

STATE OF WASHINGTON

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

Phone: (360) 725-7000



FILED

OFFICE OF
INSURANCE COMMISSIONER
HEARINGS UNIT
Fax: (360) 664-2782

2009 AUG 27 P 12:17

Patricia D. Petersen
Chief Hearing Officer
(360) 725-7105

Wendy Galloway, DIC
Patricia D. Petersen
Paralegal Hearing Officer
(360) 725-7002
wendyg@oic.wa.gov

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

FINAL ORDER APPROVING
ACQUISITION OF CONTROL

TO: Jerry Kindinger, Esq.
Attorney for Medical Professional Mutual Insurance Company
Ryan, Swanson & Cleveland, PLLC
1201 Third Avenue, Suite 3400
Seattle, Washington 98101

Robert J. Sullivan, Esq.
Attorney for Medical Professional Mutual Insurance Company
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036

H. Matthew Crusey, Esq.
Attorney for Medical Professional Mutual Insurance Company
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036



Anne Seggerman, Esq., Associate Counsel
Medical Professional Mutual Insurance Company
101 Arch Street
Boston, Massachusetts 02110

Richard C. Helgren, CPA, CPCU
Executive Vice President and COO of FinCor Holdings, Inc.
President and Chief Executive Officer of Washington Casualty Company
FinCor Holdings, Inc.
6215 West St. Joseph Highway
Lansing, Michigan 48917-4852

COPY TO: Mike Kreidler, Insurance Commissioner
Mike Watson, Chief Deputy Insurance Commissioner
James T. Odiorne, Deputy Commissioner, Company Supervision Division
Ronald Pastuch, Holding Manager, Company Supervision Division
Carol Sureau, Deputy Commissioner, Legal Affairs Division
Charles D. Brown, Sr. Staff Attorney, Legal Affairs Division
Office of the Insurance Commissioner
P.O. Box 40255
Olympia, WA 98504-0255

Pursuant to Chapter 48.04 RCW, Chapter 34.05 RCW, RCW 48.31B.015 and 284-18 WAC, and after notice to interested parties and persons, the above-entitled matter came on regularly for hearing before the Insurance Commissioner of the State of Washington ("Commissioner") commencing at 10:00 a.m. (PST) on August 25, 2009 in the Office of the Insurance Commissioner, 5000 Capitol Boulevard, Tumwater, Washington 98501. All persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence, to examine witnesses and present oral and written statements. The Commissioner appeared pro se, by and through Charles D. Brown, Sr. Staff Attorney in his Legal Affairs Division. The Applicant, Medical Professional Mutual Insurance Company, was represented by Jerry Kindinger, Esq., of Ryan, Swanson & Cleveland, PLLC in Seattle as local counsel, and by Robert J. Sullivan, Esq. and H. Matthew Crusey, Esq., of Skadden, Arps, Slate, Meagher & Flom LLP, in New York. Other individuals participating in the proceeding were Ronald J. Pastuch, Holding Company Manager in the Company Supervision Division of the Washington State Office of Insurance Commissioner, Richard W. Brewer, President and Chief Executive Officer of the Applicant, John J. Donehue, Senior Vice President and Chief Financial Officer of the Applicant, and Richard C. Helgren, Executive Vice President and COO of FinCor Holdings, Inc. and President and CEO of Washington Casualty Company.

NATURE OF PROCEEDING

By filing a Form A (which is its preacquisition notification and application pursuant to Chapter 48.13B RCW for approval of this proposed acquisition) dated June 16, 2009 and filed with the Commissioner on June 17, 2009, Medical Professional Mutual Insurance Company

("Applicant") seeks the Commissioner's approval of its proposed acquisition of control of Washington Casualty Company, a Washington domiciled insurance company ("WCC"). On June 26, the Commissioner sent a Notice of Deficiency to the Applicant, which was responded to by the Applicant in its July 9 filing ("Supplemental Filing" dated July 8). On August 10, the Applicant filed Amendment No. 1 to its Form A (original Form A, Supplemental Filing and Amendment No. 1 referred to as "Form A").

On July 24, 2009, the Commissioner designated the undersigned to conduct the proceeding to make the final decision in this matter, with no input from the Commissioner or members of his staff aside from evidence presented at the hearing. In transferring the Form A to the undersigned, the Commissioner indicated that the Form A was complete, that he had taken no position in the matter at that time and that the matter was ready for hearing. The Applicant desires to complete the closing of this proposed acquisition on or before August 31, 2009.

