

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Insurance, Securities and Banking
Office of the Commissioner

In the matter of:

The proposed Acquisition of Control of and Merger with Domestic Insurer, NCRIC Group, Inc., by ProAssurance Corporation.

MOTION TO INTERVENE

Pursuant to District of Columbia Municipal Regulations, Title 26, § 3806, Public Citizen files this Motion to Intervene in the matter of the proposed Acquisition of Control of and Merger with (“Acquisition”) Domestic Insurer, NCRIC Group, Inc. (“NCRIC”) by ProAssurance Corporation (“ProAssurance”).

1. This Motion to Intervene is filed by:

Public Citizen’s Congress Watch
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Attn: Frank Clemente

2. Explanation of how Public Citizen is, or may be, affected by the pending matter, and any relief sought.

Public Citizen is a 150,000-member non-profit, non-partisan consumer advocacy organization founded in 1971 to represent consumer interests before the legislative, executive and judicial branches of government. Based in the District of Columbia (“the District”), Public Citizen devotes a substantial portion of its activities to health care issues, centering on patient access to care; quality of care; and continued ability of patients to seek compensation in the courts for injuries suffered due to negligence and medical errors. The latter is closely connected to availability and cost of medical malpractice insurance, because as insurance costs have increased, there have been increasing calls to limit victim compensation.

Public Citizen has 802 members residing in the District. Many of these members, plus other Public Citizen members residing in areas adjacent to the District, depend on physician services provided in the District.

Public Citizen members in or adjacent to the District stand to be affected by the Acquisition in the following ways:

A. Likely harm to competition. Under the statute, the effect of a merger or acquisition upon competition is to be of paramount interest in the Commissioner’s consideration. In this case, ProAssurance’s proposed acquisition is likely to decrease competition in the

provision of medical malpractice insurance for physicians practicing in the District; to increase the cost of such insurance; or lead to a decrease in availability of such insurance.

ProAssurance's basic business plan is to acquire other companies, such as NCRIC, thereby diminishing the number of competitors in the marketplace. As ProAssurance's chairman and chief executive said following announcement of the proposed Acquisition:

“ProAssurance (is) by any measure the most successful integrator of medical liability companies in the industry. In fact, our company is made up of transactions such as this one. NCRIC will be the 11th medical liability organization that ProAssurance or its predecessors has brought into the organizations. (sic) We have a long history dating back to 1993 of identifying and integrating companies or books of business to help us further our business model.”¹

In addition, ProAssurance's particular business plan calls for restricting the number of policies it issues and charging higher premiums for those policies it does issue.²

These factors strongly suggest that if the Acquisition is approved as currently envisioned, malpractice insurance will be available from fewer companies and/or be more expensive. Physicians in the District and elsewhere have experienced sharp increases in their malpractice rates in recent years. NCRIC, for example, boosted its premiums for internal medicine physicians by 21 percent in 2003 and an additional 25 percent in 2004. Rates were also up significantly for other specialties.³

As a result, physicians have been increasingly vocal in complaining that these higher rates are causing some doctors to cease practicing medicine. If that is true, and if, as a result of the Acquisition, rates increase even further, some physicians in the District could be expected to forego their local practice, such as by retiring early or leaving the District.⁴ Other reactions by physicians to higher insurance costs could be to charge higher rates for their services or to allow quality and/or breadth of care provided to deteriorate. In turn, this will hurt availability and quality of health care to residents of the District generally and to Public Citizen's members in particular. These issues should be fully examined prior to the Commissioner's final consideration of the Acquisition.

B. Neglecting the underlying issue. Higher medical malpractice premiums stemming from the Acquisition would also obscure an underlying issue of significant importance to Public Citizen members: the need for meaningful malpractice insurance reform. Today,

¹ Derrill Crowe, chairman and chief executive of ProAssurance, in an investor relations conference call, as transcribed by FD (Fair Disclosure) Wire, February 28, 2005.

² “Malpractice insurer drops high risks, raises rates,” Birmingham (Alabama) News, March 28, 2004.

³ Source: *Medical Liability Monitor*, October 2003 and October 2004.

⁴ NCRIC also has a dominant position in the Maryland and Virginia markets. Thus, a physician's ability to avoid rate increases by moving from the District to a surrounding area could be limited.

physicians and their patients are disadvantaged by a boom/bust cycle in the insurance marketplace, in which insurance premiums periodically spike upwards without regard to the number and severity of lawsuits in the legal system. The premium increases have led to demands by the medical community that the Mayor and City Council enact severe limits on the ability of patients to recover damages for negligence or medical error. Such efforts divert attention from the underlying cause of the spike in insurance rates and, in enacted, jeopardize the ability of Public Citizen members and other patients to make full recoveries.

