

BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF DELAWARE

In Re: The proposed affiliation of)
BCBSD, INC., doing business as)
Blue Cross Blue Shield of Delaware,) Docket No.
with HIGHMARK INC.)

RESPONSE OF BCBSD, INC. TO THE APPLICATION OF
DR. JO ANN FIELDS, M.D.,
FOR PARTY STATUS

NOW COMES BCBSD, Inc. (“BCBSD”) in opposition to the pending application for party status submitted by Jo Ann Fields, M.D (“Dr. Fields”).¹

1. Pursuant to paragraph 4 of the Pre-Hearing Order issued by the Insurance Commissioner (the “Commissioner”) on October 20, 2010, persons seeking status as a “Party” to this proceeding must demonstrate that they have: 1) a significant pecuniary interest in the proceeding; 2) which interest is not adequately represented by an existing party; and 3) the protection of which interest otherwise will be impaired or impeded unless such person is admitted as a party. While BCBSD respects and appreciates the interest and concern of Dr. Fields, BCBSD believes that the existing Parties to the proceeding can more than adequately represent her interests. Furthermore, because Dr. Fields will have ample opportunity to submit evidence and testimony into the record, her entry into the proceeding is unnecessary in order to observe the making of the record, and apprise the Hearing Officer of any concerns she may have, when a hearing is held on the merits. However well-intentioned Dr. Fields may be, her

¹ An additional application for party status was filed by The Honorable Michael S. Katz, M.D. BCBSD is advised that this application has been withdrawn as of January 8, 2011.

admission as a party will only serve to unnecessarily slow and complicate the administrative process.

2. Dr. Fields' application for party status, attached hereto as Exhibit A, is based upon her assertion that she purchases her health insurance coverage from BCBSD in the individual market, and that the regulatory process will provide an opportunity to change the insurance Department's rate review processes. In essence, Dr. Fields asserts an interest as a policyholder or subscriber of BCBSD, and wishes to leverage this process for the unrelated purpose of overhauling the regulation of health insurance rates.

3. It is manifest that the standard for review of party status requests set forth in the Commissioner's Pre-Hearing Order dated October 20, 2010 (the "Pre-Hearing Order") is patterned after Civil Rule 24, which provides:

(a) Intervention of right. -- Upon timely application anyone shall be permitted to intervene in an action: (1) When a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

In the context of a civil lawsuit, under a motion to intervene under Civil Rule 24 an intervenor's interest is adequately represented by an existing party if, as between themselves, their interests are parallel and of the same intensity. *See in re RJR Nabisco, Inc. Shareholders Litigation*, 576 A.2d 654, 661 (Del. Ch. 1990). In this matter, the Pre-Hearing Order borrows the statutory standards for reviewing a change of control set forth in 18 *Del. C.* § 5003(d), thereby establishing the universe of relevant issues in this proceeding. Section 5003(d) provides as follows:

a. After the change of control, the domestic insurer referred to in subsection (a) of this section would not be able to satisfy the requirements for the

issuance of a license to write the line or lines of insurance for which it is presently licensed;

b. The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this State or tend to create a monopoly therein. In applying the competitive standard in this paragraph:

1. The informational requirements of § 5003A(c)(1) of this title and the standards of § 5003A(d)(2) of this title shall apply;

2. The merger or other acquisition shall not be disapproved if the Commissioner finds that any of the situations meeting the criteria provided by § 5003A(d)(3) of this title exist; and

3. The Commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;

c. The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

d. The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;

e. The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

f. The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

4. Clearly, these standards are designed to ensure that the interests of policyholders are considered, and by application of these standards to the transaction, the interests of BCBSD subscribers such as Dr. Fields are adequately protected by the participation of the Insurance Department as a party. Furthermore, the Attorney General is also a party to this proceeding under the doctrine of *parens patriae*, thus adding the protections of a second elected official's

perspectives and advocacy on behalf of Delaware stakeholders, including BCBSD subscribers such as Dr. Fields. The duties of these administrative agencies, and thus their relative interests, run in parallel to those of Dr. Fields, as a BCSD subscriber, and nothing in Dr. Fields application suggests that these interests are of inadequate intensity.