FINDINGS OF FACT

Having considered the oral evidence presented at the hearing and the documents on file herein, including the Form A and exhibits admitted in this proceeding, the undersigned finds as follows:

1. The Commissioner has duly and properly appointed the undersigned to conduct the adjudicative proceeding in this matter and to make the final decision herein. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the State of Washington have been satisfied.
2. The Applicant is Medical Professional Mutual Insurance Company, a Massachusetts domiciled mutual insurance company ("ProMutual"). ProMutual currently has six wholly-owned subsidiaries: Merger Sub, ProMutual Solutions Insurance Company, a Vermont captive insurance company, and ProMutual Group, Inc. of Massachusetts are direct, wholly-owned subsidiaries of ProMutual. ProSelect Insurance Company, a Massachusetts domiciled stock insurance company ("ProSelect"), ProSelect National Insurance Company, Inc., an Arizona domiciled stock insurance company, and ProMutual Insurance Agency, Inc., of Massachusetts are each direct, wholly-owned subsidiaries of ProMutual Group, Inc. and indirect, wholly-owned subsidiaries of ProMutual. [Exhibit 1 to Pre-Filed Testimony of Richard W. Brewer, Form A, Pre-Filed Testimony of Richard W. Brewer and Testimony of Richard W. Brewer.] The ProMutual group of companies ("ProMutual Group") insures over 17,000 physicians, surgeons and dentists, as well as a large number of hospitals, health centers and clinics. As of December 31, 2008, ProMutual Group had approximately \$306 million in direct written premium, approximately \$2.2 billion in net admitted assets and approximately \$612 billion in combined policyholder surplus. ProMutual has an A.M. Best Company rating of "A- (Excellent)." [Form A, Pre-Filed Testimony of Richard W. Brewer and Testimony of Richard W. Brewer.]
3. ProMutual and ProSelect write professional liability coverage for physicians, surgeons, dentists and hospitals in the Northeast on both an occurrence and claims-made basis. In addition, ProMutual and ProSelect offer ancillary coverage to policyholders, including general liability and billing errors and omissions. [Form A, Pre-Filed Testimony of Richard W. Brewer and

Testimony of Richard W. Brewer.] ProMutual is licensed and offers products and services in Massachusetts. ProSelect is licensed and offers products and services in the New England states, as well as New Jersey and Pennsylvania. ProSelect is also licensed in Virginia and New York, but has not written any business in these states. [Form A, Exhibit 3 to Pre-Filed Testimony of Richard W. Brewer, Pre-Filed Testimony of Richard W. Brewer and Testimony of Richard W. Brewer.]

4. FinCor Holdings, Inc. ("FinCor") is a Michigan insurance holding corporation. FinCor, through its direct, wholly-owned insurance subsidiaries WCC and MMHA Insurance Company of Michigan ("MHAIC"), is among the 35 largest U.S. based medical malpractice underwriters. In 2008, WCC and MHAIC collectively had over \$70 million in net written premiums, and their policyholders included more than 268 healthcare facilities and more than 5,315 insured physicians. WCC and MHAIC collectively underwrite medical professional liability insurance in twelve states located in the Midwest and the Pacific Northwest. FinCor owns all of the shares of WCC and MHAIC. FinCor also owns all of the shares of FinCor Solutions, RM&PSI and all of the management shares of CRS. [Pre-Filed Testimony of Richard C. Helgren and Testimony of Richard C. Helgren.] FinCor Solutions provides agency and administrative services. RM&PSI provides clinical risk management consulting services. CRS is a Cayman Islands captive insurer. [Pre-Filed Testimony of Richard C. Helgren and Testimony of Richard C. Helgren.]

5. The Applicant proposes to acquire FinCor along with its wholly-owned insurance subsidiary WCC. Also, as part of the overall transaction, the Applicant proposes to acquire MHAIC, FinCor Solutions, Inc. of Michigan ("FinCor Solutions"), The Risk Management and Patient Safety Institute, Inc. of Michigan ("RM&PSI") and Capital Risk Solutions, A Segregated Portfolio Company of the Cayman Islands ("CRS"). Each of MHAIC, FinCor Solutions and RM&PSI, along with WCC, are direct, wholly-owned subsidiaries of FinCor. FinCor also owns all of the management shares of CRS. The portion of the proposed transaction which involves acquisition of these other companies is subject to the jurisdiction of the other domiciliary jurisdictions involved and is therefore not the subject of the proceeding herein.

