STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

ATTORNEY GENERAL MIKE COX,
on behalf of the PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff,

v File No. 08- -CZ

BLUE CROSS BLUE SHIELD OF MICHIGAN, Hon.

Defendant.
_____/

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_____/

There is no other pending or resolved
civil action arising out of the transaction
or occurrence alleged in this Complaint.

COMPLAINT FOR DECLARATORY AND OTHER RELIEF

Attorney General Mike Cox, on behalf of the People of the State of Michigan, states the following for his Complaint for Declaratory and Other Relief against Defendant Blue Cross Blue Shield of Michigan:

JURISDICTION, STANDING, AND VENUE

1. Mike Cox is the Attorney General of the State of Michigan duly elected by the citizens of this State, and is hereinafter referred to as the "Attorney General."

2. Blue Cross Blue Shield of Michigan ("Blue Cross") is a state and local tax-exempt, charitable and benevolent Michigan nonprofit health care corporation organized under and governed by the provisions of the Nonprofit Health Care Corporation Reform Act, MCL 550.1101 – 550.1704 (the "Act"). Blue Cross' Statutory Home Office is located in Detroit, Michigan, and Blue Cross operates and conducts business throughout the State of Michigan.

3. This Court has jurisdiction under MCL 550.1619(1), which authorizes the Attorney General to bring an action or apply to the Circuit Court for a court order enjoining Blue Cross from transacting business, disbursing money, or acquiring or holding property if that corporate activity is not authorized under the Act.

4. MCL 550.1619(2) further vests jurisdiction with this Court, authorizing the Attorney General to apply to the Circuit Court for a court order enjoining an alleged violation of the Act or for other equitable or extraordinary relief to enforce the Act.

5. The Attorney General's standing to commence this action is established by the foregoing statutes and MCL 550.1207(3)(c), which authorizes the Attorney General to assert Blue Cross' lack of capacity or power to perform an act in an action or special proceeding to enjoin Blue Cross from transacting unauthorized business, to set aside an unauthorized transaction, or to obtain other equitable relief.

6. Venue is proper in the Ingham County Circuit Court pursuant to MCL 600.1631, which provides that "[t]he county in which the seat of state government is located is a proper county to commence and try" an action "commenced by the Attorney General in the name of the state or of the people of the state for the use and benefit thereof."

COMMON ALLEGATIONS

7. The Attorney General incorporates by this reference the allegations set forth in Paragraphs 1 through 6 above.

Blue Cross' Purchase of the State Accident Fund

8. Public Act 201 of 1993 amended Section 207 of the Act to allow Blue Cross to establish, own, and operate a domestic stock insurance company only for the purpose of acquiring, owning, and operating the State Accident Fund.[1] Pursuant to this statutory amendment, Blue Cross formed The Accident Fund Company[2] as a wholly-owned Michigan stock insurance subsidiary.

9. In connection with its bid to purchase the State Accident Fund, Blue Cross submitted a Business Plan to the State of Michigan.[3] On the second page of the Business Plan, Blue Cross represented to the State of Michigan that:

> [Blue Cross] plans to keep the Accident Fund financially strong by allowing earnings to accumulate in the [Accident] Fund until statutory surplus is adequate to obtain an A rating by A.M. Best and [Blue Cross] is prepared to make capital contributions to the Accident Fund from its general assets in the form of surplus notes in the early years to maintain an acceptable writings to surplus ratio.

10. On Page 6 of the Business Plan, Blue Cross similarly represented to the State of Michigan that Blue Cross would make contributions to the Accident Fund in the form of surplus notes in order to maintain adequate surplus, its A.M. Best rating, and a net premiums written to surplus ratio of 1.5 to 1. Blue Cross further represented that the process of issuing surplus notes would "be performed in consultation with the Insurance Commissioner and will be subject to his

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1 MCL 550.1207(1)(x).

2 The Accident Fund Company subsequently changed its name to the Accident Fund Insurance Company of America, and is referred to hereinafter as the "Accident Fund."

3 Exhibit A.

prior approval," and that "[i]t is [Blue Cross]'s plan that these surplus notes will be repaid, with interest, once the Accident Fund's statutory surplus exceeds a net premiums written to surplus ratio of 1.5 to 1."

11. To complete the sale of the State Accident Fund, Blue Cross, as Bidder, the State of Michigan, as Seller, and the Accident Fund, as Buyer, entered into an Asset Purchase Agreement dated June 15, 1994, and a First Amendment to the Asset Purchase Agreement dated December 28, 1994.[4]

12. Under Section 8(o) of the Asset Purchase Agreement, Blue Cross agreed and covenanted to the State of Michigan that:

> [S]o long as [Blue Cross] is a Controlling Affiliate of [the Accident Fund], [Blue Cross] shall make contributions to [the Accident Fund] from [Blue Cross]'s general assets in the form of surplus notes, to the extent permitted by law and with the prior approval of the Michigan Commissioner of Insurance, sufficient to create and maintain, at all times, [the Accident Fund]'s ratio of net written premium to surplus at a level less than or equal to one and one-half to one (1.5 : 1).

13. The closing of the sale of the State Accident Fund occurred on December 28, 1994, at which time the Accident Fund purchased all or substantially all of the assets of and assumed all or substantially all of the liabilities of the State Accident Fund.

14. Since the closing of the sale, the Accident Fund has been and continues to be a wholly-owned, for-profit insurance company subsidiary of Blue Cross.

15. Consistent with the Business Plan and Section 8(o) of the Asset Purchase Agreement, in 1995, Blue Cross contributed $40 million to the Accident Fund in the form of a

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[4] Attached as Exhibit B are: (a) the first page of the Table of Contents to the State Accident Fund closing book; and (b) the cover page, Table of Contents, first page, and Section 8(o) of the Asset Purchase Agreement. The entire closing book is voluminous and is in the possession of Blue Cross.

surplus note.[5] The Accident Fund completely repaid the principal balance of this surplus note, together with interest at a market rate, in 1997.

Accident Fund's Prior Acquisitions

16. On December 28, 2005, the Accident Fund acquired 100% of the outstanding common shares of United Wisconsin Insurance Company ("United Wisconsin"). United Wisconsin provides workers' compensation insurance coverage and services compensation pools for employers located primarily in Midwestern states. The aggregate purchase price that the Accident Fund paid for United Wisconsin was $95.8 million.

17. On August 31, 2007, the Accident Fund acquired 100% of the outstanding common shares of Third Coast Insurance Company ("Third Coast"), an inactive Illinois property and casualty insurance company. The aggregate purchase price that the Accident Fund paid for Third Coast was $11.9 million.

Accident Fund's Acquisition of CWI Holdings / CompWest Insurance Company Using Blue Cross Funds

18. On November 20, 2007, the Accident Fund acquired 100% of the outstanding shares of CWI Holdings, Inc. ("CWI"), a Delaware insurance holding company that owns 100% of the shares of CompWest Insurance Company ("CompWest"). CompWest is a California property and casualty insurance company that writes workers' compensation insurance primarily in California. The aggregate purchase price paid for CWI was $127.4 million.

19. To accomplish the Accident Fund's acquisition of CWI, on or around August 4, 2007, the Blue Cross Board of Directors approved the Accident Fund's acquisition of all capital stock of CWI. In addition, the Blue Cross Board of Directors approved a capital contribution

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[5] Exhibit C, Blue Cross' June 2, 2008 Responses to the Attorney General's April 24, 2008 Inquiries, Response 8(b).

from Blue Cross to the Accident Fund "in an amount sufficient to insure the collective workers' compensation companies are able to maintain an 'A' insurance rating."[6]

20. Consistent with the Blue Cross Board of Directors' resolution, on November 13, 2007, Blue Cross transferred $125 million in cash to the Accident Fund for the purpose of funding the Accident Fund's acquisition of CWI.

21. According to Blue Cross' written responses to the Attorney General's April 24, 2008 inquiries, Blue Cross accumulated the $125 million from interest and principal income on its existing investment portfolio over the course of approximately 180 days.[7] Blue Cross wire transferred the $125 million from its account to an Accident Fund cash account,[8] which the Accident Fund in turn used to acquire CWI.

