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Ref. No. 582871.01/020063.00005

August 21, 2009

FILED

AUG 21 2009

VIA MESSENGER

The Honorable Patricia D. Petersen
Presiding Officer
Chief Hearing Officer
Office of Insurance Commissioner of Washington
5000 Capitol Boulevard
Tumwater, WA 98501

Hearings Unit, OIC
Patricia D. Petersen
Chief Hearing Officer

**Re: In the Matter of the Proposed Acquisition of Control of:
Washington Casualty Company by Medical
Professional Mutual Insurance Company
Docket No. 09-0095
Hearing Date: Tuesday, August 25, 2009 at 10:00 a.m.**

Dear Judge Petersen:

Enclosed please find a notebook containing working copies of the following with regard to the hearing on the above referenced matter:

1. Opening Statement Offered on Behalf of Medical Professional Mutual Insurance Company and Washington Casualty Company;
2. Closing Argument Offered on Behalf of Medical Professional Mutual Insurance Company and Washington Casualty Company;
3. Final Order Approving Acquisition of Control (proposed);
4. Declaration of Richard W. Brewer (attaching pre-filed direct testimony). Mr. Brewer was physically unavailable to sign his declaration at the time of this filing, but he will do so before the hearing begins.
5. Declaration of Richard C. Helgren (attaching pre-filed direct testimony);
6. Declaration of John J. Donehue (attaching pre-filed direct testimony); and

The Honorable Patricia D. Petersen
August 21, 2009
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7. Declaration of Janice W. Allegretto Offered on Behalf of Medical Professional Mutual Insurance Company.

The originals of the above documents have been filed today and served upon Mr. Brown.

Very truly yours,


Jerry Kindinger

JK:sks

Enclosure

cc: Client (w/o encl.)
Charles D. Brown, Sr. (w/encl.)

FILED

AUG 21 2009

Hearing Room, OIC
Patricia D. Petersen
Chief Hearing Officer

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of the Proposed Acquisition of
Control of:

WASHINGTON CASUALTY COMPANY, A
Domestic Insurer and Wholly-Owned
Subsidiary of FINCOR HOLDINGS, INC.,

by

MEDICAL PROFESSIONAL MUTUAL
INSURANCE COMPANY,

the Applicant.

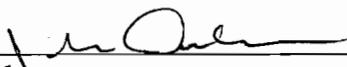
Cause No. 09-0095

DECLARATION OF JOHN J. DONEHUE

John J. Donehue, under penalty of perjury under the laws of the State of Washington, declares as follows:

1. I am Senior Vice President, Chief Financial Officer and Treasurer of Medical Professional Mutual Insurance Company. I am over the age of eighteen years old, and I make this Declaration based upon personal knowledge.
2. Attached hereto is a true and correct copy of my pre-filed direct testimony in the above-referenced matter. I am competent to testify in the matters set forth in my testimony, and I incorporate the contents of my pre-filed direct testimony into this Declaration.

Signed this 19th day of August, 2009 at Boston, MASSACHUSETTS.



John J. Donehue

**BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER**

In the Matter of the Proposed Acquisition of
Control of:

**WASHINGTON CASUALTY COMPANY,
A Domestic Insurer and Wholly-Owned
Subsidiary of FINCOR HOLDINGS, INC.,**

by

**MEDICAL PROFESSIONAL MUTUAL
INSURANCE COMPANY,**

the Applicant.

Docket No. 09-0095

**PRE-FILED DIRECT
TESTIMONY OF JOHN J.
DONEHUE OFFERED ON
BEHALF OF MEDICAL
PROFESSIONAL MUTUAL
INSURANCE COMPANY**

PRE-FILED DIRECT TESTIMONY OF JOHN J. DONEHUE

I. INTRODUCTION

1. Q. Please state your name for the record.

A. My name is John J. Donehue.

2. Q. Please state your business address.

A. ProMutual Group
101 Arch Street
Boston, Massachusetts 02110-1129

3. Q. Please state for the record your purpose for being here today.

A. I am here to testify in support of the proposed acquisition of control of Washington Casualty Company by Medical Professional Mutual Insurance Company, which I will refer to as "ProMutual."