6. Specifically, the Applicant proposes to acquire FinCor, WCC and the other abovereferenced entities through a reverse subsidiary merger of Horizon Merger Corporation, a Michigan corporation and a direct, wholly-owned subsidiary of the Applicant (the "Merger Sub"), with and into FinCor. As a result of the Merger, the separate corporate existence of the Merger Sub will cease and FinCor will continue as the surviving corporation and as a direct, wholly-owned subsidiary of the Applicant, and, insofar as is relevant herein, WCC would become an indirect, wholly-owned subsidiary of the Applicant. [Exhibit 2 to Pre-Filed Testimony of Richard W. Brewer, Pre-Filed Testimony of Richard W. Brewer, Testimony of Richard W. Brewer; Form A and Agreement and Plan of Merger, dated June 3, 2009, by and among FinCor, Merger Sub, the Applicant and Holders Agent, Inc.] Upon consummation of the Merger, each share of Merger Sub will be converted into one fully-paid and nonassessable share of FinCor common stock and all of the outstanding shares of FinCor common stock and restricted stock and all outstanding options to purchase FinCor common stock will be cancelled and converted into the right to receive a pro rata share of the merger consideration payable by the Applicant pursuant to the terms of the Agreement and Plan of Merger, dated as of June 3, 2009,

by and among FinCor, Merger Sub, ProMutual and Holders Agent, Inc. (the "Merger Agreement"). [Pre-Filed Testimony of John J. Donehue, Testimony of John J. Donehue, Form A and Merger Agreement.]

7. The Applicant proposes to acquire FinCor, WCC and all other subsidiaries of FinCor identified above for a purchase price comprised of (i) \$182 million in cash, less an \$8 million allowance for certain costs and subject to a post-closing adjustment to reflect any change in FinCor's book value, all to be paid from cash reserves of the Applicant and (ii) a portion of favorable loss and loss adjustment expense developments, if any, of WCC and MHAIC for accident years ending on or before December 31, 2008, which is payable in 2014. In addition, holders of FinCor preferred stock will receive an aggregate amount of approximately \$8.9 million in connection with the proposed transaction.

8. RCW 48.31B.015, part of the Washington Insurer Holding Company Act, requires that the Commissioner hold an adjudicative proceeding to examine the evidence and determine whether the proposed acquisition of control of WCC satisfies the applicable statutory criteria and should be approved.

9. On June 17, 2009, the Applicant properly filed its Form A with the Commissioner. Said Form A, as later supplemented, was filed over 60 days prior to the proposed effective date of the proposed acquisition, and includes substantial information and agreements concerning this proposed acquisition as required, including a copy of the Merger Agreement dated June 3, 2009. [Pre-Filed Testimony of Ronald J. Pastuch, Testimony of Ronald J. Pastuch and Form A.] Said Form A was supplemented on July 8, 2009 with information requested by the Commissioner, which was filed by the Commissioner on July 9, 2009. [Pre-Filed Testimony of Ronald J. Pastuch, Testimony of Ronald J. Pastuch and Form A.] An amendment dated August 7, 2009 to said Form A was filed with the Commissioner on August 10, 2009. [Pre-Filed Testimony of Ronald J. Pastuch, Testimony of Ronald J. Pastuch and Form A.]

10. On July 24, 2009, the Commissioner determined the subject Form A to be complete, and designated the undersigned to conduct an adjudicative proceeding in the matter, to hear and consider whether the proposed acquisition should be approved and to make the final decision concerning approval without any input from the Commissioner or his staff or anyone who has been affiliated with this proposed transaction or these entities, aside from what evidence would be presented during the adjudicative proceeding. [Letter of Ronald J. Pastuch, dated July 24, 2009.]

11. The subject Form A was submitted in the form required by, and contains the information required by, the Commissioner and applicable statutes. [Pre-Filed Testimony of Ronald J. Pastuch and Testimony of Ronald J. Pastuch.]

12. After the proposed change of control, WCC will 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 to write in the State of Washington. [Pre-Filed Testimony of Ronald J. Pastuch, Testimony of Ronald J. Pastuch, Pre-Filed Testimony of Richard W. Brewer, Testimony of Richard W.

Brewer, Pre-Filed Testimony of Richard C. Helgren, Testimony of Richard C. Helgren and Declaration of Janice W. Allegretto.]

13. The effect of the proposed acquisition would not be substantially to lessen competition in insurance in the State of Washington and would not tend to create a monopoly in the State of Washington. [Pre-Filed Testimony of Ronald J. Pastuch, Testimony of Ronald J. Pastuch, Pre-Filed Testimony of John J. Donehue, Testimony of John J. Donehue, Pre-Filed Testimony of Richard C. Helgren, Testimony of Richard C. Helgren and Declaration of Janice W. Allegretto.]