22. Blue Cross structured the $125 million cash transfer to the Accident Fund as a "capital contribution" which, unlike a loan, has no repayment obligation.[9] In addition to confirming this in its responses to the Attorney General's inquiries, the Accident Fund identified the $125 million cash transfer as a "capital contribution" in both the "Form D" filed with the Office of Financial and Insurance Regulation and the "Form A" filed with California Department of Insurance in connection with the CWI acquisition.[10]

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[6] The minutes of the August 4, 2007 Blue Cross Board of Directors meeting are marked "confidential" and are therefore not attached. The minutes are in Blue Cross' possession and can be provided to the Court under seal or other protection to maintain confidentiality upon the Court's request.

[7] Exhibit C, Response 5.

[8] *Id.* at Responses 4 and 6.

[9] *Id.* at Response 3.

[10] These documents are voluminous and, having been filed by Blue Cross' wholly-owned subsidiary the Accident Fund, are in the possession of Blue Cross.

23 Blue Cross' $125 million capital contribution to the Accident Fund reduced Blue Cross' year-end 2007 total adjusted capital by $43.3 million and reduced Blue Cross' year-end 2007 risk-based capital ratio ("RBC") by approximately 12%.[11]

COUNT I

UNAUTHORIZED INVESTMENTS IN, OWNERSHIP OF, AND CONTROL OF DOMESTIC, FOREIGN, OR ALIEN INSURANCE COMPANIES

24. The Attorney General incorporates by this reference the allegations set forth in Paragraphs 1 through 23 above.

25. Blue Cross is a statutorily created and regulated nonprofit health care corporation, the lawful purposes, capacity, power, and authority of which is limited by the provisions of the Act.

26 Section 202(1)(d) of the Act, MCL 550.1202(1)(d), establishes the lawful purposes of Blue Cross, which include "[t]o engage in activity otherwise authorized by this act, within the purposes for which corporations may be organized under this act," and to include within Blue Cross' Articles of Incorporation "[o]ther terms and conditions not inconsistent with this act, necessary for the conduct of the affairs of the corporation."

27. Section 206(1) of the Act, MCL 550.1206(1), provides that Blue Cross' funds and property "shall be acquired, held, and disposed of only for the lawful purposes of the corporation and for the benefit of the subscribers of the corporation as a whole." This Section further provides that Blue Cross "shall only transact business, receive, collect, and disburse money, and acquire, hold, protect, and convey property, that is properly within the scope of the purposes of the corporation as specifically set forth in section 202(1)(d), for the benefit of the subscribers of the corporation as a whole, and consistent with this act."

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[11] Exhibit C, Response 5.

28. In addition to the overarching limitations provided in Section 206(1), MCL 550.1207(1) enumerates the specific authorized activities in which Blue Cross may engage.

29. Section 207(1)(o) of the Act, MCL 550.1207(1)(o), generally authorizes Blue Cross, subject to Chapter 9 of the Insurance Code of 1956, MCL 500.100 – 500.8302 (the "Insurance Code"), to invest its funds in entities "other than domestic, foreign, or alien insurers."[12] This provision, either expressly or by negative implication, prohibits Blue Cross from investing its funds in domestic, foreign, or alien insurers unless otherwise authorized by the Act.

30. MCL 550.1207(1)(o) further provides the limited circumstances under which Blue Cross may invest its funds in domestic, foreign, or alien insurers:

> However, [Blue Cross] may purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, employ, sell, lend, lease, exchange, transfer, or otherwise dispose of bonds or other obligations, shares, or other securities or interests issued by a domestic, foreign, or alien insurer, so long as the activity meets all of the following:
>
> (i) Is determined by the attorney general to be lawful under section 202.
>
> (ii) Is approved in writing by the commissioner [of the Office of Financial and Insurance Regulation] as being in the best interests of [Blue Cross] and its subscribers.
>
> (iii) For an activity that occurred before the effective date of the amendatory act that added subparagraph (iv), will not result in the health care corporation owning or controlling 10% or more of the voting securities of the insurer or will not otherwise result in the health care corporation having control of the insurer, either before or after the effective date of the amendatory act that added subparagraph (iv). As used in this subparagraph and subparagraph (iv), "control" means that term as defined in section 115 of the insurance code of 1956, 1956 PA 218, MCL 500.115.
>
> (iv) Subject to section 218 and beginning on the effective date of the amendatory act that added this subparagraph, will not result in the health

[12] A copy of MCL 550.1207 is attached as Exhibit D due to the repeated references thereto in this Complaint.

care corporation owning or controlling part or all of the insurer unless the transaction satisfies chapter 13 of the insurance code of 1956, 1956 PA 218, MCL 500.1301 to 500.1379, and the insurer being acquired is only authorized to sell disability insurance as defined under section 606 of the insurance code of 1956, 1956 PA 218, MCL 500.606, or under a statute or regulation in the insurer's domiciliary jurisdiction that is substantially similar to section 606 of the insurance code of 1956, 1956 PA 218, MCL 500.606.

31. The only other statute relevant to this Complaint that authorizes Blue Cross to invest its funds in or to establish, own, and operate a domestic, foreign, or alien insurer is the statute that was enacted to permit Blue Cross' purchase of the State Accident Fund in 1994. MCL 550.1207(1)(x) provides in pertinent part:

> Notwithstanding subdivision (o) or any other provision of this act, [Blue Cross may] establish, own, and operate a domestic stock insurance company only for the purpose of acquiring, owning, and operating the state accident fund pursuant to chapter 51 of the [Insurance Code], MCL 500.5100 to 500.5114, so long as all of the following are met:
>
> (i) For insurance products and services the insurer whether directly or indirectly only transacts worker's compensation insurance and employer's liability insurance, transacts disability insurance limited to replacement of loss of earnings, and acts as an administrative services organization for an approved self-insured worker's compensation plan or a disability insurance plan limited to replacement of loss of earnings and does not transact any other type of insurance notwithstanding the authorization in chapter 51 of the [Insurance Code], MCL 500.5100 to 500.5114. This subparagraph does not preclude the insurer from providing either directly or indirectly noninsurance products and services as otherwise provided by law.
>
> (ii) The activity is determined by the attorney general to be lawful under section 202.
>
> * * *
>
> (v) Health care corporation and subscriber funds are used only for the acquisition from the state of Michigan of the assets and liabilities of the state accident fund.
>
> (vi) Health care corporation and subscriber funds are not used to operate or subsidize in any way the insurer including the use of such funds to subsidize contracts for goods and services. This subparagraph does not

prohibit joint undertakings between the health care corporation and the insurer to take advantage of economies of scale or arm's-length loans or other financial transactions between the health care corporation and the insurer.

32. Pursuant to the foregoing statutes, and for purposes relevant to this Complaint, the Act only authorizes Blue Cross to invest its funds in or to acquire, own, and operate a domestic, foreign, or alien insurer in three specific situations:

(a) Under Section 207(1)(o)(iii), such an investment is authorized if Blue Cross made the investment before July 23, 2003 (the effective date of the act adding subparagraph (iv)) and the investment did not result in Blue Cross owning or controlling 10% or more of the voting securities of the insurer. Moreover, whether the investment was made before or after July 23 2003, the investment cannot result in Blue Cross having "control" of the insurer, as defined by Section 115 of the Insurance Code[13];

(b) Under Section 207(1)(l)(iv), such an investment is authorized if it occurred on or after July 23 2003, does not result in Blue Cross owning or controlling part or all of the insurer unless the transaction satisfies Chapter 13 of the Insurance Code, and the insurer being acquired is only authorized to sell disability insurance as defined under Section 606 of the Insurance Code; and

(c) Under Section 207(1)(x), Blue Cross is specifically authorized to use its funds to acquire the assets and liabilities of the State Accident Fund, and to establish, own, and operate a domestic stock insurance company only for the purpose of acquiring, owning, and operating the State Accident Fund.

In each situation, Blue Cross is additionally required to obtain: (a) a determination by the Attorney General that the activity is lawful under Section 202 of the Act; and (b) the written approval of the Commissioner of the Office of Financial and Insurance Regulation (the "Commissioner") that the activity is in the best interests of Blue Cross and its subscribers.