5. A recent regulatory proceeding involving the acquisition of control of certain Delaware subsidiaries of Royal & SunAlliance USA, Inc., required the Commissioner's hearing Officer, Professor Lawrence A. Hamermesh, Esquire, to address the vigorously contested question of whether a person's status as policyholder or insured gave such person the right to intervene in the regulatory proceeding under 18 *Del. C.* § 5003. Professor Hamermesh noted that the interests of policyholders were more than adequately represented by the Insurance Department and held that status as policyholder was not sufficient to confer a right to intervene in the proceeding as a full fledged party:

The term "interest" as used in Section 5003(d)(2) is not defined by statute or case law, and is by no means self-defining. It should therefore be construed in a manner consistent with the governing statutory objectives and regulatory framework. All agree that the protection of policyholders is the paramount objective of Delaware's body of insurance regulation. And with regard to the regulatory framework, it is clear that "[i]n Delaware, as in most states, the Insurance Commissioner is charged with the responsibility of providing [] scrutiny and assessing risk to Delaware policyholders by enforcing the laws and regulations with their best interests in mind." *In the Matter of Proposed Affiliation of BCBSD, Inc.*, 2004 Del. Super LEXIS 333, *53 (Oct. 4, 2004). The protection of policyholders is thus the primary function of the Commissioner. The statutes do not place responsibility for protecting policyholders in the realm of private enforcement through litigation or an equivalent process. Therefore, in the absence of substantial evidence that the Commissioner – through his general investigative and supervisory powers, and through the conduct of this hearing process – is incapable of discharging his statutory obligation to review change of control transactions to determine whether they "prejudice the interest of [] policyholders" (Section 5003(d)(3)(c)), some distinct, substantial interest beyond that as a policyholder should be required as a basis for entitlement to party status in proceedings under Section 5003. However significant their interests as

policyholders may be, none of the Moving Policyholders has articulated and demonstrated such a distinct “interest” of the sort that would justify their intervention as parties in this matter.

In the matter of the Proposed Affiliation of Royal Indemnity Company, et al by Arrowpoint Capital Company, et al., Docket No. 313 (Del. Ins. Dept. Dec. 20, 2006). Exhibit B.

6. Professor Hamermesh’s holding is consistent with the view of courts in other jurisdictions, which have held that regulators, acting in their capacity as regulator, represent the interests of all citizens. Accordingly persons seeking to intervene must rebut the presumption that the regulatory body cannot represent their interests. *See Public Service Company of New Hampshire v. Patch, et. al.*, 136 F.3d 197, 207 (1st Cir. 1998) (citing *Mausolf v. Babbiot* 85 F.3d 1295, 1330 (8th Cir. 1996)). Furthermore, in the face of shared objectives (in this case, protection of the interests of policyholders and the public) a putative intervenor must demonstrate collusion, non-feasance, adversity of interest or incompetence on the part of an existing party. *See Great Atlantic and Pacific Tea Company, Inc. v. Town of East Hampton*, 178 F.R.D. 39, 42-43 (E.D.N.Y. 1998)(citing cases). As with the policyholders in *Royal Indemnity*, Dr. Fields fails to demonstrate either that the Commissioner is incapable of representing the interests of BCBSD subscribers generally, or that Dr. Fields has some special interest above and beyond that of any other BCBSD subscriber.

7. In the CareFirst, Inc./BCBSD administrative proceeding before this Hearing Officer, party status was denied for Physicians Health Service because, *inter alia*, the interest of its members was no more than a “general interest shared by many” rather than a significant pecuniary interest. *See In Re: Proposed Affiliation of BCBSD Inc. with CareFirst, Inc.*, Docket No. 99-09, (Del. Ins. Dept. September 7, 1999). Exhibit C. Similarly, while Dr. Fields may have a general interest in the proceeding as one of the hundreds of thousands of BCBSD

subscribers, she is unable to demonstrate the requisite “significant pecuniary interest” that sets her apart from her fellow subscribers. To find otherwise is to create a precedent in which any and every policyholder of every Delaware domiciled insurance company will have a right to intervene and be afforded all of the procedural rights that accompany party status in a hearing under § 5003. This in turn would have the potential of paralyzing the entire administrative process under this statute.

