

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

FILED

2016 JUL 21 A 11: 20

In the Matter of:

The Form A Application for the Proposed
Acquisition of Control of:

**NORTHWEST DENTISTS INSURANCE
COMPANY,**

By

**THE DENTISTS INSURANCE
COMPANY,**

Applicant.

Docket No. 16-0176

CASE MANAGEMENT ORDER

HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

TO: Alison Sandman, Chief Legal Officer
The Dentists Insurance Company
1201 K Street, 14th Floor
Sacramento, CA 95814

Sarah W. Schroeder, President
Rector & Associates, Inc.
172 E. State Street, Suite 305
Columbus, OH 43215

Northwest Dentists Insurance Company
19515 North Creek Parkway, Suite 214
Bothell, WA 98011

Northwest Dentists Insurance Company
10505 SE 17th Avenue
Milwaukie, OR 97222

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
Doug Hartz, Deputy Commissioner, Company Supervision Division
Ronald Pastuch, Holding Company Manager, Company Supervision Division
AnnaLisa Gellermann, Deputy Commissioner, Legal Affairs Division
Marcia Stickler, Insurance Enforcement Specialist, Legal Affairs Division
Office of the Insurance Commissioner

PO Box 40255
Olympia, WA 98504-0255

This Notice is provided pursuant to RCW 48.04.010, RCW 34.05.434, and RCW 48.31B.015(4)(b).

William Pardee, Presiding Officer, has been designated by the Insurance Commissioner to hear and determine this matter. The hearing will be held under the authority granted to the Insurance Commissioner under Chapter 48.04 RCW.

1. Receipt of Form A Filing.

On July 12, 2016, the Office of the Insurance Commissioner ("OIC") received an application, or Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer ("Form A"), from The Dentists Insurance Company ("Applicant"). In the Form A, Applicant seeks the OIC's approval to acquire control of Northwest Dentists Insurance Company ("NORDIC").

NORDIC is beneficially owned by two entities: Moda, Inc. ("Moda") and the Washington State Dental Association ("WSDA"). Moda, an Oregon for-profit corporation, is a member of an insurance holding company system whose ultimate controlling person is the Oregon Dental Association ("ODA"), a health care system that primary operates in the states of Oregon and Alaska. Moda presently owns 75 percent of NORDIC's outstanding common stock. WSDA, a non-profit corporation organized under the laws of Washington, presently owns the remaining 25 percent of NORDIC's outstanding common stock.

Applicant is a for-profit insurance company domiciled in the state of California that transacts property/casualty business, including professional and dental business liability, commercial property, workers' compensation, and employment practices liability lines of business. Applicant is a wholly owned subsidiary of CDA Holding Company ("CDA Holding"), a for-profit corporation domiciled in the State of California that acts as a holding company and has no active business operations. CDA Holding is a wholly-owned subsidiary of California Dental Association ("Parent"), a California not-for-profit corporation that is the ultimate controlling person of Applicant.

If approved, the proposed transaction would permit Applicant to acquire all of the NORDIC common stock owned by Moda (75%) ("NORDIC Shares") pursuant to the Stock Purchase Agreement dated June 10, 2016 ("Stock Agreement"). In addition, to the purchase of NORDIC shares, the Stock Purchase Agreement provides for the purchase of two additional members of the ODA health care system: (1) the purchase by Applicant of all of the issued and outstanding common stock of Dentists Benefits Insurance Company (DBIC"), an insurance company domiciled in the state of Oregon, from Moda Health Plan, Inc. ("Moda Health"), a wholly-owned subsidiary of Moda; and (2) the purchase by TDIC Insurance Solutions ("TDIC"), a California for-profit corporation, and a member of Parent's insurance holding company system, of Dentists Benefits Corporation ("DBC"), an Oregon corporation that acts as an MGA on behalf of DBIC

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and NORDIC. Additional details on the proposal are contained in the Form A, which is available on the OIC's website at www.insurance.wa.gov.