Washington Casualty is a direct, wholly-owned subsidiary of FinCor Holdings, Inc., which I will refer to as "FinCor."

4. Q. By whom are you employed and in what capacity?

A. I am employed as the Senior Vice President, Chief Financial Officer and Treasurer of ProMutual.

5. Q. **What are your duties and responsibilities as Senior Vice President, Chief Financial Officer and Treasurer of ProMutual?**
- A. I have responsibility for ProMutual Group's financial functions including financial reporting, cash management, and treasury functions.
6. Q. **Please describe your educational background.**
- A. I have a BA and a BS from Northeastern University.
7. Q. **Are you a member of any industry or professional organizations?**
- A. Yes, I am a member of the Association of Mutual Insurance Accountants. I previously served on the Board of Managers and currently serve on the Investment Committee of the Property Casualty Initiative in Massachusetts.
8. Q. **How long have you been employed with ProMutual?**
- A. I have been employed by ProMutual since 1989 or for approximately 20 years.
9. Q. **How long have you held the position of Senior Vice President, Chief Financial Officer and Treasurer of ProMutual?**
- A. I have held the title of Chief Financial Officer since I joined ProMutual in 1989. I have held the title of Senior Vice President since 1996 and the title of Treasurer since 2005.
10. Q. **What positions did you hold prior to joining ProMutual?**
- A. I served as the deputy controller and the assistant treasurer of Commercial Union Insurance Company immediately prior to joining ProMutual. Prior to that, I was a manager of corporate accounting for Liberty Mutual Insurance Company.
11. Q. **Are you authorized to speak on behalf of ProMutual in this proceeding?**
- A. Yes, I am.
12. Q. **Could you provide us with a brief explanation of your involvement and role in the Transaction?**
- A. I was directly involved in certain portions of the negotiations and the due diligence that resulted in ProMutual and FinCor entering into the Merger Agreement.
13. Q. **In connection with your responsibilities, have you become familiar with and reviewed ProMutual's Form A Statement regarding the acquisition of control of Washington Casualty?**

A. Yes, I have reviewed ProMutual's Form A Statement as well as Amendment No. 1.

14. **Q. Is the Form A Statement, as amended by Amendment No. 1 and as presented to the Washington Office of Insurance Commissioner, to the best of your knowledge, true, accurate and complete?**

A. Yes, it is.

15. **Q. Have there been any material changes with respect to the information provided or required in the Form A Statement since the Form A Statement was filed with the Washington Office of Insurance Commissioner?**

A. Only as set forth in Amendment No. 1, which was filed to reflect changes to the proposed composition of FinCor's Board of Directors following the Transaction.

II. THE APPLICANTS' FINANCIAL CONDITION

1. **Q. Before we discuss the details of the Transaction, could you please give us some information about the Applicant's financial condition?**

A. Yes, I would be happy to.

- As of December 31, 2008, ProMutual had a risk based capital ratio of 510% of its authorized control level.
- For the year ended December 31, 2008 and the quarter ended June 30, 2009, ProMutual had total admitted assets of approximately \$2.2 billion.
- For the year ended December 31, 2008, ProMutual had net written premiums of approximately \$297.5 million and approximately \$128.3 million as of quarter end June 30, 2009.
- For the year ended December 31, 2008, ProMutual had net earned premiums of approximately \$298 million and approximately \$145 million as of quarter end June 30, 2009.
- For the year ended December 31, 2008, ProMutual had capital and surplus of approximately \$612 million and approximately \$659 million as of quarter end June 30, 2009.

As indicated by these results, ProMutual is financially strong.

2. **Q. Generally, can you describe the source of ProMutual's consolidated revenues?**

A. Consolidated revenues consist of earned premiums for policies issued and interest, dividends and gains generated from the investment portfolio.

