend to help the parties. Both
4 sides want to get this done and look at this and
5 have a decision rendered by this agency. I don't
6 see any reason to delay it and to the extent it's
7 possible, I'll make myself available between now
8 and the beginning of August.

9 I don't think Fred is going on any
10 three-week backpacking trips.

11 MR. NEPPLE: Just one week.

12 MR. GOMEZ: And he'll have a cell
13 phone. I'll buy him a Trio 650 and he can even
14 download stuff. Any other matters that people
15 want to discuss now? Mr. Hanson, did you want to
16 bring something up?

17 MR. HANSON: Yes, we would like to
18 get a hearing date and a block of time set today,
19 so that we've all got something to work toward.

20 MR. GOMEZ: And realistically, what
21 I'd like to see, and not to avoid the inevitable,
22 but I'd like to give the parties some time to work
23 through the discovery process and I guess I'll
24 then see when it's realistic to schedule some
25 dates. I don't anticipate to do it much further

1 into the future after the dispositive motions.

2 So I'm hopeful and looking forward
3 to getting this thing potentially wrapped up at
4 the end of August or sometime in September,
5 assuming that we can get everything out on the
6 table. How many days of hearing do you expect?

7 MR. HANSON: We had indicated in
8 correspondence, we thought two would be probably
9 appropriate and we had suggested and will suggest
10 again that pre-filed testimony be used in this
11 proceeding. That enables a lot more speed in
12 terms of the hearing. You're really confining
13 yourself to cross-examination and perhaps some
14 rebuttal testimony or something, but at least
15 you're in a circumstance where we can move along
16 promptly, and I believe Mr. Skilton suggested five
17 days.

18 MR. GOMEZ: Let me do this. First
19 of all, let me wait for Steve.

20 MR. HANSON: I have one more point
21 on this.

22 MR. JUNIOR: We might have lost
23 about 20 seconds.

24 MR. GOMEZ: Mr. Hanson, do you
25 remember what you said 20 seconds ago?

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1 MR. SKILTON: He was talking about
2 what I was saying, so you can forget it.

3 MR. GOMEZ: Mr. Skilton was right
4 in every respect. Would you like to continue?

5 MR. HANSON: I believe I quoted him
6 correctly at a request for five days and I would
7 say, Mr. Commissioner, that there are a lot of
8 people with busy schedules, including witnesses
9 and so forth and that it's extremely important to
10 us to try to get a date fixed for the convenience
11 of counsel.

12 We've got a lot of parties or
13 potential parties here and I think that it would
14 be advantageous to fix a date sometime in early
15 September and then also to talk about the question
16 of any post hearing briefs or other things which
17 the Commissioner might require under the
18 circumstances, so that we've actually got a road
19 map for this proceeding.

20 MR. GOMEZ: You know, the
21 circumstances here have been such in the last
22 couple of years that we've pretty much been able
23 to fix a date and stick with it. Those have been
24 in situations of relative harmony and
25 occasionally, those dates get bumped and then it's

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1 a little bit rougher to kind of reschedule. My
2 thoughts would be to let me convene with my staff,
3 figure out a block of time for the September
4 period where I think realistically we can set down
5 several days. Do you really think you need five
6 days?

7 MR. SKILTON: Well, I do, but I had
8 a slight qualification to what Mr. Hanson had
9 subscribed to me and I think that the commission
10 and Commissioner would benefit from a prehearing
11 conference, such that issues as to the really
12 contested and disputed issues are the ones that
13 are brought to the forefront and furthermore,
14 issues in which you think you want to hear live
15 testimony, as distinct from canned testimony, are
16 sorted out.

17 So I think that what I would say is
18 that the issue of two to five days might well be
19 something you want to be informed of as you hear
20 what it is the parties think they wish to present
21 and how.

22 MR. GOMEZ: Your thoughts on that,
23 Mr. Hanson?

24 MR. HANSON: I think we can do that
25 in August. We'll have discovery completed at some

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1 point. I think we're going to have a date for
2 exchange of exhibits and witness lists and I think
3 at that point, presumably that can occur in
4 August. We'll be able to hold such a conference
5 and I agree such a conference would be beneficial.

6 MR. GOMEZ: Well, why don't we do
7 this, let's -- I'll need some time off the record
8 to sort out some August dates for that, that works
9 with everyone's calendar and in the interim, I'll
10 also look for some September dates, for a block of
11 time, maybe three days. If it ends up being a
12 fourth day, we'll figure that out.

13 It's not the end of the world,
14 because I know I don't have a block of time that's
15 more than two days between now and the end of
16 August, so let me figure out some time in
17 September where we can accommodate a hearing and
18 confer with my staff to make sure that the muscle
19 is in town, so I can confer and get information I
20 need to have assessed before and at the hearing.

