

STATE OF WASHINGTON

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MIKE KREIDLER
STATE INSURANCE COMMISSIONER



OFFICE OF
INSURANCE COMMISSIONER

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 below
DATED this 16th day of August 2007 at Tumwater, Washington.

Signed: Wendy Galloway

HEARINGS UNIT
Fax: (360) 664-2782

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

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

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of the Proposed Acquisition of:)
)
ARCADIAN HEALTH PLAN, INC.,)
By MSDW VENTURE PARTNERS, IV,)
LLC, and MORGAN STANLEY)
PARTNERS 2002 FUND, LLC.,)
and THREE ARCH MANAGEMENT II,)
LLC, TAC MANAGEMENT, LLC, and)
THREE ARCH MANAGEMENT IV., LLC.)
)
Applicants.)
)

Docket No. G07-12

**NOTICE OF HEARING ON
REQUEST FOR RETROACTIVE
APPROVAL TO ACQUIRE
WASHINGTON INSURERS**

TO: Debbie Abramovitz, CEO
MSDW Venture Partners IV, LLC
MSVP 2002 Fund, LLC
3000 Sand Hill Road, Building 4, Suite 250
Menlo Park, CA 94025

Melissa Daniels, Executive Director
MSDW Venture Partners IV, LLC
MSVP 2002 Fund, LLC
3000 Sand Hill Road, Building 4, Suite 250
Menlo Park, CA 94025

Barclay Nicholson, Administrative Partner
Three Arch Mgmt. II, LLC, TAC Mgmt., LLC, Three Arch Mgmt. IV., LLC
3200 Alpine Road
Portola Valley, CA 94028



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John Austin, M.D., CEO
Arcadian Health Plan, Inc.
825 Washington Street, Suite 300
Oakland, California 94607

AND TO: James E. Hadley, Esq.
Mary M. Cotter, Esq., of Counsel
Ryan, Swanson & Cleveland PLLC
1201 Third Avenue, Suite 3400
Seattle, Washington 98101-3034

Charles B. Cliett, Jr., Esq.
Mitchell, Williams, Selig, Gates & Woodyard, PLLC
425 West Capitol Avenue, Suite 1800
Little Rock, Arkansas 72201-3525

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

The Applicants herein are 1) Morgan Stanley Dean Witter Venture Partners IV, LLC with its executive offices located in Menlo Park, California; 2) Morgan Stanley Venture Partners 2002 Fund, LLC, with its executive offices located in NYC, New York; 3) Three Arch Management II, LLC ("TAM II"), a California limited liability corporation with its corporate offices located in Portola Valley, California; 4) TAC Management, LLC ("TAC"), a California limited liability corporation with its corporate offices located in Portola Valley, California; and 5) Three Arch Management IV, LLC ("TAM IV"), a California limited liability corporation with its corporate offices located in Portola Valley, California.

The two Morgan Stanley entities which are Applicants herein are venture capital limited liability corporations which have been raising funds for companies in the health care and technology sectors since 1986. Within health care, these entities invest primarily in pharmaceutical services, medical technology and health care information technology, as well as health care services companies. They operate independently within the family of affiliates of Morgan Stanley (NYSE: MS), the global financial services firm. These entities provided significant venture capital invested in the five Applicants' funds that purchased voting stock of AMS. These entities often invest in companies

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that have significant potential for revenue but are not yet profitable. They provide due diligence, assessing a company's management, technology, product, strategy and financial plan.

The other three entities which are Applicants herein, TAM II, TAC and TAM IV, focus on identifying and supporting new health care companies in markets with significant unmet clinical or infrastructure needs. TAM II, TAC and TAM IV only invest in health care companies, including those providing health care services, such as AMS, as well as those specializing in medical devices, diagnostics and sometimes biotechnology. The primary focus of TAM II, TAC and TAM IV is early stage investments, where it can develop an approach and a team that can generate the best returns. TAM II, TAC and TAM IV also make investments in later stage health care companies which show strong potential for significant financial returns.

