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**In the Matter of  
Proposed Acquisition of Control of  
Physicians Insurance Company of  
Wisconsin, Inc. by  
American Physicians Capital, Inc., and  
American Physicians Assurance  
Corporation (“Applicants”)**

PHYSICIANS INSURANCE COMPANY  
OF WISCONSIN, INC.’S OPPOSITION  
TO AMERICAN PHYSICIANS CAPITAL,  
INC. AND AMERICAN PHYSICIANS  
ASSURANCE CORPORATION’S BRIEF  
IN SUPPORT OF REQUESTED  
DISCOVERY

Case No. 04-C29283

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### INTRODUCTION

Petitioner Physicians Insurance Company of Wisconsin, Inc. (“PIC”) has requested the Commissioner to order appropriate discovery, commencing immediately. PIC seeks both written discovery and oral depositions, all to be completed within the time frame outlined by the Commissioner. The Commissioner’s order on discovery issues should provide for both written discovery and oral depositions, and for the identification of experts and exchange of expert reports, as will be discussed in Sections II and III of this memorandum.

American Physicians Capital, Inc. and American Physicians Assurance Corporation (“APC”) seem intent upon building delay into the discovery process such that there would be no time for oral depositions to take place. *See* Letter from David Hanson to Sarah Walkenhorst, dated June 9, 2005. APC’s tactics should not be countenanced. Full and probing discovery on all relevant issues should be provided for by the Commission.

APC also argues, without statutory justification, for “reciprocal” discovery: “Applicants are entitled to as much discovery from PIC as PIC obtains from the Applicants.” Applicants’ Brief in Support of Requested Discovery, at 2. Why this should be so is not explained. Relevance in this proceeding is strictly governed by the statute, Wis. Stat. § 611.72, under which

the adequacy of APC's Form A application will be tested. PIC is not the applicant. The standards of approval which govern this proceeding and which have been expressly identified by the Commission do not, with one exception, implicate discovery of PIC. APC's "right" to discovery is necessarily circumscribed by the inquiry that this Commission is charged to make. *See CenTra, Inc. v. Chandler Ins. Co.*, 540 N.W.2d 318, 331 (Neb. 1995) ("No part of the Nebraska Act is concerned with the security of or services rendered to stockholders; whether a merger or acquisition is equitable to stockholders is immaterial in the eyes of the [Nebraska] director [of Insurance].").

## **I. PRELIMINARY RESPONSES TO DISCOVERY DEMANDS**

On June 8, 2005, APC served a motion relating to its requests for discovery, which included as "exhibits" three sets of discovery requests. Notably (while seemingly conceding that much of the discovery it seeks is irrelevant), APC nonetheless makes extensive and sometimes oppressive discovery demands against PIC. Attached with this memorandum are PIC's objections and preliminary responses, respectively, to each of these requests. Generally, PIC's responses can be grouped into four categories:

- A. Requests for which PIC will provide answers. *E.g.*, response to Interrogatories 20 and 21 and to Document Requests 8, 9, 13, 16, 20, 22, 26 and 27.
- B. Requests that can (and should) be handled by stipulation of the parties (without the need to impose overbroad and oppressive discovery). *See, e.g.*, Proposed Stipulation, attached as Exhibit D and the responses to Interrogatories 1 and 2.
- C. Requests for which discovery is required before PIC can fully respond. *See, e.g.*, responses to Interrogatories 5-9 and 11-18.
- D. Requests which seek discovery on irrelevant issues. *See e.g.*, objections to Interrogatories 3, 4, 10 and 19 and to Document Requests 1-7, 10-12, 14, 15, 17-19, 21, 24 and 25.

The attached objections and preliminary responses (Exhibits A, B, and C) more fully state and explicate PIC's specific positions. When a response is designated "PRELIMINARY RESPONSE," PIC is requesting the Commission to rule that PIC need not provide a final response until it has completed its requested discovery. Where an OBJECTION is asserted, PIC is requesting the Commission to rule on that objection at the time that it issues its order.

