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In the Matter of the Proposed Acquisition of Control of  
Physicians Insurance Company of Wisconsin, Inc. by  
ProAssurance Corporation, the Applicant

BRIEF OF PROASSURANCE  
CORPORATION IN OPPOSITION  
TO REQUEST FOR ADMISSION  
AS A PARTY BY  
DR. DAVID MOSS

Case No. 06-C29893

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### FACTS

On December 21, 2005, ProAssurance Corporation ("ProAssurance") filed a Form A with the Office of the Commissioner of Insurance ("OCI"). The Form A relates to the proposed merger of Physicians Insurance Company of Wisconsin, Inc. ("PIC") into a subsidiary of ProAssurance pursuant to an Agreement and Plan of Merger, between ProAssurance and PIC and dated December 8, 2005 (as amended, the "Agreement" or the "Plan"). The Agreement and the merger have been unanimously approved by the Board of Directors of PIC, subject to OCI and PIC shareholder approval.

Dr. David H. Moss, for himself and as Custodian for Starr H. Moss UWIUTMA and as Trustee for Emergency Resources Group 401(k) Plan (collectively, the "Moss Group"), has filed a Request for Admission as a Party dated January 12, 2006 (the "Request for Admission as a Party").

The Request for Admission as a Party states the following as the basis for the Moss Group to participate in the Form A proceeding:

5. The [Moss Group has] a substantial interest that may be affected by the Commissioner's decision following the hearing because, if the Commissioner determines to withhold approval of the Plan, the [Moss Group] will be prevented from selling their shares of PIC common stock to ProAssurance pursuant to the Agreement and Plan of Merger. Further, the failure of the Commissioner to approve the Plan or the failure of the Plan to be consummated for any reason could result in the Commissioner re-opening the suspended Form A Proceeding of [American Physicians Assurance Corporation's] proposed acquisition of PIC (Case # 04-C29283). This could potentially result in the unwinding of APA's prior acquisition of 157 shares from the [Moss Group]. The [Moss Group] could effectively be prevented from disposing of any or all of their shares of PIC common stock, all to their substantial economic detriment.

## LEGAL STANDARD

OCI recently reviewed the legal standard for participation as a party to a Form A proceeding.<sup>1</sup> The statutory standard is stated in Section 227.44 (2m) of the Wisconsin Statutes:

Any person whose substantial interest may be affected by the decision following the hearing shall, upon the person's request, be admitted as a party.

As explained by OCI:

The courts have not construed this provision, but have addressed the closely related standard for a "person aggrieved" under s. 227.53, Stat. The Wisconsin Supreme Court describes that standard as follows:

"The first step under the Wisconsin rule is to ascertain whether the decision of the agency directly causes injury to the interest of the petitioner. The second step is to determine whether the interest asserted is recognized by law. This approach is similar to the two-pronged standing analysis outlined by the United States Supreme Court . . . as follows: (1) Does the challenged action cause the petitioner injury in fact? and (2) is the interest allegedly injured arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question?" Waste Management of Wisconsin, Inc. v. Department of Natural Resources, 144 Wis. 2d 499, 505 (1988).

As further noted by OCI in that decision:

The interests protected by s. 611.72, Stat., include protection of the insureds, the acquired insurer's ability to satisfy standards for licensure, a competitive marketplace, the financial stability of the acquired insurer, the interests of present and future policy holders, the public interest, and competent and trustworthy management (s. 611.72(3), Stat.).

### THE MOSS GROUP FAILS TO MEET THE LEGAL STANDARD FOR ADMISSION AS A PARTY

According to the Request for Admission as a Party, the potential injury of the Moss Group is economic injury as shareholders of PIC. That potential injury is not an interest protected by Section 611.72 of the Wisconsin Statutes. Section 611.72 protects the interests of the insureds and the general public. In establishing the grounds for disapproving a merger or other acquisition of control, Section

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<sup>1</sup> Decision on Standing and Discovery, 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 (Case No. 04-C29283).

611.72(3) makes no mention of shareholders, their economic interests, or the fairness of the transaction to the shareholders. In fact, the drafters of Section 611.72 stated the following about Section 611.72 and the interests of the shareholders:

The position of this section is that as far as possible, the business judgment of the owners of insurance corporations should not be reviewable by the commissioner, so far as that relates only to shareholder interests. . . .

. . . [T]his section does not grant the commissioner . . . power [to pass up on the fairness of a transaction].

L. 1971, ch. 260, Note, pp. 888, 889

As with the request made by Waste Management in the case quoted above by OCI, the alleged injury to the Moss Group is not within the zone of interests to be protected or regulated by the statute. The same result must follow here: "an argument for standing based on alleged harm to an economic interest [as shareholders, in the case of the Moss Group] must fail." Waste Management, 144 Wis. 2d at 508.

ProAssurance appreciates the Moss Group's interest in having this merger consummated. That too is the interest of ProAssurance.

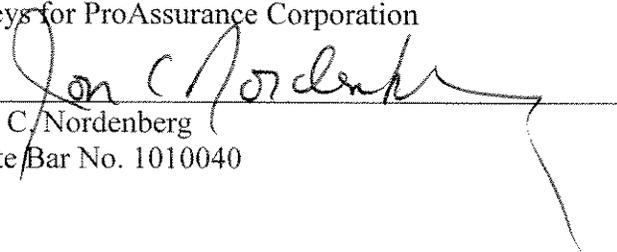
ProAssurance also believes that consummating the merger as soon as reasonably possible will serve to expedite the success of the merger. Therefore, ProAssurance opposes the admission of the Moss Group and other parties not meeting the requisite legal standard. However, ProAssurance remains willing to provide the Moss Group with any public information about either PIC or ProAssurance that the Moss Group may reasonably request.

As was recognized by the drafters of Section 611.72, even if the Moss Group did not approve of the merger, the Moss Group's interests are protected by the dissenter's rights granted under Subchapter XIII of the Wisconsin business corporation law, Chapter 180 of the Wisconsin Statutes. L. 1971, ch. 260, Note, p. 887.

Dated this 11th day of April, 2006.

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