For the foregoing reasons, Public Citizen requests that its Motion to Intervene be granted, and that the hearing before the Commissioner scheduled for June 6, 2005 under terms of District of Columbia Official Code § 31-703(g)(2) be postponed until Public Citizen has had adequate time to conduct full discovery, as contemplated by the statute and regulations.

3. Statement summarizing the issues, laws, and any other matters that will be pursued during discovery or covered at the hearing.

If Public Citizen's Motion to Intervene is granted, Public Citizen will pursue these issues:

A. The extent to which the Acquisition is likely to reduce competition and/or raise medical malpractice insurance premiums in the District, thereby prejudicing the interests of physicians and their patients. As discussed earlier, there are significant reasons to be concerned about the Acquisition's effect on competition and malpractice insurance pricing.

ProAssurance appears to pursue a higher target rate of return than does NCRIC, based on both companies' 2004 securities filings. If ProAssurance, in assuming control of NCRIC, conforms NCRIC's business practices to its own, malpractice insurance rates in the District are likely to rise, thereby prejudicing the interests of physicians in the District and their patients.

ProAssurance's "loss ratio" – the ratio of claims incurred to premiums earned, expressed as a percentage – has been lower than NCRIC's in recent years. A lower ratio means that a company is devoting more of its funds to expenses and profits than to paying claims to injured patients on behalf of its policyholders. This affects the level of compensation to patients, thereby affecting their quality of life, their ability to work and their ability to afford medical care required by their injuries.

B. The extent to which Acquisition expenses are likely to raise medical malpractice rates in the District, and thus prejudice the interests of physicians and their patients. Certain expenses in connection with the Acquisition may be unreasonably high, and could have a material effect on malpractice rates in the District. For example, NCRIC has authorized "change of control payments" for its three most highly paid executives, which will total more than \$2 million if the Acquisition is approved. In addition, whereas NCRIC today markets its insurance in the District largely without agents, ProAssurance

generally uses agents and pays commissions to those agents. Thus, the Acquisition may increase NCRIC's costs. Expenses such as change of control payments and agents' commissions could raise the cost of medical malpractice insurance in the District, thereby prejudicing the interests of physicians in the District and their patients.

C. The extent to which the interests of non-stockholder policyholders of NCRIC may be prejudiced as a result of the acquisition. In 1998, NCRIC restructured as a mutual holding company system, and in 2003, it fully demutualized. Before these corporate changes in organization, policyholders of NCRIC were the sole owners of NCRIC. But when NCRIC demutualized, unlike most insurers that have undergone that process, the company distributed no stock to its policyholder-owners. To the contrary, if NCRIC's policyholder-owners wished to retain their ownership interest in NCRIC, they were required to buy stock in the company. The proposed Acquisition exacerbates injury already suffered by policyholders who did not buy stock in the company, because only stockholders will receive any increased value the Acquisition may produce.

4. Why Public Citizen's interests would not be adequately represented by parties already participating, including the Department.

The interests of Public Citizen and its members would not be adequately represented by either NCRIC or ProAssurance, because both companies owe a fiduciary duty to their shareholders, not to Public Citizen or its members.

The Department of Insurance, Securities and Banking ("the Department") would not adequately represent Public Citizen or its members for the following reasons:

A. Comprehensive analysis. Although the Department has statutory authority to do so under § 31-703(g), the Department has not, to Public Citizen's knowledge, retained experts, nor conducted a comprehensive analysis itself, to fully analyze the finances of the companies before or after the Acquisition, or the competitive effect of the Acquisition on the District's medical malpractice insurance marketplace.

B. Level of scrutiny. In contrast to other insurance departments, the Department has not historically given close scrutiny to change of control payments in connection with acquisitions or conversions.

C. Prior Department approvals. The Department approved NCRIC's restructuring as a mutual holding company in 1998; it approved NCRIC's initial public offering of stock in 1999; it approved NCRIC's full demutualization in 2003, and it approved NCRIC's declination to distribute stock to its policyholder-owners in connection with all these steps. Based on this series of favorable considerations, it is unreasonable to expect that the Department would now reverse course and advocate protecting the interests of former policyholder-owners of NCRIC, and by extension, the interests of patients of those policyholder-owners, in connection with the Acquisition.

SUMMARY

For the foregoing reasons, Public Citizen asks that this Motion to Intervene in the matter of ProAssurance's proposed Acquisition of NCRIC be granted, and that the hearing scheduled for June 6 be postponed pending establishment of a schedule to permit full discovery proceedings on the issues raised in this motion.

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