DEPARTMENT OF FINANCIAL SERVICES

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PUBLIC HEARING IN THE MATTER OF MEDICAL LIABILITY MUTUAL INSURANCE COMPANY ("MLMIC")

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One State Street

New York, New York

August 23, 2018

10:05 A.M.

Reported By:

Stefanie Krut

A P P E A R A N C E S:

PANEL MEMBERS PRESENT:
Maria T. Vullo - Superintendent
Marshal Bozzo - Assistant Deputy Superintendent
Laura Evangelista - Executive Deputy Superintendent
Stephen Doody - Deputy Superintendent

WITNESSES:
Dr. James Reed
Edward J. Amsler
Thomas Ryan
Bruce Byrnes

INTERESTED SPEAKERS:
Dr. Michael Brisman
Dr. Richard B. Frimer
Philip Schuh
Richard Stone, Esq.
Richard L. Stone, Esq.
Bruce J. Flanz
Jeffrey C. Thrope, Esq.
Laura M. Alfredo, Esq.

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SUPERINTENDENT VULLO: Good morning. So now that we have all the logistics done we hope, hopefully they will stay for the remainder of the hearing. So good morning everyone. I am Maria Vullo. I am the superintendent of the New York State Department of Financial Services or DFS, which is the acronym. And for those of you who don't know, this agency is the New York State agency that regulates the insurance, banking and financial services industries in the State of New York. We're here today for a public hearing which was scheduled by statutory notice to consider a proposal by Medical Liability Mutual Insurance Company, also known as MLMIC, which is a New York domestic mutual property and casualty insurance company that writes medical malpractice insurance and the proposal is to convert MLMIC from a mutual insurance company to a stock

insurance company and then for that stock to be sold by the members of MLMIC to a company called National Indemnity Company or NICO, which is a whole owned subsidiary of the Berkshire Hathaway insurance group.

If this demutualization transaction moves forward, MLMIC would change it's name to drop the word "Mutual" and would have a new sole shareholder, but otherwise MLMIC would continue as a New York domestic insurer writing medical malpractice insurance and be subject to the continuing regulatory authority of the Department of Financial Services for the continued protection of policyholders and the public.

So I'm going to give a summary in my opening remarks because I think this is a complex transaction and I wanted to give a short summary. Obviously the documents that have been submitted in advance of this hearing provide more

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details but I think it's important because this is a public hearing for me to at least summarize where we are and to provide a framework for the decision that I have to make as superintendent with respect to this proposed transaction.

Section 7307G of New York State's Insurance Law requires that I hold this public hearing before deciding whether to approve the demutualization of a property casualty insurer. In addition, the State Administrative Procedures Act Section 102 considers this corporate restructuring of a mutual insurer to be an act of proposed rule making. Therefore, as required, notice of this public hearing was published in the New York State Register on June 20, 2018, which was more than 60 days before this hearing. And notice was also posted on DFS's website including instructions for attending this hearing, submitting

comments and requests for oral testimony. We instructed on our website that anyone requesting to submit oral testimony do so by last Friday.

Pursuant to the Insurance Law, MLMIC was also required to publish notice of this public hearing in three newspapers and it has submitted Affidavits of Publication demonstrating that it has done so. This proposed conversion is pursuant to a document called a plan of conversion, which we may call "plan" for short. If approved, that would be effected as a sponsored demutualization. What does that mean? A mutual insurance company like MLMIC is owned by its members the policyholders. As part of their policies held in MLMIC, the members have membership interests and those interests include the right to vote at meetings, the right to elect directors that represent them and the right to

share in any dividends. In order for the members of a mutual to sell that -- their company, the company must first be converted to a stock company so that the stock can be bought by the buyer. As a result of this type of transaction, the members keep their policies in force so the policies themselves don't change but they would give up their membership interests and all rights of ownership of the mutual company in return for the consideration to be paid as part of this transaction which I'm sure we'll be talking about today.

Under the proposed transaction following the conversion, NICO would acquire the stock of MLMIC. That is what makes this a sponsored demutualization. So under this plan of conversion that is before us today, the demutualization only happens if the sale to NICO goes through. So it's two steps, there's a conversion to a stock

company and then the stock is sold and it's a package for purposes of approval. Otherwise, if the Department and myself as the superintendent determines not to approve this transaction, which is certainly within my right, MLMIC would remain a mutual insurer as it is today.

So this hearing is for me as the superintendent with my terrific staff that's here today, including Marshal Bozzo who's Assistant Deputy Superintendent for the Property Bureau and Laura Evangelista and Stephen Doody. Laura is there as my Deputy Superintendent for Insurance. And Stephen Doody has the Property Bureau, and I'm sure he'll be with us shortly.

So this hearing is for us to determine whether to approve, to disapprove or to modify the plan of conversion. The statute gives those choices. We have made no decision on this issue. However, I think it's

important to explain for the public that if the Department does decide to approve the plan of conversion, as well as the amended corporate documents that go along with it, the relevant policyholders that are now the policyholders of MLMIC then after that approval, if approval occurs, would have the right to vote themselves on the plan, and that's an important part of the process as well. So this proposed transaction is governed by the Insurance Law, Section 7307 to be precise. And because the proposed demutualization must be effectuated, the Insurance Law requires that it be approved, as I said, by the superintendent, that's myself, but prior to this it had to be approved by a majority of MLMIC's board of directors. And then if I approve it, two-thirds of the MLMIC policyholders, who are eligible to participate in the vote, must approve the transaction.

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So the MLMIC Board unanimously adopted the plan of conversion on May 31st, 2018 and they made some subsequent amendments on June 15, 2018, based upon the authority granted to the officers by the Board. And the policyholder vote is currently scheduled to take place on September 14, 2018 but, again, that vote is conditioned upon whether or not I approve the plan in the interim. If the policyholders approve the transaction, then the parties will proceed to a closing and once the deal closes MLMIC, if again all the approvals occur, MLMIC would be renamed MLMIC Insurance Company a New York State domestic stock corporation owned 100 percent by NICO, again, the subsidiary of Berkshire Hathaway.

It's important to note that the transaction has been in the works for some time. Demutualizations are very time consuming transactions because

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there are many statutory steps required and I've outlined some of those steps already. The initial resolution by the Board of MLMIC was adopted on July 15, 2016, which included a request for permission to file a plan of conversion and by the statute that request and that Board resolution triggered a requirement that the Department conduct a full financial examination of the insurance company and also engage an independent firm to conduct an appraisal of the insurer, and the Department has done both of those things prior to this public hearing.

The consideration which is an obvious important part of this transaction. The consideration to be paid for this transaction has been worked through by the parties and is part of the approval process today. In July 2016, the acquisition agreement provided an agreement by the parties for a purchase price formula with the

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price to be finally determined post closing, which would have been after approvals and after the policyholder vote. During the course of the Department's examination and the commencement of the appraiser's work, the Department reviewed that particular provision as well as everything else in the acquisition agreement and raised concerns about the sequencing of those steps, specifically about the purchase price specifically being determined after the closing, and the Department requests requested that the parties consider whether that was the appropriate way to proceed with the transaction.

The parties then amended the acquisition agreement on February 23 of 2018 and they added a fixed purchase price of $2.502 billion. The parties agreed to amend the termination date in that acquisition agreement from June 30, 2018 through September 30, 2018.

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As mentioned, if I approve the transaction the Insurance Law requires that the plan be submitted to a vote of those policyholders and the statute's very specific on this. The vote is for those policyholders who were policyholders of the insurance company the day before the resolution of MLMIC's board which was July 15, 2016 with at least 30 days notice of the vote. And so the statute's very specific that persons who were holders the day before that resolution are the ones entitled to vote on this transaction and notice for that vote had to be given at least 30 days in advance, so MLMIC has advised that on June 22 of this year they provided notice of the September 14, 2018 vote, and with that notice MLMIC sent the policyholders eligible to vote on the plan a policyholder information statement, along with the actual plan of conversion that's being considered,

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which also includes amendments and success and includes proposed amendment Charter and bylaws of MLMIC. Also proxies for voting were included in those notices to policyholders entitled to vote. MLMIC also provided public notice in newspapers as required by the Insurance Law. All of these documents and the plan itself, again, so have been out there for people to consider and that's why this public hearing follows all of that information being out there.

The documents include information about the nature of the transactions, some of which I've summarized. The purchase price, which is obviously important for the policyholders and for me to consider in terms of looking at the fairness of this transaction and also how that purchase price would be paid if the transaction is approved, and that's all of the information that was made available to policyholders and

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others. And it also includes certain disputed resolution procedures in case there are any dispute. The documents also describe the conditions to the acquisition and the plan which include, among other things, the payment by MLMIC to NICO of an extraordinary dividend of $1.905 billion, a loss portfolio transfer which is a type of reinsurance agreement that would transfer the economics of MLMIC's business to NICO and would increase MLMIC's surplus by $20 million. Another reinsurance agreement that would transfer 85 percent of MLMIC's post closing business to NICO and its affiliate, as well as the trust agreements that secure these reinsurance agreements, along with other closing conditions set forth in the acquisition agreement between NICO and MLMIC, and the Department, of course, has reviewed and will continue to review all of these materials in

considering how to proceed.

I mentioned who the policyholders that are entitled to vote under the statute which is those who are policyholders prior the July 15, 2016 date, the day before, so on July 14, 2016.

The Insurance Law is also very specific about how the determination is made in terms of consideration from the transaction. Specifically Section 7307(e)(3) states that the holders of policyholders in policies in effect during the three-year period immediately prior to the Board resolution. So you have a July 15, 2016 Board resolution and for those for the three-year period before that would receive the transaction consideration in proportion to the amount of net premium that each such policyholder paid on that eligible policy out of the total net premium paid on the eligible policies. So I mentioned a $2.5

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billion amount as transaction consideration, and if this transaction is approved, then the Insurance Law is very specific about who gets that consideration and that's the policyholders in effect for that three-year period prior to July 15, 2016, and in proportion to their net premium, depending upon how much they paid.

