



COPY

In The Matter Of:

**State of Delaware Insurance
Commissioner**

Proposed Affiliation of BCBSD, Inc with Highmark, Inc

Docket No. 1509-10

January 18, 2011

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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF DELAWARE

In Re:)
)
The Proposed Affiliation of)
BCBSD, Inc., doing business) Docket No. 1509-10
as BlueCross BlueShield of)
Delaware, with Highmark, Inc.)
)

TRANSCRIPT OF HEARING

Department of Insurance
841 Silver Lake Blvd.
Dover, Delaware 19904
January 18, 2011
9:40 a.m.

HEARD BEFORE: HONORABLE BATTLE ROBINSON
APPEARANCES:

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LESLIE A. POLIZOTI, ESQ.
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For the Department of Insurance

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ALSO PRESENT:

GianClaudio Finizio, Esq. - Counsel to the
Hearing Officer
William E. Kirk, III - BlueCross BlueShield
of Delaware
John L. Sencak - Highmark
Linda Sizemore - Department of Insurance
Linda Nemes - Department of Insurance
Gene Reed - Deputy Insurance Commissioner
Darelle Riabov - BCBSD
Mickey McKay - League of Women Voters
Charles Santana - Department of Insurance

* * * * *

1 THE HEARING OFFICER: We're here in
2 the proposed affiliation of BlueCross BlueShield
3 of Delaware, doing business as BlueCross
4 BlueShield of Delaware, with Highmark, Inc.

5 I'm Battle Robinson. I've been
6 appointed to be the hearing officer in this
7 matter by the Insurance Commissioner.

8 First of all, I want to thank all of
9 you for being here this morning. I know it was a
10 terrible day to be on the roads. This weekend, I
11 was talking with a retired school superintendent
12 who said just about the worst part of his job was
13 deciding on whether or not to call off school or
14 to delay the opening.

15 And I sort of knew how he felt this
16 morning when J.C. and I were conferring from
17 opposite ends of the state, where the weather
18 seemed to be quite different, and trying to make
19 that call.

20 And the superintendent told me that
21 when he was having to make this decision, that
22 parents started calling him at 4:00 in the
23 morning, asking if school was going to be closed.
24 So I thank all of you for not calling me at 4:00

1 this morning.

2 We have some preliminary matters
3 that we need to deal with, but before we do that,
4 I think it would be helpful if we went around the
5 table and introduced ourselves for the record,
6 and also, so all of us in the room will know who
7 each other is, and who is speaking.

8 Mr. Houghton, maybe you will start
9 things.

10 MR. HOUGHTON: Thank you, Your
11 Honor. Good morning. My name is Michael
12 Houghton. I'm a partner with Morris, Nichols,
13 Arsht & Tunnell. We are serving as special
14 counsel to the Department of Insurance in
15 connection with this matter.

16 MS. POLIZOTI: My name is Leslie
17 Polizoti, I'm also a partner at Morris Nichols,
18 serving as special counsel to the Department of
19 Insurance.

20 DR. FIELDS: My name is Dr. Jo Ann
21 Fields, and I'm here to speak this morning.

22 MR. McCONNEL: My name is Ian
23 McConnell, and I'm with the Delaware Department
24 of Justice.

1 MS. PARIKH: Mona Parikh, and I'm
2 with Buchanan Ingersoll & Rooney, and I am local
3 counsel to Highmark.

4 MR. FINIZIO: GianClaudio Finizio,
5 I'm an attorney at Bayard and acting as counsel
6 for the hearing officer.

7 MR. TEICHMAN: Mike Teichman. I'm
8 with Parkowski, Guerke & Swayze, and we are
9 counsel to BCBSD, Inc.

10 MR. SWAYZE: Dave Swayze of
11 Parkowski, Guerke & Swayze. We are counsel to
12 BCBSD, Inc.

13 MR. KIRK: Bill Kirk, general
14 counsel of BCBSD, Inc.

15 MR. CAMPBELL: Rick Campbell,
16 outside counsel to Highmark.

17 MR. FOSTER: As if we don't have
18 enough lawyers, Doak Foster, outside counsel to
19 Highmark, as well.

20 MR. SENCAK: And I'm Jack Sencak.
21 I'm inside counsel for Highmark, in-house
22 counsel.

23 THE HEARING OFFICER: And how about
24 the other folks in the room? Do you want to

1 identify yourself? Are you members of the public
2 or --

3 MS. SIZEMORE: Linda Sizemore. I'm
4 director of company regulation at the Delaware
5 Department of Insurance.

6 MS. NEMES: I'm Linda Nemes, the
7 senior insurance analyst for the Department of
8 Insurance.

9 DEPUTY COMMISSIONER REED: Gene
10 Reed, Deputy Insurance Commissioner.

11 MS. SANCHEZ: Darelle Riabov,
12 assistant vice president of corporate
13 communications at BlueCross.

14 MS. MCKAY: Mickey McKay, League of
15 Women Voters. I'm chair of the open government
16 committee.

17 MR. SANTANA: Charles Santana. I am
18 a financial analyst for the Delaware Department
19 of Insurance.

20 THE HEARING OFFICER: Thank you. I
21 think the first matter that we have before us
22 today are the motions that Mr. Campbell and
23 Mr. Foster have filed to be admitted pro hac
24 vice, or rather, Delaware counsel has filed that

1 on behalf of them. Do you have anything to say
2 in connection with your motion?

3 MS. PARIKH: Nothing to add. Just
4 that we ask that they be admitted at your Honor's
5 earliest convenience.

6 THE HEARING OFFICER: Thank you.
7 Does anyone else want to be heard on that?

8 MR. HOUGHTON: Your Honor, we can
9 confirm that the Delaware Department of Insurance
10 has received the requisite fee in connection with
11 the application, and speaking for the Department,
12 we have no opposition or problem with respect to
13 the application for the pro hac admission.

14 THE HEARING OFFICER: And I have
15 reviewed those applications, and will sign them
16 forthwith, and they and the checks of the -- they
17 will be made part of the record in this case, and
18 the checks will be delivered to the Delaware
19 Supreme Court. Who is going to do that?

20 MR. HOUGHTON: Your Honor, we've
21 undertaken to do that, the Delaware Department
22 has.

23 THE HEARING OFFICER: Okay. Good.

24 MR. HOUGHTON: Thank you.

1 THE HEARING OFFICER: And the matter
2 that we have before us today are the applications
3 of individuals to be admitted to these
4 proceedings as parties in interest. And I
5 believe that there is an affidavit, affidavits of
6 publication of the notices of this hearing that
7 were published in the Wilmington News Journal and
8 the Dover State News -- Delaware State News.

9 MR. HOUGHTON: That's correct, Your
10 Honor. If I can, perhaps I can facilitate some
11 of the items being placed in the record, if I can
12 address Your Honor.

13 THE HEARING OFFICER: Okay. That
14 would be helpful. I will check my list off.

15 MR. HOUGHTON: I have marked,
16 perhaps not as well as I should have, but there
17 were packets delivered to Your Honor and to the
18 other parties in the proceeding, and Dr. Fields
19 is being handed one, as well.

20 I'd like to offer these up to the
21 reporter, and then go through them. My
22 experience over time has been the court reporter
23 always get the short shrift, often, in this, so I
24 thought I'd make your job as easy as I could.

1 What I've premarked as Exhibit 1 is
2 the actual text of the public hearing notice that
3 was published.

4 2 is the affidavit of publication in
5 The News Journal.

6 3 is the application -- I'm sorry.
7 The affidavit of publication evidencing
8 publishing notice in the Delaware State News.

9 And, Your Honor, I then put together
10 a series of communications to the Department
11 relating to applications for party status, the
12 first which would be 4, is the communication
13 dated December 28th, both in letter form and
14 e-mail form, from Dr. Fields.

15 5 is a communication by certified
16 mail and e-mail to Linda Sizemore, dated December
17 13th from Gary M. Ciaffi, senior vice president
18 of -- I think it's Delle Donne Associates.