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[13] Section 115(b) of the Insurance Code, MCL 500.115(b), defines "control" to include possession, direct or indirect, of the power to direct or cause the direction of management and policies through the ownership of voting securities. Control is presumed to exist upon ownership or control of 10% or more of an insurer's voting securities

33. As indicated above, Blue Cross, through its wholly-owned subsidiary the Accident Fund, owns and controls 100% of the voting securities of United Wisconsin, CWI / CompWest, and Third Coast. Moreover, Blue Cross' wholly-owned subsidiary the Accident Fund acquired these companies after July 23, 2003. Consequently, Blue Cross is not authorized to invest its funds in, own, or control these companies under the "before July 23, 2003 / less than 10% exception" provided by Section 207(1)(o)(iii) of the Act, MCL 550.1207(1)(o)(iii).

34. United Wisconsin, CWI / CompWest, and Third Coast are not "only authorized to sell disability insurance" as defined by Section 606 of the Insurance Code, MCL 500.606. Rather, these companies are "casualty" and/or "property" insurers as defined by Sections 624(1) and 610 of the Insurance Code, MCL 500.624(1) and 500.610, respectively. Consequently, Blue Cross is not authorized to invest its funds in, own, or control these companies under the "disability insurers exception" provided by Section 207(1)(o)(iv) of the Act, MCL 550.1207(1)(o)(iv).

35. The acquisitions of United Wisconsin, CWI / CompWest, and Third Coast are wholly unrelated to Blue Cross' 1994 acquisition of the State Accident Fund. Consequently, Blue Cross is not authorized to invest its funds in, own, or control these companies under the "Accident Fund exception" provided by Section 207(1)(x) of the Act, MCL 550.1207(1)(x).

36. In addition, Blue Cross did not seek or obtain any determination from the Attorney General regarding the lawfulness of the acquisitions of United Wisconsin, CWI / CompWest, or Third Coast, as required by the Act.

37. At least with respect to the CWI / CompWest acquisition, neither did Blue Cross obtain the prior written approval of the Commissioner that the acquisition is in the best interests of Blue Cross and its subscribers, as required by the Act.

38. Because no exception applies to the general prohibition on Blue Cross investing its funds in, owning, or controlling domestic, foreign, or alien insurers (and where Blue Cross failed to seek or obtain the necessary determination by the Attorney General and/or written approval by the Commissioner prior to making these investments), Blue Cross is not authorized to have its funds invested in, own, or control United Wisconsin, CWI / CompWest, or Third Coast.

WHEREFORE, for the reasons stated above, Attorney General Mike Cox requests this Court to enter judgment against Blue Cross providing the following relief:

(a) A declaration that Blue Cross has engaged in transactions not authorized by the Act by investing its funds in, owning, and controlling United Wisconsin, CWI / CompWest, and Third Coast; and

(b) Because Blue Cross lacks the statutory capacity, power, and authority to invest its funds in, own, or control these companies, requiring that the acquisitions of these companies be set aside through Blue Cross' complete and timely divestment of any and all interests it has in United Wisconsin, CWI / CompWest, and Third Coast.

COUNT II

USE OF BLUE CROSS FUNDS TO OPERATE AND SUBSIDIZE THE ACCIDENT FUND IN VIOLATION OF MCL 550.1207(1)(x)(vi)

39. The Attorney General incorporates by this reference the allegations set forth in Paragraphs 1 through 38 above.

40. As indicated in Paragraph 31 above, MCL 550.1207(1)(x) specifically authorized Blue Cross to form the Accident Fund for the purpose of acquiring, owning, and operating the State Accident Fund. However, this express grant of statutory authority is subject to certain restrictions.

41. One such restriction is MCL 550.1207(1)(x)(vi), which prohibits Blue Cross from using company and subscriber funds "to operate or subsidize in any way the [Accident Fund]."

42. On November 13, 2007, Blue Cross made a $125 million capital contribution to the Accident Fund from Blue Cross company funds.

43. The purpose of Blue Cross' $125 million capital contribution was to provide the funding necessary for the Accident Fund to acquire CWI / CompWest.

44. Blue Cross' $125 million capital contribution to the Accident Fund constituted a grant or gift of money having no repayment obligation. As such, Blue Cross used company funds to subsidize the Accident Fund, in violation of MCL 550.1207(1)(x)(vi).

45. Blue Cross made the $125 million capital contribution to the Accident Fund (with the express approval of Blue Cross' Board of Directors) for the purpose of funding the Accident Fund's acquisition of CWI / CompWest. As such, Blue Cross used company funds to operate the Accident Fund in violation of MCL 550.1207(1)(x)(vi) by, among other ways: (a) performing the funding function; (b) exerting the power or influence necessary to secure the acquisition of CWI / CompWest; and (c) producing the desired outcome or effect, i.e., ensuring the Accident Fund's successful acquisition of CWI / CompWest.

46 Blue Cross is not authorized to use (and is in fact expressly prohibited from using) company or subscriber funds to operate or subsidize the Accident Fund in any way, including but not limited to making capital contributions to the Accident Fund to enable it to acquire CWI / CompWest or any other insurance company.

WHEREFORE, for the reasons stated above, Attorney General Mike Cox requests this Court to enter judgment against Blue Cross providing the following relief:

(a) A declaration that Blue Cross has engaged in an unauthorized transaction, in violation of the express prohibition against using Blue Cross and subscriber funds to operate or subsidize the Accident Fund in any way, by making a $125 million capital contribution to the Accident Fund to enable the Accident Fund to acquire CWI / CompWest; and

(b) Because Blue Cross lacked the statutory capacity, power, and authority to make this $125 million capital contribution, setting aside the capital contribution by requiring Blue Cross to direct the Accident Fund to immediately repay the $125 million capital contribution, together with accrued interest at the applicable market rate.

COUNT III

BREACH OF ASSET PURCHASE AGREEMENT BY MAKING CAPITAL CONTRIBUTIONS IN A FORM OTHER THAN A SURPLUS NOTE

47. The Attorney General incorporates by this reference the allegations set forth in Paragraphs 1 through 46 above.

48. As stated in Paragraph 12 above, under Section 8(o) of the Asset Purchase Agreement, Blue Cross agreed and covenanted to the State of Michigan that:

> [S]o long as [Blue Cross] is a Controlling Affiliate of [the Accident Fund], [Blue Cross] shall make contributions to [the Accident Fund] from [Blue Cross]'s general assets **in the form of surplus notes**, to the extent permitted by law and with the prior approval of the Michigan Commissioner of Insurance, sufficient to create and maintain, at all times, [the Accident Fund's] ratio of net written premium to surplus at a level less than or equal to one and one-half to one (1.5 : 1).[14]

49. Blue Cross is and has always been the sole Controlling Affiliate of the Accident Fund, owning 100% of the Accident Fund's outstanding stock.

50. A surplus note is an unsecured subordinated debt obligation payable from an insurer's surplus. In 1995, Blue Cross contributed $40 million to the Accident Fund in the form of a surplus note. The Accident Fund completely repaid the principal balance of this surplus note, together with interest at a market rate, in 1997.

51. In its June 2, 2008 written response to the Attorney General's inquiries, Blue Cross identified its November 13, 2007, $125 million cash transfer to the Accident Fund as a "capital contribution." In addition, Blue Cross identified the $125 million cash transfer as a

"capital contribution" in both the "Form D" filed with the Office of Financial and Insurance Regulation and the "Form A" filed with California Department of Insurance in connection with the CWI / CompWest acquisition.

52. Blue Cross' $125 million capital contribution to the Accident Fund constituted a grant or gift of money having no repayment obligation. The Accident Fund gave no surplus note to Blue Cross in exchange for this capital contribution.

53. Blue Cross breached the terms of the Asset Purchase Agreement, including but not limited to Section 8(o), by transferring $125 million to the Accident Fund in the form of a capital contribution rather than in the form of a surplus note.

54. As a result of Blue Cross' breach of the Asset Purchase Agreement, Blue Cross' subscribers and the People of the State of Michigan have suffered damages in the full amount transferred to the Accident Fund, or $125 million.