14. The financial condition of the Applicant is not such as might jeopardize the financial stability of WCC, or prejudice the interests of WCC's policyholders. The Applicant is financing this transaction with cash on hand and no debt will be incurred as a result of this purchase. [Pre-Filed Testimony of Ronald J. Pastuch, Testimony of Ronald J. Pastuch, Pre-Filed Testimony of John J. Donehue, Testimony of John J. Donehue, Pre-Filed Testimony of Richard C. Helgren, Testimony of Richard C. Helgren and Declaration of Janice W. Allegretto.]

15. The plans or proposals that the Applicant has to liquidate WCC, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are not unfair or unreasonable to policyholders of WCC and are not against the public interest. [Pre-Filed Testimony of Ronald J. Pastuch, Testimony of Ronald J. Pastuch, Pre-Filed Testimony of Richard W. Brewer, Testimony of Richard W. Brewer, Pre-Filed Testimony of Richard C. Helgren, Testimony of Richard C. Helgren and Declaration of Janice W. Allegretto.]

16. The Applicant expects to make no material changes in the location of WCC or other aspects of the operations of WCC which would significantly affect its policyholders. [Pre-Filed Testimony of Richard W. Brewer, Testimony of Richard W. Brewer, Pre-Filed Testimony of Richard C. Helgren, Testimony of Richard C. Helgren and Declaration of Janice W. Allegretto.] In particular, the Applicant commits to comply with the Covenants entered into between the Commissioner and FinCor at the time of FinCor's purchase of WCC regarding marketing to small and medium size institutions. The Applicant also specifically commits to honor all of WCC's contracts and other obligations as they currently exist. [Testimony of Richard W. Brewer.]

17. The competence, experience and integrity of those persons who would control the operation of WCC after completion of this proposed transaction are not such that it would not be in the interest of the policyholders of WCC or of the public to permit the proposed acquisition of control. [Pre-Filed Testimony of Ronald J. Pastuch, Testimony of Ronald J. Pastuch, Pre-Filed Testimony of Richard C. Helgren, Testimony of Richard C. Helgren and Declaration of Janice W. Allegretto.] Further, the Applicant and Commissioner agree that, due to an unforeseen problem with lack of clarity in submission of his fingerprints as required by statute, the Applicant shall remove Mr. John J. Donehue as an officer and director of WCC in the event that his background check is found to be unsatisfactory by the Commissioner. [Applicant's Ex. 2.]

18. The proposed acquisition is not likely to be hazardous or prejudicial to the insurance buying public. [Pre-Filed Testimony of Richard C. Helgren, Testimony of Richard C. Helgren and Declaration of Janice W. Allegretto.]

19. The Notice of Hearing entered by the undersigned in this matter contains detailed information concerning this proposed acquisition and notification of the date, time and location of this adjudicative proceeding. Said Notice of Hearing further advises the public that any interested individuals and entities may submit comments on, or objections to, the proposed acquisition by email, fax or U.S. Mail to the undersigned and that any person whose interest is determined by the undersigned to be affected, may present evidence and argument on all issues involved, examine and cross-examine witnesses, and offer oral and written statements, and in connection therewith may conduct discovery proceedings. [Notice of Hearing.] A copy of the Notice Hearing was published in its entirety on the Commissioner's website beginning on August 13, 2009, and remained published thereon through the scheduled day of the adjudicative proceeding. It is here found that the Commissioner provided reasonable notice to the public in advance of this proceeding.

20. The Commissioner received no responses to the Notice of Hearing given by the Commissioner to the public regarding the adjudicative proceeding herein considering this proposed transaction other than an inquiry concerning the time and date of the hearing. The undersigned received no communications about any concerns from the public in response to the notice. Further, neither the Applicant, FinCor or WCC received communications expressing any concerns from the public in response to the publication of the Notice of Hearing described above. It is therefore hereby found that reasonable notice to the public was given concerning this proposed transaction and that no reasonable objection exists.

21. The sole witness who appeared on behalf of the Commissioner was Ronald J. Pastuch, the Holding Company Manager, Company Supervision Division, of the Washington State Office of the Insurance Commissioner. Mr. Pastuch was properly qualified to testify, and presented his testimony in a detailed and credible manner and exhibited no apparent biases.

22. Richard W. Brewer, President and Chief Executive Officer of ProMutual and John J. Donehue, Senior Vice President and Chief Financial Officer of ProMutual, testified on behalf of the Applicant. Mr. Brewer and Mr. Donehue were properly qualified to testify, and each presented his testimony in a detailed and credible manner and exhibited no apparent biases.

23. Richard C. Helgren, Executive Vice President and Chief Operating Officer of FinCor and President and Chief Executive Officer of WCC, testified on behalf of WCC. Mr. Helgren was properly qualified to testify and presented his testimony in a detailed and credible manner and exhibited no apparent biases.