So with that as background, which, again, I thought was important for the -- for this public hearing, we now will receive testimony about the plan and hear from any other interested parties. And I wanted to direct the witnesses to really talk about what the factors are that I am to consider in terms of this proposed demutualization under Section 307(h) of the Insurance Law, I must determine whether the plan complies with the Insurance Law, whether it is fair and equitable and whether it is in the best interest of

the policyholders and the public. So those are the bases upon which this decision would be made.

After this hearing -- and this is important -- we have a five-day period for additional written comments through August 25 of 2018 -- I'm sorry -- August 28 of 2018 for receipt of any additional written comments that anyone wants to give. We will receive all additional comments. We will read and assess and consider all comments received whether we hear them orally today or all the written comments we've received up to today and in that five-day period. And then after that five-day period is when we will consider whether to approve, deny or modify the plan and a decision will be rendered sometime thereafter, after we've been able to fully consider everything that has been presented to us.

So we invited the parties to the

transaction who obviously are the ones that are presenting this for approval and we've asked them to actually presents testimony today. They've also submitted written testimony. In the notices that were sent out for the public hearing we also invited requests by those who wish to speak in addition to the parties and we received eight of those such requests and we granted all of them. We also invited and received registration requests from people to be here, and about 60 people actually asked, and we granted all of those requests for anyone who wanted to attend the hearing.

So again, I ask the witnesses try to direct their testimony to the factors that the law requires me to consider. And please remember that we will read and consider carefully all of the written testimony, so the oral need not repeat everything that is in the written testimony. We want to move

this forward fully but efficiently and effectively to a conclusion, so I'm going to ask the witnesses to keep their time -- the parties I've said if you could keep your time to 15 minutes we would greatly appreciate it and we have four witnesses from the parties and then the eight members, other interested parties I'm going to ask you to keep your testimony, again, your oral testimony to 10 minutes. And I'm going to be -- I'm going to look at the watch because we need to get through and I want to make sure everybody has a chance to be heard and I will say now that after all of the registered people have testified, I will open it up and if anybody else wants to come up and say anything, I'm going to limit you to two minutes then because if you didn't register in advance you're only getting two minutes but I'm going to give everybody who wants to be heard the opportunity today to be heard. And I

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also want to warn everyone that if I have any questions, and I probably will, I will ask the witnesses questions because it's important for us in considering this transaction to sort of make sure we understand where we are. So with that, and I see Stephen Doody has joined us here, who is the Deputy Superintendent of the Property Bureau.

So with that, we have a court reporter here who is taking down everything. I am not going to ask the court reporter to swear the witnesses under oath but every witness here is testifying before the Department of Financial Services and of course that means truthful and factual and honest testimony without me having to actually go through that procedure.

So with that, we're going to start with the four parties witnesses and then I will say up front, the eight people, the order in which they're

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testifying is the order in which they registered. So the first person to register is the first one that going to get to speak. That's the way we did it. But with respect to the party witnesses, I'm going to call first Dr. James Reed who is the chairman of the Board of Directors of MLMIC, which is obviously the proponent of this transaction.

So Dr. Reed, please.

DR. REED: My name is Dr. James Reed. I am Chairman of the Board of Directors of the Medical Liability Mutual Insurance Company, which I will refer to as MLMIC and I was elected to that position last year. I have served on the Board of Directors of MLMIC since 2005 and have served as MLMIC's Vice President and Treasurer and chaired its finance committee which oversees MLMIC's investments.

I would like to thank the superintendent for the opportunity to

testify today. I'm joined by Ed Amsler, CEO of MLMIC Services, Incorporation and Thomas Ryan, Principal Consulting Actuary at Milliman Incorporated who will also be offering testimony. Bruce Burns, Vice President and Senior Counsel and Chief Compliance Officer of National Indemnity Company is also here and will provide testimony on behalf of Berkshire Hathaway Incorporated, which I will refer to as Berkshire.

I'm here today to testify in support of MLMIC's request that the New York State Superintendent of Financial Services approve of MLMIC's plan of conversion to convert from a property and casualty mutual insurance company to a property and casualty stock company, which was unanimously adopted by the Board on May 31, 2018 and revised on June 15, 2018, which I will refer to as the plan. The proposed sponsored conversion includes the

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acquisition by National Indemnity Company, which I'll also refer to as NICO, pursuant to an Amended and Restated Acquisition Agreement dated February 23, 2018 between NICO and MLMIC.

I'll refer to the plan and the Acquisition Agreement collectively as the Proposed Transaction. And I have previously submitted a written statement in connection with today's hearing and I adopt that written statement in full.

As personal background, I'm also president and CEO of Saint Peter's Health Partners in Albany, New York, which is that regions's largest healthcare system and also the largest private employer with 12,500 employees and a budget of $1.3 billion.

I'm also a board member of Health Now New York, the holding company for Blue Shield of Northeastern New York and the Blues Western New York, and a

board member of Pioneer Bank, a mutual bank.

I received my undergraduate degree with honors in economics from Amherst College, then my masters of business administration from the Horton School at the University of Pennsylvania. I joined the International Paper Company and Finance where I eventually became the company's Director of Corporate Finance and I also then joined Union Pacific Corporation as manager of strategic planning and director of acquisitions and investitures.

I then attended Cornell University Medical College, completed residency training in family practice and spent nine years as a private family physician in the Albany area. I was then named CEO of Northeast Health, an integrated health system in the Albany area and we subsequently merged Northeast Health, St. Peter's Health

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Care Services and Seton Health to form St. Peter's Health Partners where I became CEO and president in 2012. I've also served as a member of the New York State Hospital Review and Planning Counsel and was a gubernatorial appointee to the Regional Advisory Committee to the Berger Commission.

I'd like to first speak generally about the state of the medical malpractice insurance market in New York. The medical malpractice market in this state is highly competitive. Over 40 companies in New York compete for about $1.6 billion in medical malpractice premiums. Competition is driven by a fairly stable claims environment and a large number of entrance into the market with capital to write medical malpractice business. Competition has increased markedly over the last decade or so with the entry of risk retention groups into the market.

Turning to MLMIC. MLMIC was

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regionally created as a mutual company. It is a leader in the medical malpractice industry and has been meeting the professional liability needs of healthcare professionals for over 40 years. MLMIC insures 13,000 physicians, 3,000 dentists and dozens of hospitals across New York State.

MLMIC has always been strongly committed to its policyholders and will continue to serve them after the proposed transaction. I would now like to discuss the background of the proposed transaction.

In September of 2015 Berkshire approached MLMIC about a possible acquisition of MLMIC by the Medical Protective Company which I'll refer to as MPC. MPC is an affiliate of Berkshire that writes medical professional liability insurance nationwide. In 2011, MPC had purchased the wholly owned subsidiary of MLMIC, Princeton Insurance Company, which I'll

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refer to as PIC, a medical professional liability insurer operating in New Jersey. The offer of a possible acquisition of MLMIC by MPC would be similar to the PIC transactions and would have resulted in MLMIC's operations merging into MPC.

MLMIC's executive committee was apprised of this initial expression of interest on October 6, of 2015. The executive committee determined that the initial indication of interest was not in the best interest of MLMIC's policyholders because the sale would result in MLMIC being run by MPC rather than the leadership MLMIC's policy holders had elected. Accordingly, the executive committee decided not to pursue the initial indication of interest and never reached the stage of discussing financial consideration. Berkshire then revised its expression of interest to propose NICO as the purchaser instead of MPC and confirmed

that it intended that MLMIC continue to operate the same as it would have before the acquisition.

On October 14, 2015, MLMIC's executive committee voted unanimously to pursue that expression of interest. On December 16, 2015 the Board voted unanimously to pursue the revised expression of interest in Berkshire as being in the best long-term interest of MLMIC's policyholders. Berkshire and MLMIC negotiated the terms of the acquisition, including the amount of consideration to be paid by NICO. MLMIC was able to negotiate a higher consideration than originally offered by Berkshire. Berkshire then prepared a nonbinding letter of intent which was reviewed and approved by MLMIC's executive committee and Board on February 3, 2016 and February 10, 2016, respectively.

On March 16, 2016, the Board heard a presentation from Keefe,

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Bruyette and Woods Incorporated or KBW, an independent financial advisor. KBW is an international investment banking firm specializing in financial services. Following that presentation, the Board concluded that Berkshire's offer was within a range of acceptable values. Berkshire and MLMIC then began drafting and negotiating an acquisition agreement and plan of conversion to convert MLMIC from a mutual to a stock insurance company that would be acquired by NICO in exchange for cash consideration.

On July 15, 2016, the Board voted unanimously to approve the acquisition agreement and for MLMIC to enter into the proposed transaction with NICO. That same day, MLMIC announced the proposed transaction publically and filed an application with DFS requesting permission to convert MLMIC to a stock insurance company.

After reviewing the initial

acquisition agreement, DFS advised MLMIC there was an inconsistency between a purchase price to be determined post closing and the procedural steps set forth in Section 7307 of the New York Insurance Law. Specifically DFS commented that the requirement to Section 7307 could not be met before determining the dollar amount of the purchase price before those steps are taken. In response to these comments from DFS, MLMIC and NICO renegotiated the cash consideration to be paid.

On February 23, 2018, the Board voted unanimously to approve the acquisition agreement pursuant to which the cash consideration was revised to provide a fixed price of $2.502 billion. In addition, the termination date under the acquisition agreement was extended from June 30, 2018 to September 30, 2018.

I would like to explain why I

believe that policyholders will benefit from the proposed transaction and there are two principal reasons. First, eligible policyholders will receive cash consideration as a result of the proposed transaction. Second, the proposed transaction will financially strengthen MLMIC protecting policyholders and insuring they continue to receive the same quality of insurance protection they always have.

Turning to cash consideration first as a mutual company, MLMIC policyholders have certain membership rights that the proposed transaction will extinguish, therefore each policyholder will be allocated a share of the cash consideration received by MLMIC. The amount allocable to a particular eligible policyholder will be based on a formula described in greater detail in my written statement.

MLMIC currently estimates that each eligible policyholder's allocation

will be approximately equal to 1.9 times the sum of the eligible premiums during the three-year period. The cash consideration will be distributed as promptly as practical after the effective date of the plan.