19 6 is a letter from me, as counsel
20 for the Department, responding to Mr. Ciaffi's
21 letter, informing him that we construed his
22 application as one to be a party to be informed
23 of the proceedings, but not seeking party status.

24 7 is a communication from

1 Mr. Ciaffi -- I'm sorry. From Mr. Finizio to
2 counsel, informing us that he had had a
3 communication with Mr. Ciaffi confirming that he
4 would not be pursuing party status. And also, an
5 e-mail from Senator Katz confirming receipt and
6 acceptance of his withdrawal of party status.

7 8 seems to be missing from my book,
8 so I will consult the index. 8 is a letter from
9 Senator Katz to Linda Sizemore, dated 12/21,
10 which I believe was the original communication by
11 Senator Katz to the Department, indicating his
12 interest in obtaining party status.

13 9 is a response by Ms. Sizemore to
14 Mr. -- Senator Katz' e-mail.

15 10 is a -- again, an e-mail from
16 Linda Sizemore to Senator Katz regarding this
17 matter.

18 And 11 is an e-mail from Senator
19 Katz, again reflecting his withdrawal, his
20 retracting, as he characterized it, in a January
21 8 e-mail, of his party status request.

22 The additional item which I think
23 should be in the record, is the most recent
24 communication, which I undoubtedly have sitting

1 here, from Dr. Fields, which is dated the 17th of
2 January. And I think your package included this.
3 I think it does.

4 Your Honor, perhaps this is too much
5 in one blast, but it's my attempt in good faith
6 to make sure we have these communications in the
7 record.

8 THE HEARING OFFICER: So the letter
9 of the 17th from Dr. Fields would be Exhibit 12?

10 MR. HOUGHTON: That's correct.

11 THE HEARING OFFICER: And I suppose
12 that we will have those duly marked and admitted
13 as set out in Mr. Houghton's listing.

14 (Department's Exhibits 1 through 12
15 admitted into evidence)

16 THE HEARING OFFICER: From
17 Mr. Houghton's summary of the exhibits, it
18 indicates that in response to the notice to
19 identify additional parties to this proceeding,
20 we had three responses. Two of those have been
21 withdrawn. The third was from Jo Ann Fields.
22 She is here, Dr. Fields is here today on behalf
23 of her application.

24 I did receive responses to that

1 application. The Department of Insurance and
2 BlueCross BlueShield and Highmark are all opposed
3 to her request, and the Department of Justice
4 took no position.

5 And so, we're here for the public
6 hearing. Mr. Ciaffi and Senator Katz have not
7 appeared for the hearing, so it's obvious that
8 they will not be pursuing their applications.

9 Dr. Fields, I guess at this point it
10 is up to you to tell me, if you wish, why you
11 would like to be made a party to this proceeding.

12 DR. FIELDS: Well, I thank you, and
13 I'm sorry so many people had to come out on an
14 icy morning just for me, but I appreciate the
15 opportunity to present my case, because I think
16 this is important. I'm basically going to follow
17 my statement here, if you don't mind.

18 THE HEARING OFFICER: I suppose I
19 should swear her in? Yeah. I think you're going
20 to be testifying, so let's have the court
21 reporter administer the oath.

22 MR. FINIZIO: I think we should have
23 the court reporter swear her in.

24 DR. FIELDS: Should I stand?

1 THE HEARING OFFICER: Yes, go ahead.

2 JO ANN FIELDS, M.D.

3 The witness herein, having first been
4 duly sworn on oath, was examined and
5 testified as follows:

6 THE HEARING OFFICER: Thank you.

7 DR. FIELDS: I'm basically going to
8 be reading from my statement, if you don't mind.
9 And I believe that my application for party
10 status should be approved, because I do have a
11 significant financial interest here, and because
12 I do not believe that my interests are adequately
13 represented by the other parties.

14 I've been a customer of BlueCross
15 BlueShield of Delaware in the small group market
16 since 2007. In response to my application for
17 party status to be a part of this affiliation,
18 both BlueCross and the Department of Insurance
19 oppose my application. Their objections and my
20 responses are as follows:

21 Number one, they say that I do not
22 have a significant pecuniary interest in this
23 proceeding. I say that what is significant to me
24 may not be significant to an organization like

1 BlueCross BlueShield, with \$530 million in annual
2 revenues, or an organization like Highmark, with
3 \$13 billion in reported revenues in 2009.

4 What is significant to me is I had
5 to lay off two full-time employees, in part
6 because I could not afford to pay both their
7 insurance and mine.

8 What is significant to me is that my
9 health insurance premiums are my single biggest
10 discretionary expense, if you want to call health
11 insurance a discretionary expense. I could drop
12 my health insurance, I suppose, but I would be
13 very frightened to do that.

14 What is significant to me is that
15 since I started with BlueCross BlueShield in
16 2007, my health insurance rate jumped 12 percent
17 in 2008, 9 percent in 2009, and 13 percent in
18 2010. The monthly premium was \$372 in 2007, and
19 now it's \$518 a month.

20 Their second objection is that my
21 interests are already adequately represented by
22 the Department of Insurance. I believe the
23 Department of Insurance does the best it can, but
24 the Department of Insurance does not adequately

1 represent my interests, and I base this on my
2 experience with them.

3 In my opinion, the Insurance
4 Commissioner does not have strong enough
5 authority, and probably not enough resources, to
6 adequately review health insurance rate increases
7 from the private insurers. The new healthcare
8 law passed last March recognizes that rate review
9 processes in the states are weak.

10 As I saw my health insurance go up
11 year after year, I got involved in this issue. I
12 had informal discussions with then-Insurance
13 Commissioner Matt Denn, and starting in 2008 with
14 Insurance Commissioner Weldin Stewart.

15 The extent of the explanation I got
16 was that elementary lesson in economics, that if
17 you have a business, you have to make sure that
18 your revenues are higher than your expenses. But
19 there was no proof, no documentation, of what was
20 going on in these rate reviews, and what the
21 insurers were doing with my money.

22 When my rate again jumped 13 percent
23 in July of 2010, I wrote a formal letter to
24 Commissioner Weldin Stewart. And I have copies

1 of these letters, if anybody wants to see them.

2 My letter was answered by Jessica
3 Love, an investigator in consumer services
4 division, in a letter dated June 29th, 2010. She
5 says, quote, that a rate filing is reviewed by an
6 actuary on behalf of the carrier. Not on behalf
7 of the Department of Insurance, not on my behalf,
8 but on behalf of the carrier, which is the
9 insurer.

10 Then, quote, "This information is
11 reviewed by other actuaries for accuracy, and to
12 verify that the increase is justified. The
13 filings, actuarial reviews, audits, and
14 correspondence between the company and the
15 Department is proprietary information, and is not
16 available for review."

17 So it's not clear to me that any
18 actuary looks at this rate increase on my behalf.
19 And even if they do, I can't know about it or see
20 it.

21 I then took the next step, and I
22 filed a Freedom of Information Act request to
23 find out why my rate went up. The FOIA request
24 was answered by Deputy Insurance Commissioner

1 Gene Reed, in a letter dated August the 10th,
2 2010. Again, my request was rejected.

3 I sent a third letter to
4 Commissioner Weldin Stewart on October 7th, 2010,
5 asking quote, "What insurers and what health
6 insurance rate increases have been reviewed by
7 the department this year?" Unquote.

8 There was new State legislation in
9 October of 2010, giving the Insurance
10 Commissioner stronger rate review powers, and I
11 wanted to know how that was being used.

12 I received an e-mail saying that the
13 Department hopes to have this information
14 available by early first quarter, 2011. Nothing
15 is available so far.

16 So, I ask, where's the
17 representation of my interests here? I see none.
18 I have used what means are available to me to get
19 answers from the Department of Insurance. The
20 Department of Insurance may want to make
21 information available, but I suspect it does not
22 have the authority to expose excessive insurance
23 rates, or do anything about excessive rate
24 increases.

1 The new healthcare law steps up
2 scrutiny of insurance rates, but for right now,
3 studies show that active rate review lowers
4 premium requests by insurers. I want the benefit
5 of active rate review of the increased insurance
6 rates.