2. Adjudicative Hearing on Form A.

The review of the Form A is governed by the Insurer Holding Company Act ("Act"), RCW Chapter 48.31B. RCW 48.31B.015(4)(b) requires the OIC to hold a public hearing within 30 days of the date that a Form A is filed, or by August 11, 2016. Therefore, for the sole purpose of meeting this statutory timeline I hereby tentatively schedule the hearing on the Form A in question for August 11, 2016, beginning at 9 a.m., Pacific Time, at the OIC, 5000 Capital Blvd., Tumwater, Washington, **but in issuing this order immediately adjourn such proceeding (i.e., cancel it)** pursuant to RCW 48.04.010(1)(a) (the Commissioner's general authority to conduct hearings), RCW 48.04.060, and RCW 2.28.120, or other similar authority, in order to fulfill the scope of the requirements of the public hearing intended by RCW 48.31B.015(4)(b).

As explained more fully below, because the Form A presents questions of important public interest, the OIC will at a date to be set later and publicly announced, be holding a public adjudicative hearing to consider the matter and to receive evidence and testimony from Applicant, NORDIC, Parent, the agency staff review team ("OIC Staff"), expert consultants, and any other person whose interest may be affected by the proposal.

RCW 48.31B.015(4)(b) specifically allows the parties and any person whose interest may be affected thereby to "present evidence, examine, and cross-examine witnesses, and offer oral and written arguments and in connection therewith are entitled to conduct discovery proceedings in the same manner as is presently allowed in the superior court of this state." More time is needed to conduct discovery in this matter, for the OIC to review the Form A, to identify those persons whose interest may be affected by the proposed transaction underlying the Form A, and for the OIC Staff, the parties, and others to present evidence.

RCW 48.31B.015(4)(b) also requires that the Commissioner issue a ruling on the Form A within the sixty-day period preceding the effective date of the proposed transaction. However, as the Stock Purchase Agreement between Moda, Moda Health, and Applicant does not list an effective date, this timeframe is not a concern.

The Act specifies that the hearing held by the Commissioner in connection with his review of the Form A shall be conducted as an adjudicative proceeding, resulting in a final administrative order. See RCW 48.31B.070 and the Administrative Procedure Act ("APA"), RCW Chapter 34.05. The parties to the proceeding are NORDIC, Applicant, Parent, and the OIC Staff. The position and recommendations of the OIC will be presented to the Presiding Officer during the proceedings by OIC Staff, who will have the assistance of various expert consultants. In addition, those persons whose interest may be affected by the proposed transaction underlying the Form A will be given the right to participate in the proceedings. Such persons will be permitted to present evidence, examine witnesses, and conduct discovery. See RCW 48.31B.015(4)(b).

3. The Standard by which DIC's Form A is Analyzed.

As to the Form A, at least one authorized representative of NORDIC, Applicant and/or Parent (officers, directors, or in-house counsel are acceptable), and the OIC Staff shall testify as to the criteria set forth in 48.31B.015(4)(a), which provides that the OIC shall approve a merger or acquisition of control, unless after a public hearing thereon, the OIC finds that:

(i) After the change of control, the domestic insurer referred to in subsection (1) 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;

(ii) 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 subsection (4)(a)(ii):

(A) The informational requirements of RCW 48.31B.020(3)(a) and the standards of RCW 48.31B.020(4)(b) apply;

(B) The merger or other acquisition may not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by RCW 48.31B.020(4)(c) exist; and

(C) 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;

(iii) 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;

(iv) The plans or proposals which the acquiring party has to liquidate the insurer, 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 unfair and unreasonable to policyholders of the insurer and not in the public interest;

(v) 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

(vi) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

In addition, at least one authorized representative of NORDIC, Applicant and/or Parent (officers, directors, or in-house counsel are acceptable), and the OIC Staff shall testify as to the criteria set forth in 48.31B.020(4)(a), which provides that the OIC shall approve an acquisition if there is not substantial evidence that the effect of the acquisition may substantially lessen competition in a line of insurance in this state or tend to create a monopoly therein, and the insurer does not fail to file adequate information under RCW 48.31B.020(3). In determining whether the proposed acquisition violates this competitive standard, the OIC shall consider the criteria in RCW 48.31B.020(4)(b). RCW 48.31B.020(4)(c) requires that the OIC not deny such an acquisition if (i) the acquisition will yield substantial economies of scale or economies in resource that cannot be feasibly achieved in any other way, and the public benefits that would arise from the economies exceed the public benefits that would arise from not lessening competition; or (ii) the acquisition will substantially increase the availability of insurance, and the public benefits of the increase exceed the public benefits that would arise from not lessening competition.