3. **Q. Following the Transaction, what will be the financial condition of the combined entities?**

A. On a combined statutory basis we estimate combined revenues of approximately \$489 million, net income in excess of \$50 million, and combined assets approaching \$2.7 billion.

4. **Q. Is there anything about the financial condition of ProMutual that would jeopardize the financial stability of Washington Casualty or prejudice the interests of its policyholders?**

A. No. ProMutual is a well capitalized company. Maybe even more importantly, ProMutual is not borrowing any funds to pay the merger consideration.

III. TRANSACTION CONSIDERATION

1. **Q. What is the amount and nature of consideration being paid by ProMutual in connection with the Transaction?**

A. The consideration will have two components, both of which will be funded by ProMutual with cash on hand. The first portion is payable when the Transaction is consummated. I will refer to this as the "Closing Consideration." The Closing Consideration consists of \$182 million less an \$8 million allowance for certain costs associated with the Transaction and certain other liabilities, which I will refer to as "Pro Forma Adjustments."

The Closing Consideration is also subject to a post-closing adjustment to reflect any changes in the net book value of FinCor between December 31, 2008 and the closing date of the Transaction, which I will refer to as the "Closing Date." I will describe the calculation of the Closing Consideration and the post-closing adjustment in more detail later in my testimony.

2. **Q. What is the second portion of the consideration?**

A. The second portion payable by ProMutual relates to favorable loss and loss adjustment expense development, if any, of FinCor's two principal insurance company subsidiaries, Washington Casualty and MHA Insurance Company. This second portion, which I will refer to as the "Contingent Consideration," is payable in 2014. I will describe the calculation of the Contingent Consideration in more detail later in my testimony.

3. **Q. Is there any consideration being paid to the holders of FinCor preferred stock?**

A. Yes, each outstanding share of FinCor preferred stock will be cancelled and converted into the right to receive a one-time payment of \$1,000 per share, plus any accrued but unpaid dividends. The aggregate amount of all of the payments for the FinCor preferred stock will be equal to approximately \$8.9 million.

4. **Q. How is the amount payable as Closing Consideration determined?**

A. The Closing Consideration consists of \$182 million, less the \$8 million allowance for the Pro Forma Adjustments. Of the remaining \$174 million, ProMutual will hold back \$10 million to cover any negative developments in the net book value of FinCor between December 31, 2008 and the closing date of the transaction.

As a result, an aggregate amount of \$164 million will be payable to the holders of FinCor common stock, restricted stock and options that were outstanding immediately prior to the consummation of the Transaction. For ease of reference, I will refer to these holders of outstanding FinCor common stock, restricted stock and options as "Interest Holders."

5. **Q. What amount is payable to Interest Holders for each share of FinCor common stock, restricted stock or common stock represented by options?**

A. On a fully diluted basis, each holder of FinCor common stock and restricted stock will be entitled to receive approximately \$239.11 per share in cash.

Each holder of options will be entitled to receive, in cash, \$239.11 per share represented by the options minus the applicable exercise price per share represented by the options.

Any amounts payable to the Interest Holders are subject to applicable withholding taxes.

Since the amount of \$239.11 is calculated on a fully-diluted basis, it is subject to adjustment to reflect any fluctuation in the number of common shares, restricted shares and common shares represented by options.

6. **Q. You mentioned the Closing Consideration is subject to a post-closing adjustment. Could you please explain the post-closing net worth adjustment?**

A. Sure. Following the Closing Date, ProMutual will calculate the net book value of FinCor as of the Closing Date and the actual amount of Pro Forma Adjustments. Upon final determination of these amounts, ProMutual will pay the Interest Holders an aggregate adjustment amount equal to the difference between FinCor's net book value as of the Closing Date and its net book value as of December 31, 2008, which we refer to as the "Target Net Book Value." This amount will be further adjusted for any difference between the actual amount of the Pro Forma Adjustments and the \$8 million estimated allowance.