8. Dr. Fields’ assertions regarding the transparency of the Insurance Department’s rate review process do not change this outcome. The Insurance Department’s review of rates is a process governed under various statutory provisions within the Insurance Code, including, for example, 18 *Del. C.* Ch. 25 (Rates and Rating Organizations) and 18 *Del. C.* Ch. 72 (Small Employer Health Insurance). If Dr. Fields has a concern regarding the manner in which the Insurance Department reviews rates, her remedy is to petition the Insurance Commissioner – and ultimately the General Assembly – to change the statutes, regulations and administrative practices that govern the rate review process.

9. Importantly, denial of party status does not exclude Dr. Fields from the administrative process. As a member of the public, Dr. Fields can review all documents submitted into the record that have not been given confidential treatment, she may submit documents into the record if she wishes and she will have a full opportunity to voice her concerns with testimony on the record. Given this, her admission as a full-fledged party would add little to the proceeding.

WHEREFORE, because Dr. Fields has not demonstrated a significant pecuniary interest in the transaction and because her interests are adequately represented by the Insurance Department and the Attorney General, BCBSD respectfully requests that the application of Dr. Jo Ann Fields, M.D. for party status be denied

PARKOWSKI, GUERKE & SWAYZE, P.A.

By  _____

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Date: January 14, 2011

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Michael W. Teichman (DE Id. No. 3323)

EXHIBIT A

JO ANN FIELDS, M.D.

P.O. BOX 615, 2 EAST HIGH STREET • FELTON, DELAWARE 19943
TEL: 302-284-1169 • FAX: 302-284-8827

December 28, 2010

Linda Sizemore
Director of Company Regulation
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, Delaware 19904

Dear Ms. Sizemore:

I request to be party to the review of the proposed affiliation between Blue Cross Blue Shield of Delaware (BCBSD) and Highmark, Inc. As a customer of BCBSD I have a financial stake. I purchase my health insurance from BCBS in the individual and small group market where I am particularly vulnerable to above average rate increases.

In fact, when my policy renewed in July 2010 I had a 13% rate increase. I wrote to the Department of Insurance and later filed a FOIA request with the Department of Insurance to get an explanation for the rate increase. I was told in a letter dated 8/10/10 from Deputy Insurance Commissioner, Gene Reed, that this information is "private commercial information" and "is proprietary and deemed non-public and not subject to disclosure by FOIA request." It seems to me that BCBSD is not a totally private organization. It is a not-for-profit plan and as I understand it has a charter with the state to provide not-for-profit health insurance coverage to the people of Delaware.

I believe that the affiliation review process is a good opportunity for the state to write into the affiliation agreement certain guarantees that BCBSD and Highmark will open up their records to a more rigorous rate review process by the Insurance Commissioner and also allow public review and comment. I believe that my participation will help to achieve that goal.

In particular I would pursue three basic issues:

- 1) If one goal of the affiliation is to achieve operating efficiencies for the two companies, how will those efficiencies translate into lower rates for customers and how will customers know?
- 2) As part of the affiliation agreement, BCBSD and Highmark should agree to a process by which rate increases will be subject to public review and comment.
- 3) I believe the Department of Insurance has recently received a \$1 million grant to implement a new health insurance rate review process. The affiliation review process would be a good opportunity for the Insurance Commissioner to present her department's progress on that grant by explaining how she could conduct a rate review using BCBSD/Highmark as a specific example.

I am fully aware that the technical and legal issues here are beyond my understanding. But the customers and the public deserve some assurance that their interests are being represented.

Thank you for your consideration.