7 The parties' third objection is that
8 my interests are already adequately represented
9 by the Attorney General. In his media release
10 dated January the 4th, the Attorney General says
11 he wants to look at BlueCross' surplus cash
12 reserves and how Highmark intends to use them.
13 Excessive surpluses could be applied toward
14 holding down rate increases.

15 So I hope Mr. Biden looks into that.
16 Mr. Biden also asks how will the expected cost
17 savings result in economies of scale? How will
18 that be passed on to customers? I think that's a
19 good question, and I hope he follows through on
20 that.

21 I am proposing increased scrutiny
22 and transparency of BlueCross BlueShield's
23 proposed rates as a condition of the approval of
24 this proposed affiliation. To my knowledge, the

1 Attorney General has not requested a similar
2 condition.

3 Their fourth objection is that the
4 protection of my interests is not impeded if I'm
5 not admitted as a party.

6 If the affiliation is approved, who
7 has authority to do rate reviews? Delaware, or
8 Pennsylvania, or both? And who in Pennsylvania
9 is going to listen to me if I have a complaint?

10 In Pennsylvania, Highmark already is
11 being criticized for threatening to pull out of
12 the State's adult basic health insurance plan,
13 which offers low-cost health insurance to
14 low-income working families. And then they plan
15 to transfer these customers to a more expensive
16 plan, with rates up to four times higher. At the
17 same time, Highmark surpluses have grown to \$5.6
18 billion last year.

19 So, Highmark's track record for
20 raising rates is under scrutiny. If we add
21 problems with controlling rates in Pennsylvania
22 to problems we already have controlling rates in
23 Delaware, I lose protection.

24 In conclusion, I have a significant

1 financial interest in the matter of the
2 affiliation between BlueCross BlueShield and
3 Highmark. My interests are not adequately
4 represented by the other parties.

5 I am specifically advocating that
6 any approval of the proposed affiliation include
7 a condition of full transparency of BlueCross'
8 rates, and a requirement of prior approval before
9 new rates are effective. The condition must
10 include a standard of review for BlueCross'
11 proposed rates.

12 BlueCross BlueShield of Delaware's
13 rates should be actuarially sound, reasonable,
14 not excessive, inadequate, or unfairly
15 discriminatory. They shall be based on
16 reasonable administrative expenses. Rates may
17 not be deceptive or constitute an unfair trade
18 practice, and the insurer shall have the burden
19 to show, by clear and convincing evidence, that
20 its rates comply with these terms, and the public
21 may review summary documents.

22 The Commissioner shall disapprove a
23 proposed rate change if the proposed rates are
24 not actuarially sound, if they're unreasonable,

1 excessive, inadequate, and if they're based on
2 unreasonable administrative expenses.

3 Neither the Insurance Commissioner
4 nor the Attorney General has proposed a similar
5 condition of approval for this affiliation.

6 Judge Robinson, I thank you for your
7 time and your consideration, and everyone else
8 also. Thank you.

9 THE HEARING OFFICER: Thank you,
10 Dr. Fields. I suppose at this point it is
11 appropriate, if any of the attorneys in the room
12 representing the existing, present parties
13 through the proceeding, have any questions they
14 would like to ask Dr. Fields about her testimony.

15 MR. HOUGHTON: Your Honor, the
16 Department has no questions.

17 MR. SWAYZE: BlueCross has no
18 questions, Your Honor.

19 MR. CAMPBELL: I have no further
20 questions.

21 THE HEARING OFFICER: I have a
22 couple of questions.

23 EXAMINATION

24 BY THE HEARING OFFICER:

1 Q. Dr. Fields, why do you feel that -- I mean
2 given the fact that you've had the opportunity
3 today to make the statement, which had a lot of
4 interesting and thorough information in it, why
5 do you feel that you need to be a full-fledged
6 party to this proceeding, rather than
7 participating as a member, as an interested
8 member of the public?

9 A. I want to see -- I want to read the papers
10 with my own eyes. I want to see the tables and
11 the charts with my own eyes, so I can follow the
12 facts to their logical conclusion.

13 Q. And you are talking about the filings that
14 have to do with their rates, rather than with
15 material that will be part of the record in this
16 particular matter?

17 A. I'm talking about both, really.

18 Q. There will be a lot of documentary
19 evidence coming in in this matter. Some of it is
20 already here, and I think there will probably be
21 additional exhibits that come in during the
22 course of this matter. And you are free to take
23 a look at that, except for those portions of that
24 record that may be deemed confidential. I think

1 there are two -- there are requests to have two
2 of the documents confidential, and I've not ruled
3 on them as yet.

4 But -- you are certainly entitled to
5 review all of that documentation, but I'm not
6 sure, I mean I don't think that what has been --
7 is before the Department on the rates matter is
8 really a part of this proceeding.

9 A. It's hard for me to answer when I don't
10 know what is going to be deemed proprietary, and
11 what is going to be deemed I can't look at it.
12 So it's hard for me to answer that question.
13 What my experience is, is that too many things
14 are deemed I can't look at unless I'm a party.

15 Q. So you're saying the benefit of being a
16 party would be that you could thereby take a look
17 at all the documents, even those that are
18 proprietary or confidential --

19 A. Right.

20 Q. -- in the record?

21 A. Yes, your Honor. I believe that my
22 experience tells me that too many documents and
23 information is withheld, and it's hard for me to
24 answer your question when I don't know what's

1 been withheld and what hasn't. And that's part
2 of it.

3 Q. And it's hard for me to ask it, because we
4 don't know yet, either.

5 A. But I appreciate your giving me the
6 opportunity. And I -- I believe that, like I
7 say, my experience is, I would like to look at
8 the papers with my own eyes, and -- but I
9 appreciate anything that is made available to me.

10 Q. And are you proposing to bring in
11 witnesses on your behalf, or call in an actuary,
12 or any experts to review? Or is it just going to
13 be your personal review of the information?

14 A. Just my personal review. I have no means
15 of bringing in anything else.

16 THE HEARING OFFICER: Is there
17 anything further? Well, I've reviewed
18 Dr. Fields' two letters, and heard her testimony
19 this morning, and she has obviously done a lot of
20 thinking about this matter, and has presented a
21 very cogent argument on her behalf.

22 I have to judge it in light of the
23 standards that are set out in the law for
24 determining which additional parties may

1 participate in the proceeding. That is, first of
2 all, governed by the Commissioner's pre-hearing
3 order, which sets three things that must be
4 demonstrated.

5 One is that the person has a
6 significant pecuniary interest, and that interest
7 is not adequately represented by an existing
8 party, and the protection of that interest would
9 otherwise be impaired or impeded, unless such
10 person is admitted as a party.

11 I've also taken a look at 18
12 Delaware Code section 5003(d)(2), which is
13 somewhat related to this proceeding because it
14 governs hearings, on the standards that are set
15 out and are applicable to this case. And that
16 makes it clear that a person who is admitted as a
17 party in interest has the opportunity to present
18 evidence, to examine and cross-examine witnesses,
19 to offer oral and written arguments, and subject
20 to certain deadlines, conduct discovery in the
21 matter.

22 I think it's important to note that
23 persons who -- unlike what goes on in a
24 courtroom, people who are denied the status of

1 parties in interest in this proceeding
2 nevertheless have an opportunity to participate
3 in these proceedings in a meaningful way.

4 Both the order and the provisions of
5 the code require public hearing, and the
6 Commissioner's order makes clear that any person,
7 whether or not a party, may appear at the hearing
8 and present testimony in aid of the inquiry. And
9 such persons may also furnish written statements.
10 Their submissions will be part of the record in
11 the matter and considered by the hearing officer
12 and by the Commissioner.

13 They are also entitled to review the
14 entire public record in the matter, including the
15 exhibits and information admitted by the parties,
16 except for information which the hearing officer
17 determines is confidential.