21 MR. SKILTON: Mr. Commissioner, may
22 I, this is a point of personal privilege.

23 MR. GOMEZ: Sure.

24 MR. SKILTON: I've been married for
25 38 years and my wife has planned a trip to Tuscany

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1 from the 16th to the 25th of September.

2 MR. GOMEZ: And I'm invited, right?

3 MR. HANSON: What a great place for
4 a hearing.

5 MR. SKILTON: So whatever you do,
6 write an excuse for me, if you have to.

7 MR. GOMEZ: What dates can you
8 absolutely not do it?

9 MR. SKILTON: It's that week, it's
10 the 16th through the 25th. It's the third week
11 of --

12 MR. GOMEZ: Of August?

13 MR. SKILTON: Of September, in
14 terms of issues that are important to me.

15 MR. GOMEZ: All right, yeah, well,
16 I agree. I'll figure out -- I have to look at my
17 calendar. I mean, I'm not entirely sure if that
18 period of time is even open for three days in
19 succession for me as well. I'm not going to
20 Tuscany, but you know, I'll make sure that that
21 period of time is accommodated, unless we can have
22 the hearing in Tuscany.

23 MR. HANSON: Yes.

24 MR. GOMEZ: A small cottage would
25 be nice. Let me do this to conclude, I'll issue a

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1 prehearing memo explaining all these issues. I'll
2 look forward to looking at the memoranda on some
3 of the issues we get in the next few days resolved
4 and get the game plan charted for the summer and
5 move forward. Mr. Hanson?

6 MR. HANSON: There was one more
7 issue I thought we might focus on just a bit and
8 that has to do with whether some of the statutory
9 standards are issues at all in the case, because
10 it makes a difference when you're thinking about
11 witnesses and so forth and I would suggest that
12 looking at point C on Mr. Nepple's outline,
13 looking at number two, I can't see how that could
14 be an issue, since there's nothing in this
15 transaction that would change the ability of PIC
16 Wisconsin to be licensed to write the lines of
17 insurance which it currently writes.

18 So I don't understand why that
19 would be an issue in the case and if we can knock
20 that out, that will save a little thinking.

21 MR. GOMEZ: Well, you know, I can
22 just share with you some thoughts on the several
23 acquisitions that I've looked at this last year,
24 sub 2 really does look at the question of finances
25 of the company and I'm assuming some of those

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1 discussions will take place, so.

2 MR. HANSON: But the focus, if I
3 might interrupt, is on the financial condition of
4 PIC Wisconsin, because it is the licensed entity,
5 and again, I would point out there's nothing in
6 this transaction that will affect the ability on
7 the date an order is issued approving this
8 transaction for having any effect whatsoever on
9 PIC's being able to satisfy the requirements for
10 issuance of a license.

11 So I don't think it's an issue and
12 if we can get agreement on that, I think it would
13 be helpful.

14 MR. SKILTON: Let me follow the
15 lead, somewhat constructive lead of Mr. Hanson and
16 that would be that why don't we address the
17 question of relevance in our discovery motion and
18 briefs so that we'll try to peg our requests under
19 a statutory standards which we think are at issue
20 and will be litigated.

21 MR. GOMEZ: Why don't we revisit
22 this in the next prehearing conference.

23 MR. HANSON: Well, actually, I
24 think what Mr. Skilton is suggesting is we do this
25 as we make our discovery requests, so that if he's

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1 looking for discovery on this issue, we can
2 address it there.

3 MR. GOMEZ: Sure.

4 MR. HANSON: And I think there are
5 a couple of others here that just fall out by
6 virtue of the way the transaction is structured
7 and we can -- I think we can get rid of some of
8 those.

9 MR. GOMEZ: Well, these are also
10 questions that this office may want to cover as
11 well, anyway. Anything else? Okay, we're
12 adjourned.

13 (2:30 p.m.)

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STATE OF WISCONSIN

OFFICER OF THE COMMISSIONER OF INSURANCE

=====

In the Matter of:


The proposed acquisition of Case No. 04-C29283
control of Physicians Insurance
Company of Wisconsin, Inc., by
American Physicians Capital, Inc.
and American Physicians Assurance
Corporation ("Applicants"),

=====

C E R T I F I C A T E

I, NANCY L. DELANEY, hereby certify that as
the duly-appointed shorthand reporter, I took in
shorthand the proceedings had in the above-entitled
matter on the May 31, 2005 commencing at 1:30
o'clock p.m., and that the attached is a transcription
of the proceedings so taken.

Dated at Madison, Wisconsin this 1st day of
June, 2005.



