

STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

FILED

2019 OCT -9 P 2:45

In the Matter of:

The Form A & Form E Applications for
the Proposed Acquisition of Control of:

**WESTERN PROFESSIONAL
INSURANCE COMPANY**

by

COPIC INSURANCE COMPANY

and

**MICHIGAN PROFESSIONAL
INSURANCE EXCHANGE**

Applicants.

Docket No. 19-0378
HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

ORDER ON CONFIDENTIALITY

This Order on Confidentiality is issued pursuant to Paragraph 5 of the August 7, 2019 Case Management Order issued in the Form A and Form E Applications for the Proposed Acquisition of Control of Western Professional Insurance Company ("WPIC") by COPIC Insurance Company ("COPIC") and Michigan Professional Insurance Exchange ("MPIE"; and the companies together the "Parties"). Representatives of the Parties, together with a representative of the Washington State Office of the Insurance Commissioner ("OIC"), filed the "Joint Submission on Confidentiality Issues," which requested confidential treatment of certain categories of information to be submitted this proceeding. Those requests are granted as outlined below.

1. The Form E Statement.

On July 29, 2019, COPIC and MPIE submitted the Form E Preacquisition Notification Form (the "Form E") to the OIC. The Washington Insurance Code provides that the Commissioner must give confidential treatment to the Form E and "additional material and information [the commissioner] deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard" set forth therein in their entirety. *See* RCW 48.31B.020(3)(a); *see also* RCW 48.31B.020(3) (extending confidential treatment to information submitted thereunder "in the same manner as provided in RCW 48.31B.038"). The Code further provides that all documents, materials and information reported therein or provided to the Commissioner in connection therewith "are confidential by law and privileged, and not subject to chapter 42.56 RCW, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action." *See* RCW 48.31B.038(1).

Accordingly, pursuant to the authority above, as well as RCW 34.05.446(1), which allows for protective orders in administrative proceedings, and CR 26(c), which provides for protective orders in civil court, and is expressly adopted for hearings before the OIC under WAC 284-02-070, the Form E and all additional material and information provided to support the Form E will receive confidential treatment as required. Those materials (a) are not subject to public inspection or disclosure, (b) are not subject to subpoena or discovery, and (c) are not admissible in evidence in any private civil action.

2. Biographical Affidavits.

On July 31, 2019, COPIC and MPIE submitted the Form A Statement to OIC (the "Form A"). Attached as Exhibits 5 and 6 to the Form A are the biographical affidavits of the directors and officers of COPIC and the directors and officers of MPIE. To the extent the biographical affidavits contain sensitive personal information, such as information used to prove identity, age, residential address and social security number, such personal information is exempt from public inspection and copying and must be redacted from public records.

Under RCW 42.56.230(7)(a), the following information is exempt from public disclosure: "[a]ny record used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identicaid." CR 26(c), specifically applicable to OIC proceedings as outlined in WAC 284-02-070(2)(e), allows for orders to be entered for "good cause" and to protect people from "annoyance, embarrassment, oppression, or undue burden or expense..."

GR 31(e) also requires "personal identifiers" be redacted from court records, such as social security numbers, financial account numbers, and driver license numbers.

As outlined above, RCW 48.31B.038 specifically protects certain information submitted to the commissioner. Disclosure of this information could subject the identified persons to identity theft, and compromise their personal privacy. Thus, the information should be redacted as requested and third party background reports withheld from public inspection and copying.

3. Materials that Qualify as Trade Secret Information.

The Parties have asked that two different categories of information be treated as "trade secrets" and kept confidential: the transaction documents and the financial projections. The authority governing the confidentiality of trade secret information is outlined below.

RCW 19.108.010(4) defines a trade secret as:

[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process that:

(a) Derives independent economic value, actual or potential, from not

being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Trade secrets must have novelty and independent economic value, which must be alleged with specificity. *Robbins Geller Rudman & Dowd, LLP v. Office of Attorney Gen.*, 179 Wn. App. 711, 722, 328 P.3d 905, 911 (2014). CR 26(c)(7) allows a court to enter an order specifically to ensure “that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way[.]” RCW 42.56.270(11) specifically exempts from public disclosure “[p]roprietary data, trade secrets, or other information that relates to: (a) [a] vendor’s unique methods of conducting business; (b) data unique to the product or services of the vendor...”

Business practices that are not unique to a company are not trade secrets. *See generally Robbins Geller Rudman & Dowd, LLP, v. Office of Attorney Gen.*, 179 Wn. App. 711, 723-24, 328 P.3d 905, 912 (holding that the fee schedule and general insurance information of a law firm were not exempt from public disclosure as trade secrets); *Woo v. Fireman's Fund Ins. Co.*, 137 Wn. App. 480, 492-93, 154 P.3d 236, 242 (2007) (holding that insurance company claim manuals were not proven to be novel, nor secret, and were not considered a trade secret and should not be sealed); but see *Ed Nowogroski Ins., Inc. v. Rucker*, 137 Wn.2d 427, 442, 971 P.2d 936, 943 (1999) (finding that a customer list, when unknown and subject to reasonable efforts to keep it secret, qualified as a trade secret).