Turning now to the effect of the proposed transaction on MLMIC. MLMIC's affiliation with NICO after the proposed transaction will insure that policyholders receive the same quality of insurance protection and policyholder servicing they have come to expect from MLMIC. NICO is one of Berkshire's lead companies with substantial capital and surplus and the affiliation with NICO will MLMIC greater resources with which to protect its policyholders.

MLMIC will be provided with affiliate reinsurance to back its obligations to policyholders. As a result, MLMIC will continue to write business and be a strong competitor in

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the New York State medical malpractice market after the proposed transaction. Moreover, the proposed transaction will enhance MLMIC's financial strength and give it the opportunity to obtain an AM best rating of A plus plus. This will give MLMIC the ability to underwrite additional business and benefit more policyholders across New York.

I also believe that the public will greatly benefit from the proposed transaction for several reasons. First, as explained earlier, the affiliation with NICO will enhance MLMIC's financial strength. The proposed transaction will also provide MLMIC with greater flexibility to obtain capital and will provide MLMIC with affiliate reinsurance to back its obligations to policyholders. This will have the effect of reducing MLMIC's statutory reserves allowing it to underwrite additional business and benefiting the public at large.

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The proposed transaction is also an excellent strategic for MLMIC as Berkshire and MLMIC have compatible visions of the future. The affiliation with Berkshire will enhance the competitiveness of MLMIC and generate efficiency. The cumulative effect of these efficiencies will be to support the growth of existing product lines and to take advantage of investments and acquisition opportunities as they may arise. All of this will accrue to the benefit of the public by enhancing MLMIC's financial strength and allowing it to support its existing business and write new business.

Finally, the proposed transaction will ensure that MLMIC will remain a strong New York domestic corporation. MLMIC will continue to write business in New York and will continue to maintain offices and employees here. Moreover, as I explained earlier, the proposed transaction will not

negatively impact competition for medical malpractice insurance in New York.

So based on careful consideration, the various elements of the plan, the plan was unanimously adopted by the Board on May 31, 2018 and revised on June 15, 2018. After extensive analysis and consultation with independent financial, actuarial legal and other advisors, we strongly believe that the terms of the plan are fair an equitable, are consistent with the purpose an intent of Section 7307 of the New York Insurance Law and will not prejudice the interests of the policyholders of MLMIC. I strongly support the Board's unanimous decision to support the plan. I share their belief that the conversion of MLMIC to a stock insurance company and the acquisition by NICO is fair and equitable consistent with the purpose and intent of Section 7307 of the New

York Insurance Law and will not prejudice the interests of the policyholders.

For the reasons I just described, and for the reasons described in the other testimony presented today and written statements submitted on behalf of MLMIC, we respectfully ask that the proposed transaction be approved and on behalf of MLMIC and their Board of Directors, I would like to thank the superintendent and her staff and advisors for the opportunity to testify today and for their hard work in connection with their consideration of the proposed. Thank you.

SUPERINTENDENT VULLO: Thank you, Dr. Reed. That was very helpful. I have a few questions. You're chairman of the Board of Directors of MLMIC.

DR. REED: Yes.

SUPERINTENDENT VULLO: Were you chairman on July 15, 2016 when the Board unanimously approved the proposed

transaction?

DR. REED: I was not chairman at that point.

SUPERINTENDENT VULLO: Were you on the Board at that point?

DR. REED: I was on the Board at that point.

SUPERINTENDENT VULLO: So you participated in those discussions?

DR. REED: Yes. And on the executive committee.

SUPERINTENDENT VULLO: And on the executive committee. How many members are there on the MLMIC Board of Directors about?

DR. REED: We're 42 -- pardon me. 39.

SUPERINTENDENT VULLO: 39. And are there policyholders that are members of the Board of Directors of? MLMIC?

DR. REED: Yes.

SUPERINTENDENT VULLO: How many?

DR. REED: Primarily our

policyholders, I believe we have about three or four that are not policyholders. I'm one of them. I'm an independent director. I don't have a MLMIC policy.

SUPERINTENDENT VULLO: Okay. That was going to be my next question.

So you're an independent director?

DR. REED: Yes.

SUPERINTENDENT VULLO: But the majority, overwhelming majority of the Board are actually policyholders which means they are physicians that hold policies or they're policy administrators that hold policies.

DR. REED: Right. Right. Or they may run a hospital that has a policy.

SUPERINTENDENT VULLO: Okay. And so it's fair to say that they're familiar with the medical malpractice market and --

DR. REED: Yes.

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SUPERINTENDENT VULLO: -- all those issues.

When you said that when the transaction was approved by the Board on July 15, 2016 it was made public. I assume that means that all policyholders of MLMIC were informed at least that there was an agreement reached between MLMIC and the Berkshire Hathaway Group with respect to this proposed transaction?

DR. REED: Yes. Not only the policyholders but the public at large. We had a press release.

SUPERINTENDENT VULLO: There was a press release.

And to the policyholders have regular meetings, annual meetings as well?

DR. REED: We have an annual meeting every year in May and that's obviously open to any policyholder who wants to attend that, and that's where board member elections occur and so

forth. We hold a board meeting after that and organize the Board that's been elected.

SUPERINTENDENT VULLO: So since July 15, 2016 to today I assume there's been one or two annual meetings of policyholders; is that fair?

DR. REED: Right. Two since then; '17 and '18.

SUPERINTENDENT VULLO: And was this transaction discussed at any of those meetings?

DR. REED: Yes. It was discussed at both those meetings, questions were asked and we answered those questions.

SUPERINTENDENT VULLO: So the policyholders had the opportunity during the process to ask any questions they may have?

DR. REED: Yes.

SUPERINTENDENT VULLO: You mentioned that there was an earlier proposed transaction by MPC, which is a separate affiliate of Berkshire that

the Board rejected, right?

DR. REED: Right.

SUPERINTENDENT VULLO: That MPC, which is also known as MedPro, right? That's an RRG, right?

DR. REED: Yes.

SUPERINTENDENT VULLO: And an RRG --

DR. REED: Well, no, wait. It's not entirely. It -- I'll let Ed opine but --

SUPERINTENDENT VULLO: Okay. You want to answer that? I'll have you do that.

But that -- it's a different type of a medical malpractice writer than MLMIC is.

DR. REED: No. We all write medical malpractice. It's the way the organization is organized. And again, I'd have to defer to details on MedPro's board.

SUPERINTENDENT VULLO: Okay. I'll ask you to answer that on that.

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During the July 15 Board presentation in 2016, you mentioned that KBW made a presentation that informed the Board in its decision.

Do you remember what in that presentation convinced the Board with respect to this transaction?

DR. REED: Yeah. It was -- it was primarily aimed at the financial aspect of it and the numbers that we were looking at and I don't recall the specific range they presented at that time but the proposed transaction was in the range that KBW was, in fact, had found looking through a variety of valuation methods, it wasn't just one method. They went through the process of looking at tangible book value and so forth, but then also bench marked it in terms of the industry, any similar types of transactions that could be found, although that's difficult to do. And using all of that data for some sense of what a reasonable number would

be and that certainly fell well within that margin.

SUPERINTENDENT VULLO: And that was -- and so -- and I think you described an estimate of the considerations of this transaction for a policyholder is equivalent to about 1.9 times three years of the policyholders' net premiums; is that right?

DR. REED: Right.

SUPERINTENDENT VULLO: So that would be the three-year period prior to July 15, 2016. If you were a policyholder for three years, you'd get your premiums back times 1.9 as consideration for the transaction.

DR. REED: That's what it will be equal to, that's not the actual formula that's used but that's about what it will be equal to.

SUPERINTENDENT VULLO: Right. And so -- and you mentioned that there are a number of -- large number of the

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Board is policyholders, so they would --

DR. REED: Yes.

SUPERINTENDENT VULLO: -- you know, receive that consideration --

DR. REED: Yes.

SUPERINTENDENT VULLO: -- as well. Is any member of the Board of Directors receiving anything else --

DR. REED: No.

SUPERINTENDENT VULLO: -- in this transaction? No financial consideration or anything else?

DR. REED: No.

SUPERINTENDENT VULLO: Only whatever they would get as a policyholder otherwise.

DR. REED: And the non-investment policyholders would receive nothing.

SUPERINTENDENT VULLO: Thank you that's what I have. Thank you, Dr. Reed, for your testimony.

The next witness is Edward Amsler, he's the vice president of

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MLMIC and chief executive officer of MLMIC Services, Inc.

MR. AMSLER: Good morning, Superintendent. Thank you for giving me the opportunity to speak. Your summary of the transaction eliminated about five pages of my presentation.

SUPERINTENDENT VULLO: Great.

MR. AMSLER: Which I think that will benefit you and everybody here, as well.

I'm Edward Amsler and I'm Chief Executive Officer of MLMIC Services and and I'm also vice president of assistant treasurer and I've been associated with MLMIC in excess of 30 years. And I know -- I was hoping you would say you don't look that old but...

What I'm really thinking about is -- and I was involved in the beginning about 40 years ago when it was formed by the physicians -- I'm sorry -- by the physicians -- and at

that time physicians and then hospitals and healthcare providers in the state. Aside from thanking you and the staff for the opportunity I'm here to talk to you about supporting the conversion of this company from its current status as a mutual insurance company to a stock company, which was unanimously adopted by the Board.

If I can just make one observation relative to the questions that asked Dr. Reed regarding the ownership of policies and benefit as a mutual insurance company. And it could be correct -- I'm sure Steve will correct me in this, but I believe we're only allowed to have four non-policyholder members, Board members. When this company was formed back in 1975 it was done in the auspice of medical society of the state of New York, and so having 39 Board members became important because we had various territories covered, various

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specialties, et cetera, and through their auspices we-- that dictated the size of the Board, most of the functions occurred through the executive committee, and I'm sure as you know from your examinations over the years, but that's why we have so many and that's why so many are policyholders is because of that.

Now it's -- I'll talk to you about the plan and the acquisition and we'll call that the Proposed Transaction, if we can. But I've submitted a written statement with this which I will incorporated here verbally but it answers a lot of the questions that you may have and covers all of the areas that you covered to a degree.

But since 1974, this company has been a New York State domiciled company, we've been an admitted carrier under the jurisdiction of this Department. We have been through crises affordability. We have been

through crises of availability and we're still here. And we think we've done a pretty good job accomplishing that, so you have to ask yourself why now are you doing this. And that's a good question, I think it's a question and one that we should be in a position to answer because that's the question that our Board asked, essentially.