18 And in a prior manifestation of this
19 proceeding, ten years ago, I specifically recall
20 that we had a whole day in which we heard from
21 members of the public, and that we had a number
22 of letters and requests that came in from the
23 public. They were considered by the hearing
24 officer, and by the Commissioner, and I think my

1 findings in that case made reference to some of
2 those submissions and statements that members of
3 the public made.

4 So, I think that there is an
5 opportunity for people to participate in this
6 proceeding in a very meaningful way, even though
7 they are not technically formal parties to the
8 proceeding.

9 The interest which you assert is
10 that you are a customer or policyholder of
11 BlueCross BlueShield, and that you have been
12 affected, and may in the future be affected by
13 the rate, by any rate increases which would be
14 imposed.

15 Although the Commissioner's order
16 directs that an interest must be a significant
17 pecuniary interest, this interest is not
18 determined simply by considering the amount of a
19 financial impact on the applicant. This is made
20 clear by the decision of the hearing officer in
21 another case before the Insurance Department, and
22 I refer to the Royal Indemnity Company case,
23 where the hearing officer denied party status to
24 applicants who held policies that involve, quote,

1 "upwards of hundreds of millions of dollars."

2 The hearing officer wrote that,
3 quote, "Some distinct, substantial interest
4 beyond that as a policyholder should be required
5 as a basis for entitlement to party status in
6 proceedings under section 5003."

7 And the idea that the interest
8 asserted must be more than that of a mere
9 policyholder is also suggested by the fact that
10 in an administrative hearing of this nature, the
11 Commissioner would be overwhelmed if every single
12 BlueCross BlueShield policyholder had party
13 status.

14 Accordingly, I believe, under this
15 ruling and under just plain common sense, that
16 some distinct and substantial interest beyond
17 that of a policyholder must be demonstrated by an
18 applicant for party status.

19 Also, I believe that you have failed
20 to overcome the presumption that your interests
21 can be adequately protected by the involvement of
22 the Department of Insurance and by the Attorney
23 General in this matter. Both of those have
24 responsibilities to policyholders to make sure

1 their interests are not harmed by the proposed
2 affiliation.

3 In the hearing officer's decision in
4 the Royal Indemnity matter, he stated that,
5 quote, "All agree that the protection of
6 policyholders is the primary objective of
7 Delaware's body of insurance regulation."

8 And in an earlier manifestation of
9 the present matter, the Delaware Superior Court
10 noted that, quote, "In Delaware, as in most
11 states, the Insurance Commissioner is charged
12 with the responsibility of providing scrutiny and
13 assessing risks to Delaware policyholders by
14 enforcing the law and regulations with their best
15 interests in mind."

16 Now, I know you have concerns about
17 how you were dealt with by the Department when
18 you raised the issue of the rate increase. And
19 although the matter of insurance rates is
20 involved in this whole proceeding, it's not the
21 central inquiry.

22 What we're talking about here is a
23 matter that will be judged under specific
24 statutory standards that are set out in 5003(d),

1 and although that makes reference to the
2 interests of a policyholders and to the public,
3 so in that way rates do have some relationship to
4 what is going on, it is not the crucial matter
5 here.

6 And I don't believe that this
7 proceeding should be used to challenge the rates
8 which are made under other sections of the code.
9 Which it sounds like what your basic interest is,
10 is in challenging how rates are made, and how
11 rates were increased in July and affected you.
12 But I believe that is not the central inquiry
13 before the Board.

14 I also notice that the Attorney
15 General is participating as a party, and I read
16 his quote in his media release, as you did,
17 because I think you quoted it in your letter.
18 And he said, he is quoted as saying, "The
19 Attorney General's Office has a responsibility to
20 be a voice for Delawareans and represent the best
21 interests of the public. The proposed
22 BCBS/Highmark transaction raises a number of
23 serious questions regarding the quality of care
24 to its beneficiaries, the cost of care to its

1 beneficiaries, and the disposition of this not
2 for profit significant cash reserve. We will
3 ensure that all the necessary questions are asked
4 and answered before this transaction proceeds."

5 And this strong statement certainly
6 agrees, Dr. Fields, that your concerns will be
7 pursued by the Attorney General as a present
8 party to these proceedings.

9 And finally, I note that the
10 provision of 18 Delaware Code 5003(d)(1), which
11 sets out the factors that the Commissioner must
12 consider in connection with the proposed
13 affiliation, and several of those factors require
14 the Commissioner specifically to consider, quote,
15 "The interest of policyholders, and also the
16 public interest."

17 So, the role of the Department in
18 the matter, the involvement of the Attorney
19 General, and the existence of the statutory
20 factors all establish to my satisfaction that
21 your interests will be represented by the present
22 parties, and that your interest as a policyholder
23 will be protected in these proceedings.

24 And for those reasons, I'm denying

1 your application to be considered a party in
2 interest to the proceedings. However, you are
3 certainly welcome to participate, to attend all
4 the hearings, to participate as a member of the
5 public, to submit additional statements in
6 addition to the ones that are already in the
7 record, and to make statements at that hearing in
8 the future.

9 And you also are entitled to review
10 the extensive record in this case, and I frankly
11 hope you will do that. So, thank you very much.

12 DR. FIELDS: Thank you very much.

13 THE HEARING OFFICER: Is there
14 anything further today? Do you --

15 MR. HOUGHTON: Your Honor, I would
16 like to note on the record, subsequent to your
17 Honor's ruling, a few things regarding
18 Dr. Fields' application.

19 First of all, I'd like to thank her
20 for participating in the proceeding. It is the
21 Department's wish that the public is involved, is
22 engaged, and contributes to this process.

23 Secondly, I want to note that as
24 your Honor had noted in your comments, that

1 there's an obvious concern on the part of
2 Dr. Fields regarding the rate making process, and
3 the transparency of that process. The Department
4 does retain actuaries, and other consultants, and
5 qualified individuals within the Department to
6 review rates to protect the interest of
7 policyholders and the public.

8 But the Department also wants to
9 assure that members of the public are obtaining
10 information that they're entitled to. I met with
11 Deputy Commissioner Reed prior to the hearing
12 this morning. The Department is going to
13 undertake the current status of the records that
14 you had previously requested, to review and
15 redetermine whether anything previously deemed
16 confidential and not available is now available,
17 as a result, in part, of the process of
18 completion of the rate application, and will be
19 in communication with you regarding the possible
20 availability of additional information. Because
21 we do want to assure that you and other members
22 of the public have access to information.

23 That's really what I wanted to make
24 clear, your Honor, is that we -- we have heard

1 Dr. Fields, previously and today, and that we do
2 want to, in a process that we agree is not
3 inextricably linked to the affiliation process,
4 we do want to publicly recognize our sensitivity
5 to an interest in providing you and other members
6 of the public information. And we will review
7 and be back to you within the next two weeks.

8 DR. FIELDS: Thank you.

9 MR. HOUGHTON: Thank you.

10 THE HEARING OFFICER: I have two
11 questions, just for my information. In the last
12 letter of Dr. Fields, the last paragraph of her
13 first letter, she references some sort of grant,
14 or money that had been given to the Department to
15 review its rate process. Is that -- what can you
16 tell me about that? Or tell her about that.

17 MR. HOUGHTON: Your Honor, I will, I
18 guess, preface my remarks by saying I understand
19 that Dr. Fields has been not only an attendee,
20 but a participant in healthcare commission
21 meetings where there has been a discussion about
22 the availability of certain Federal funding to
23 implement elements of Federal healthcare reform.

24 I know that we've had a discussion,

1 and Linda Nemes of the Department can address
2 your Honor's concern directly about the
3 availability of money. Maybe you'd like to
4 comment.

5 MS. NEMES: Yes, your Honor.

6 Delaware did apply for the premium rate review
7 grant. We initially applied for about \$600,000,
8 and the Federal government, for all the states
9 that applied, actually awarded \$1 million. There
10 are some steps we would have to take to access
11 the additional amounts, but it is sitting there
12 for the Department.