Finally, authorized representatives of NORDIC, Applicant and/or Parent, and the OIC Staff shall also testify as to whether they, or any employees, officers or directors, or other affiliates, have received comments, complaints or concerns concerning the proposed acquisitions at issue in the Form A, and the nature and source.

4. Intervenors in the Adjudicative Proceeding.

Those persons whose interest may be affected by the proposed transaction underlying the Form A may participate in the adjudicative proceedings. Such participants may present evidence, examine and cross-examine witnesses, and offer oral and written arguments, and in connection therewith conduct discovery proceedings in the same manner as is allowed in the superior courts of this state. RCW 48.31B.015(4)(b).

Persons who are permitted to participate in the proceeding not only have rights but also obligations and responsibilities. These responsibilities include, but are not limited to, the following: (1) being subject to discovery and obligated to respond timely to discovery requests; (2) being subject to examination and cross-examination; (3) being required to attend, in person or by counsel, conferences and hearings scheduled by the Presiding Officer; and (4) being subject to all orders of the Presiding Officer, which may include orders regarding deadlines, protection of confidential documents and information, and the service and filing of pleadings.

August 1, 2016, is the deadline for all other persons to file a petition to participate in these proceedings. The petition shall set forth a statement of facts, including relevant evidence if any, demonstrating that the petitioner is a person whose interest may be affected by the proposed transaction underlying the Form A. The petition shall be supported by applicable law and argument that explains with particularity the basis for the request to participate. The petition shall be served on the Hearings Unit in the manner described in paragraph 5 of this Order and a copy served on all those persons listed on the attached Certificate of Service.

On or before August 5, 2016, the OIC Staff, NORDIC, and Applicant and/or Parent, shall each file a single pleading responsive to all such petitions. On or before August 9, 2016, the petitioners may each file a single pleading in reply.

The Presiding Officer shall issue a written ruling on the petitions thereafter. The ruling may contain conditions on an intervenor's participation, such as: (1) limiting an intervenor's participation to designated issues in which the intervenor has established an interest; (2) limiting an intervenor's use of discovery, cross-examination and other procedures so as to promote an orderly and efficient proceeding; and (3) requiring two or more intervenors to combine their presentations of evidence and argument, examination of witnesses, discovery, and other participation in the proceeding.

5. Telephonic Status Conference.

The parties to the above-referenced matter, NORDIC, Applicant and/or Parent, intervenors whose petitions are granted (if any), and OIC Staff, through their counsel or representatives, shall be present for a telephonic status conference to be held on **Monday, August 22, 2016, at 10:00 a.m., Pacific Time**. The OIC's Hearing Unit will provide the call-in number for the teleconference to the parties' representatives prior to its occurrence.

The purpose of the status conference is to establish a case scheduling order, including motion and discovery deadlines, exchange of witness and exhibit lists and hearing briefs, and scheduling of the adjudicative hearing.

The parties should be prepared to discuss the following matters:

1. Whether the OIC Staff has issued data or information requests to NORDIC, Applicant and/or Parent, and if so, the nature and number of those requests;
2. The status of NORDIC, Applicant and/or Parent's responses to any requests;
3. Plans of the OIC Staff, if known at this time, to issue data and information requests to NORDIC, or Applicant and/or Parent in the future; and
4. Each parties' estimate of the time that each parties' experts will require to prepare written reports regarding the transaction proposed in the Form A.

By close of business on **August 17, 2016**, each party shall file a brief written report addressing these items and submit it to the OIC's Hearings Unit.

Unless otherwise authorized, every person filing pleadings, letters, and other documents in this proceeding shall submit the original and an electronic copy to the attention of the Hearings Unit Paralegal, Dorothy Seabourne-Taylor, via U.S. Mail at PO Box 40255, Olympia, WA 98504-0255, via personal delivery at 5000 Capitol Boulevard, Tumwater, Washington 98501, via facsimile at (360) 664-2782, or via e-mail at HearingsU@oic.wa.gov. All interested individuals and entities who have questions or concerns concerning this proceeding should direct them to the Hearings Unit paralegal, whose phone number is (360) 725-7002.