Let me give you a little bit of my personal background so you have that in the record. I'm a past Chairman of the National Association which is the Medical Professional Liability Association, formally the PIAA. I earned my undergraduate degree from St. Lawrence and I'm -- I'm so sorry -- and a trustee emeritus of St. Lawrence University. And I received my juris doctorate degree from Syracuse University, although after listening to Dr. Reed's curriculum, I feel a little inadequate.

Going beyond that, let me say --

the big question that you're asking what -- you know, why did we do this? First question that came about. We're sort of at a point of inflexion for this company in this market, in this state, in the provision of healthcare and across the board. And what is that point of reflexion. In the market we've seen a contraction of healthcare providers, there are limited number of physicians practicing independently and actually purchasing one policy for themselves. They're growing increasingly into groups. They're growing increasingly into employment situations and hospitals. They're growing increasingly into in the provision of medical care to the New York State citizens through these large groups. These larger groups who have different requirements than the individual practitioner. When we sold a policy originally $1 million or maybe $1.3 million, at that time we, you know

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that was adequate for the physicians, these larger groups require larger levels of coverage. We thought about that, how do we go about doing that. As the marketplace has changed, we saw the advanced come -- in terms of medical liability insurance, we saw the advent of risk retention groups enter into this market. And advent from 1984 in the change in the federal law which permitted risk retention groups. Risk retention groups can into the market place there, there prices aren't controlled, as you know, premiums are established by the superintendent in this state. No one establishes their premiums. No one establishes their capital capacity to write this business. They have a history of -- some of them have a history of coming in and leaving early. There are many legitimate risk retention groups that are out there as well. But it also is field day for illegitimate competition,

it's something that we have faced. We have witnessed during ten years, I believe from 2007 to 2017, a decrease in our premium volume from over $700 million down to just below $400 million during that time. I think as Dr. Reed pointed out, we've had about 40 competitors for this business. We've witnessed the market share that we had inside of New York decrease down to about 26 percent from about over 40 percent.

So it is a highly competitive environment and then if we look at this -- we looked at the market, the Board looked at it and said well, here we are in this situation. We're losing policyholders. We're providing a service as a mutual to our policyholders and what we provide is a service of financial security. We're giving physicians, hospitals, dentists financial security in malpractice litigation, which ultimately benefits

patients who are injured as a result of negligence. That's what we do. And we have done it for 40 years.

The next question is, are we needed in that capacity. And if we are needed, how do we go about providing that service. Well, the first thing we said was we have all this competition coming in that is price driven. The Board looked at the price driven competition, we see the number of insureds going down, we see the number of competitors increasing, we see the financial -- the financial security as being supplied by a lot of our competitors being inadequate, you know, in this environment. And what policyholders are we serving now, it's becoming less and less. So the point of inflexion in the market seemed to be there and then the point of inflexion interestingly, and perhaps ironically, from the financial health of the company is the opposite. Our financial

health as a result from writing premiums and profit, but rather resulted from the reserve redundancies which was a national phenomenon, nobody had thought it was going to happen, it happened. And it also resulted from good investment philosophy, very conservative investment philosophy throughout the entire recession, throughout the drama of the stock market in '08. We lost very, very little money. We were successfully investing. And in fact, it was Dr. Reed, a member of the board -- chair of our finance committee and rode us through those days. So our financial health was a result of how, you know, we ran the company, and yet at the same time the demand for our product seems to be going down, the demand for the mutual service seems to be going down. The need for greater capacity in the marketplace clearly was there, and how do we keep that with a

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mission to serve financial security for the physicians, hospitals, dentists inside New York State.

You asked a question of Dr. Reed earlier about the initial questions regarding the overture from Medical Protective. Medical Protective is confusing because they really have two vehicles. One is a national insurance company, Medical Protective and the other one is Risk Retention Group. I think the thing that you're familiar with is the Risk Retention Group that writes some business inside New York, writes some businesses in all the states.

Medical Protective as an admitted carrier does not write in New York and it is not an admitted carrier. Medical Protective we had a relationship with Berkshire and with the folks at Medical Protective because they purchased the Princeton Insurance Company, I think it was in 2011 as Dr. Reed pointed out,

and so we knew who they were, we had a very good relationship with them and we liked their approach and their philosophy, so when they first came to us we listened to them but the key difference there was this would make us a part, make this company, this mutual company, this New York focused company a part of Medical Protective, which is a national company with a regional focus and we wanted -- the Board members thought it imperative that we continue that mission of serving New York insureds via a New York admitted carrier, and that's who we are. So when we talked to them about it and when we talked to Medical Protective and met with the folks at Berkshire, we expressed that to them, totally understood and they came back and said well here's a different idea for you. And the idea was to go with NICO as you've described. And I'm not going to go through a lot of these because you

know it already. Go with NICO -- why did we go with NICO and Berkshire Hathaway. Well, for a couple of reasons. Number one, Berkshire, why would anybody have an interest in this company, you know, this is a single writer of mostly occurrence policies in a single state in a highly volatile long tail line of business.

Now in terms of an investment. That's probably all the elements of a negative aspect to an investment, so why would Berkshire have this, that's the first question we asked them. Well, why they have an interest is they like, number one, the way we run the company. Number two, what we've done so far, the relationship with our insureds. Number three, they like writing long tail lines of business that are volatile, right. What we liked about Berkshire was that they were good to their commitment. When they said they let their companies run,

they let their companies run. In fact, at the time we were discussing this it was a Harvard business review right on that subject, which was supportive, which our Board read during the course of its deliberations, supportive of the idea; Berkshire as a conglomerate lets their managers, their companies run themselves and reports back financially.

So getting away from the whole investment philosophy afloat and things like that, that was less important to us than it was how are they going to let us continue to serve the mission that we have. And we thought Berkshire -- and we met with Warren Buffet from Berkshire at GCHAIN and talked to them about these things, you know. How do we know that in the future something's isn't going to change, you're going to change your mind. Well, if you look at the history of Berkshire that doesn't happen and

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their commitment to us verbally, and otherwise, has been consistent throughout this entire process. So we felt if we were going to have a partner in this process, and going forward basis, this would be the best thing to do. Now, what did it do do for our mutual policyholders?

Well, mutual policyholders are in a situation where it gave them an opportunity to unlock the interests they had in this company, financial interests. We talk a lot about value in this transaction. Finances is only one portion of the value, as we see it as a Board. The finances is one -- the financial aspect is one element of that value. One element of value that this gave our owners, which prescribed by statute who qualifies for it, but it gave our owners the ability to unlock and liquidate the asset they had. Now, you're going to make the argument, well, why do you just do it though

dividends. Well, we've given out dividends in the past but there are perimeters to dividends that you can give. You have to have financial security. If you take all the money out and give it out as dividends, then you don't have adequate financial security. Well, this transaction permits us to give financial security through the reinsurance program through NICO.

I have probably gone off n three different tangents but I'll try to get back on course here so --

SUPERINTENDENT VULLO: And you're getting close to your 15 minutes.

MR. AMSLER: Sure. We closed in on -- and I can go 20 minutes but that's all right.

We closed in on the thought that, you know, that this transaction from our perspective, and this Board's perspective having witnessed this over 40 years, was at a point of inflexion,

this was a perfect marriage for us and for our Board and giving them financial and other benefits off into the future. That's the basis of the decision. I think, you know, we've complied with the statute. Statute is very, very difficult, as your staff well knows and I think we've complied with the statute throughout, so I'm not going to repeat all the elements that we've done to comply with it.

I will answer any questions that you have but before I do that, I just make one comment: This -- over these 30, 40 years that I have dealt with this insurance department at the company, this has been for the insurance department and the efforts put in by your staff -- in this type of environment it's easy to have puffery for your staff. Your staff has worked nights, mornings and weekend on a very, very difficult transaction and we've had our arguments, we've had our

disagreements, but the fact is, it has never been as a result of lack of effort. I thank you and I thank the Department so much for your efforts and I ask you to approve this transaction.

SUPERINTENDENT VULLO: Thank you. And thank you especially for the comments about the staff because the work of this Department could not be done without them and they're the people to my right, as well as the people who work for them. So I too am grateful for their hard work and effective work, including being difficult and making sure that the Insurance Law is followed and that policyholders and the public are protected, so -- and that's really what we're here about.

So just a few questions, Mr. Amsler. The -- you mentioned that a main, you know, part of this transaction that was important to the Board was the continuation of MLMIC

post transaction effectively continuing the same with its commitment but I guess with the new shareholder, right?

MR. AMSLER: Correct.

SUPERINTENDENT VULLO: And you mentioned that, you know, MLMIC is a New York admitted carrier and so -- and, you know, does MLMIC post transaction have every intention to continue as a New York admitted carrier?

MR. AMSLER: Absolutely.

SUPERINTENDENT VULLO: And have you heard anything from anybody at MLMIC or from Berkshire to the contrary of that?

MR. AMSLER: Absolutely not.

SUPERINTENDENT VULLO: And so we've talked a little bit about our RRG's which are these risk retention groups and, you know, part of what I have to consider is not just the interest of policyholders but also the interests of the public which also

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includes the claimants and the entire industry in New York and I will tell you something that I'm sure you know, because I've said it before, is that RG's are a different animal than an admitted carrier. It was mentioned before they're not subject to the same -- to the regulation by the Department which means they don't have the requirements of the capital that we require. And the capital that we require and the reserves and everything else has put MLMIC in the position it is, which it has surplus to be able to, you know, protect policyholders. Our RRGs do not -- are not subject to our premium review in terms of the rates that they would charge and they're not subject to oversight and that also means that if an RRG goes under, and we've seen that happen, in New York and elsewhere, when RRGs go under there's no protection for either the policyholders or the claimants who are

the people who are claiming that they were injured by negligence and medical malpractice. There's a guarantee fund in the State of New York and that guarantee fund does not apply to RRGs so policyholders and claimants are out when the RRG is out. So -- so you know, you've mentioned sort of dynamics, but again, I want to just emphasize the importance that, you know -- and we still have a lot to go through in determining this transaction, but if this transaction will become an RRG there is no way that I would even consider approving it because it would absolutely not be in the interest of either policyholders or the public.