13 The Department is undertaking steps
14 to use that money to enhance transparency,
15 provide additional information to the public.
16 And the first step that we are undertaking, which
17 I did indicate at the last healthcare commission
18 meeting, is to come up with a spreadsheet that
19 will list by carrier, by plan, the requested
20 rate, now approved, and a couple other columns of
21 additional information to be published on our
22 website.

23 And hopefully, that will be complete
24 by the end of January of the year 2011. And

1 after that, we are also working to move forward
2 on a comparison function of our website, so that
3 consumers can go in and put in a few data
4 elements, be able to do comparisons among various
5 insurance for their particular situation.

6 Those are two primary undertakings
7 that we have at the current time. There are
8 plans, moving forward, that we will do some
9 hearings throughout the state on rate filings,
10 that meet certain parameters. Because we
11 certainly couldn't do every single one, but
12 certain ones.

13 We would want to have the
14 Commissioner do hearings in the form of
15 commentary, not formal hearing proceedings, but
16 commentary from the public, presenting what's
17 being asked, and information about these things,
18 to receive input from the public.

19 Those are three major initiatives
20 for the first part of this year. Additionally,
21 we do hope to sponsor meetings between carriers
22 and the public, to have carriers explain to the
23 public what impacts rates, and have public input
24 into that.

1 THE HEARING OFFICER: And I think
2 I've read somewhere, and you all are far more
3 knowledgeable about health insurance matters than
4 I, that the new Federal legislation will require,
5 if there is a rate increase above 10 percent,
6 will require some sort of Federal review, or if
7 the State does not have certain practices in
8 place.

9 MS. NEMES: Yes. That is correct.
10 The Department of Health and Social Services
11 would be reviewing those rates to determine
12 whether they were excessive.

13 But in Delaware, Delaware already
14 has a rate review process in place. In October,
15 2009 -- or 2008, the Commissioner was given --
16 I'm sorry. It is 2009. I apologize. Was given
17 the ability to review and approve rates, approve
18 or disapprove rates. And the Commissioner has
19 been engaging in that process.

20 We do have an actuarial firm that is
21 not connected to any insurance carrier. They are
22 on retainer with the Department of Insurance to
23 review the filings, to be sure that what is filed
24 actually meets actuarially justified

1 requirements, takes a look at the exhibits, takes
2 a look at all the information that a carrier
3 submits, to be sure that the carriers requesting
4 an increase actually needs that increase.

5 Increases have been denied,
6 increases have been decreased, as a result of the
7 process.

8 THE HEARING OFFICER: Okay. Thank
9 you. Any further questions?

10 MR. HOUGHTON: Nothing further.

11 THE HEARING OFFICER: Dr. Fields,
12 keep after them. Make sure they do what they
13 just said they were going to be doing in this
14 next quarter.

15 DR. FIELDS: I would ask one
16 question.

17 THE HEARING OFFICER: Yes, ma'am.

18 DR. FIELDS: Can I get a copy of the
19 grant application?

20 MS. NEMES: I think we can probably
21 provide that. You know, I'm -- I don't see any
22 reason offhand why not. But --

23 DR. FIELDS: Okay.

24 MS. NEMES: I don't have a problem

1 with it.

2 DR. FIELDS: Okay. Thank you.

3 THE HEARING OFFICER: Okay. Is
4 there anything further for the hearing today?
5 Then this hearing is concluded. I would like to
6 meet briefly with counsel, just to see how we
7 stand on scheduling matters.

8 MR. SWAYZE: We're a captive
9 audience, your Honor.

10 MR. HOUGHTON: Thank you, your
11 Honor.

12 (Hearing concluded at 10:23 a.m.)

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REPORTER'S CERTIFICATE

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I, JULIANNE LaBADIA, Registered Diplomate Reporter and Notary Public, do hereby certify that the foregoing record, pages 1 through 40 inclusive is a true and accurate transcript of my stenographic notes taken on January 18, 2011, in the above-captioned matter.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 19th day of January, 2011, at Wilmington.

Julianne LaBadia, RDR, CRR

PRINTED DUPLICATE
The original certified E-Transcript
file was electronically signed
using RealLegal technology.

EXHIBIT 1

**IN RE: THE PROPOSED AFFILIATION OF BCBSD, INC.,
DOING BUSINESS AS BLUE CROSS BLUE SHIELD
OF DELAWARE, WITH HIGHMARK INC.**

**PUBLIC HEARING
IDENTIFICATION OF PARTIES IN INTEREST**

Highmark Inc., a Pennsylvania nonprofit corporation, has filed with Insurance Commissioner Karen Weldin Stewart, pursuant to the Commissioner's general regulatory authority under 18 *Del. C.* § 301 *et seq.*, a proposed plan to affiliate with BCBSD, Inc., a Delaware nonprofit health service corporation. The Hearing Officer, appointed by the Commissioner's Order, dated November 4, 2010, will hold a hearing open to the public to consider the merits of the affiliation proposal, although no hearing date has been established relating to the merits of the proposal.

Any person who seeks to be determined a party in interest to this proceeding must submit to the Delaware Department of Insurance a statement, in writing, providing his or her name; the name of his or her organization, if any; and the name of his or her counsel, if any. The statement must further provide a brief statement explaining why he, she, or the organization which he or she represents, has a significant pecuniary interest in the proceeding, which interest is not adequately represented by an existing party, and the protection of which otherwise will be impaired or impeded unless such person is admitted as a party, and that therefore, pursuant to the Pre-Hearing Order, dated October 20, 2010, such person should be declared a party to this proceeding. The foregoing written statement must be submitted to Linda Sizemore, Director of Company Regulation, at the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904-2465, no later than 4:00 p.m. Tuesday, December 28, 2010, by mail, hand, parcel service, fax delivery (302-739-2709), or electronic mail (Linda.Sizemore@state.de.us). If delivered by fax or electronic mail to the Delaware Department of Insurance, the original signed document must be received by the Delaware Insurance Department within two (2) days of the transmission. A duplicate submission shall be simultaneously served on counsel for each of the original parties to the proceeding by any one of the following methods: mail, hand, parcel service, fax delivery, or electronic mail, as follows: David S. Swayze, Esquire, attorney for BCBSD, Inc., at Parkowski, Guerke & Swayze, P.A., 800 King Street, Suite 203, Wilmington, DE 19801 (fax: 302-654-3033; email: dswayze@pgslegal.com); Michael Houghton, Esquire, attorney for the Delaware Department of Insurance at Morris, Nichols, Arsht & Tunnell, LLP, 1201 North Market Street, P.O. Box 1347, Wilmington, DE 19899 (fax: 302-658-3989; email: mhoughton@mnat.com); Frederick K. Campbell, Esquire, attorney for Highmark Inc., at Mitchell & Williams, 425 West Capitol Avenue, Suite 1800, Little Rock, AR 72201-3525 (fax: 501-688-8807; email: RCampbell@mwlaw.com); and Timothy P. Mullaney, Sr., Esquire, attorney for the Delaware Department of Justice, at P.O. Box 1227, Dover, DE 19901 (fax: 302-577-6499; email: Tim.Mullaney@state.de.us).

The Hearing Officer will hold a public hearing at the Delaware Department of Insurance Hearing Room, 841 Silver Lake Boulevard, Dover, DE 19904 at 9:30 a.m. on Tuesday, January 18, 2011 to hear argument in support of or in opposition to such requests for party status by the applicant or parties to the proceeding. If necessary, the Hearing Officer may continue such hearing to a date and time to be set by the Hearing Officer. Public Comment at

this hearing shall be limited to the party status issue. There will be no opportunity for Public Comment at this hearing on the merits of the affiliation proposal. Public Comment on the merits of the affiliation proposal from any person not afforded party status may be provided in writing or orally at a subsequent public hearing to be scheduled.

Additional information about this matter is available at <http://www.delawareinsurance.gov/departments/bcbs/bcbs.shtml>.

EXHIBIT 2

INDEPENDENT NEWSPAPERS, INC.