Sincerely,

Jo Ann Fields, MD
Jo Ann Fields, MD

Sent to:

Linda Sizemore by email and hand delivered
David Swayze by email and US mail
Michael Houghton by email and US mail
Frederick Campbell by email and US mail
Timothy Mullancy by email and US mail

EXHIBIT B

THE INSURANCE DEPARTMENT OF THE STATE OF DELAWARE

IN THE MATTER OF:

The Proposed Acquisition of Royal Indemnity)
Company, a Delaware domiciled)
property/casualty insurance company, Security)
Insurance Company of Hartford, a Delaware)
Domiciled property/casualty insurance company,)
Guaranty National Insurance Company, a) Docket No. 313
Delaware domiciled property/casualty insurance)
Company, and Royal Surplus Lines Insurance)
Company, a Delaware domiciled)
property/casualty insurance company, by)
Arrowpoint Capital Corp., a Delaware)
Corporation, and Arrowpoint Capital, LLC, a)
Delaware limited liability company)

ORDER ON PRE-HEARING MOTIONS

1. This proceeding involves a proposed transaction (the "Royal US Acquisition") in which Arrowpoint Capital Corp. and Arrowpoint Capital LLC (the "Applicants") would acquire the partnership interests in Arrowpoint General Partnership (the "Partnership"). The Partnership owns 100% of the common stock of Royal & SunAlliance USA, Inc. ("RSA USA"), which in turn indirectly owns 100% of the common stock of four Delaware domestic insurers (the "Insurers"), including Royal Indemnity Corporation ("Royal Indemnity"). As a result, the Royal US Acquisition requires the approval of the Commissioner of Insurance of the State of Delaware (the "Commissioner") pursuant to 18 *Del.C.* §5003 ("Section 5003").

2. Current directors, officers and certain employees of RSA USA are the beneficial owners of the Applicants. The proposed Royal US Acquisition, in substance, would result in the transfer of ownership and control of the Insurers from The Royal & Sun Alliance Insurance Group plc ("RSA plc") to the Applicants.

3. In proceedings in this matter prior to the appointment of the undersigned as Hearing Officer, various persons (identified collectively as "the Moving Policyholders") who assert significant claims or potential claims as holders of insurance policies issued by the Insurers submitted a variety of requests for pre-hearing relief. Specifically:

a. The following Moving Policyholders seek to be accorded the status of formal parties to this proceeding (a number of these persons have also explicitly sought leave to take discovery, and such requests will be treated as ancillary to, and subsumed within, their applications for status as parties): General Motors Corporation ("GM");

DaimlerChrysler Corporation ("DC"); The Student Loan Corporation ("SLC"); Federal-Mogul Corporation ("F-M"); MBIA Insurance Corporation ("MBIA"); Wells Fargo Bank, as trustee ("WF"); World Trade Center Properties, LLC, Silverstein Properties Inc., Silverstein WTC Mgmt. Co. LLC 2, 2 World Trade Center LLC, 4 World Trade Center LLC, and 5 World Trade Center LLC (collectively "WTC"); The Port Authority of New York and New Jersey and 1 World Trade Center LLC (collectively "Port Authority"); and Westfield WTC LLC, Westfield WTC Holding LLC, Westfield Corporation Inc. and Westfield America, Inc. (collectively "Westfield").

b. Several Moving Policyholders (GM, DC, SLC, MBIA, WF, Port Authority and Westfield) seek continuance of the hearing in this matter in order to permit discovery on matters asserted to be related to the issues in this proceeding. In particular, GM seeks a continuance of 120 days from the time of completion of the Form A filing in this matter, in significant part for the purpose of having this proceeding informed by the disposition of certain of the issues in its litigation against Royal Indemnity in the Circuit Court of Oakland County, Michigan (the "Michigan litigation").

c. WTC has also moved for the appointment of an independent actuary for the purpose of evaluating whether the Insurers have adequately reserved for the claims (pending and potential) against them. WTC has also sought leave to submit the Declaration of Prof. David F. Babbel and Hon. Robert E. Wilcox, MAAA (the "Babbel/Wilcox Declaration").