So I am hopeful of at least your comments in terms of to the extent this is approved what would happen thereafter. Can you just -- you know, I asked this of Dr. Reed too, you know, the Board may -- you're on the Board as

well?

MR. AMSLER: No.

SUPERINTENDENT VULLO: You're not on the Board.

Were you present for the presentation?

MR. AMSLER: Absolutely.

SUPERINTENDENT VULLO: So can you just, from your memory, the presentation by KBW with respect to, you know, what I put in the statutory terms is the fairness of the purchase price.

MR. AMSLER: Sure.

SUPERINTENDENT VULLO: And if you could just speak a little to that as to what that presentation was and how it did or did not inform the Board's determination.

MR. AMSLER: Sure. One of the concerns that the Board had was, you know, here we have this offer from Berkshire which, you know, in our estimate it looked legitimate, it

looked appropriate in terms of value, in terms of dollars, so the question was let's get somebody from the outside to give an opinion as to the reasonableness of this offer. Is this offer reasonable on the metrics that an investment advisor would tell us. So we engaged with KBW as a financial advisor to advise us on the reasonableness of this offer and they went through a series of analytics or metrics that investment advisors use, including analysis of direct premium written, expense ratios, descriptive and descriptions of competitive alike transactions that have occurred. All the elements, I think there are four elements involved, they're included in our written testimony, as to what they went through to give us an analysis as to whether or not this was in a range of reasonableness for the Board to consider.

The Board also knew at that time

that we were going to have -- that you, as a superintendent, were going to have an independent analysis by a financial advisor to you as to the appropriateness of the transaction financially on behalf of the policyholders and the people of the State of New York. So our concern at that point was before we got to that point, before we got to the situation where you were going to do this analysis, is this reasonable. And they concluded, and advised the Board, that it was a reasonable offer and that's when the Board decided to move forward.

SUPERINTENDENT VULLO: Okay. And the actual dollar amount -- so there's a formula then, but the actual dollar amount of the purchase price was set sometime this year in 2018?

MR. AMSLER: Correct.

SUPERINTENDENT VULLO: And that's that $2.5 billion amount?

MR. AMSLER: Correct.

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SUPERINTENDENT VULLO: How did that amount get arrived at?

MR. AMSLER: Sure. The original purchase price was described as tangible GAAP book value plus $100 million. The difficulty with that was it didn't, as your staff pointed out, it didn't give the policyholders an opportunity to know what that was going to be for what they were going to vote on until after they had to vote.

So we sat down. Two things had happened in the interim, two big things. Number one, our GAAP tangible book value had increased substantially because of reserve development and investment income, essentially.

The other thing that happened was the legislature and the government signed into law Laverne's law, which had a negative effect on our reserves and IPNR. And so we needed to quantify both those things. Once those things were quantified by MLMIC on Laverne's

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Law, etcetera, we sat down with Berkshire and said well, here is the current tangible GAAP book value and here is the effect of Laverne's Law as the actuaries see it. We agreed upon that and agreed upon the 2.502.

SUPERINTENDENT VULLO: And do you remember what timeframe that was or the as-of date?

MR. AMSLER: Does anybody remember?

SUPERINTENDENT VULLO: Maybe MLMIC knows that?

MR. AMSLER: I assume it was at the time that we -- we'll supply it if I don't have --

SUPERINTENDENT VULLO: Okay. That's fine.

MR. AMSLER: I don't have it off the top of my head. I do know that, unfortunately for Berkshire, but unfortunately for us, the value has benefitted us as of this date. Now by the time of closing --

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SUPERINTENDENT VULLO: Right. So the 2.5 million was determined sometime earlier in the year and that was going to be my question, if it was determined today, it would be lower but --

MR. AMSLER: Probably. Because the bottom market has decreased because of investment income increasing. That would have that effect, but, you know, it's still in the range and Berkshire committed to it. They were willing to take that market risk, that investment risk no matter what it was between then and closure and they did take that risk.

SUPERINTENDENT VULLO: Okay. That's what I had. Thank you.

MR. AMSLER: Thank you very much. I appreciate your time.

SUPERINTENDENT VULLO: Thank you, Mr. Amsler. Thank you.

So the next witness we have is Thomas Ryan who is principal consulting actuary from MLMIC.

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Mr. Ryan, please.

I may have more difficulty asking you questions as an actuary.

MR. RYAN: Good morning. My name is Thomas Ryan. I'd would like to thank the superintendent for the opportunity to testify today. I'm testifying today in support of the Medical Liability Insurance Company, which I'll refer to as MLMIC, requests that the New York State Superintendent of Financial Services approve MLMIC's plan of conversion to convert from a property casualty mutual insurance company to a property and casualty stock insurance company.

The proposed sponsored conversion includes the acquisition by National Indemnity Company, which I'll refer to as NICO, pursuant to an amended and restated acquisition agreement dated February 23, 2018 between NICO and MLMIC.

I refer to the conversion of

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MLMIC to a stock company as the Conversion.

I refer to the acquisition of MLMIC by NICO as the Acquisition. I will refer to the Conversion and Acquisition jointly as a Proposed Transaction.

I have previously submitted a written statement in connection with today's hearing and I adopt that written statement in full.

By way of personal background, I'm a Principal and Consulting Actuary at Milliman, a leading actuarial and consulting firm. I have been at Milliman since 1997 and I focus on projects involving rate making, loss reserving, and reinsurance. I specialize in the review of claim liabilities for very large financial services firms and have read the analyses of some of the largest P&C insurers and reinsurers in the world. I'm a member in good standing and

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Fellow of the Casualty Actuarial Society and a member of American Academy of Actuaries.

I received my bachelor of science at the Webb Institute of Naval Architecture.

I have been a consulting actuary to MLMIC for over 20 years. In that role, I have previously provided to MLMIC actuarial opinions on behalf of Milliman regarding the adequacy of MLMIC's loss reserves.

I most recently provided an opinion for MLMIC for the year December 31, 2017. At that time, I concluded that MLMIC's reserves make a reasonable provision for MLMIC's future obligations. In formed this opinion, I relied as reserving methods, assumptions and selections consistent with Actuarial Standards of Practice as promulgated by the Actuarial Standards Board and the Statement of Principles Regarding Property and Casualty Unpaid

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Claim Estimates as adopted by the Casualty Actuarial Society.

The reserve analysis for the year ended December 31, 2017 was performed in product line detail incorporating paid and incurred losses, reported and closed claims and earned exposure data provided by MLMIC.

The results of our analysis were peer reviewed for reasonableness /-L internally by other medical professional liability insurance experts within Milliman, and were also reviewed by MLMIC's Chief Actuary and MLMIC's auditors.

The Conversation and Acquisition will not impact the loss and loss adjustment expense carried by MLMIC or its surplus. Therefore, my actuarial opinion, and consistent with my findings for the year ended December 31, 2017, the Conversion and Acquisition will not adversely affect MLMIC's ability to meet its ongoing

obligations.

In my actuarial opinion, after the Conversion and Acquisition, MLMIC will remain well-capitalized and will be able to continue to pay claims.

I'd like to turn now to the reinsurance and proposed dividend transactions with Berkshire Hathaway, which I will refer to as Berkshire, which are explained in detail in my written statement.

In general, it is my understanding that after completion of the proposed transaction NICO will reinsure 100 percent of MLMIC's preclosing insurance liability in consideration for premiums equal to MLMIC's outstanding loss, loss expense and unearned premium reserves les $20 million.

In addition, MLMIC will enter into a quota share reinsurance transaction with affiliates of Berkshire, reinsuring a combined 85

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percent of the business MLMIC will write on a prospective basis.

Further, MLMIC is seeking to declare and pay a dividend of $1.905 billion to NICO which mill be MLMIC's parent company following the proposed transaction. In my actuarial opinion, the dividend and reinsurance transactions will not negatively affect MLMIC's policyholders because MLMIC will continue to be well-capitalized and be able to continue to pay claims.

Indeed, NICO intends to keep sufficient capital in MLMIC so that MLMIC has at least the capital and surplus necessary to maintain MLMIC's risk-based capital ratio above 350 percent.

I'd like to turn now to the New York medical malpractice insurance market. The New York medical malpractice insurance market is highly competitive today, as Mr. Amsler and Dr. Reed said with over 40 companies

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competing for over $1.6 billion in premium. The market is very competitive, primarily due to a fairly stable claims cost trend, as well as large amounts of capital willing to write business. Over the last decade numerous new competitors have entered the market, many in the form of alternative solutions, such as risk retention groups, which have increased competition substantially.

One measure of the competitiveness of the current market is the size of the residual market for medical professional liability insurance in New York, as represented by the Medical Malpractice Insurance Pool which I'll refer to as the MMIP.

Policy year earned premium of the MMIP has decreased from over 110 to just under 40 million over the last 10 years. Premiums related specifically to primary physicians has declined from 45 million to just over seven million

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and the trend continues downward.

In my opinion, this material reduction and exposure written by the MMIP residual market is indication of the competitiveness of the current market.

Another commonly accepted measure of market concentration is the Herfindahl-Hirschman index, which also shows that market concentration has actually dropped materially over the last 10 years.

Based on these measures, in my professional opinion I expect the New York market will remain competitive in the near term. Claims costs are relatively stable and there's a large amount of capital willing to write business.

It is true over the long-term there may be periods of volatility and higher losses which may cause new entrants to leave. During those volatile periods the proposed

transaction will benefit consumer because it will insure that MLMIC is financially stable since it will be owned and reinsured by NICO and will retain the ability to write premiums. This will add stability to the market and temper potential future availability crisis in New York during times of rising costs.

Therefore, because we expect that MLMIC will continue to operate successfully after the proposed transaction under NICO's ownership, the Proposed Transactions will help and not negatively impact the overall medical malpractice insurance marketplace.

This completes my statement. I'll be happy to answer any questions.

SUPERINTENDENT VULLO: Thank you, Mr. Ryan. So this sort of goes to the question I was asking before as well, some of you can help with this. So you determined, or Milliman determined as an actuarial firm, that as of

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12/31/2017 that MLMIC had sufficient reserves to meet its obligations to the policyholders and the claimant; is that right?