WHEREFORE, for the reasons stated above, Attorney General Mike Cox requests this Court to enter judgment against Blue Cross providing the following relief:

(c) A declaration that Blue Cross breached the terms of the Asset Purchase Agreement, including but not limited to Section 8(o), by transferring $125 million to the Accident Fund in the form of a capital contribution rather than in the form of a surplus note; and

(d) To enforce and ensure compliance with the Asset Purchase Agreement and the provisions of the Act, requiring Blue Cross to immediately restructure the $125 million capital contribution as a surplus note, the principal balance of which must be repaid over time from the Accident Fund's surplus, together with interest at the applicable market rate.

RELIEF REQUESTED

WHEREFORE, Attorney General Mike Cox requests this Court to enter judgment against Blue Cross providing the following relief:

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[14] Exhibit B (emphasis added).

(a) A declaration that Blue Cross has engaged in transactions not authorized by the Act by investing its funds in, owning, and controlling United Wisconsin, CWI / CompWest, and Third Coast. Because Blue Cross lacks the statutory capacity, power, and authority to invest its funds in, own, or control these companies, the judgment should additionally set aside these unauthorized transactions by requiring Blue Cross to completely and timely divest itself of any and all interests that it has in United Wisconsin, CWI / CompWest, and Third Coast Insurance Company;

(b) Alternatively, a declaration that Blue Cross has engaged in an unauthorized transaction, in violation of the express prohibition against using Blue Cross company and subscriber funds to operate or subsidize the Accident Fund in any way, by making a $125 million capital contribution to the Accident Fund to enable the Accident Fund to acquire CWI / CompWest. Because Blue Cross lacked the statutory capacity, power, and authority to make this capital contribution, the judgment should additionally set aside this unauthorized transaction by requiring Blue Cross to direct the Accident Fund to immediately repay the $125 million capital contribution, together with accrued interest at the applicable market rate;

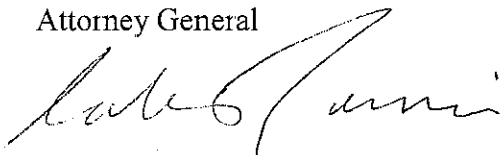
(c) Alternatively, a declaration that Blue Cross breached the terms of the Asset Purchase Agreement, including but not limited to Section 8(o), by transferring $125 million to the Accident Fund in the form of a capital contribution rather than in the form of a surplus note. To enforce and ensure compliance with the Asset Purchase Agreement and the provisions of the Act, the judgment should additionally require Blue Cross to immediately restructure the $125 million capital contribution as a surplus note, the principal balance of which must be repaid over time from the Accident Fund's surplus, together with interest at the applicable market rate;

(d) Depending upon the relief granted, enjoining Blue Cross from: (a) Investing its funds in, owning, or controlling, both presently and in the future, any other insurance companies not expressly authorized by the Act; (b) Using Blue Cross company or subscriber funds to operate or subsidize the Accident Fund in any way, including but not limited to making capital contributions for the purpose of funding Accident Fund acquisitions; or (c) Making any capital contributions to the Accident Fund in a form other than a surplus note;

(e) Consistent with the provisions of the Act, mandatorily enjoining Blue Cross by requiring it to obtain both the Attorney General's determination of lawfulness and the prior written approval of the Commissioner in connection with any future investments in or acquisitions of domestic, foreign, or alien insurers by Blue Cross or its wholly-owned subsidiaries; and

(f) Granting such other and further relief as this Court deems just and equitable to ensure Blue Cross' compliance with Michigan law and the terms of the State Accident Fund Asset Purchase Agreement.

Michael A. Cox
Attorney General



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Dated: July 2, 2008

EXHIBIT A

EXHIBIT 3

BUSINESS PLAN

Blue Cross and Blue Shield of Michigan (BCBSM) intends to operate the Accident Fund of Michigan as an independent wholly-owned subsidiary. The current employees and management will be the foundation for the new Accident Fund supplemented by new employees, as appropriate, to conduct activities currently performed by the State of Michigan such as the legal, purchasing, payroll and investment functions. BCBSM recognizes that an adequate staff is necessary to maintain superior service levels for the business. BCBSM will appoint an independent Board of Directors and will comply with all provisions of Michigan law, and in particular, the Insurance Code will be honored including the "books and records in Michigan " requirement of Section 5256.

BCBSM has been and continues to be committed to small business in Michigan. BCBSM currently operates through over 7,000 licensed independent insurance agents throughout Michigan. These agents are responsible for most insurance written for groups with less than 100 subscribers (active and retired employees) and are BCBSM's exclusive source of business for groups with less than 50 subscribers. BCBSM's current health plans for groups of less than 100 subscribers cover 429,000 Michigan employees and 567,000 dependents in more than 45,000 small businesses throughout Michigan. The annual health premium volume from this business is $1.4 billion.

BCBSM believes that its ownership of the Accident Fund will enhance the Accident Fund's workers' compensation business as well as BCBSM's core health insurance programs. With similar corporate missions and because both companies sell through independent agents, BCBSM anticipates consistent policy growth over the next five years. In addition, with the Accident Fund now authorized to function as a Third Party Administrator (TPA) for self-insured workers' compensation accounts, BCBSM's customer base will provide an excellent opportunity for entrance into the self-insured marketplace. BCBSM has no plans to expand into other lines of property and casualty business nor other states.

BCBSM plans to keep the Accident Fund financially strong by allowing earnings to accumulate in the Fund until statutory surplus is adequate to obtain an A rating by A.M. Best and BCBSM is prepared to make capital contributions to the Accident Fund from its general assets in the form of surplus notes in the early years to maintain an acceptable writings to surplus ratio. There are no plans for regular dividends in the next five years nor for any extraordinary dividends.

BCBSM does not anticipate changes to the current method of operation for the Accident Fund nor to discount unpaid claim and claim experience reserves either directly or through reinsurance arrangements. BCBSM believes that this is not in the long-term best interest of the policyholders of the Fund nor of BCBSM. BCBSM understands and accepts the importance of regulatory oversight by the Michigan Insurance Commissioner and will cooperate to the best of its ability to make an orderly transition of ownership and to operate this business in a manner acceptable to the Insurance Commissioner. BCBSM does not plan to go public through the issuance of an initial stock offering.

BCBSM is well positioned to work with the Accident Fund management to reduce medical costs through effective managed care techniques. BCBSM has established statewide HMO and PPO networks which are very cost effective. A combination of the technical knowledge of BCBSM and the Accident Fund employees should be able to produce lower overall costs for the medical component of the workers' compensation premium. Lower cost trends will result in smaller premium increases which are good for the Accident Fund and good for small businesses throughout Michigan.

The following is a description of the key assumptions of BCBSM's five-year business plan for the Accident Fund of Michigan. Attached is a five-year forecast of the Accident Fund's income statement and balance sheet.

REVENUE

BCBSM believes that critical elements of a successful company are stable rate changes and steady policy growth. BCBSM anticipates that annual rate changes will average 4% over the next five years and that policy growth in the insured market will increase slightly. Actual growth may exceed these plans if our marketing efforts are successful, however, because workers' compensation is subject to competitive pressures and underwriting cycles, a cautious forecast was prepared.

SELF-INSURED WORKERS' COMPENSATION MARKET

BCBSM has included the following revenue and expenses in its plan which will result from the Accident Fund functioning as a third party administrator (TPA) for self-insured accounts:

	REVENUE	ADDITIONAL EXPENSES
	(,000 OMITTED)	
1994	$ -0-	$ -0-
1995	2,000	1,500
1996	4,000	3,000
1997	6,000	4,500
1998	8,000	6,000
1999	10,000	8,000

The revenue net of additional expenses has been recorded as a reduction in expenses in this forecast similar to the current recording of the State of Michigan account.

ASSIGNED RISK BUSINESS

BCBSM anticipates continuing as a servicing carrier for the Michigan Workers' Compensation Placement Facility and its forecast anticipates assuming business from the Facility at levels slightly larger than the 1993 level. The forecast provides premiums ceded (serviced) to the Facility separately from premium ceded to reinsurers.

REINSURANCE

BCBSM does not plan any changes to the Accident Fund's reinsurance programs nor any other reinsurance transactions. Changes to the current programs will be made by the Accident Fund management as they deem them appropriate.