4. The Moving Policyholders have submitted an array of speaking motions and letter memoranda in support of their various applications, and the Applicants and the Delaware Department of Insurance ("DID") have responded in kind. Counsel for these participants submitted additional oral comments on the various applications at a two and a half hour telephonic pre-hearing status conference on December 14, 2006 (the "December 14 Status Conference").

5. The recitation of background and reasons for the determinations embodied in this Order is necessarily truncated and preliminary, and is not intended to set forth final determinations of either fact or law that will control the disposition of the matter upon final public hearing. As recited more formally below, however, and for the reasons recited briefly below, WTC's application for leave to submit the Babbel/Wilcox Declaration is granted, but the other applications of the Moving Policyholders are denied.

6. Not surprisingly in light of the sophistication of their counsel, the Moving Policyholders support their various motions with a superficially compelling array of legal authorities and appeals to practical and policy concerns. Their legal arguments in support of their motions for party status center on Section 5003(d)(2), specifically its provision that in connection with the public hearing on a matter such as this, "any person ... whose interest may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the Superior Court of this State." Because of their

status as holders of policies issued by the Insurers (policies that involve upwards of hundreds of millions of dollars), the Moving Policyholders maintain that they have an "interest" that "may be affected" by this proceeding, and they therefore have a statutory right to "conduct discovery proceedings" and "present evidence, examine and cross-examine witnesses" as if this were an action pending in the Superior Court.

7. This statutory argument does not adequately take into account competing statutory provisions and objectives:

a. Section 5003(d)(2) also requires that the public hearing "be held within 30 days after the [Form A] is filed," and that the hearing occur upon as little as "7 days' notice to such other persons [other than "the person filing the statement"] as may be designated by the Commissioner." The statute does not clearly explain how the Commissioner could satisfy the 30-day hearing deadline and still afford persons with an "interest" in the matter the right to take discovery as under the Rules of the Superior Court. What is clear, however, is that Section 5003 contemplates a relatively expedited proceeding for action on applications for approval of a change of control of a Delaware domestic insurer. An expansive view of this sort of proceeding as an adversarial forum equivalent to ordinary civil litigation undermines that clear statutory policy of expedition. This consideration militates against allowing intervention in this proceeding on a basis that is more liberal than the standard generally applicable to intervention in civil actions in the Superior Court (*see* Superior Court Civil Rule 24(a)(2), denying intervention as of right if the applicant's interest is adequately represented by existing parties).

b. The term "interest" as used in Section 5003(d)(2) is not defined by statute or case law, and is by no means self-defining. It should therefore be construed in a manner consistent with the governing statutory objectives and regulatory framework. All agree that the protection of policyholders is the paramount objective of Delaware's body of insurance regulation. And with regard to the regulatory framework, it is clear that "[i]n Delaware, as in most states, the Insurance Commissioner is charged with the responsibility of providing [] scrutiny and assessing risk to Delaware policyholders by enforcing the laws and regulations with their best interests in mind." *In the Matter of Proposed Affiliation of BCBSD, Inc.*, 2004 Del. Super. LEXIS 333, *53 (Oct. 4, 2004). The protection of policyholders is thus the primary function of the Commissioner. The statutes do not place responsibility for protecting policyholders in the realm of private enforcement through litigation or an equivalent process. Therefore, in the absence of substantial evidence that the Commissioner – through his general investigative and supervisory powers, and through the conduct of this hearing process – is incapable of discharging his statutory obligation to review change of control transactions to determine whether they "prejudice the interest of [] policyholders" (Section 5003(d)(3)(c)), some distinct, substantial interest beyond that as a policyholder should be required as a basis for entitlement to party status in proceedings under Section 5003. However significant their interests as policyholders may be, none of the Moving Policyholders has articulated and demonstrated such a distinct "interest" of the sort that would justify their intervention as parties in this matter.

8. With regard to practical and policy concerns, however, the Moving Policyholders urge that the proposed Royal US Acquisition is a conflict transaction (in light of the equity interest of current management in the acquiring entities), and therefore requires regulatory oversight in a manner that cannot be, and is not being, applied by the DID in this matter. In essence, the Moving Policyholders maintain that regulatory oversight will be deficient as a matter of law in the absence of an adversarial process (involving discovery and cross-examination, as in litigation) or at least some independent alternative (such as the appointment of an independent actuary) to test the adequacy of the proposed Royal US Acquisition from the perspective of protecting the Insurers' policyholders.