24. Based upon the above findings of fact, it is hereby found that the application of ProMutual for approval of its proposed acquisition of control of WCC, through the Applicant's proposed acquisition of FinCor through the merger of Merger Sub with and into FinCor is reasonable under the circumstances and should be approved.

CONCLUSIONS OF LAW

1. Pursuant to Chapter 48.31B RCW and RCW 48.04.010, and by virtue of the proper delegation of the Commissioner, the undersigned was properly delegated the authority to conduct the adjudicative proceeding and make the final decision in this matter, namely, whether the Applicant's application for approval of its proposed acquisition of, WCC should be approved, approved with modification, or denied.
2. Based upon Findings of Fact above, on June 17, 2009, the Applicant properly filed its Form A (preacquisition notification and application pursuant to Chapter 48.13B, Revised Code of Washington for Approval of the Acquisition of Control of Washington Casualty Company). Said Form A included all pertinent information and contracts required by RCW 48.31B.015(1) and (2). Further, the Form A contained that information required to be included by RCW 48.31B.020(3)(a) and was filed over sixty days prior to the proposed effective date of this proposed acquisition, as required by RCW 48.31B.015(1).
3. Based upon Finding of Fact above, after the proposed change of control, WCC will continue to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed, as contemplated by RCW 48.31B.015(4)(a)(i).
4. Based on Findings of Fact above, the proposed change of control of WCC will not substantially lessen competition in insurance in this state or tend to create a monopoly in this state, as contemplated by RCW 48.31B.015(4)(a)(ii).
5. Based on Finding of Fact above, the financial condition of the Applicant is such that the financial stability of WCC will not be jeopardized by the proposed acquisition, and the interest of its policyholders will not be prejudiced, as contemplated by RCW 48.31B.015(4)(a)(iii).
6. Based on Findings of Fact above, there are no plans to liquidate WCC, sell its assets, consolidate or merge them with any person, or to make any other material change in their business or corporate structure or management, which would be unfair or unreasonable to policyholders of these carriers or which would not be in the public interest, as contemplated by RCW 48.31B.015(4)(a)(iv).
7. Based on Finding of Fact above, the competence, experience, and integrity of those persons who will control the operations of WCC are such that they would not be against the interests of WCC's policyholders or of the public, as contemplated by RCW 48.31B.015(4)(a)(v).
8. Based on Finding of Fact above, the acquisition of WCC is not likely to be hazardous or prejudicial to the insurance buying public, as contemplated by RCW 48.31B.015(4)(a)(vi).
9. Based on Finding of Fact above, reasonable and adequate notice to interested parties and other members of the public has been given, and no reasonable objection exists.

10. Based on Finding of Fact above and agreement of the parties, Mr. John J. Donehue will be removed as an officer and director of WCC in the event that the background check is found to be unsatisfactory by the Commissioner.

11. The provisions of the Insurance Code of the State of Washington, Chapter 48.31B RCW, and specifically RCW 38.31B.015 governing approval of acquisitions, have been met. Pursuant to Chapter 38.31 RCW, and specifically 48.31B.015, the Applicant's request for approval of this proposed transaction should be granted.

ORDER

On the basis of the foregoing Findings of Fact and Conclusions of Law, to the effect that the statutory criteria for approval of this proposed acquisition have been met, and to the effect that approval of this proposed acquisition should be granted,

IT IS HEREBY ORDERED that the application of ProMutual for the Washington State Insurance Commissioners' approval of its proposed acquisition of Washington Casualty Company, a Washington domiciled insurer, upon the terms included into evidence in this proceeding is **GRANTED**. This decision was the oral ruling of the undersigned entered on August 25, 2009 at the approximate hour of 12:30 p.m. PST and was specifically stated to be effective immediately. This written order is confirmation of the August 25 oral order of the undersigned as required by Title 34 RCW.

IT IS FURTHER ORDERED that ProMutual shall remove Mr. John J. Donehue as an officer and director of Washington Casualty Company in the event that the Washington State Insurance Commissioner finds his background check to be unsatisfactory.

This Order is entered pursuant to Title 48 RCW, and specifically RCW 48.31B.015, Title 34 RCW, and the regulations applicable thereto.

ENTERED at Tumwater, Washington, this 27th day of August, 2009.



PATRICIA D. PETERSEN
Chief Hearing Officer
Presiding Officer

DECLARATION OF MAILING

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery of a true copy of this document to *parties listed on page 1 + 2*
DATED this *27* day of *Aug*, 2009
at Tumwater, Washington.
Signed: *W. Yalloway*