The Applicants have provided venture capital financing for AHP and other health plan affiliates of AMS to perform Medicare Advantage business on Washington State, Texas and Arizona and beginning in 2007 will also do business in South Carolina.

The Applicants request retroactive approval of its acquired controlling shares of AMS, as required by Chapter 48.31 RCW, to purchase controlling shares of Arcadian Management Services, Inc. ("AMS") (however, as discussed below, the Applicants have actually already acquired those controlling shares, without authority to do so). AMS is a Delaware stock corporation with its primary offices located in Oakland, California. Arcadian Health Plan, Inc. ("AHP") is a wholly owned subsidiary of AMS. AHP, which also has its corporate and principal executive offices located in Oakland, California, and Washington home office located in Spokane, Washington, was incorporated in Washington State on August 6, 2004, had no existence prior to that date, and was licensed by the Washington State Insurance Commissioner ("Commissioner") as a domestic Washington State for-profit health care service contractor on July 21, 2004 (Certificate of Registration No. 174). AMS is the sole shareholder of AHP, and AMS appoints the Board of Directors of AHP. Prior to the August 17, 2005 unauthorized purchase of AMS stock by Applicants (see below), the Applicants owned significant shares of AMS's voting securities, and subsequent to the August 17, 2005 unauthorized issuance and purchase of the additional 2,693,544 AMS voting securities, the Applicants became the controlling shareholders of AMS, including AHP.

A significant issue in this request for approval of acquisition is that on or about September 2006 the Commissioner discovered that, without any legal authority either sought by the Applicants as specifically required by RCW 48.31B.015(4) and related statutes or granted by the Commissioner as also required therein, the Applicants had actually already acquired their controlling shares of AMS including AHP. Specifically, the parties had, on August 17, 2005, already effected an unauthorized stock offering and issuance of 2,693,544 shares of Series C Preferred Stock of AMS at a price of \$7,156 per shares for the total amount of \$19,275,000.86, also without the statutorily required permission for said stock offering being sought or granted, and the Applicants acquired control of AMS, including AHP, as of that date of August 17, 2005. For this reason, the hearing in this matter will be undertaken in two stages on the date set forth below: 1) the first stage will be an inquiry into the activities and decisions surrounding the abovereferenced unauthorized stock offering and purchase of AMS and AHP, relative most specifically to the criteria set forth in RCW 48,31B.015(5)

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concerning 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 acquisition or control; 2) the second stage of the hearing will be, if the above criteria is deemed to be met based upon evidence presented during the first stage, a typical adjudication hearing regarding this request for approval of acquisition as set forth below.

In order to remedy the situation, as required by the Commissioner and as had always been required by RCW 48.31B.015(1) and (2), on September 1, 2006, the Applicants, by and through their Arkansas counsel Margaret A. Johnston, Esq. and Charles Cliett, Esq. of Selig, Gates & Woodyard, PLLC of Little Rock Arkansas, filed a Form A Statement Regarding the Acquisition of Control of a Domestic Health Care Services Corporation ("Form A") with the Washington State Insurance Commissioner, on March 12, 2007, filed Amendment No. 1 to Form A and on February 26, 2007 filed Amendment No. 2 to Form A. Said Form A, which is part of the hearing file and shall be used as evidence herein, includes 1) substantial information and agreements concerning this proposed acquisition as required by RCW 48.31B.015(2) and in accordance with RCW 48.31B.020(3)(a); and 2) information and agreements relative to the issues which must be the subject of findings pursuant to RCW 48.31B.015(4).

Copies of the relevant contracts, partnership and corporate information concerning the entities and individuals involved and current and proposed organizational structures of the Applicants and AMS including AHP are included in the public hearing file, together with several preliminary orders entered by the undersigned and responded to by the parties in written form are by this reference incorporated herein and the majority of this material has also been published on the Commissioner's website.