9. The Moving Policyholders, however, have not demonstrated (at least at this point) that the Commissioner and this proceeding are incapable of protecting the policyholders' interests in the absence of their intervention and conduct of adversarial proceedings in this matter:

a. Preliminarily, the Moving Policyholders have not demonstrated that the proposed Royal US Acquisition is tainted by unique or unusual conflicts of interest. In conflict transactions generally, the primary concern is that directors and officers will use their control to structure a transaction to favor themselves at the expense of their corporation and its stockholders. In view of that sort of concern, the party meriting protection here would be RSA plc, the seller in the transaction. There is no substantiated conflict, however, between RSA's directors and officers, on one hand, and the Insurers' policyholders, on the other: to the contrary, it is at least equally plausible that the directors and officers would be anxious to extract as much from RSA plc as possible in the proposed transaction for the benefit of the Insurers (and, indirectly, for the benefit of their policyholders), since the more financially secure the Insurers become under the transaction, the more profit and job security the directors and officers might be able to achieve in the long run. To be sure, WTC suggests that management of the Insurers (like any equity holder of a domestic insurer) will have an incentive to minimize payouts to policyholders, unmitigated by any countervailing reputational incentive to promote the writing of additional policies. While that suggested incentive may be one that should be taken into account in evaluating the proposed Royal US Acquisition at the public hearing in this matter, it is not one that is sufficiently concrete at this stage to require a determination that the DID is incapable of effectively representing policyholder interests in evaluating the proposed transaction (even without the proposed transaction, and while under the ultimate control of RSA plc, the Insurers already seem to have had no lack of zeal to minimize claims brought by GM, DC, MBIA and WTC).

b. The Moving Policyholders question the efficacy of the DID's review of the proposed Royal US Acquisition, asserting that in evaluating the Insurers' financial condition and reserves, the DID has not directly contacted any of the Moving Policyholders to obtain their input in assessing the appropriate amounts to reserve on claims that they assert. The Moving Policyholders, however, point to nothing in any statute, rule or case precedent that requires that the DID's assessment of the Insurers'

reserves must include an invitation to claimants to present evidence and argument concerning their respective claims.

c. The Commissioner's powers with respect to this proceeding, moreover, by no means exhaust his authority to protect policyholder interests. GM expresses particular concern, for example, that the proposed Royal US Acquisition would grant "management insiders the opportunity to extract millions of dollars from the acquired companies to the detriment of the policyholders." (Docket #15 at 3). Even disregarding the limitations on distributions by the Insurers established in the proposed Royal US Acquisition, however, GM's stated concern is significantly addressed by statutes that would require the Insurers to give notice to the DID of proposals to declare and pay dividends to the Insurers' owners (*see* 18 Del. C. §5004(e), §5005(b)), and that require the DID to periodically examine the financial condition of domestic insurers (*see* 18 Del. C. §§318 *et seq.*).

10. Denial of the Moving Policyholders' applications for party status does not deny them a meaningful opportunity to call attention to their concerns about the proposed Royal US Acquisition. They have not squarely contended that such denial would unconstitutionally deprive them of due process of law, and any such contention would lack merit. *See LaFarge v. Cmwlth. of Pa., Ins. Dep't.*, 735 A.2d 74, 78 (Pa. 1999) (in proceeding on insurer's proposal to place asbestos and environmental liabilities in a separate operating entity, notice and opportunity to comment "were adequate to satisfy the requirements of due process," and the "imposition of additional procedures such as sworn testimony, cross-examination, a full stenographic record, and opportunity to submit briefs would entail extensive delay [and] would not materially enhance the interests of [policyholders]"). In this proceeding, the Moving Policyholders have had and will have significant opportunities to present their concerns. They have already submitted comments that will surely need to be addressed in connection with the public hearing in this matter. The Babbel/Wilcox Declaration, for example, raises a number of significant questions (*e.g.*, about the scope of and responsibility for unfunded pension obligations) that the Applicants and the DID should address in regard to the statutorily required evaluation of the effect of the proposed transaction on the Applicants' financial condition and the Insurers' financial stability. It can be expected that the Moving Policyholders will submit still more comments on the proposed transaction, and those comments should inform the outcome of this proceeding.

