

OFFICE OF THE COMMISSIONER OF INSURANCE  
STATE OF WISCONSIN

---

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

Case No. 04-C29283

---

**MEMORANDUM OF DEAN HEALTH SYSTEMS, INC. IN OPPOSITION TO  
PHYSICIAN'S INSURANCE COMPANY OF WISCONSIN, INC.'S REQUEST FOR  
DISCOVERY FROM THE SELLING SHAREHOLDERS**

---

Dean Health Systems, Inc. ("Dean"), by its attorneys, Whyte Hirschboeck Dudek S.C., submits this Memorandum in opposition to the request by Physicians Insurance Company of Wisconsin, Inc. ("PIC") for leave to conduct discovery of Dean and the other Selling Shareholders.

**I. PIC'S REQUEST IS OVERLY BROAD.**

PIC seeks discovery of the Selling Shareholders because it claims to ". . . have reason to believe that in putting together this group [of Selling Shareholders] there may well have been securities law violations." (PIC's Memorandum, p. 8, Item II.A.) Rather than identify particular factual matters, documents or information it intends to seek from the Selling Shareholders, PIC provides a laundry list of legal issues about which it presumably expects to be permitted to make broad inquiry – unlimited in time or scope. For that reason alone, Dean believes that PIC's request for discovery ought to be denied.

II. **PIC'S REQUEST WILL NOT LEAD TO THE DISCOVERY OF EVIDENCE WITH REASONABLE PROBATIVE VALUE AS REQUIRED BY § 227.45, WIS. STATS.**

PIC bases its legal argument for discovery on an incorrect reading of Section 611.72(3), Wis. Stats. The statute provides:

- (3) Grounds for Disapproval. The commissioner shall approve the plan if the commissioner finds, after a hearing, unless a hearing is not required under sub. (3m), that it would not violate the law or be contrary to the interests of the insureds of any participating domestic corporation . . .

As the plain language of this section of the statute makes clear, the Commissioner shall approve the plan if he finds that “it [i.e. the plan] would not violate the law . . . “ The “plan” in the case before the Commissioner consists of the transactions contemplated by the Stock Purchase Agreement between the Selling Shareholders and the Applicant, the consummation of which is subject to approval by the Commissioner. The discovery PIC seeks has absolutely nothing to do with the “plan” or whether the “plan” violates the law. Instead, that discovery is focused on alleged action, or inaction, that allegedly took place before – in some cases many years before - the plan was submitted for the Commissioner's approval.

PIC suggests that discovery by it is necessary to determine whether there "should have been disclosure" of compensation payable to the investment banker hired by the Selling Shareholders, without alleging any connection between this issue and whether the "plan" would "violate the law." There is no such connection and this discovery should not be permitted.

PIC suggests that it should be allowed to conduct discovery into Dean's conduct – including the formation of the group of Selling Shareholders – that PIC claims may be inconsistent with Dean's April 14, 2003 disclaimer of control. First, whether ownership of 10.3% of PIC's voting securities by Dean constitutes “control” by Dean is a legal question that

was decided in Dean's favor by the OCI in 2003. No discovery will change that conclusion. Moreover, even if PIC were allowed to conduct discovery into this issue and found information to suggest that Dean did act "inconsistently" with the specific limits set forth in OCI's April 22, 2003 letter to Dean [Exhibit D to PIC's Memorandum], any such inconsistency cannot lead to a finding that the plan violates the law. As such, discovery into that legal issue should not be allowed.

Likewise, "whether Dean and the Selling Shareholders as a group (with 24% ownership) were themselves required to file a Form A" is a legal issue that presumes that Dean and the Selling Shareholders already "control" PIC when, in fact, all the Selling Shareholders have done is agreed to sell their PIC stock to APA if the Commissioner approves the transaction. In fact, whether Dean and the Selling Shareholders should have filed a Form A has nothing to do with whether the "plan" that is the subject of this proceeding would, if approved, violate the law. As such, discovery into that issue should not be allowed either.

Nor would discovery into the issue of whether Dean and the other Selling Shareholders were required to make notice filings under the Securities Exchange Act or Chapter 552, Wis. Stats. lead to the discovery of evidence with probative value. These alleged violations have nothing to do with whether the plan APA submitted for OCI approval in September of 2004 would violate the law. For example, Dean acquired and has held more than 5% of PIC's common stock for many years. PIC is now suggesting that an alleged violation of the law which, if it occurred, occurred years ago, and about which PIC had full knowledge, should cause the Commissioner to disapprove this "plan." This suggestion is inconsistent with the statute and discovery into these alleged violations should not be allowed.

Finally, PIC's request for discovery as to whether entering into the Stock Purchase Agreement was an "attempt" to acquire control of PIC without the Commissioner's approval is specious. The Stock Purchase Agreement is, by its explicit terms, subject to, and cannot be consummated, without the Commissioner's approval. Its execution could not have been a "violation of the law" that should cause the Commissioner to not approve the "plan" when it is the plan that the Commissioner is being asked to approve. Allowing discovery into that issue would not lead to the discovery of information of probative value.

### CONCLUSION

Since the discovery PIC seeks has absolutely nothing to do with the "plan" or whether the "plan" violates the law, PIC's motion for leave to conduct discovery of the Selling Shareholders should be denied.

Dated this 17th day of June, 2005.

Respectfully submitted,



---

Ann M. Maher  
Andrew J. Guzikowski  
WHYTE HIRSCHBOECK DUDEK S.C.  
555 E. Wells Street, Suite 1900  
Milwaukee, WI 53202  
(414) 273-2100