MR. RYAN: That's correct.

SUPERINTENDENT VULLO: And the reserve is the amount of money put aside in order -- based upon an actuarial estimate of future liabilities under these policies, right?

MR. RYAN: Absolutely.

SUPERINTENDENT VULLO: These are long tail policies, so you looked at the future liabilities in arriving at that?

MR. RYAN: Absolutely.

SUPERINTENDENT VULLO: Am I correct that that 12/31/2017 date is the same date that was utilized as the as of date for the purchase price of $2.5 billion. Do you know that?

MR. RYAN: That's not my bailiwick.

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SUPERINTENDENT VULLO: Okay. Maybe somebody else will tell me that.

And you said, but I just want to make sure I understand, so the transaction, if this transaction as it is being proposed is approved, approved by this Department, approved by the policyholders, that reserve amount that you are saying is sufficient, the transaction has no effect on that, certainly no negative effect on that?

MR. RYAN: Absolutely. Just break it up into two parts. The conversion transaction, you're just converting from mutual to stock, no change in reserves.

SUPERINTENDENT VULLO: Correct.

MR. RYAN: Then the reinsurance has the impact of taking the liabilities off the book, prospectively we're protected by an 85 percent quote share and then we dividend out the money. At all those points, the liabilities are covered.

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SUPERINTENDENT VULLO: And they're covered so there's no negative -- in your opinion, there's no sort of negative impact from the transaction structure with respect to the future liabilities to policyholders and claimants which is the business of the company?

MR. RYAN: Actually, it's a benefit. Because today -- and you know, we tend to focus on the most recent history within the medical malpractice where frequency has come down, reserves have been released, but you look back a little further than that, reserves went up by about a billion dollars in five years. There was a cyclical nature to this as it goes through.

And today, if we were to enter one of those volatility time periods, MLMIC's surplus would be directly eaten by that reserve.

SUPERINTENDENT VULLO: The

surplus as of today?

MR. RYAN: As of today. But in going into the transaction with NICO, there's unlimited amount of coverage on all those, on the past liabilities and going forward there's 85 percent coverage, plus there's a trust agreement in place so it's sort of like a belt and suspenders that they are actually going into a more secure environment with the reinsurance.

SUPERINTENDENT VULLO: Because of the reinsurance.

And this reinsurance is all U.S. domestic reinsurance, right?

MR. RYAN: Yes.

SUPERINTENDENT VULLO: You mentioned a $1.905 billion dividend. How does that relate to the $2.5 billion purchase price or does it, do you know?

MR. RYAN: I don't know.

SUPERINTENDENT VULLO: Okay.

With respect to market

concentration, if this transaction is approved MLMIC then becomes part of the quota share affiliate group of companies. What does that do in terms of the -- do you know the percent of the New York market that the Berkshire companies would have in medical malpractice writing?

MR. RYAN: I think the -- in 2017 MLMIC's about 26 percent of the market and I think NICO is 10 so it'd be about 36.

SUPERINTENDENT VULLO: So it would increase.

MR. RYAN: Right. The market share would increase but actually it would be below where MLMIC was ten years ago where they themselves controlled over 40 percent of the market so it's less than it was historically.

SUPERINTENDENT VULLO: All right. Thank you. Thank you. Appreciate it.

Next we have Bruce Byrnes, Vice

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President and Senior Counsel of Birkshire Hathaway Group of Insurance Companies.

Mr. Byrnes.

MR. BYRNES: Good morning, first of all, thank you for having us testify. My name is Bruce Byrnes. I am Vice President, Senior Counsel and Chief Compliance Officer of the National Indemnity Company, which we call NICO actually, and the Berkshire Hathaway Group of insurance companies. I'm here today to testify in support of the conversion and the transaction that all of our friends today have talked about.

First of all, I would like to being to reiterate everyone's thanks to you Superintendent and to your staff for the extraordinary level of engagement and work that they have done probably more so than I've seen over my entire career in terms of the level of activity and diligence I've ever seen

from the Department on a single transaction.

National Indemnity Company, first of all is the largest insurance company in the world by surplus with $130 billion of surplus as of June 30.

NICO is wholly owned by Berkshire Hathaway, Inc. Berkshire is one of the largest publically traded companies in the United States by market capitalization. Berkshire is a holding company that owns subsidiaries engaged in a diverse range of business activities. Berkshire owns a number of insurance companies that are licensed to conduct business in New York and actually owns three that are domiciled in New York that you already regulate. So you have a long history of regulating our entities and working with our entities.

Berkshire -- well, insurance is a large and critical part of our business. We also are engaged in a

number of other businesses, including energy, railroads, consumer products and manufacturing. Warren Buffet is the chairman and chief executive of Berkshire and is also its largest shareholder. As of June 30th, Mr. Buffet owns shares that give him the equivalent of approximately 32 percent of the voting shares -- voting power for the shares of Berkshire Hathaway.

We believe that medical malpractice is an attractive line of business that plays to Berkshire's strengths. Given the long-term nature of the liabilities and the specialty nature of the underwriting. Our various insurance with the subsidiaries have written medical malpractice in New York for a number of years and given its role as a leading medical malpractice insurer in the state, we've had a long relationship with MLMIC and it's come to greatly respect its management and the way they conduct

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their business.

Most notably, and I think we've mentioned in prior testimony, our MedPro Group, which is our specialist of medical malpractice underwriter, acquired Princeton Insurance Company from the MedPro team, and I've gotten to know that management team very well in 2011. That relationship led MedPro to approach MLMIC in September 2015 about the potential acquisition. And our colleagues at MedPro were told that MlMIC was not willing to consider that acquisition because it wanted to continue to operate independently of MedPro. Interestingly, we acquired MedPro approximately 10 or 12 years ago from General Electric in actually a very similar transaction where we continued to have the management of MedPro run MedPro. So we then, when they told us those were the concerns, that was not a huge issue for us and we then presented them with a revised

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proposal where NICO would be acquirer and MLMIC would be allowed to continue to operate its business independent of MedPro with its existing management team.

As I noted before, this is typical for Berkshire. We very often acquire a team with management in place and we actually prefer to make acquisitions where we have a significant management team that we know and respect in place to continue to run the business. Finally after several months of negotiation we were able to successfully negotiate the terms of the proposed acquisition of MLMIC by NICO for a price equal to MLMIC's tangible GAAP book value plus $100 million. The acquisition agreement was originally signed in July of 2016.

Due to the length of the rigorous statutory conversion process and changes in New York law regarding

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medical malpractice statute of limitation, and input from the Department as we previously discussed on the structure of the price, NICO and MLMIC's management entered into further discussions about the purchase price in late 2017 and an acquisition agreement was amended February of 2018.

You asked questions previously about where that came from. Essentially when the discussions started in late, probably around November, I guess, when Laverne's Law all still pending, there was projections given to us that as to what surplus would be at 2000 -- year end 2017, and by early February when it was signed, those projections had largely been crystalized to what GAAP book value was at year end 2017, and essentially just crystalized the formula into the actual purchase price at a fixed price.

So it didn't represent a

renegotiation of the price so much as it crystalized what had previously been agreed.

SUPERINTENDENT VULLO: And that was as of December 31, 2017 applying the formula that had been agreed to earlier but making it concrete in terms of what that dollar amount would be?

MR. BYRNES: Yes, ma'am. Tangible GAAP book value plus $100 million.

Practically that has actually worked against us because the tangible GAAP book value at MLMIC has actually decreased since December 31, 2017, at least as of June 30, 2018.

We believe that MLMIC's policyholders will benefit significantly by NICO's acquisition of MLMIC. Following the closing of the transaction, as I will discuss in more detail, MLMIC will continue to operate on a standalone basis but we believe it will be better able to serve its customers and existing insureds and

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offer them improved ability to meet its claim obligations because MLMIC will be able to leverage the financial strength and expertise of the Berkshire Hathaway Group of insurance companies.

The most immediate benefit to MLMIC's policyholders is the increased financial security for the payment of outstanding claims under the existing policies. Upon the closing of the transaction, subject to your approval Superintendent, NICO will reinsure 100 percent of MLMIC's existing liabilities without an aggregate limit. NICO's 130 billion in policyholder surplus, which -- sorry, excuse me -- with NICO's $130 billion in policyholder surplus, this portfolio transaction will provide significantly more financial security to MLMIC's policyholders than was the case solely based on MLMIC's existing balance. The premium paid to NICO by MLMIC will be an amount equal to its existing loss

reserves, we didn't charge a premium over and above, and in fact, we are charging less than 20 million less than the existing reserves.

Despite the peerless financial strength of NICO, in order to enhance that security even further, the premium paid to NICO will be deposited into a trust and held for the benefit of MLMIC under the loss portfolio arrangement.

Also subject to your consent, following the transaction, NICO and another Berkshire Hathaway affiliate, National Liability and Fire -- and let me just note that NICO is an accredited reinsurer in New York and National Liability and Fire is licensed in New York, so both subject to your supervision -- will then provide ongoing reinsurance protection for 85 percent of the new business written by MLMIC after the closing date pursuant to a quota share reinsurance agreement.

Here again, despite the

extraordinary financial strength of the Berkshire Hathaway reinsurers, we've agreed to provide MLMIC with collateral to secure our reinsurance obligations under certain circumstances. Specifically, if the liability ceded to the Berkshire insurers under the quota share agreement exceed 4 to 1 of a ratio of MLMIC surplus to the liability ceded, then NICO and MLF will both collateralize those obligations. Or if because there's two reinsurers, if the liability ceded to either exceed 3 to 1, in by itself then the reinsurer that has more than 3 to 1 of MLMIC's surplus will be required to collateralize.

So we think both in terms of the extraordinary financial strength of the two reinsurers, and the collateral that policyholders will be extraordinarily well served, and that be able to sleep at night in a way that given the volatility of New York medical malpractice, which you know better than

anybody else, will give -- will significantly benefit policyholders.