11. The Moving Policyholders' requests for continuance become largely moot once it is determined that they will not have party status in this matter and therefore will not be entitled to conduct discovery. GM suggests an independent reason, however, why a continuance would be appropriate, so it is necessary to address that reason here. GM's suggestion is that the hearing in this matter should await the outcome of proceedings in the Michigan litigation, since the trial in that litigation, scheduled to begin in February 2007, could soon result in a trial court-level resolution of Royal Indemnity's liability to GM on substantial policy claims, and that the adequacy of the Insurers' reserves would become clearer with the benefit of such a resolution. There are at least two reasons, however, to reject this suggestion as a predicate for an extended continuance here. First, it is not a foregone conclusion that developments in the Michigan litigation will occur as

promptly as GM expects: damages issues may be bifurcated and deferred, as Royal Indemnity is seeking, or proceedings may be delayed for any number of other reasons inherent in the litigation process. Second, and more importantly, the previously mentioned statutory policy of expedition counsels against even a limited stay of this administrative proceeding in favor of civil litigation pending elsewhere.

12. With respect to WTC's application for the appointment of an independent actuary, the Applicants raise the threshold question of whether the Hearing Officer in a proceeding of this sort has the statutory authority to require such an appointment. WTC points out that in the proceeding involved in *LaFarge, supra*, the Pennsylvania Insurance Department engaged an independent actuary, and that under Section 5003(d)(3) the Commissioner may retain actuaries "not otherwise part of the Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing the proposed acquisition of control." The question of the Hearing Officer's authority to require the appointment of an independent actuary may be academic in any event, since WTC is surely correct in asserting, alternatively, that the Hearing Officer could at least recommend that the Commissioner appoint an independent actuary. For reasons previously set forth, however, the application for an order requiring or recommending the appointment of an independent actuary will be denied. Any lack of a report by such an actuary may be taken into account in evaluating the application for approval of the proposed Royal US Acquisition. In the meantime, however, there is no factual basis for a determination at this stage of the proceedings that the DID's evaluation to date suffers from some debilitating disqualification or inadequacy (see paragraph 7b, above).

13. For similar reasons, it is inappropriate to enter any direction to the Applicants or to the DID with respect to the content of the Applicants' Form A filing in this matter. The determination of the completeness of that filing is the responsibility of the DID. Whether that filing is a sufficient basis for approval of the proposed Royal US Acquisition is a different question, one that is to be addressed at the public hearing in this proceeding.

IN CONSIDERATION OF WHICH,

A. WTC's motion for leave to submit the Babbel/Wilcox Declaration is granted;

B. The various motions for party status, for discovery, for continuance and for appointment of an independent actuary are denied;

C. Notwithstanding such denial, the materials previously submitted by the Moving Policyholders, including the Babbel/Wilcox Declaration, will be considered as written comments on the proposed Royal US Acquisition, and such materials need not be resubmitted for purposes of such consideration, and the Moving Policyholders may submit additional written comment and argument in accordance with procedures to be established for the public hearing in this matter.

Lawrence A. Hamermesh

Prof. Lawrence A. Hamermesh
Hearing Officer

December 20, 2006

EXHIBIT C

BEFORE THE INSURANCE COMMISSIONER
IN AND FOR THE STATE OF DELAWARE

IN RE: Proposed Affiliation of BCBSD, :
INC., D/B/A Blue Cross and : Docket No. 99-09
Blue Shield of Delaware, :
with CareFirst, Inc. :
:

**PRE-HEARING ORDER ON REQUEST OF
PHYSICIANS HEALTH SERVICES OF DELAWARE, LTD.
TO INTERVENE AS A PARTY IN INTEREST**

By letter from its attorney dated April 28, 1999 Physicians Health Services of Delaware, Ltd., (“PHS”) request that it be considered a “party in interest” in the above-captioned matter. By further letter of August 18, 1999 counsel requests party in interest status for two individual physician members of PHS who are policyholders of and have contracts with Blue Cross Blue Shield of Delaware (“BCBSD”).