A. Transaction Documents

Attached as Exhibit 1 to the Form A is the Stock Purchase Agreement (as defined in the Form A), including the related attachments and disclosure schedules, the Amended and Restated Articles, the Amended and Restated Bylaws (as defined in the Form A), and attached as Exhibit 2 is the Shareholders Agreement (as defined in the Form A) (collectively, the “Transaction Documents”).

The Parties have provided the OIC Staff with a redacted copy of the Transaction Documents, which redacts those portions of the Transaction Documents which the Parties consider confidential trade secrets exempt from public disclosure.

The redacted portions of the Transaction Documents contain information that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. The Transaction Documents were negotiated in connection with a private commercial transaction and contain certain terms which, if made public, could reasonably be expected to result in unfair competitive injury to the Parties by providing the Parties’ competitors with a competitive advantage in negotiating power, capital deployment and strategic transactions.

For example, the Transaction Documents Include:

- Highly confidential commercial information related to the proposed transaction (including, but not limited to, representations and warranties, covenants, closing conditions, financial matters, termination provisions and indemnification provisions). Disclosure of such commercial terms could reasonably be expected to cause unfair competitive injury to the Parties if it were used by competitors to take specific actions in an effort to interfere with or unwind the proposed transaction or to negotiate similar provisions in pursuit of strategic transactions that are also of interest to the Parties in the future.
- Highly confidential commercial information related to the Parties' business operations independent of the proposed transaction (including, but not limited to, detailed commercial information in the Parties' disclosure schedules attached to the Stock Purchase Agreement). Notwithstanding the disclosure of this information to each other for purposes of effecting the proposed transaction, the Parties have agreed with each other to maintain the confidentiality of the competitively sensitive information each Party has shared with the other. Disclosure of such information to third parties could reasonably be expected to result in unfair competitive injury to the Parties by providing competitors with insights into the Parties' confidential business operations that are independent of the proposed transaction.
- Financial information, including details about enterprise projects and investments and the Parties' economic evaluations thereof, and access to such information could reasonably be expected to result in unfair competitive injury to the Parties by providing competitors with insights into the Parties' confidential financial strategies and plans.

The Transaction Documents were negotiated and developed by the Parties over a period of several months and represent a significant investment both in terms of effort from the Parties' key executives and expense (including internal resources and outside legal advisors). The Transaction Documents have been made available to a limited number of the Parties' key employees and executives, are not generally known by other individuals or third parties by proper means, and the Parties have taken and intend to continue to take all reasonable efforts to maintain the secrecy of such redacted portions of the Transaction Documents. For these reasons, it would be very difficult for third parties to acquire or duplicate the terms contained in the redacted portions of the Transaction Documents by proper means. As a result, the redacted portions of the Transaction Documents constitute trade secrets exempt from public disclosure.

The OIC Staff have reviewed the redacted Transaction Documents and concur with the Parties' proposed redactions. Based on the legal authority above, a protective order requiring that the redacted portions of the Transaction Documents receive confidential treatment and be maintained under seal should be entered.

B. Financial Projections

Attached as Exhibit 9 to the Form A is the five-year financial projections of Western Professional Insurance Company (the "Domestic Insurers"). The Parties and the OIC agree that these financial projections constitute trade secrets.

In this case, the financial projections constitute information that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. Specifically, the financial projections contain key managerial strategic decisions concerning the Domestic Insurers' growth prospects which, if known to the Domestic Insurers' competitors, would result in competitive harm to the Domestic Insurers. The financial projections have been made available to a limited number of the Parties' key employees and executives, are not generally known by other individuals or third parties by proper means, and the Parties have taken and intend to continue to take all reasonable efforts to maintain the secrecy of the financial projections. The Parties are seeking confidential treatment of the financial projections in all states in which Form A filings were submitted in connection with the proposed transaction. For these reasons, it would be very difficult for third parties to acquire or duplicate the financial projections by proper means. As a result, the financial projections constitute trade secrets exempt from public disclosure.

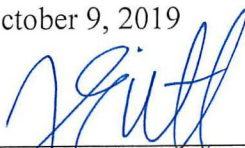
Pursuant to the legal authority regarding protection of a trade secret information, a protective order requiring that the financial projections attached as Exhibit 9 to the Form A receive confidential treatment and be maintained under seal should be entered.

ORDER

Pursuant to the legal authority outlined above, IT IS ORDERED:

- (1) The Form E and all additional material and information provided to support the Form E (a) be maintained as confidential in their entirety;
- (2) The Parties should redact the personal information in the biographical affidavits attached as Exhibits 5 and 6 to the Form A, including, including but not limited to, social security numbers, dates of birth, phone numbers and home addresses, and that third party background reports are withheld from public inspection and copying;
- (3) The redacted portions of the Transaction Documents attached as Exhibits 1 and 2 to the Form A be maintained as confidential; and
- (4) The financial projections attached as Exhibit 9 to the Form A be maintained as confidential.

Dated: October 9, 2019



Julia Eisentrout,
Presiding Officer
Office of the Insurance Commissioner

CERTIFICATE OF MAILING

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 Order on Confidentiality on the following people at their addresses listed below:

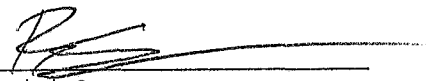
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Dated this 9th day of October, 2019, in Tumwater, Washington.



Rebekah Carter
Paralegal
Hearings Unit