Pursuant to RCW 48.31B.015(4), the Insurance Commissioner shall approve an acquisition of a domestic insurer unless, after a hearing thereon, it is found: 1) that after the change of control, the domestic insurer 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; 2) that the effect of the acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein; 3) that the financial condition of an acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interests of its policyholders; 4) that the plans or proposals that 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; 5) that 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 acquisition or control; or 6) that the acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

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Toward this end, the parties are advised that the Commissioner is expected to testify as to whether he has given reasonable advance notice to the public of the hearing scheduled herein and whether he has received any objections or other input relative to this proposed transaction. The Insurance Commissioner is also expected to testify as to the conclusions he has reached during his examination of the subject Form A insofar as they relate to the above stated issues 1) through 6).

As to the first stage of this proceeding, duly authorized, knowledgeable representatives of each of the five Applicants, which representatives were part of the activities leading up to the August 17, 2005 date of securities offering and purchase as described above, are required to testify as to how and why the subject securities were offered and purchased, and the purchase of these controlling securities consummated on August 17, 2005, without request of receipt of any legal authority as described above. Further, if the hearing proceeds into stage two, duly authorized representatives of each of the five Applicants are expected to testify as to the above stated issues and as to whether the Applicants or any of their subsidiaries or representatives have received any objections to the proposed transaction.

Finally, duly authorized representatives of the AMS and AHP are expected to testify as to the above stated issues and as to whether AMS or AHP have received any objections to the proposed transaction. While live testimony from the parties will be taken during the hearing as to the above identified issues, written declarations from those parties are also required. Further, oral opening statements and closing arguments from the Applicants, as well as closing arguments, are required.

YOU ARE HEREBY NOTIFIED that a hearing will be held commencing at 9 a.m., Pacific Standard Time, on Friday, September 7, 2007, in the Office of the Insurance Commissioner, 5000 Capitol Boulevard, Tumwater, Washington 98501, to consider the acquisition of Arcadian Management Services, Inc. including Arcadian Health Plan, Inc. by Morgan Stanley Dean Witter Venture Partners, IV, LLC, and Morgan Stanley Partners 2002 Fund, LLC., Three Arch Management II, LLC, TAC Management, LLC, and Three Arch Management IV., LLC.

The hearing will be held under the authority granted the Insurance Commissioner by Chapter 48.04 RCW and specifically RCW 48.31B.015 and shall have as its purpose consideration of the Applicants' request for approval of its proposed acquisition of control of Arcadian Management Services, Inc. including Arcadian Health Plan, Inc..

The Insurance Commissioner has not taken, and will not take, any position on this matter prior to entry of the Findings of Facts, Conclusions of Law and Final Order to be entered after hearing.

YOU ARE FURTHER NOTIFIED that all interested individuals and entities may submit comments on, or objections to, this proposed acquisition to the undersigned. Said comments or objections, which will be included in the hearing record and will be considered by the undersigned prior to her making her final decision, must be submitted by 9:00 a.m., Pacific Standard Time, on September 7, 2007, by fax, U.S. Mail, personal delivery, or email. The fax number of the undersigned is (360) 664-2782, her mailing address is PO Box 40255, Olympia, WA 98504-0255, her delivery address is 5000 Capitol Boulevard, Tumwater, Washington 98501, and the

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e-mail address for her paralegal is Wendyg@oic.wa.gov. **Further, pursuant to RCW 48.31B.015(4)(b), any person whose interest is determined by the undersigned to be affected may present evidence, examine and cross-examine witnesses, and offer oral and written arguments, and in connection therewith may conduct discovery proceedings as authorized by Title 34 RCW.**

Finally, all parties may participate in the hearing. They may examine witnesses and fully respond and present evidence and argument on all issues involved, as required by the Administrative Procedure Act. The hearing will be governed by the Administrative Procedure Act, Chapter 34.05 RCW, and the model rules of procedure contained in Chapter 10-08 WAC. A party who fails to attend or participate in any stage of the proceeding may be held in default in accordance with Chapter 34.05 RCW.