PIC has also made certain admissions (*e.g.*, to APC's Requests to Admit Nos. 6, 8 and 11) and has proffered (as Exhibit D hereto) a PROPOSED STIPULATION both of which make admissions that simultaneously obviate any "need" for APC to pursue its requested discovery on these issues. Here PIC is requesting the Commission to rule that these mooted discovery requests be quashed.

Accordingly, PIC respectfully requests the Commission, in its order, to quash, limit, or qualify APC's discovery requests as specifically requested in its responses.

**II. ORAL DISCOVERY IS NEEDED AND THE COMMISSIONER SHOULD ISSUE AN ORDER THAT PERMITS IT TO BE COMPLETED BEFORE AUGUST 30.**

In the Pre-Hearing Conference Memorandum, the Commissioner established a report back date as August 30. PIC assumes that this Order contemplates that all permitted fact discovery will be completed by this date. For this to occur, all documents will have had to be produced, and answers to other written discovery requests will have had to be given no later than July 15, 2005, so as to permit the taking of depositions. Fact depositions (including PIC's requested depositions of representatives of the selling group) can commence thereafter and, assuming mutual cooperation, can then be completed by August 30.

As the Commissioner is aware, PIC attempted to set up a discovery schedule by serving signed discovery requests under which the written discovery responses would be due on June 28,

2005. APC's counsel objected to this procedure, thus building in the potential for delay, dependent upon the Commission's ability to screen and establish a date for responses to these discovery requests. Given the position that APC has taken, PIC suggests that it is necessary for the Commission to establish a schedule that permits the needed discovery to be completed by August 30. PIC respectfully requests the Commissioner to grant its request for oral discovery and issue an Order to the effect that responses to written discovery are due on July 15, 2005, including production of all required documents, and that oral discovery can commence immediately thereafter, to be completed by August 30.

**III. THE COMMISSIONER SHOULD PROVIDE FOR DISCLOSURE OF EXPERTS, EXPERT REPORTS AND/OR DISCOVERY OF EXPERTS AS PART OF ITS DISCOVERY ORDER.**

In Interrogatory No. 20 (Exhibit 2 to APC's Brief in Support of Requested Discovery), APC has sought the names and credentials of PIC's experts. Although PIC now discloses the name of one of its experts, PIC will not be in a position to disclose its additional experts until (1) APC has identified the expert(s) it intends to call and the subjects upon which they will testify and (2) PIC has received appropriate responses to at least its written discovery. PIC therefore requests that the Commission's discovery order expressly provide for the disclosure of experts and the exchange of expert reports. PIC suggests that the Commissioner enter an order requiring (1) APC to identify its expert(s) and the subjects upon which each will testify no later than July 15; (2) PIC to identify its expert(s) and the subjects upon which each will testify no later than July 29; (3) the exchange of all expert reports on September 7; and (4) the exchange of all expert reply reports on September 16.

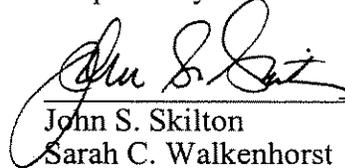
## CONCLUSION

While APC is entitled to some of the discovery it has requested, APC, not PIC, is the Form A applicant in this proceeding. As such, APC is not, *ipso facto*, entitled to “as much” discovery as is PIC. It is entitled only to discovery that is relevant to the issues expressly identified by the Commission in its June 8, 2005 Order.

Based on the relevant statutory criteria to be evaluated by the OCI, PIC is entitled to full discovery on issues relating to the adequacy of APC’s application under the statutory criteria of Wis. Stat. § 611.72.

Dated this 17th day of June, 2005.

Respectfully submitted,



John S. Skilton  
Sarah C. Walkenhorst  
Heller Ehrman LLP  
1 East Main Street  
Suite 201  
Madison, WI 53703  
(608) 663-7460

Walter C. Carlson  
Sidley Austin Brown & Wood LLP  
Bank One Plaza  
10 South Dearborn Street  
Chicago, IL 60603  
(312) 853-7000

Noreen J. Parrett  
Lafollette Godfrey & Kahn  
1 East Main Street  
P.O. Box 2719  
Madison, WI 53701  
(608) 257-3911

Attorneys for  
Physicians Insurance Company of  
Wisconsin, Inc.