CLAIM TRENDS

Claims incurred are expected to increase 5.5% per $100 of payroll in 1994 and 1995 based on information obtained from recent rate filings. This trend is expected to be reduced to 5.0% in 1996 and 1997 and then to 4.5% in 1998. The improvement in claim trends are expected to result from the continued effective management by the Accident Fund in conjunction with new managed care techniques provided by BCBSM's many years of experience in the health insurance business. If claim trends improve even further, lower rate increases will be necessary.

OPERATING EXPENSES

The loss adjustment expenses (LAE) are expected to increase over the 1993 level by 6% per year plus the anticipated change in policy count. An adjustment was made in 1994 to remove the distortion caused in 1993 by the large increase in unpaid LAE. The other-than-claim expenses anticipate that commissions, assessments and fees will remain at the current rates, and that the single business taxes will be paid at the rate appropriate for a domestic insurer. Staffing increases are anticipated in the first year of operation to correct for the large number of unfilled positions. The expense ratios are expected to improve beginning in 1997 in part from the positive contribution of self-insured business.

FEDERAL INCOME TAXES

BCBSM's proposed tax sharing agreement with the Accident Fund is on a separate company basis which will result in a federal income tax rate of 35% applied to taxable income based on Internal Revenue Services (IRS) rules. This agreement was prepared by BCBSM's independent public accounting firm and will result in a fair and reasonable allocation of taxes to the subsidiary. A copy of this agreement is provided as Attachment 1. Because of timing differences inherent in these rules regarding the discounting of unpaid claims and claims expenses and the treatment of unearned premium reserves, taxable income will generally exceed statutory net income. As a result, the effective tax rate will be higher than 35% on a statutory basis. At the point of acquisition, a significant one-time tax will be incurred by the Fund resulting in a reduction in surplus.

STATUTORY SURPLUS

BCBSM is committed to maintaining an adequate surplus in the Accident Fund as it has in its HMO subsidiaries. BCBSM recognizes that the Michigan Insurance Commissioner will require an adequate surplus to support the Accident Fund's business and that rating agencies such as A.M. Best will consider the Fund's surplus level in establishing their rating. For planning purposes, BCBSM expects that a net premiums written to surplus ratio of 1.5 to 1 must be maintained, and has therefore anticipated surplus notes beginning in 1994 from BCBSM to maintain this surplus level. This process will be performed in consultation with the Insurance Commissioner and will be subject to his prior approval. It is BCBSM's plan that these surplus notes will be repaid, with interest, once the Accident Fund's statutory surplus exceeds a net premiums written to surplus ratio of 1.5 to 1.

This forecast anticipates that the sale will include the current real estate of the Accident Fund. If this does not occur, BCBSM plans to include the current market value of the real estate ($14,750,000) as an additional capital contribution to maintain a proper surplus level. If this option is selected by the State of Michigan, the real estate asset is eliminated and bonds would be increased by $14,750,000. The operating expenses increase as the rent paid exceeds the depreciation cost, but most of this amount is offset by increased investment from the additional bonds.

ACCIDENT FUND EMPLOYEES

BCBSM recognizes the importance of retaining the highest quality employees with experience in workers' compensation. As the successful acquirer, it is BCBSM's intention to work with the Accident Fund management and union leadership to retain and develop the current employees and to be sure that the Accident Fund maintains an adequate level of well trained employees to continue to provide superior service. Because BCBSM is a Michigan company, the Accident Fund jobs will remain in Michigan.

SUMMARY

Under BCBSM's ownership, the Accident Fund would be operated as an independent wholly-owned subsidiary with growth anticipated through independent insurance agents. The Accident Fund's commitment to the small business market in workers' compensation mirrors BCBSM's commitment to the small group marketplace in health insurance. Third Party Administration (TPA) of self-insured workers' compensation plans will be encouraged to lower the overall cost structure of the Fund, thus improving its competitive position. With medical claims now accounting for nearly half of the workers' compensation costs, BCBSM's managed care expertise will be utilized to the extent possible to lower the medical cost trends and thus reduce future rate increases which should help small businesses throughout Michigan.

BCBSM is one of the financially strongest of the Blue Cross plans and its financial commitment to the Accident Fund will strengthen the Fund's surplus position without resorting to discounting of unpaid claims either directly or through reinsurance. BCBSM plans to maintain an adequate surplus in the Accident Fund. BCBSM's offer is a simple cash transaction which will not require a public stock offering. BCBSM already has a commitment to small businesses throughout Michigan and will also be committed to the management and the employees of the Accident Fund.

kl/afplan

EXHIBIT B

TABLE OF CONTENTS

PRIVATIZATION OF THE ACCIDENT FUND OF MICHIGAN

This volume contains documents related to the purchase of all or substantially all of the assets of the State Accident Fund ("AF") and the assumption of all or substantially all of the liabilities of AF by The Accident Fund Company ("Buyer"), a wholly-owned Michigan stock insurance subsidiary of Blue Cross and Blue Shield of Michigan ("BCBSM" or "Bidder").

I. DEFINITIONS

Except as otherwise specifically provided, the terms used herein shall have the same meanings as set forth in the Asset Purchase Agreement between the State of Michigan ("Seller") and BCBSM, dated June 15, 1994, as amended by that certain First Amendment to the Asset Purchase Agreement, dated as of December 28, 1994 (the "Agreement").

II. TIME AND PLACE OF CLOSING

The closing of the sale of AF ("Closing") occurred on December 28, 1994 at 11:00 a.m. local time, at the offices of Dykema Gossett, 800 Michigan National Tower, Lansing, Michigan 48933.

III. BASIC DOCUMENTS

	TAB NO.
A. Asset Purchase Agreement dated June 15, 1994 by and between BCBSM and the State of Michigan, and First Amendment to the Asset Purchase Agreement dated December 28, 1994 (the "Agreement")	1
B. Exhibits to the Agreement	2
Exhibit A - Deposit Escrow Agreement	A
Exhibit B - Purchase Price Adjustment Escrow Agreement	B
Exhibit C - Purchase Price Hold-Back Escrow Agreement	C
Exhibit D - Form of Bill of Sale; Deed	D
Exhibit E - Assumption Agreement	E

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

THE STATE OF MICHIGAN

AND

BLUE CROSS AND BLUE SHIELD
OF MICHIGAN

TABLE OF CONTENTS

Page

1. Definitions..... 1
2. Transaction..... 9
   (a) Purchase and Sale of Assets..... 9
   (b) Assumption of Liabilities..... 9
   (c) Purchase Price..... 9
   (d) The Closing..... 10
   (e) Period of Employment..... 10
   (f) Additional Period of Employment..... 11

3. Representations and Warranties of Seller..... 11
   (a) Organization of AF..... 11
   (b) Authorization of Transaction..... 11
   (c) Noncontravention..... 11
   (d) Brokers' Fees..... 12
   (e) Financial Statements..... 12
   (f) Events Subsequent to December 31, 1993..... 13
   (g) Legal Compliance..... 13
   (h) Tax Matters..... 13
   (i) Real Property..... 14
   (j) Title to or Lease of Tangible Personalty... 15
   (k) Contracts..... 15
   (l) Litigation and Regulation..... 16

4. Representations and Warranties of Bidder..... 16
   (a) Organization of Buyer and Bidder..... 16
   (b) Authorization to Do Business..... 16
   (c) Authorization of Transaction..... 17
   (d) Noncontravention..... 17
   (e) Brokers' Fees..... 17
   (f) Legal Compliance..... 17
   (g) Tax Matters..... 18
   (h) Litigation and Regulation..... 18
   (i) Filings..... 19
   (j) Financing..... 19

5. Pre-Closing Covenants..... 19
   (a) Bidder's Pre-Closing Covenants..... 19
   (b) Seller's Pre-Closing Covenants..... 20
   (c) Notice of Developments..... 21
   (d) Notice to Employees..... 21

6. Conditions Precedent to Obligation to Close..... 22
   (a) Conditions Precedent to Buyer's Obligation. 22
   (b) Conditions Precedent to Seller's Obligation 24

7. Deliveries at Closing..... 25
(a) Seller's Deliveries at Closing..... 25
(b) Buyer's or Bidder's Deliveries to Seller at Closing..... 26
(c) Buyer's or Bidder's Other Deliveries at Closing..... 28