As a result of all these transactions, we then feel that MLMIC will be significantly overcapitalized, and subject to your approval, we would intend to dividend the excess capital over and above what would be necessary to acquire a 350 percent RBC ratio. There's no relationship in prior -- to answer your prior question, between the dividend and the purchase price. We simply, based on what -- we actually -- normally as our part of our ORSA process, which you'll be familiar with, always seek to have -- all of our companies have at least a 300% RBC ratio and we added a margin of safety error 350 percent after discussion with your -- with your team to make sure that we would always maintain surplus of at least in excess of 350, and the math just worked out that that was a $1.9 billion thing, so it's not tiled

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to the purchase price in anyway.

Upon the closing, MLMIC will continue to operate in a very similar manner to how it has operated historically. It will continue to operate in the marketplace under the direction of it's current management team and Board of Directors. It will also operate independently of MedPro and any other Berkshire Insurance subsidiary.

About the only changes that will be immediately apparent will be that the investments will be managed by the team managing the investments of the Berkshire reinsurers which -- whose track record is pretty well-known and well-regarded internationally.

MLMIC would will have the ability to call on Berkshire's resources on an as-needed basis and customer will be free to choose their medical malpractice insurer. MLMIC will not steer its existing customers to

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MedPro's affiliated Risk Retention Group for any of its existing admitted market insurance products. And I should also mention, while MedPro does operate in New York through a Risk Retention Group, you have no need for concerns around the financial stability of that Risk Retention Group. MLMIC is expect to take advantage of its I had affiliation with Berkshire, however, to offer improved service to his existing clients, for example, we anticipate MedPro and MLMIC would potentially work together to pull their medical expertise and collaborate of patient safety, risk management and claims issues and we believe they reduce healthcare risk, improve patient safety and result in better outcomes for patients and insurers.

Finally, we don't expect that this transaction will materially effect competition in New York. The New York medical malpractice liability market is

very competitive and we expect that the level of competition will continue to increase due to the continued entrance of national medical malpractice specialty insurers and other national insurers into this market.

Based on publically available data through 2017, MedPro held the largest market share of the New York medical malpractice at 26.3 percent.

SUPERINTENDENT VULLO: You mean MLMIC?

MR. BYRNES: Sorry, MLMIC. I'm sorry. Did I say MedPro?

SUPERINTENDENT VULLO: You said MedPro.

MR. BYRNES: MLMIC: Affiliates of Berkshire Hathaway, primarily MedPro, were ranked fifth in the market with a 10.49 percent share. This is as of the end of 2017.

Following the transaction, the combined market share, based on the 2017 data for Berkshire Hathaway

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affiliates, including MLMIC, would be approximately 37 percent. But to put this pro forma 37 percent in contest, it should be noted that MLMIC's historical market share exceeded 37 percent from 2007 when it was 43 percent, through 2008 where it was 39 percent and has exceeded 33 percent from 2009 through 2012.

Historical market share, however, amply demonstrates MLMIC's historical market share, did not have the effect of dampening competition for medical malpractice liability insurance. Nor did MLMIC's historical market position prevent other competitors from gaining additional market share at the expense of MLMIC and other competitors.

Indeed, despite its market share, MLMIC's premiums have decreased by 44 percent since 2007, as a result of the intense buying in competition.

40 different companies reported writing medical malpractice liability

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insurance in 2017 in New York. Those 40 competitors include several large and well capitalized insurance groups that have demonstrated an ability to grow their books of medical malpractice business in New York over the last 10 years, including Allegany, Liberty Mutual, W.R. Berkley and Markel.

Further, well capitalized specialist competitors that focus on the healthcare liability insurance business who have not traditionally competed in the New York market are doing so aggressively through accelerated efforts of building agency relationships, appointing legal defense firms, adding capabilities to compete more aggressively in New York. These include doctor's company ranked number two nationally in healthcare. Pro Assurance ranked number four. Coverys Group ranked number five and NORCAL Mutual Insurance Company ranked number eight, all nationally as of 2017.

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It is also important to note that a substantial portion of the healthcare market has moved to the -- from the standard market into alternative risk transfer mechanisms, such as captives and other nonreporting entities, such as self-insured.

So a portion of the market has even been captured in the premium data that we're referring to. So the actual numbers we're giving you presented the distorted view that doesn't capture the whole market.

That concludes my testimony. I'm happy to answer any questions you may have.

SUPERINTENDENT VULLO: Great. Thank you. I do have a few questions.

So you mentioned that if this transaction is approved MLMIC will operate independently of MedPro.

MR. BYRNES: Uh-huh.

SUPERINTENDENT VULLO: What's the separate legal corporation -- there

would be separate legal corporations but both with National Indemnity as the parent?

MR. BYRNES: Compared to MedPro?

SUPERINTENDENT VULLO: Yeah. MLMIC and MedPro will be post transaction, two separate legal entities with the same parent?

MR. BYRNES: No. MedPro is a subsidiary of Columbia Insurance Company, which is another Berkshire Hathaway affiliate.

SUPERINTENDENT VULLO: So even -- they don't have an ultimate holding company but they won't have the same parent company?

MR. BYRNES: No. And as an operational matter, both report to Mr. Ajit Jain who is Vice Chairman of insurance operations for Berkshire Hathaway.

SUPERINTENDENT VULLO: Okay. But again, I mean, but the -- the concept of, you know, and this is relevant

to -- you know, relevant with respect to the 37 percent that would result is that we would have still post transaction two separate entities will operating -- you know, MLMIC will operate as it has before, MedPro will operate as it has before. It's not a merger of those resulting in the 37 percent.

MR. BYRNES: No, not at all. We have a long history of acquiring businesses and allowing the management teams to continue to operate them, and frankly have a number of groups that we have that compete against each other. For example, we have Guard Insurance Company that competes against Berkshire Hathaway Home State Insurance Company, on a result basis. We have National Indemnity Company writing primary business competing Berkshire Hathaway Speciality Company. Each of those has their own separate management teams and, you know, operates in the market

in an independent basis.

SUPERINTENDENT VULLO: So it's your expectation that if this transaction is approved and closes, that MLMIC and MedPro will be competitors, will continue to be competitors of each other?

MR. BYRNES: Yes. As I said, I think they will seek ways to cooperate where -- to the extent possible, where they can, you know, but there won't be a merger of staffs. They will continue to operate and, you know, Ed will continue to run the company and Tim will continue to run his company.

SUPERINTENDENT VULLO: But it's the -- the competitive nature of it is an important factor to consider here and that they would still remain as competitors of each other?

MR. BYRNES: Yes, ma'am.

SUPERINTENDENT VULLO: And you mentioned that part of this transaction, I guess it was different

than what the initial proposal was, is that the management team would sort of continue under this new shareholder.

Has the management team of MLMIC been offered any financial incentives by Berkshire for their commitment to this transaction?

MR. BYRNES: No.

SUPERINTENDENT VULLO: You mentioned a 100 percent reinsurance as being a part of the financial security for the transaction. So now may be a tough question: Why didn't Berkshire just do a reinsurance transaction with MLMIC? Why acquire it instead of just doing a reinsurance transaction?

MR. BYRNES: Well, I suspect you would have had issues trying to -- approving a 100 percent reinsurance transaction of prior reserves as a first bit.

SUPERINTENDENT VULLO: You're right.

MR. BYRNES: And I'm not sure

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MLMIC would have wanted to hand overall of all of its claims over to a competitor. So basically in order to gain the security for its policyholders, the only way we would have been willing to do that was with the overall reinsurance transaction connected with the acquisition, as opposed to doing it separately.

SUPERINTENDENT VULLO: Okay. So explain the -- you mentioned the $1.9 billion dividend and I think what you said is it's not connected to the purchase price. In other words, the purchase price was determined based upon the formula that has been talked about, right?

MR. BYRNES: Yes. The formula was agreed to establish the purchase price.

SUPERINTENDENT VULLO: So where does the dividend money, where does that $1.9 billion come from that could be dividend-ed to NICO post closing?

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MR. BYRNES: We reviewed the financials of MLMIC and the projections going forward. When you consider both the 85 percent quota share and the reinsurance of the existing reserves, it leaves MLMIC significantly overcapitalized from a risk based capital standpoint, because it will no longer have any historical liabilities and will only retain 15 percent of its going forward liabilities, so it no longer needs to retain the level of capital that it does today in order to meet its policyholder obligations.

So working with MLMIC's team, we came up with projections that said what is the required level of capital necessary to maintain what we believe is a more than adequate level of capital and we sort of set upon a 350 percent RBC ratio, which risk based capital is a standard use, although I don't think it actually directly applies to New York medical

malpractice, as it's a standard measure to look at and one we use for all of our insurance companies to evaluate their financial health. And we looked and said, what's the appropriate level of capital that would be needed to be retained in MLMIC to allow it to continue to operate going into the future at a 350 percent or better ratio, and we came up with 1.9 was essentially the capital in excess of that level.

SUPERINTENDENT VULLO: Great. Thank you.

And how is Berkshire financing the $2.5 billion purchase price?

MR. BYRNES: From its existing cash on hand.

SUPERINTENDENT VULLO: So there's no issue in terms of the ability to close?

MR. BYRNES: No.

SUPERINTENDENT VULLO: Okay. Thank you. I appreciate it.

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So now we have the other witnesses who -- and interested parties who have registered to speak today and, again, I'm going to call on them in the order in which they registered to speak, and the first is Dr. Michael Brisman from Neurological Surgery, PC.

Dr. Brisman, we're ready for you.

DR. BRISMAN: Thank you for allowing me to speak today.

SUPERINTENDENT VULLO: Of course.

DR. BRISMAN: My name is Dr. Michael Brisman. I am a neurosurgeon and I have practiced on Long Island for 20 years. I am the head of my group, Neurological Surgery PC, which is the largest private neurosurgery group in the State of New York. I represent 45 eligible policyholders in this MLMIC demutualization process and this includes neurosurgeons, neurologists, neuroradiologists, neuro nurses and neuro PAs.

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The members of our group were MLMIC policyholders for over 20 years but we left in the middle of 2014. As such we are slated to get a payment, based on only one of the last three years prior to the announcement of the sale to Berkshire Hathaway. That is to say, we are slated to get only one-third of a full payment. We strongly believe that this is materially unfair because the leadership of MLMIC was not fully transparent with us about the circumstances of our account and their plans for the company. Had they been so, we would not have left when we did.