6. Standards Governing Confidentiality, Sealing, and Redaction of Records.

If a document contains confidential proprietary, trade secret, or other non-public information, each and every page in which such information is contained must be conspicuously marked confidential. In addition, a cover letter shall be submitted with such document identifying the portions of the document that are confidential and the specific reasons for confidentiality. Every effort should be made to segregate nonpublic information from public information so that public information is readily disclosable upon request and on the OIC website. To achieve this, the duly authorized

representatives of the parties or participants in this matter shall file with the OIC's Hearings Unit their legal position with respect to what working papers, documents, materials, or information involved with the Form A at issue they deem to be confidential under RCW 48.31B.038(1), RCW 48.02.065(6), RCW 48.31B.020(3), and if not confidential, should be sealed or redacted pursuant to Washington General Rules 15(c) and 31(e). The parties are also encouraged to examine the provisions in RCW Ch. 42.56, and the general authority for protective orders in CR 26(c) (and in particular subsection (7) therein that prevents disclosure of trade secret or other confidential research, development, or commercial information) applicable to adjudicative proceedings conducted by the OIC per WAC 284-02-070(2)(e)(i).

Following the parties' submission(s), without oral argument, and if deemed necessary, the Presiding Officer will issue a written ruling on what documents will be deemed confidential, or redacted or sealed. Any documents not deemed confidential or sealed (in either redacted or un-redacted form) will be posted on the OIC's website.

Pursuant to WAC 284-02-070(1)(c), accommodation will be made for persons needing assistance due to difficulty with language or disability. Further, pursuant to WAC 10-08-040(2) and in accordance with Ch. 2.42 RCW, if a limited English speaking or hearing impaired or speech impaired party or witness needs an interpreter, a qualified interpreter will be appointed. There will be no cost to the party or witness therefore, except as may be provided by Ch. 2.42 RCW. A Request for Accommodation form, with instructions, is attached to the original of this Notice.

Dated: July 21, 2016



WILLIAM PARDEE
Presiding Officer

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the state of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be filed and served the foregoing Case Management Order on the following people at their addresses listed below:

Alison Sandman, Chief Legal Officer
The Dentists Insurance Company
1201 K Street, 14th Floor
Sacramento, CA 95814

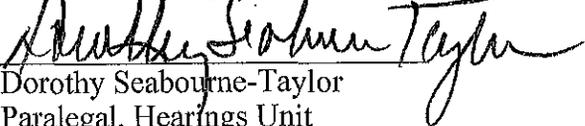
Sarah W. Schroeder, President
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AnnaLisa Gellermann, Deputy Commissioner, Legal Affairs Division
Marcia Stickler, Insurance Enforcement Specialist, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Dated this 21st day of July, 2016, in Tumwater, Washington.


Dorothy Seabourne-Taylor
Paralegal, Hearings Unit

OFFICE OF INSURANCE COMMISSIONER

HEARINGS UNIT

Fax: (360) 664-2782

To request an interpreter, complete and mail this form to:

Hearings Unit
Office of Insurance Commissioner
P.O. Box 40255
Olympia, WA 98504-0255

REQUEST FOR ACCOMMODATION FOR LANGUAGE OR DISABILITY

I am a party in Matter No.16-0176 before the Insurance Commissioner.
I request accommodation for the following disability (insert your disability):

I request an interpreter for myself or a witness who will be testifying at the evidentiary hearing.

Please check the statements that apply:

I am a non-English-speaking person and cannot readily speak or understand the English language. My primary language is _____ (insert your primary language). I need an interpreter who can translate to and from the primary language and English.

I am unable to readily understand or communicate the spoken English language because:

- I am deaf.
- I have an impairment of hearing.
- I have an impairment of speech.

[Please state below or on the reverse side any details which would assist the Commissioner or Presiding Officer in arranging for a suitable accommodation for your disability, an interpreter or in providing appropriate mechanical or electronic amplification, viewing, or communication equipment.]

Date: _____ Signed: _____

Please print or type your name: _____
Address: _____
Telephone: _____