8. Post-Closing Covenants..... 28
(a) Compliance with Law..... 28
(b) Guaranty Association..... 28
(c) Underwriting Practices..... 28
(d) Deposit of Assets in Michigan..... 28
(e) Employment of AF Personnel..... 28
(f) Notification of Insureds..... 29
(g) Agents..... 29
(h) Continuation of Business..... 30
(i) Dividends and Distributions..... 31
(j) Records..... 31
(k) Payment of Fees in Lieu of Taxes..... 31
(l) Change of Control of Buyer..... 31
(m) Third-Party Consent..... 32
(n) Independent Directors..... 32
(o) Contributions to Surplus..... 33
(p) Discounting of Reserves..... 33
(q) Going Public Transaction..... 33
(r) Duration of Covenants..... 33

9. Purchase Price Hold-Back..... 33
(a) Reimbursement to Bidder and Buyer Limited to Purchase Price Hold-Back Escrow Fund. 33
(b) Bidder or Buyer's Method of Asserting Claims, Etc..... 35
(c) Disclaimer of Projections; Memorandum..... 37
(d) Bidder's Knowledge of Business; Seller's Representations Modified by Bidder's Knowledge..... 37
(e) Qualifying to Do Business..... 38
(f) Damages Net of Tax Benefits..... 39

10. Indemnification by Bidder or Buyer..... 39
(a) General Indemnification Obligation of Bidder or Buyer..... 39
(b) Seller's Method of Asserting Claims, Etc... 40

11. Purchase Price Adjustment..... 42
(a) Estimated Purchase Price Adjustment..... 42
(b) Preparation of Closing Actuarial Report.... 44
(c) Preparation of Closing Financial Statements 44
(d) Dispute of the Closing Actuarial Report.... 45
(e) Dispute of the Closing Financial Statements 46
(f) Dispute of the Closing Actuarial Report but not the Closing Financial Statements 48
(g) Purchase Price Adjustment in Favor of Seller..... 49
(h) Purchase Price Adjustment in Favor of Buyer..... 50

(i) Fees of Selected Actuary..... 50
(j) Fees of Selected Accountant..... 50

12. Termination..... 51
(a) Termination of Agreement..... 51
(b) Effect of Termination..... 52

13. Miscellaneous..... 52
(a) Survival of Covenants, Representations and Warranties..... 52
(b) Press Releases and Public Announcements.... 52
(c) No Third-Party Beneficiaries..... 52
(d) Entire Agreement..... 52
(e) Succession and Assignment..... 53
(f) Counterparts..... 53
(g) Headings..... 53
(h) Notices..... 53
(i) Governing Law..... 54
(j) Amendments and Waivers..... 54
(k) Severability..... 54
(l) Expenses..... 54
(m) Construction..... 55
(n) Incorporation of Exhibits and Schedules.... 55
(o) Bulk Transfer Laws..... 55

Exhibit A - Deposit Escrow Agreement
Exhibit B - Purchase Price Adjustment Escrow Agreement
Exhibit C - Purchase Price Hold-Back Escrow Agreement
Exhibit D - Form of Bill of Sale; Deed
Exhibit E - Assumption Agreement
Exhibit F - AF Statutory Financial Statements
Exhibit G - AF GAAP Financial Statements
Exhibit H - Form of Opinion of Counsel to Seller
Exhibit I - Form of Opinion of Counsel to Buyer
Exhibit J - [Deliberately Left Blank]
Exhibit K - [Deliberately Left Blank]
Exhibit L - [Deliberately Left Blank]
Exhibit M - Form A
Exhibit N - [Deliberately Left Blank]
Exhibit O - [Deliberately Left Blank]
Exhibit P - [Deliberately Left Blank]
Exhibit Q - Deemed Tax Letter
Exhibit R - Audited Financial Statements of Bidder and Certified Resolutions of the Board of Directors of Bidder
Exhibit S - Example of Calculation of Purchase Price Adjustments

Disclosure Schedule

Section 3(c) Noncontravention.
Section 3(f) Events Subsequent to December 31, 1993.
Section 3(g) Legal Compliance--Environmental Reports.

Section 3(h)(iii)	Tax Matters.
Section 3(i)(i)	Real Property Being Sold By Seller.
Section 3(i)(ii)	Real Property Being Leased By Seller.
Section 3(i)(iii)	Real Property Leased or Subleased to Seller for Use of AF.
Section 3(k)(i)	Contracts for Reinsurance.
Section 3(k)(ii)	Other Material Written Contracts.
Section 3(k)(iii)	Insurance Policies Owned by AF.
Section 3(l)	Litigation and Regulation.
Section 4(d)(i)	Noncontravention.
Section 4(d)(ii)	Notices, Filings, Authorizations.
Section 4(f)	Legal Compliance.
Section 4(g)	Tax Matters.
Section 4(h)	Litigation and Regulation.
Section 4(i)(i)	Truth, Completeness and Accuracy of Exhibits M, N and O.
Section 4(i)(ii)	Filings Relating to Organization of Buyer.
Section 4(i)(iii)	Material Adverse Changes.

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") entered into on June 15, 1994, by and between Blue Cross and Blue Shield of Michigan, a Michigan corporation ("Bidder") and the State of Michigan ("Seller," Bidder and Seller are referred to collectively herein as the "Parties").

W I T N E S S E T H:

WHEREAS, the Parties desire to enter into a transaction in which Bidder's wholly-owned subsidiary, which will be, as of the Closing Date, an Acquiring Insurer ("Buyer"), will purchase for cash all or substantially all of the assets and assume all or substantially all of the liabilities of the Accident Fund of Michigan, as defined in Section 1 hereof.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the Parties agree as follows.

1. Definitions.

"Absolute Value" shall have its ordinary mathematical meaning, viz. the Absolute Value of a number equals that number if that number is greater than or equal to zero, while the Absolute Value of a negative number equals the product of that negative number times negative one (-1).

"Accident Fund of Michigan" ("AF") means the state accident fund, an autonomous entity in the Department of Commerce of the State of Michigan, existing pursuant to the Worker's Disability Compensation Act and the Michigan Insurance Code.

"Acquired Assets" means all of the right, title, and interest that AF possesses (or that Seller possesses with respect to the discharge of the statutory obligations of AF) as of the Closing Date, and has the right to transfer, in and to all of the assets utilized by AF in the conduct of its business, including: (a) Cash and securities, (b) real property described in Disclosure Schedule Section 3(i)(i), leaseholds therein, improvements, fixtures, and fittings thereon, and easements, rights-of-way, and other appurtenances thereto, (c) leases, subleases, and rights thereunder, (d) agents' balances, uncollected premiums, reinsurance recoverables, accounts, notes, and other receivables, interest, dividends and real estate income due and accrued on account of realty described in Disclosure Schedule Section 3(i)(i), (e)

that a majority, at all times, of the directors of Buyer shall not be officers or employees of Buyer or Bidder or of any Affiliate of Bidder or Buyer. For purposes of this Section 8(n), any person who is both an officer of Bidder and an outside director of Bidder shall not be counted as an officer or employee of Bidder.

(o) Contributions to Surplus. Bidder agrees and covenants that, so long as Bidder is a Controlling Affiliate of Buyer, Bidder shall make capital contributions to Buyer from Bidder's general assets in the form of surplus notes, to the extent permitted by law and with the prior approval of the Michigan Commissioner of Insurance, sufficient to create and maintain, at all times, Buyer's ratio of net written premium to surplus at a level less than or equal to one and one-half to one (1.5 : 1).

(p) Discounting of Reserves. Bidder agrees and covenants that so long as Bidder is a Controlling Affiliate of Buyer, Bidder shall cause Buyer not to discount its loss and loss adjustment expense reserves, whether directly or through reinsurance arrangements.

(q) Going Public Transaction. Bidder agrees and covenants that so long as Bidder is a Controlling Affiliate of Buyer, Bidder shall cause Buyer not to go public through the issuance of capital stock in an initial public offering, or otherwise.

(r) Duration of Covenants. The covenants contained in Sections 8(n) through 8(q), inclusive, of this Agreement shall terminate seven years after the Closing Date.