The Insurance Commissioner will be represented by Charles D. Brown, Senior Staff Attorney with the Legal Affairs Division, Office of the Insurance Commissioner, 5000 Capital Blvd., Tumwater, WA 98501. He can be reached at (360) 725-7044. Arcadian Management Services, Inc., Arcadian Health Plan, Inc., Morgan Stanley Dean Witter Venture Partners, IV, and Morgan Stanley Partners 2002 Fund, LLC., Three Arch Management II, LLC, TAC Management, LLC, Three Arch Management IV., LLC will be represented by Mary M. Cotter, Esq., of Counsel and James E. Hadley, Esq. of Ryan, Swanson & Cleveland PLLC, 1201 Third Avenue, Suite 3400, Seattle, Washington. They can be reached at (206) 464-4224. Charles B. Cliett, Jr., Esq. of Mitchell, Williams, Selig, Gates & Woodyard, PLLC, 425 West Capitol Avenue, Suite 1800, Little Rock, Arkansas will also represent all Applicants. He can be reached at (501) 688-8819.

Based upon a delegation of authority from the Insurance Commissioner, the undersigned will conduct the hearing and will make the final decision and enter the final order relative to this matter without input from the Insurance Commissioner or his staff or any other individual who has knowledge of the issues herein, except as will be presented as evidence in the hearing. Her address is Office of the Insurance Commissioner, P.O. Box 40255, Olympia, WA 98504-0255 and her telephone number is (360) 725-7105. All questions or concerns should be directed to Wendy Galloway, paralegal to the undersigned, who may be reached at the telephone, e-mail and fax number specified above.

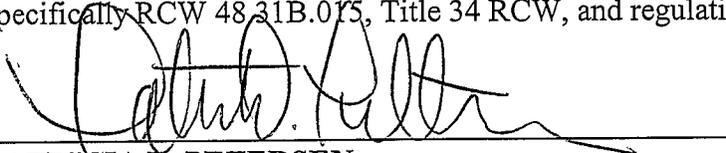
On February 16, 2007, the undersigned held a first prehearing conference in this matter. The Insurance Commissioner was represented by Charles D. Brown, Esq.; the Applicants were represented by Charles B. Cliett, Jr., Attorney of Mitchell, Williams, Selig, Gates & Woodyard, PLLC of Little Rock, Arkansas. During said first prehearing conference, the undersigned identified the parties and statutes involved, reviewed procedure to be expected at hearing, and responded to all questions and concerns of the parties.

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. Following this Notice is a form you may use to advise the Chief Hearing Officer

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of your need for an interpreter.

ENTERED at Olympia, Washington, this 16th day of August, 2007, pursuant to Title 48 RCW and specifically RCW 48.31B.015, Title 34 RCW, and regulations applicable thereto.

A handwritten signature in black ink, appearing to read 'Patricia D. Petersen', written over a horizontal line.

PATRICIA D. PETERSEN

Presiding Officer
Chief Hearing Officer



OFFICE OF
INSURANCE COMMISSIONER

HEARINGS UNIT

Fax: (360) 664-2782

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

Wendy Galloway
Paralegal
(360) 725-7002
wendyg@oic.wa.gov

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

Chief Hearing Officer
Office of Insurance Commissioner
P.O. Box 40255
Olympia, Washington 98504-0255

REQUEST FOR INTERPRETER

I am a party or witness in Matter No. _____, before the Insurance Commissioner. I NEED AN INTERPRETER and request that one be furnished.

Please check the statements that apply to you:

I am a non-English-speaking person. I 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 interpreter, or in providing appropriate mechanical or electronic amplification, viewing, or communication equipment.]

Date: _____

Signed: _____

Please print or type your name: _____

Address: _____

Telephone: _____

Mailing Address: P.O. Box 40255 • Olympia, WA 98504-0255
Street Address: 5000 Capitol Blvd. • Tumwater, WA 98501