P. O. Box 7001 • Dover, Delaware • 19903 • 1-800-282-8586

State of Delaware:

County of Kent:

Before me, a Notary Public, for the County and State aforesaid, Edward Dulin, known to me to be such, who being sworn according to law deposes and says that he is President of Independent Newspapers, Inc. / Delmarva, the publisher of **The Delaware State News**, a daily newspaper published at Dover, County of Kent, and State of Delaware, and that the notice, a copy of which is hereto attached, as published in **The Delaware State News** in its issue of December 3-7, 2010.



President
Independent Newspapers, Inc. / Delmarva

Sworn to and subscribed before me this _____

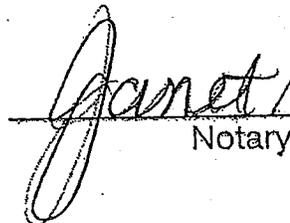
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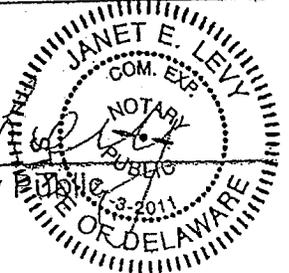
Day of _____

December

A.D. _____

2010


Notary Public



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DOING BUSINESS AS BLUE CROSS BLUE SHIELD
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Additional information about this matter is available at
<http://www.delawareinsurance.gov/departments/bcbs/bcbs.shtml>.
372742 DSN 12/3-7/2010

EXHIBIT 3

Legal Desk 302-324-2676
Legal Fax 302-324-2249

Street Address:
950 West Basin Road
New Castle, DE 19720

Mailing Address:
P.O. Box 15505
Wilmington, DE 19850

(302) 324-2500
(800) 235-9100

AFFIDAVIT OF PUBLICATION

State of Delaware

Personally appeared before me this 7th day of December, 2010.

I, Kristin Segner, of The News Journal Company, a daily newspaper printed and published in the County of New Castle County, State of Delaware, who, being duly sworn states that the advertisement of MORRIS, NICHOLS, ARSHT & TUNNELL - PUBLIC HEARING - IDENTIFICATION OF PARTIES IN INTEREST

was published in The News Journal on December 3, 4, 5, 6, 7, 2010

Kristin Segner
Name

Legal Coordinator
Title

Sworn to before me this 7th day of December, 2010

Wanda James
Notary Public

Wanda James
Notary Public
State of Delaware
Commission expires 11/02/2012

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Additional information about this matter is available at <http://www.delawareinsurance.gov/departments/bcbs/bcbs.shtml>, 12/3,4,5,6,7-NJ

0110616989-01

EXHIBIT 4

JO ANN FIELDS, M.D.
P.O. BOX 615, 2 EAST HIGH STREET • FELTON, DELAWARE 19943
TEL: 302-284-1169 • FAX: 302-284-8827

December 28, 2010

Linda Sizemore
Director of Company Regulation
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, Delaware 19904

Dear Ms. Sizemore:

I request to be party to the review of the proposed affiliation between Blue Cross Blue Shield of Delaware (BCBSD) and Highmark, Inc. As a customer of BCBSD I have a financial stake. I purchase my health insurance from BCBS in the individual and small group market where I am particularly vulnerable to above average rate increases.

In fact, when my policy renewed in July 2010 I had a 13% rate increase. I wrote to the Department of Insurance and later filed a FOIA request with the Department of Insurance to get an explanation for the rate increase. I was told in a letter dated 8/10/10 from Deputy Insurance Commissioner, Gene Reed, that this information is "private commercial information" and "is proprietary and deemed non-public and not subject to disclosure by FOIA request." It seems to me that BCBSD is not a totally private organization. It is a not-for-profit plan and as I understand it has a charter with the state to provide not-for-profit health insurance coverage to the people of Delaware.

I believe that the affiliation review process is a good opportunity for the state to write into the affiliation agreement certain guarantees that BCBSD and Highmark will open up their records to a more rigorous rate review process by the Insurance Commissioner and also allow public review and comment. I believe that my participation will help to achieve that goal.

In particular I would pursue three basic issues:

- 1) If one goal of the affiliation is to achieve operating efficiencies for the two companies, how will those efficiencies translate into lower rates for customers and how will customers know?
- 2) As part of the affiliation agreement, BCBSD and Highmark should agree to a process by which rate increases will be subject to public review and comment.
- 3) I believe the Department of Insurance has recently received a \$1 million grant to implement a new health insurance rate review process. The affiliation review process would be a good opportunity for the Insurance Commissioner to present her department's progress on that grant by explaining how she could conduct a rate review using BCBSD/Highmark as a specific example.

I am fully aware that the technical and legal issues here are beyond my understanding. But the customers and the public deserve some assurance that their interests are being represented.

Thank you for your consideration.

Sincerely,

Jo Ann Fields, MD
Jo Ann Fields, MD

Sent to:

Linda Sizemore by email and hand delivered

David Swayze by email and US mail

Michael Houghton by email and US mail

Frederick Campbell by email and US mail

Timothy Mullancy by email and US mail

From: joannfields@verizon.net <joannfields@verizon.net>
To: Linda.Sizemore@state.de.us <Linda.Sizemore@state.de.us>
Cc: dswayze@pgslegal.com <dswayze@pgslegal.com>; Houghton, Michael; RCampbell@mwlaw.com <RCampbell@mwlaw.com>; Tim.Mullaney@state.de.us <Tim.Mullaney@state.de.us>
Sent: Mon Dec 27 22:36:02 2010
Subject: Party in Interest-Affiliation BCBSD and Highmark

December 28, 2010

Linda Sizemore
Director of Company Regulation
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, Delaware 19904

Dear Ms. Sizemore:

I request to be party to the review of the proposed affiliation between Blue Cross Blue Shield of Delaware (BCBSD) and Highmark, Inc. As a customer of BCBSD I have a financial stake. I purchase my health insurance from BCBS in the individual and small group market where I am particularly vulnerable to above average rate increases.

In fact, when my policy renewed in July 2010 I had a 13% rate increase. I wrote to the Department of Insurance and later filed a FOIA request with the Department of Insurance to get an explanation for the rate increase. I was told in a letter dated 8/10/10 from Deputy Insurance Commissioner, Gene Reed, that this information is "private commercial information" and "is proprietary and deemed non-public and not subject to disclosure by FOIA request." It seems to me that BCBSD is not a totally private organization. It is a not-for-profit plan and as I understand it has a charter with the state to provide not-for-profit health insurance coverage to the people of Delaware.

I believe that the affiliation review process is a good opportunity for the state to write into the affiliation agreement certain guarantees that BCBSD and Highmark will open up their records to a more rigorous rate review process by the Insurance Commissioner and also allow public review and comment. I believe that my participation will help to achieve that goal.

In particular I would pursue three basic issues:

- 1) If one goal of the affiliation is to achieve operating efficiencies for the two companies, how will those efficiencies translate into lower rates for customers and how will customers know?
- 2) As part of the affiliation agreement, BCBSD and Highmark should agree to a process by which rate increases will be subject to public review and comment.

3) I believe the Department of Insurance has recently received a \$1 million grant to implement a new health insurance rate review process. The affiliation review process would be a good opportunity for the Insurance Commissioner to present her department's progress on that grant by explaining how she could conduct a rate review using B...D/Highmark as a specific example.

I am fully aware that the technical and legal issues here are beyond my understanding. But the customers and the public deserve some assurance that their interests are being represented.

Thank you for your consideration.

Sincerely,

Jo Ann Fields, MD

EXHIBIT 5

INCORPORATED

Via Certified Mail and e-mail: linda.sizemore@state.de.us

December 13, 2010

Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904

Attn: **Linda Sizemore**
Director of Company Regulation

Re: **Affiliation of Blue Cross Blue Shield of Delaware and Highmark, Inc.**

Dear Linda:

I write as a result of an article published in the News Journal on Saturday, December 11th informing of a December 28th filing deadline with D.O.I. for anyone feeling they have a need to become a party to the above referenced affiliation. I hereby write on behalf of Corporate Plaza SPE, LLC as Landlord to BCBSD, Inc. for their leased premises located in the 800 Delaware Avenue Building, Wilmington, Delaware. The Landlord has a financial interest in BCBSD by virtue of this Landlord/Tenant relationship. Accordingly, we would like to remain informed of the progress of this affiliation and Delaware Department of Insurance's position on same.