9. Purchase Price Hold-Back.

(a) Reimbursement to Bidder and Buyer Limited to Purchase Price Hold-Back Escrow Fund.

(i) Notwithstanding anything to the contrary contained in this Agreement or in any Exhibit hereto, from and after the Closing, Buyer or Bidder, as appropriate, shall be reimbursed solely from the Purchase Price Hold-Back Escrow Fund in respect of any and all damages, losses, deficiencies, liabilities, fines, judgments, costs and other expenses (including, without limitation, reasonable legal fees and expenses) incurred or suffered by Buyer or Bidder that result from, relate to or arise out of:

a. any material misrepresentation, breach of warranty or nonfulfillment of any agreement or covenant on the part of Seller under this Agreement;

EXHIBIT C

Sent by facsimile to 517-373-3042
and by first class mail

June 2, 2008

Attorney General Mike Cox
Department of Attorney General
525 W. Ottawa St. 7th Floor, Williams Building
P.O. Box 30212
Lansing, MI 48909

Subject: Your inquiry of April 24, 2008 re Senate Health Policy Committee Hearing of April 16, 2008

Dear General Cox:

BCBSM responds as follows to the questions posed in your April 24, 2008 letter to Daniel J. Loepp regarding financial transactions involving its subsidiary, Accident Fund Insurance Company of America (AFICA) and its acquisition of the stock of CWI Holdings, Inc. We met with members of your staff last week to discuss this matter and review supporting documentation.

1) **The date in 2007 on which BCBSM made the $125 million capital contribution to the Accident Fund;**

   November 13, 2007

2) **The specific reason(s) why BCBSM made the $125 million capital contribution to the Accident Fund;**

   To maintain the 'A' rating held by AFICA, issued by its rating agencies. The 'A' rating enables AFICA to retain customers and preserves BCBSM's investment in AFICA.

3) **How the transaction by which BCBSM contributed $125 million to the Accident Fund was structured (e.g., as a loan, a grant, etc.);**

   Capital contribution

Subject: Your inquiry of April 24, 2008 re Senate Health Policy Committee Hearing of April 16, 2008

4) **In what form BCBSM transferred the $125 million to the Accident Fund (e.g., by wire transfer, check, accounting entry, etc.);**

   Wire transfer

5) **The source of BCBSM's $125 million capital contribution to the Accident Fund, including from where the funds used to make the contribution derived, how BCBSM accounted for the contribution in its financial records, and the effect of the contribution on BCBSM's total adjusted capital;**

   BCBSM accumulated interest and principal income on its existing investment portfolio (which includes Home Bank debits and credits) over the course of approximately 180 days to generate the $125 million capital transfer. The effect of the acquisition on BCBSM's total adjusted capital was a reduction to BCBSM's statutory surplus of $43.3 million. This had the effect of reducing the 2007 BCBSM RBC by approximately 12 basis points.

6) **The precise manner in which the Accident Fund used the $125 million capital contribution from BCBSM;**

   The wire transfer of the capital contribution sum was received by an AFICA cash account, thereby increasing AFICA surplus and capital by that same amount.

7) **Any agreements, correspondence, memoranda, notes, or other documents relating to BCBSM's $125 million capital contribution to the Accident Fund.**

   These were provided for review by your staff.

8) **The amount, date, purpose, and use of any other capital contribution(s) or transfer(s) of funds from BCBSM to the Accident Fund that occurred on or after the effective date of Section 207(1)(x)(vi) of PA 350, which was October 19, 1993; and**

   The following capital contributions or transactions have occurred since October 19, 1993, between BCBSM and Accident Fund Insurance Company of America:

   a. In November 1994, BCBSM incorporated Accident Fund Insurance Company of America to acquire the assets and assume certain

Subject: Your inquiry of April 24, 2008 re Senate Health Policy Committee Hearing of April 16, 2008

liabilities of the Michigan state accident fund. In connection with this incorporation, BCBSM acquired 100% of the shares of the Company in exchange for $10,000,000 of capital. This transaction was the original capitalization of AFICA.

b. In 1995, BCBSM contributed $40,000,000 to Accident Fund Insurance Company of America in exchange for a surplus note. The note, which was considered surplus under statutory accounting principles, carried interest at a market rate of interest. Accident Fund repaid $19,267,545 of principal on the note in 1996 and the balance of the principal in 1997. Accident Fund paid $2,581,414 of interest on the note in 1996 and $3,074,619 of interest in 1997. This transaction was necessary to acquire an AM Best financial rating for AFICA.

c. In 1999 Accident Fund Insurance Company of America declared and paid a shareholder dividend of $100,000,000 to BCBSM.

d. In 2000 Accident Fund Insurance Company of America declared and paid a shareholder dividend of $35,000,000 to BCBSM. In the same year BCBSM made a capital contribution of $200,000 to Accident Fund Insurance Company of America. The $200,000 BCBSM stock purchase was a required by the Commissioner of Insurance for the state of South Carolina to meet capital stock requirements.

e. In 2001 Accident Fund Insurance Company of America declared and paid a shareholder dividend of $33,000,000 to BCBSM.

f. In 2002 Accident Fund Insurance Company of America paid a shareholder dividend of $1,800,000 to BCBSM, and in the same year BCBSM made a capital contribution to Accident Fund Insurance Company of America of $1,800,000. This capital transaction was required by the Insurance Commissioner for the state of Maryland to meet minimum AFICA capital requirements to conduct business in that state.

g. In 2005 Accident Fund Insurance Company of America declared a dividend of $15,000,000 to BCBSM, which was paid in 2006.

h. In 2006 Accident Fund Insurance Company of America declared a dividend of $12,000,000 to BCBSM, which was paid in 2007.

i. In November 2007 BCBSM made the $125,000,000 capital contribution to Accident Fund Insurance Company of America described above. The purpose of the transfer was to preserve AFICA's "A" AM Best financial rating.

Subject: Your inquiry of April 24, 2008 re Senate Health Policy Committee Hearing of April 16, 2008

9) **Any documents, memoranda, or minutes of any discussions or meetings involving Mr. Hogle or any other officers, employees, or agents of BCBSM and the Accident Fund regarding transfers of monies from BCBSM to the Accident Fund.**

   These were provided for review by your staff.

We appreciate the opportunity to explain how this transaction conforms to the requirements of Sec. 207 (1) (x) (vi) of 1980 PA 350. It was neither a subsidy nor monies used to operate the subsidiary. As disclosed in documents filed with OFIR and other state regulators in 2007, the capital transfer was a form of financial transaction between BCBSM and its subsidiary, necessary to maintain AFICA's AM Best financial rating.

Very truly yours,

Lisa Sewell DeMoss
Senior Vice President and General Counsel

LSD/n

Enclosures

EXHIBIT D

THE NONPROFIT HEALTH CARE CORPORATION REFORM ACT (EXCERPT)
Act 350 of 1980

550.1207 Powers of health care corporation; interests of senior citizens; validity of corporate acts.

Sec. 207.

(1) A health care corporation, subject to any limitation provided in this act, in any other statute of this state, or in its articles of incorporation, may do any or all of the following:

(a) Contract to provide computer services and other administrative consulting services to 1 or more providers or groups of providers, if the services are primarily designed to result in cost savings to subscribers.

(b) Engage in experimental health care projects to explore more efficient and economical means of implementing the corporation's programs, or the corporation's goals as prescribed in section 504 and the purposes of this act, to develop incentives to promote alternative methods and alternative providers, including nurse midwives, nurse anesthetists, and nurse practitioners, for delivering health care, including preventive care and home health care.

(c) For the purpose of providing health care services to employees of this state, the United States, or an agency, instrumentality, or political subdivision of this state or the United States, or for the purpose of providing all or part of the costs of health care services to disabled, aged, or needy persons, contract with this state, the United States, or an agency, instrumentality, or political subdivision of this state or the United States.

(d) For the purpose of administering any publicly supported health benefit plan, accept and administer funds, directly or indirectly, made available by a contract authorized under subdivision (c), or made available by or received from any private entity.

(e) For the purpose of administering any publicly supported health benefit plan, subcontract with any organization that has contracted with this state, the United States, or an agency, instrumentality, or political subdivision of this state or the United States, for the administration or furnishing of health services or any publicly supported health benefit plan.