As hearing officer, I have reviewed these written submittals on behalf of PHS and the two individual physicians, as well as written responses objecting to the interventions. A hearing on the requests was held on August 23, 1999 at which I denied the requests of PHS and the two physicians for party status. This written order memorializes the ruling.

The request of the two physicians for party status is denied because it was not timely. The published notice of the proceedings established a deadline of April 30, 1999 to apply for party status. Two such requests were filed prior to that date. However, the two physicians did not seek to intervene until August 18, 1999, three and one half months after the deadline imposed by the Commissioner and after a hearing date has been set. This belated request must be denied.

With respect to the application of PHS the hearing officer found that PHS failed to show a sufficient, immediate interest in the subject matter of the proceedings to support its application for party status, for the reasons discussed below.

Under the Insurance Commissioner's ("Commissioner") Pre-Hearing Order ("Order"), only those persons with a "substantial pecuniary interest" in the proceeding may intervene as "parties in interest." (Such persons are distinguished from "interested persons" who are given leave to appear at the hearing and offer testimony.) The Order also carefully circumscribes the purposes of the proceedings as being threefold: whether the proposed affiliation of BCBSD and CareFirst 1) violates Delaware law, 2) threatens the capital adequacy of BCBSD or 3) adversely affects BCBSD policyholders. Because the hearing officer is directly to apply the standards contained in Ch. 50 of Title 18 of the Delaware Code, the inquiry must necessarily touch on the effect the affiliation may have on competition among health care insurers in the State.

A review of PHS's application shows that it fails to meet the standards set out in the Commissioner's order. While the nature of PHS's business and its current activities are not entirely clear from the record, PHS acknowledges that it has no existing contracts with BCBSD. It asserts, however, that it may have such contracts in the future. This showing is simply insufficient to establish a "significant pecuniary interest" as required by the Order and PHS's assertion of a possible contractual relationship in the future is speculative and does not support the direct claim or right required for party status.

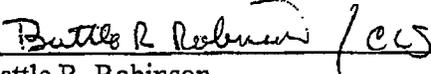
PHS also asserts, however, that a number of physicians who are shareholders in and/or members of PHS have existing contracts with BCBSD. Further, they may wish to have such contracts in the future. PHS asserts that physicians will be at a disadvantage in negotiating contracts with the larger entity which will result from the affiliation.

Even if I assume that a contractual relationship between BCBSD and physician members/shareholders of PHS gives PHS a sufficient interest to seek party status, I conclude that issues related to the negotiations and implementation of provider-contracts are not directly involved

in the subject matter of the current proceeding. The fundamental issue before the Delaware Insurance Commissioner is the capital adequacy of a health insurance provider of this State. That inquiry simply does not encompass a review of the provider's relationship with individual physicians. While the capital adequacy of BCBSD certainly impacts upon physicians - as it does numerous others who do business with it - that appears to be a more general interest shared by many rather than a specific pecuniary interest of PHS and its shareholders and members.

It also appears that neither PHS nor its shareholders/members have a specific or direct interest in the scope of the other two inquiries before the Commissioner: whether the affiliation comports with the Delaware law and whether it adversely affects policy holders. In both of these issues PHS and its shareholder/members can assert only a general interests, an interest which can be adequately protected by the Attorney General and by its ability to appear and testify at the hearing. Similarly, PHS is not a competitor of BCBSD and so lacks any direct or substantial pecuniary interest that such status might confer under the Order.

For these reasons I have denied PHS's request to intervene as a party in interest. It may, however, participate in the hearing as an "interested party" where its views and concerns may be heard and considered.


Battle R. Robinson
Hearing Officer

Date: September 7, 1999