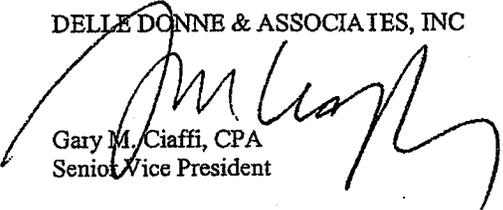
All correspondence and written notifications in connection with this matter can be sent to the Landlord as follows:

Corporate Plaza SPE, LLC
c/o Delle Donne & Associates, Inc
100 West Commons Boulevard, Suite 100
New Castle, DE 19720
Attention: Gary M. Ciaffi
e-mail: gciaffi@ddal.com
Telephone: (302) 325-1111, ext. 110

Thank you for your assistance with this matter. Please do not hesitate to contact me directly with questions or comments.

Sincerely,

DELLE DONNE & ASSOCIATES, INC


Gary M. Ciaffi, CPA
Senior Vice President

gmc/mlm

cc: E. F. Delle Donne
J. P. Collins, Esq.

Delle Donne & Associates Inc.

One Corporate Commons • 100 West Commons Boulevard Suite 100 • New Castle DE 19720
302-325-1111 • Fax: 302-325-0111

EXHIBIT 6

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

1201 NORTH MARKET STREET
P.O. Box 1347
WILMINGTON, DELAWARE 19899-1347

302 658 9200
302 658 3989 FAX

MICHAEL HOUGHTON
302 351 9215
302 425 4675 FAX
mhoughton@mnat.com

December 22, 2010

Gary M. Ciaffi, CPA
Corporate Plaza SPE, LLC
c/o Delle Donne & Associates, Inc.
100 West Commons Boulevard, Suite 100
New Castle, DE 19720

Re: Affiliation of Blue Cross Blue Shield of Delaware and Highmark, Inc.

Dear Mr. Ciaffi:

We are counsel to the Delaware Department of Insurance (the "Department") in the above-named proceeding and have received your letter to Linda Sizemore, Director of Company Regulation, dated December 13, 2010.

We understand from your letter that Corporate Plaza SPE, LLC, as Landlord to BCBSD, Inc., would like to be informed of the progress of the proposed affiliation between BCBSD, Inc. and Highmark Inc. and the Department's position on the proposed affiliation, but is not seeking to become a party to the statutory proceeding concerning the proposed affiliation. You may follow the progress of the affiliation proceeding and the Department's involvement by viewing the publicly-available documents on the following website:

<http://www.delawareinsurance.gov/departments/bcbs/bcbs.shtml>

The Department will continue to post additional public documents in this proceeding on this website as they become available.

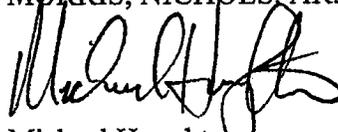
Gary M. Ciaffi, CPA
December 22, 2010
Page 2

If you have any questions regarding your lease, we suggest that you send them directly to BCBSD, via counsel below:

David S. Swayze, Esq., counsel for BCBSD, Inc.
Parkowski, Guerke & Swayze, P.A.
800 King Street, Suite 203
Wilmington, DE 19801
fax: 302-654-3033
email: dswayze@pgslegal.com

We trust the foregoing responds fully to your letter.

Very truly yours,
MORRIS, NICHOLS, ARSHT & TUNNELL, LLP



Michael Houghton
Leslie A. Polizoti
Brenda R. Mayrack

MH/ss

cc: Linda Sizemore, Delaware Department of Insurance
David S. Swayze, Esquire, Counsel for BCBSD, Inc.

EXHIBIT 7

Stein, Suzanne

From: Mayrack, Brenda
Sent: Thursday, January 13, 2011 5:21 PM
To: Stein, Suzanne
Subject: FW: Proposed Affiliation of BCBSD Inc. with Highmark Inc. - January 18th Hearing Update
Attachments: BCBSD Highmark Affiliation (01721587).MSG

From: GianClaudio Finizio [mailto:GFinizio@bayardlaw.com]
Sent: Wednesday, January 12, 2011 10:10 PM
To: 'McConnel Ian R (DOJ)'; 'David Swayze'; Houghton, Michael; 'william.kirk@bcbsde.com'; 'rcampbell@mwlaw.com'; 'dfoster@mwlaw.com'; 'mona.parikh@bipc.com'; 'mteichman@pgslegal.com'; 'ed.bittner@highmark.com'; 'Mullaney Sr Tim (DOJ)'; Mayrack, Brenda; Polizoti, Leslie; 'meredith.stewart@state.de.us'
Cc: 'robinsonr@ce.net'
Subject: RE: Proposed Affiliation of BCBSD Inc. with Highmark Inc. - January 18th Hearing Update

Dear Counsel,

Mr. Ciaffi of Delle Donne & Associates returned my call this afternoon and confirmed that he will not be pursuing party status. My follow-up e-mail confirmation to Mr. Ciaffi is attached.

Regards,

GianClaudio Finizio
BAYARD
(302) 429-4240

From: GianClaudio Finizio
Sent: Tuesday, January 11, 2011 2:40 PM
To: 'McConnel Ian R (DOJ)'; 'David Swayze'; 'Houghton, Michael'; 'william.kirk@bcbsde.com'; 'rcampbell@mwlaw.com'; 'dfoster@mwlaw.com'; 'mteichman@pgslegal.com'; 'ed.bittner@highmark.com'; 'Mullaney Sr Tim (DOJ)'; 'Mayrack, Brenda'; 'Polizoti, Leslie'; 'meredith.stewart@state.de.us'
Cc: 'robinsonr@ce.net'
Subject: Proposed Affiliation of BCBSD Inc. with Highmark Inc. - January 18th Hearing Update

Counsel, attached please find my e-mail to Senator Katz confirming the hearing officer's receipt and acceptance of the withdrawal of his party status request. Pursuant to the January 5 scheduling order, I also reached out to Dr. Fields and Mr. Ciaffi today regarding the January 18th hearing but have not yet heard back from either. While no one may show up to request party status on the 18th, we believe it makes sense to go forward with the hearing. Out-of-state counsel may participate by phone but Delaware counsel is expected to be present in person. We would like to take some time with counsel after the close of the January 18th public hearing to receive an update on the status of information exchange. I would ask the Department of Insurance to coordinate telephonic participation.

Please let me know if you have any questions.

Regards,

GianClaudio Finizio
BAYARD
(302) 429-4240

1/13/2011

EXHIBIT 8

From: Katz Michael (LegHall)
Sent: Tuesday, December 21, 2010 4:53 PM
To: Sizemore Linda (DOI)
Cc: Stewart Karen (DOI)
Subject: party to affiliation blue cross
Importance: High

Linda,
I would like to become a party to the affiliation of Blue Cross Blue Shield of Delaware and Highmark Inc.
My financial interest is not represented in the case, but is at stake.
As State Senator, I represent the interests of Delawareans, individuals, and businesses.
Please confirm that you received this email by return email and please advise if you need further information from me so that I
can be documented as a party to the affiliation.
Thank you.
-Michael S. Katz
State Senator, 4th District

EXHIBIT 9

Stein, Suzanne

From: Sizemore Linda (DOI) [mailto:Linda.Sizemore@state.de.us]
Sent: Wednesday, December 22, 2010 9:06 AM
To: Katz Michael (LegHall); Houghton, Michael; Mayrack, Brenda
Cc: Stewart Karen (DOI)
Subject: RE: party to affiliation blue cross

Thank you, Senator Katz. There is a hearing set for January 18th whereby the hearing officer will decide party status for those who have applied. I am forwarding this e-mail to the Department's counsel, Michael Houghton, for further reply about the details.