7. **Q. What happens if FinCor's net book value as of the Closing Date is below the Target Net Book Value?**

A. The aggregate adjustment amount paid by ProMutual may be decreased, dollar for dollar, to reflect any decrease in FinCor's net book value below the Target Net

Book Value as well as any increase in the Pro Forma Adjustments over the \$8 million allowance.

To the extent the aggregate amount of any such decrease in FinCor's net book value or increase in the amount of the Pro Forma Adjustments exceeds the \$10 million withheld by ProMutual, such shortfall will be deducted from the Contingent Consideration.

8. Q. What happens if FinCor's net book value as of the Closing Date is above the Target Net Book Value?

A. The aggregate adjustment amount paid by ProMutual may be increased dollar for dollar to reflect any increase in FinCor's net book value above the Target Net Book Value as well as any decrease in the amount of the Pro Forma Adjustments below the \$8 million allowance.

9. Q. Is the amount FinCor is required to pay as part of the net worth adjustment capped in any manner?

A. Yes. Adjustments for any increase in FinCor's net book value above the Target Net Book Value will be capped pursuant to an upside collar, initially set at \$13 million. However, if the Closing Date does not occur by August 31, 2009, the amount of the upside collar will increase at a rate of \$1.5 million per month, pro rated daily.

10. Q. How will the Contingent Consideration be determined?

A. The Contingent Consideration will be based on the favorable loss and loss adjustment expense developments, if any, for accident years ending on or before December 31, 2008, as determined by ProMutual as of December 31, 2013. ProMutual is entitled to the first \$38 million of reserves relating to any favorable loss and loss adjustment expense developments for such accident years. The Interest Holders will be entitled to 70% of the remainder of such reserves on a tax-effected basis.

11. Q. Is the Contingent Consideration subject to any other adjustments?

A. The Contingent Consideration may be further reduced to reimburse ProMutual for the following:

- any shortfalls related to the post-closing adjustment that I mentioned earlier in my testimony;
- amounts ProMutual advances to Holders Agent in connection with reaching an agreement on the Contingent Consideration; and

- any losses incurred after the Closing Date as a result of any breach of the representations and warranties or covenants of FinCor contained in the Merger Agreement.

12. **Q. What criteria was used to determine the amount and nature of the consideration to be paid by ProMutual in connection with the Transaction?**

A. The Board of Directors of ProMutual approved the terms and conditions of the Transaction as set forth in the Merger Agreement. The terms of the Merger Agreement, including the nature and amount of consideration, were determined by arms' length negotiation between ProMutual and FinCor. The amount and type of consideration was determined based on the consideration paid in other recent acquisitions of similar businesses, as well as the financial position and results of operation of the business of FinCor and its subsidiaries. This also included historical and potential future earnings, financial condition and prospects, assets and liabilities and such other factors and information as ProMutual considered relevant under the circumstances.

13. **Q. Did anyone outside of ProMutual Group advise the ProMutual Board of Directors on the amount and nature of the consideration to be paid in the Transaction?**

A. Yes, ProMutual's Board of Directors was advised by Keefe, Bruyette & Woods, an independent investment bank retained by ProMutual in connection with the Transaction.

IV. FINANCING OF THE TRANSACTION

1. **Q. How is ProMutual financing the Transaction?**

A. All consideration will be paid with cash on hand. To be clear, ProMutual will not incur any debt in connection with the payment of the consideration for the Transaction.

2. **Q. Does FinCor have any current outstanding indebtedness? If so, how much?**

A. Yes, the aggregate principal amount of FinCor's outstanding indebtedness as of the closing of the Transaction will be approximately \$49.8 million.