Notary Public, State of Wisconsin

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certain

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<p>abide (18:17) ability (30:6)(41:15)(42:6) able (32:12)(37:22)(39:4)(42:9) above (7:19) above-entitled (2:2)(44:15) absolutely (40:8) abusive (18:1) accept (17:15) access (34:2)(34:3) accommodate (33:11)(39:17) accommodated (40:21) accordance (4:15) accurately (24:16) acquire (11:24)(19:12) acquiring (15:23)(17:11)(20:18) acquisition (1:5)(4:7)(6:9)(12:2)(27:23)(44:5) acquisitions (41:23) act (9:24) actually (10:13)(31:12)(31:19)(37:18)(42:23) add (20:5) addition (10:1) additional (9:4)(28:17) address (9:21)(10:14)(16:9)(42:16)(43:2) addressed (29:5) addressing (10:10) adjourned (43:12) administrative (9:24) admission (6:21) advance (32:3) advantageous (37:14) adversarial (14:11) adversely (11:6)(11:18)(12:6) advice (5:5) advise (32:8) advisement (25:24) affect (17:23)(21:1)(42:6) affected (11:6)(11:18)(12:6) affirmative (14:4) afforded (10:1) after (20:1)(20:3)(21:3)(23:9)(32:23)(36:1) afternoon (4:2) agency (33:7)(35:5) agree (25:15)(39:5)(40:16) agreement (25:10)(25:13)(33:15)(42:12) ahead (23:4) alegan (2:15) allegations (14:1)(15:5) allow (12:23) allows (10:24) along (5:1)(23:6)(27:22)(36:15) already (22:10) although (9:18)(31:13) amendment (15:19) american (1:6)(1:7)(4:9)(4:10)(6:15)(6:16)(11:7)(15:13)(15:22)(20:19)(20:20)(21:7)(21:8)(44:6)(44:7) amount (15:17)(18:23)</p>	<p>amounts (31:19) analyze (19:18) and/or (10:19)(17:5)(18:15) andrew (3:5) andy (8:2) ann (3:5)(8:1) another (25:22) answer (5:20)(25:1)(30:15)(31:1)(31:2) anticipate (13:14)(27:9)(35:25) anticipated (19:13) anxious (14:17)(33:5) anyway (43:11) apa (12:9)(14:2) apc (6:14) appearing (2:12)(2:15)(2:18)(2:21)(3:4)(3:7)(3:10)(3:13)(3:16)(7:18) appears (4:21) applicant (15:2)(15:3) applicants (1:7)(2:13)(2:16)(4:11)(21:19)(28:8)(28:9)(44:7) application (21:12) applied (11:2) apply (26:23) appreciate (29:1) appropriate (18:16)(25:15)(25:25)(30:9)(30:10)(36:9) appropriately (14:22) approval (10:19) approved (14:15)(34:1) approving (42:7) argument (17:2)(24:24)(25:1)(32:2) around (33:6) asking (20:7) asks (10:22) aspect (17:3) asserting (17:8)(17:18) assertions (14:1)(14:18)(14:23) assess (30:16) assessed (39:20) assume (21:10) assuming (18:22)(19:20)(20:2)(24:23)(26:20)(27:11)(31:4)(32:16)(36:5)(41:25) assumption (34:1)(34:4) assurance (1:7)(4:10)(11:8)(15:22)(20:20)(21:7)(44:7) attached (44:17) attempt (11:24) attempting (18:5) attend (5:24) attention (28:10) attorney (8:1)(8:2) attorneys (2:12)(2:14)(2:17)(2:21)(3:3)(3:6)(3:9)(3:12) audited (15:20) august (19:24)(33:1)(33:6)(33:19)(33:21)(35:8)(36:4)(38:25)(39:4)(39:8)(39:16)(40:12) aurora (8:14) austin (3:2)(7:6) authority (30:20) available (15:15)(27:6)(33:16)(34:19)(35:7) avenue (3:10) avoid (35:21)</p>	<p>back (23:1)(30:16) backpacking (35:10) balanced (14:14) bank (3:3) based (25:24)(31:25)(34:11) basically (17:14) basis (17:6)(34:11) batch (19:5) bear (14:18)(32:13) begin (22:24) beginning (21:15)(35:8) behalf (2:12)(2:16)(2:18)(2:22)(3:4)(3:7)(3:10)(3:13)(3:16)(8:2)(8:5)(8:14)(8:19) behind (5:1) believe (14:13)(16:20)(19:12)(26:11)(31:25)(34:9)(34:11)(36:16)(37:5) believes (22:7) beneficial (17:3)(39:5) benefit (38:10) best (2:11)(6:17) bigger (30:15) bit (28:14)(38:1)(41:7) block (35:18)(38:3)(39:10)(39:14) board (21:11)(31:18) bob (8:13) boemer (3:12)(7:18) breaking (34:4) brief (10:16)(16:24)(17:1)(23:1)(23:7)(23:12)(24:1)(24:3)(24:21) briefly (9:21)(10:14) briefs (22:9)(22:13)(24:5)(24:6)(24:19)(29:24)(37:16)(42:18) briesen (8:7) bring (25:8)(35:16) broadening (27:9) brought (12:25)(38:13) brown (3:2) builds (18:11) bumped (37:25) burden (16:21)(17:17)(22:22)(32:14) busy (37:8)</p>
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share

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value

yourself

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