(f) Provide administrative services only and cost-plus arrangements for the federal medicare program established by parts A and B of title XVIII of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1395c to 1395i, 1395i-2 to 1395i-5, 1395j to 1395t, 1395u to 1395w, and 1395w-2 to 1395w-4; for the federal medicaid program established under title XIX of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396r-6, and 1396r-8 to 1396v; for title V of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 701 to 704 and 705 to 710; for the program of medical and dental care established by the military medical benefits amendments of 1966, Public Law 85-861, 80 Stat. 862; for the Detroit maternity and infant care--preschool, school, and adolescent project; and for any other health benefit program established under state or federal law.

(g) Provide administrative services only and cost-plus arrangements for any noninsured health benefit plan, subject to the requirements of sections 211 and 211a.

(h) Establish, own, and operate a health maintenance organization, subject to the requirements of the

insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

(i) Guarantee loans for the education of persons who are planning to enter or have entered a profession that is licensed, certified, or registered under parts 161 to 182 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18237, and has been identified by the commissioner, with the consultation of the office of health and medical affairs in the department of management and budget, as a profession whose practitioners are in insufficient supply in this state or specified areas of this state and who agree, as a condition of receiving a guarantee of a loan, to work in this state, or an area of this state specified in a listing of shortage areas for the profession issued by the commissioner, for a period of time determined by the commissioner.

(j) Receive donations to assist or enable the corporation to carry out its purposes, as provided in this act.

(k) Bring an action against an officer or director of the corporation.

(l) Designate and maintain a registered office and a resident agent in that office upon whom service of process may be made.

(m) Sue and be sued in all courts and participate in actions and proceedings, judicial, administrative, arbitrative, or otherwise, in the same cases as natural persons.

(n) Have a corporate seal, alter the seal, and use it by causing the seal or a facsimile to be affixed, impressed, or reproduced in any other manner.

(o) Subject to chapter 9 of the insurance code of 1956, 1956 PA 218, MCL 500.901 to 500.947, invest and reinvest its funds and, for investment purposes only, purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, employ, sell, lend, lease, exchange, transfer, or otherwise dispose of, mortgage, pledge, use, and otherwise deal in and with, bonds and other obligations, shares, or other securities or interests issued by entities other than domestic, foreign, or alien insurers, as defined in sections 106 and 110 of the insurance code of 1956, 1956 PA 218, MCL 500.106 and 500.110, whether engaged in a similar or different business, or governmental or other activity, including banking corporations or trust companies. However, a health care corporation may purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, employ, sell, lend, lease, exchange, transfer, or otherwise dispose of bonds or other obligations, shares, or other securities or interests issued by a domestic, foreign, or alien insurer, so long as the activity meets all of the following:

(i) Is determined by the attorney general to be lawful under section 202.

(ii) Is approved in writing by the commissioner as being in the best interests of the health care corporation and its subscribers.

(iii) For an activity that occurred before the effective date of the amendatory act that added subparagraph (iv), will not result in the health care corporation owning or controlling 10% or more of the voting securities of the insurer or will not otherwise result in the health care corporation having control of the insurer, either before or after the effective date of the amendatory act that added subparagraph (iv). As used in this subparagraph and subparagraph (iv), "control" means that term as defined in section 115 of the insurance code of 1956, 1956 PA 218, MCL 500.115.

(iv) Subject to section 218 and beginning on the effective date of the amendatory act that added this subparagraph, will not result in the health care corporation owning or controlling part or all of the

insurer unless the transaction satisfies chapter 13 of the insurance code of 1956, 1956 PA 218, MCL 500.1301 to 500.1379, and the insurer being acquired is only authorized to sell disability insurance as defined under section 606 of the insurance code of 1956, 1956 PA 218, MCL 500.606, or under a statute or regulation in the insurer's domiciliary jurisdiction that is substantially similar to section 606 of the insurance code of 1956, 1956 PA 218, MCL 500.606.

(p) Purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with, real or personal property, or an interest therein, wherever situated.

(q) Sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, or create a security interest in, any of its property, or an interest therein, wherever situated.

(r) Borrow money and issue its promissory note or bond for the repayment of the borrowed money with interest.

(s) Make donations for the public welfare, including hospital, charitable, or educational contributions that do not significantly affect rates charged to subscribers.

(t) Participate with others in any joint venture with respect to any transaction that the health care corporation would have the power to conduct by itself.

(u) Cease its activities and dissolve, subject to the commissioner's authority under section 606(2).

(v) Make contracts, transact business, carry on its operations, have offices, and exercise the powers granted by this act in any jurisdiction, to the extent necessary to carry out its purposes under this act.

(w) Have and exercise all powers necessary or convenient to effect any purpose for which the corporation was formed.

(x) Notwithstanding subdivision (o) or any other provision of this act, establish, own, and operate a domestic stock insurance company only for the purpose of acquiring, owning, and operating the state accident fund pursuant to chapter 51 of the insurance code of 1956, 1956 PA 218, MCL 500.5100 to 500.5114, so long as all of the following are met:

(i) For insurance products and services the insurer whether directly or indirectly only transacts worker's compensation insurance and employer's liability insurance, transacts disability insurance limited to replacement of loss of earnings, and acts as an administrative services organization for an approved self-insured worker's compensation plan or a disability insurance plan limited to replacement of loss of earnings and does not transact any other type of insurance notwithstanding the authorization in chapter 51 of the insurance code of 1956, 1956 PA 218, MCL 500.5100 to 500.5114. This subparagraph does not preclude the insurer from providing either directly or indirectly noninsurance products and services as otherwise provided by law.

(ii) The activity is determined by the attorney general to be lawful under section 202.

(iii) The health care corporation does not directly or indirectly subsidize the use of any provider or subscriber information, loss data, contract, agreement, reimbursement mechanism or arrangement, computer system, or health care provider discount to the insurer.

(iv) Members of the board of directors, employees, and officers of the health care corporation are not, directly or indirectly, employed by the insurer unless the health care corporation is fairly and reasonably compensated for the services rendered to the insurer if those services were paid for by the health care corporation.

(v) Health care corporation and subscriber funds are used only for the acquisition from the state of Michigan of the assets and liabilities of the state accident fund.

(vi) Health care corporation and subscriber funds are not used to operate or subsidize in any way the insurer including the use of such funds to subsidize contracts for goods and services. This subparagraph does not prohibit joint undertakings between the health care corporation and the insurer to take advantage of economies of scale or arm's-length loans or other financial transactions between the health care corporation and the insurer.

(2) In order to ascertain the interests of senior citizens regarding the provision of medicare supplemental coverage, as described in section 202(1)(d)(v), and to ascertain the interests of senior citizens regarding the administration of the federal medicare program when acting as fiscal intermediary in this state, as described in section 202(1)(d)(vi), a health care corporation shall consult with the office of services to the aging and with senior citizens' organizations in this state.

(3) An act of a health care corporation, otherwise lawful, is not invalid because the corporation was without capacity or power to do the act. However, the lack of capacity or power may be asserted:

(a) In an action by a director or a member of the corporate body against the corporation to enjoin the doing of an act.

(b) In an action by or in the right of the corporation to procure a judgment in its favor against an incumbent or former officer or director of the corporation for loss or damage due to an unauthorized act of that officer or director.

(c) In an action or special proceeding by the attorney general to enjoin the corporation from the transacting of unauthorized business, to set aside an unauthorized transaction, or to obtain other equitable relief.

(4) A health care corporation shall not condition the sale or vary the terms or conditions of any product sold by the corporation or by a subsidiary of the corporation by requiring the purchase of any other product from the corporation or from a subsidiary of the corporation.

History: 1980, Act 350, Eff. Apr. 3, 1981 ;-- Am. 1989, Act 260, Imd. Eff. Dec. 26, 1989 ;-- Am. 1993, Act 127, Imd. Eff. July 21, 1993 ;-- Am. 1993, Act 201, Imd. Eff. Oct. 19, 1993 ;-- Am. 1999, Act 210, Imd. Eff. Dec. 21, 1999 ;-- Am. 2003, Act 59, Eff. July 23, 2003
Popular Name: Blue Cross-Blue Shield
Popular Name: Act 350

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