Regards,
Linda

Linda Sizemore, CPA, CFE
Director of Company Regulation
Delaware Department of Insurance
302-674-7343

From: Katz Michael (LegHall)
Sent: Tuesday, December 21, 2010 4:53 PM
To: Sizemore Linda (DOI)
Cc: Stewart Karen (DOI)
Subject: party to affiliation blue cross
Importance: High

Linda,
I would like to become a party to the affiliation of Blue Cross Blue Shield of Delaware and Highmark Inc. My financial interest is not represented in the case, but is at stake. As State Senator, I represent the interests of Delawareans, individuals, and businesses. Please confirm that you received this email by return email and please advise if you need further information from me so that I can be documented as a party to the affiliation.
Thank you.
-Michael S. Katz
State Senator, 4th District

EXHIBIT 10

Mayrack, Brenda

From: Sizemore Linda (DOI) [Linda.Sizemore@state.de.us]
Sent: Thursday, December 30, 2010 11:53 AM
To: Mayrack, Brenda
Subject: FW: party to affiliation blue cross
Attachments: BCBSD_2010.12.03_Public Notice re_Parties in Interest and Public Hearing.pdf

From: Sizemore Linda (DOI)
Sent: Wednesday, December 22, 2010 2:40 PM
To: Katz Michael (LegHall)
Subject: RE: party to affiliation blue cross

Dear Senator Katz,

Thank you again for your email. To further respond, attached please find the Public Notice, published December 3-7, 2010, which contains additional information regarding the procedure and standard for any person who seeks to be determined a party in interest to this proceeding. The Public Notice also contains information about the Public Hearing on January 18, 2011. For your reference, all public documents concerning this proceeding are available on the Department's website at <http://www.delawareinsurance.gov/departments/bcbs/bcbs.shtml>. Should you have further questions, please give me a call at 302-674-7343.

Thanks,

Linda Sizemore, CPA, CFE
Director of Company Regulation
Delaware Department of Insurance

From: Sizemore Linda (DOI) [mailto:Linda.Sizemore@state.de.us]
Sent: Wednesday, December 22, 2010 9:06 AM
To: Katz Michael (LegHall); Houghton, Michael; Mayrack, Brenda
Cc: Stewart Karen (DOI)
Subject: RE: party to affiliation blue cross

Thank you, Senator Katz. There is a hearing set for January 18th whereby the hearing officer will decide party status for those who have applied. I am forwarding this e-mail to the Department's counsel, Michael Houghton, for further reply about the details.

Regards,
Linda

Linda Sizemore, CPA, CFE
Director of Company Regulation
Delaware Department of Insurance
302-674-7343

12/30/2010

From: Katz Michael (LegHall)
Sent: Tuesday, December 21, 2010 4:53 PM
To: Sizemore Linda (DOI)
Cc: Stewart Karen (DOI)
Subject: party to affiliation blue cross
Importance: High

Linda,

I would like to become a party to the affiliation of Blue Cross Blue Shield of Delaware and Highmark Inc.

My financial interest is not represented in the case, but is at stake.

As State Senator, I represent the interests of Delawareans, individuals, and businesses.

Please confirm that you received this email by return email and please advise if you need further information from me so that I can be documented as a party to the affiliation.

Thank you.

-Michael S. Katz

State Senator, 4th District

EXHIBIT 11

Stein, Suzanne

From: GianClaudio Finizio [GFinizio@bayardlaw.com]
Sent: Tuesday, January 11, 2011 2:09 PM
To: 'michael.katz@state.de.us'
Subject: FW: party to affiliation blue cross

Dear Senator Katz,

I am GianClaudio Finizio, counsel to hearing officer Battle Robinson for the proposed affiliation of BCBSD, Inc. with Highmark Inc. I write to inform you that Commissioner Stewart has forwarded to the hearing officer your below request to retract your request for party status in this matter. The hearing officer has received and accepted your request.

Thank you for your interest in the matter. Please note that you are welcome to attend the hearing to be scheduled on the affiliation, where there will be opportunity to comment and offer your views as an interested person.

Regards,
 GianClaudio Finizio

GianClaudio Finizio, Esquire
 Phone: (302) 429-4240
 Fax: (302) 658-6395
 gfinizio@bayardlaw.com

Bayard, P.A.
 222 Delaware Avenue, Suite 900
 P.O. Box 25130
 Wilmington, DE 19899
 Zip Code 19801 for Deliveries
 www.bayardlaw.com



www.meritas.org

B
BAYARD

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From: Katz Michael (LegHall)
Sent: Saturday, January 08, 2011 12:14 PM
To: Harrison Lorilee (DOI); Sizemore Linda (DOI)
Cc: Stewart Karen (DOI)
Subject: RE: party to affiliation blue cross
Importance: High

Please **retract** my request to be a party to the affiliation for blue cross.
 Please confirm that you have received this email and have retracted my request.
 Thank you.
 -Michael Katz

1/14/2011

EXHIBIT 12

H/D

January 17, 2011

Response to objections from BCBSD and the Delaware Department of Insurance to Jo Ann Fields' application to be a party to the affiliation of BCBSD, Inc. with Highmark, Inc.

Jo Ann Fields, MD
PO Box 615
2 E. High Street
Felton, DE 19943

Statement for public hearing Tuesday 1-18-11 9:30 AM

My application for party status should be approved because I have a significant financial interest in this matter and because my interests are not adequately represented by other parties.

I have been a customer of BCBSD in the small group market since 2007.

In response to my application for party status to review the affiliation between BCBSD and Highmark both BCBSD and the Department of Insurance oppose my application. Their objections and my responses are as follows:

1) Their objection: I do not have significant pecuniary interest in the proceeding. My response:

What is significant to me may not be significant to an organization such as BCBSD with \$530 million in annual revenues (Wall Street Journal) or an organization like Highmark with \$13 billion in reported revenues in 2009 (Pittsburgh Post-Gazette 8/21/10). What is significant to me is I had to lay off my 2 full time employees in part because I could not afford to pay for my health insurance and theirs too. What is significant to me is my health insurance premium is my single biggest discretionary expense - if you want to say health insurance is discretionary. I could drop my medical insurance but I would be very afraid to do that. What is significant to me is that since I started with BCBSD in 2007 my health insurance rate jumped 12% in 2008, then 9% in 2009, then 13% in 2010. The monthly premium was \$372 in 2007 and now it is \$518.

2) Their objection: My interests are adequately represented by the Department of Insurance. My response:

I believe the Delaware Department of Insurance does the best it can but the Department of Insurance does not adequately represent my interests. In my opinion the Insurance Commissioner in Delaware does not have strong enough authority and probably not enough resources to adequately review health insurance rate increases from the private insurers. The new health care law passed in March 2010 recognizes that the rate review process in the states is weak. I base my opinion on my own experience over the past few years. As I saw my health insurance go up year after year I got involved in this issue. I had informal discussions about it with then Insurance Commissioner Matt Denn and after 2008 with Insurance Commissioner Weldin-Stewart. The extent of the explanation I got was a first grade lesson on how, in a business, revenues have to be more than expenses. I saw no proof, no documentation of what went into the rate review process or just what was the insurer doing with my money. When my rate again jumped 13% in July 2010 I wrote a formal letter to Commissioner Weldin-Stewart to ask why. My letter was answered by Jessica Luff, an investigator in the Consumer Services Division, in a letter dated 6/29/10. "A rate filing is reviewed by an actuary on behalf of the carrier" not on behalf of the Department of Insurance, not on my behalf, but on behalf of the carrier, i.e., the insurer. Then "this information is reviewed by other actuaries for accuracy and to verify that the increase is justified. The filings, actuarial reviews, audits and correspondence between an insurance company and the Department of Insurance is proprietary information and is not available for review." So it is not clear that any actuary looks at this rate increase on my behalf and even if they do I can't see it. I then took the next step and filed a Freedom of Information Act Request to find out why my rate went up. The FOIA request was answered by Deputy Insurance Commissioner

Neither the Insurance Commissioner nor the Attorney General has proposed a similar condition of approval of the affiliation.

Thank you for your time and consideration, Judge Robinson.

Respectfully,

Jo Ann Fields, MD