3. **Q. What is ProMutual's plan with respect to FinCor's outstanding indebtedness?**

A. At this time, we intend for FinCor's debt to remain outstanding and to have FinCor repay the debt as it becomes due.

V. COMPENSATION ARRANGEMENTS

1. **Q. What compensation arrangements have been made with respect to FinCor employees in connection with the Transaction?**

A. It is anticipated that three executive officers of FinCor, Thomas Dickinson, Richard Helgren and Christine Schmitt, will enter into amended and restated employment agreements with FinCor prior to the closing of the Transaction. These agreements will be on substantially the same terms as their current employment agreements, with the exception of Ms. Schmitt, whose annual salary will increase by \$25,000. In addition, each of these three executives will be entitled to a bonus upon the termination of their employment with FinCor.

2. **Q. Are these executives entitled to any type of bonus?**

A. Yes, each executive will be entitled to a bonus upon the termination of their employment. Mr. Dickinson will be entitled to a bonus equal to 1/12th of half of his annual salary for each month after the closing of the Transaction that he remains employed by FinCor. Both of Mr. Helgren and Ms. Schmitt will be entitled to a bonus equal to 1/12th of 35% of their respective annual salaries for each month after the closing of the Transaction that they remain employed by FinCor.

3. **Q. Are these executives entitled to any type of severance?**

A. Yes. Each of these executives will be entitled to certain severance payments upon the termination of their employment with FinCor following the Transaction. These severance payments are payable under the terms of their current employment agreements and will be funded by FinCor prior to the closing of the Transaction. The costs of such severance payments are Pro Forma Adjustments, which I mentioned earlier in my testimony.

4. **Q. What is the anticipated aggregate amount of these severance payments?**

A. ProMutual anticipates that the aggregate amount of the severance payments to Mr. Dickinson, Mr. Helgren and Ms. Schmitt will be equal to approximately \$2.5 million in the aggregate.

5. **Q. Have any employee retention programs been instituted in connection with the Transaction?**

A. FinCor, after consulting with ProMutual, has developed an employee retention and severance pay program that will be instituted in connection with the Transaction. This program is designed to provide employees of FinCor and its subsidiaries with an incentive to remain with FinCor through the consummation of the Transaction.

6. **Q. Could you please describe the retention program?**

A. Sure. If during the year following the consummation of the Transaction employees are terminated without cause, they will receive a lump sum payment equal to three months of their base pay. Certain additional employees may be eligible for an additional three months of their base pay.

7. **Q. Will any of these compensation arrangements be funded, either directly or indirectly, by Washington Casualty?**

A. Washington Casualty will not fund any of the compensation arrangements or severance arrangements, either directly or indirectly, for Mr. Dickinson, Mr. Helgren or Ms. Schmitt. However, with regard to the retention program, Washington Casualty would be required to fund any severance payments to its own employees who are terminated without cause during the year after the Transaction. That said, we do not have any plans to terminate any employees of Washington Casualty.

VI. COMPETITIVE IMPACT OF THE TRANSACTION

1. **Q. Are you familiar with the extent to which ProMutual and Washington Casualty compete for policyholders in Washington?**

A. Yes. ProMutual does not compete for policyholders with Washington Casualty in any state, including Washington. Neither ProMutual nor any of its subsidiaries, currently do business in the State of Washington. As previously mentioned by Dick Brewer in his testimony, ProMutual and its subsidiaries are currently focused on the Northeast.

2. **Q. Can you describe the impact that the overall Transaction may have on competition in Washington?**

A. Given that ProMutual and its subsidiaries do not do business in the State of Washington, the Transaction will not have any impact on competition in the State of Washington.

3. **Q. Has ProMutual received any communications expressing concerns from the public in response to the publication of the Notice of Hearing?**

A. To the best of my knowledge, no such concerns have been expressed to ProMutual.

4. **Q. Is there anything else that you would like to add, Mr. Donehue?**

A. Yes. I would like to thank Chief Hearing Officer Petersen and Commissioner Mike Kreidler, as well as the staff of the Washington Office of Insurance Commissioner for its attention to our Form A filing and for their diligence in reviewing the Form A Statement and related materials.

5. Thank you, Mr. Donehue.