Furthermore, our group contributed more than any other group to the profit that MLMIC now enjoys. Prior to our leaving MLMIC, we were MLMIC's largest account. As such, we had numerous conversions and meetings with MLMIC leadership regarding the circumstances of our account and the

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company as a whole. We strongly believe, and our attorneys have advised us, that MLMIC had a fiduciary responsibility during those conversations with us to be reasonable and transparent and to look out for our best interests.

Regardless of their intent the various MLMIC representatives did not keep us properly apprised of our of circumstances or those of the company as a whole. Many of our conversations with MLMIC leadership revolved around the specific issue of the size of our premiums. Our neurosurgeons pay some of the largest malpractice premiums in the country. The rates are over $300,000 per doctor per year. Since we have almost 20 surgeons, our total insurance payment per year are probably the highest in the country for any group.

In our final years at MLMIC, our group was paying about $6 million per

year. While ultimately DFS does set the rates, it is also true that MLMIC is supposed to be accurately assessing the likely needed rates, advocating for its members and advising DFS to set rates only as high as are reasonably needed.

Further, we have unique insight into the appropriateness of the premiums as we represent a large percent of the private neurosurgeons in our area. In the 10 years prior to our leaving MLMIC we paid MLMIC something in the range of $40 million in premiums. However, we cost no mor than about $4 million in legal fees and settlements.

It was clear to us, and likely even to a layperson, that premiums were set way too high for our specialty in our region. We discussed our concern repeatedly with MLMIC leadership. We discussed that the rates were clearly way out of proportion to any

anticipated costs. We discussed the possibility that MLMIC could advocate for lower rates for us. We discussed that MLMIC had frequently requested double digit increases in premium and that at least for some group such as ours, the premiums were now severely over priced. We pointed out that our account alone had generated tens of millions of dollars of profit from MLMIC. We wondered if there were other groups who might be in similar circumstances and whether the dividends should have been available for distribution.

We suspected there might be hundreds of millions of dollars of profits that were not being openly acknowledged. We would also remind everyone that MLMIC's self-declared mission is specifically not to accumulate profits but to provide medical malpractice insurance to policyholders at cost.

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MLMIC repeatedly denied the validity of all of our suspicions. They insisted the premiums were set at exactly the correct levels. They insisted there was no reasonable way they could advocate for lowering our premiums. They denied there were any profits from our account or any other.

Quite to the contrary, MLMIC leadership always presented themselves in private and in public, as if they were on the verge of a crisis. Ultimately, MLMIC representatives came to our office one day after we had been particularly insistent and said they had performed a specific investigation and accounting analysis of our account confirming that they were exactly right and we were completely wrong. When I asked if I could have the analysis for an outside review, they refused and said it contained company secrets.

When we let MLMIC leadership know that we were strongly considering

leaving the company because of the inadequacy of their responses, they again met with us in our office and said that they would prefer that we stay but they provided no rational reason why we should do so.

Ultimately, we became convinced there was something completely unreasonable about the way MLMIC was conducting business and we left to form our own captive insurance company which we have had for the last four years.

Several points can be made about our new company that are relevant to the way MLMIC managed our account. One, our new company is fully transparent with us about all its accounting analyses, sharing them with us every three months. Two, our new company readily acknowledges that our premiums are much higher than are needed to cover our losses and will formally request that DFS consider lower our premiums.

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Three, our new company regularly acknowledges that profits are being developed on our account. And four, our new company really acknowledges that as a result, significant dividend can and should be paid back on a regular basis to our shareholders.

At no point prior to leaving MLMIC did MLMIC acknowledge that our premiums were to high. At no point did they advocate for lowering the premiums. At not point did they acknowledge the existence of profits from our account or the company in general. At no point did they make any substantive dividends during our stay with the company. At no point prior to our leaving did MLMIC suggest that failure to renew our contracts would cause us to forfeit our claims to these large accumulated profits.

At no point did MLMIC leadership acknowledge the possibility of a sale of the company. While recently they

have told me that the idea of a sale occurred as a complete surprise to them, and only soon before the announcement in 2016, this is impossible to believe. From 2011 to 2013, MLMIC sold its other division, the New Jersey division to Berkshire Hathaway. It is hard to believe that discussion of sale of the other division, the New York division didn't occur from the very first meeting they had with Berkshire Hathaway. It is hard to believe that MLMIC leadership was not considering a sale of the New York division in general and specifically to Berkshire Hathaway from as early as 2011.

Furthermore, the possibility that profits were being accumulated for purposes of one big payout at the of such a sale, should have been revealed to us during our numerous conversations with MLMIC, as this would have been critical information for us to have

with regards to whether to renew our policies. Our group left MLMIC in the middle of the three-year eligibility period because MLMIC was not transparent with us.

We were mislead by MLMIC, both by acts of comission and omission. MLMIC had an obligation during our numerous discussions with our leadership to give us accurate information about what was happening with the company and they failed to do so.

It appears in fact that they were ever increasing profits accumulating at MLMIC. And the accumulation of such profits was part and parcel of the forthcoming demutualization plan and sale to Berkshire Hathaway. Had MLMIC raised this as a possibility with us, we certainly would have remained with a company to collect the benefits of the profits that we more than anyone had helped to create.

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Therefore, we should not be penalized for forfeit a full three-basis for eligibility.

When I recently discussed my concerns with MLMIC leadership, they contended that because they had regularly submitted the data about the company that was required by law at the DFS, that they were fully compliant with their possibilities. We disagree.

If MLMIC representatives had numerous discussions meetings with us and subsequently misrepresented critical facts about our account and the business as a whole, this would be a breach of their fiduciary responsibilities to us regardless of what forms they may have separately submitted for State review.

When I recently discussed our issue with MLMIC leadership, they also suggested that the transaction be completed and that then any grievance we had could be brought to Berkshire

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Hathaway. It is entirely unclear why every effort should not be made to resolve this problem right now. It is both reasonable and appropriate and in the public interest that DFS try to resolve a strong claim such as ours concurrent with the proposed transaction. New York State Insurance Law specifically calls for the superintendent to make a decision to accept the plan for insurance demutualization or require modification of the plan based on whether the plan is, quote, fair and equitable and is in the best interest of the policyholders and the public, unquote.

For all these reasons we urge that the plan of conversion be amended to include an additional amount to compensate our group for MLMIC's failure to honor it's fiduciary responsibilities to us. Thank you for your consideration of this matter.

SUPERINTENDENT VULLO: Thank you,

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Dr. Brisman. Thank you very much.

Just a question: When exactly did your group leave MLMIC as a policyholder? You said 2000 --

DR. BRISMAN: Middle of '14.

SUPERINTENDENT VULLO: And were you here earlier when there was testimony about the initial approach by Berkshire was in 2015?

DR. BRISMAN: Well, that was the -- I was here for that testimony.

SUPERINTENDENT VULLO: Okay. Okay. And I know that you said that in your opinion it's hard to believe that there weren't earlier discussions but do you actually have any evidence that there were earlier discussions between Berkshire and MLMIC with respect to the transaction that's before me today?

DR. BRISMAN: I do not.

SUPERINTENDENT VULLO: And in terms -- the matter for today is deciding whether or not to approve the plan of conversion that's before us.

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If I don't approve this plan of conversion, your policyholders don't get anything at all as a result of any transaction because MLMIC would stay the way it is, right, so you don't get anything.

SUPERINTENDENT VULLO: I don't know what my legal rights would or wouldn't be and I'm not asking --

SUPERINTENDENT VULLO: I'm not talking about your legal rights, that's for you to discuss with your lawyer.

DR. BRISMAN: No, and I'm not asking to block the conversion.

SUPERINTENDENT VULLO: That's why I'm trying to get at. What are you asking for?

DR. BRISMAN: The only thing that I was discuss -- asking, that instead of a one-year payout that our organization be somehow arranged to get a three-year payout in that we would have stayed had our numerous discussions and conversations been

forthright.

SUPERINTENDENT VULLO: Okay. And again, you should talk to your lawyer about this or not, but the law is very clear that it's a three-year time period prior to and that's the time period.

DR. BRISMAN: Agreed.

SUPERINTENDENT VULLO: And its existing policyholders but I appreciate your concerns and thank you for your testimony.

DR. BRISMAN: Thank you.

SUPERINTENDENT VULLO: Next is Dr. Richard Frimer from Maple Medical LLP.

DR. FRIMER: Thank you, Superintendent, Assistant Superintendent, members of the Board for allowing me the opportunity to speak at this hearing today. By way of introduction, my name is Richard Frimer and I'm a pulmonary and critical care physician. I am managing partner of a

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20-physician multispecialty group located in White Plains, New York. I was also the physician who originally suggested to Ed Amsler, Vice President of MMIC back in 2008 during the height of the financial crisis that MLMIC de-mutualize. In order to stem the loss of physicians due to the increasing threat, at that time, posed by risk retention groups who were syphoning off premium dollars, as well as causing adverse risk selection. What a difference 10 years makes.

We, Maple Medical, have now been diligently paying the premiums, and actually suffering sometimes to pay the premiums because we're still independent, for 15-plus years for all the partners and employed physicians in our practice. These payments total over $5 million since that time. We, like many other partnerships, employers and hospitals in our situation are extremely displeased with the tentative

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decision to distribute the payout to our employees who have never contributed any funds toward their premiums.

As originally conceived MLMIC like every mutual was expected and required to distribute the funds to those physicians and groups who've paid the premiums. The idea back then was to provide medical liability insurance at the height of the malpractice crisis at the lowest possible cost while maintaining a high quality product for the benefit of both patients and physicians. Lowering malpractice costs is ultimately in the best interests of patients since it reduced the overall cost of healthcare.

Going forward, this concept must be maintained. With the above background we would then like to make the following points: Number one, to my knowledge, to my knowledge MLMIC represents the first demutualization of

a medical malpractice company in New York State history. As such, there is no legal, clear legal precedent but the attention of Insurance Law 7307 and the equities lie with the payments upon demutualization going to the party or parties that pay the premium.

Number two, unlike either a life insurance company or a property casualty insurance company, the premium in medical malpractice is often paid by a third entity, such as a practice administrator, a group administrator or a hospital. The concept of refunding the premium payout to the individual policyholders, many of whom never contributed any money toward their policy defies logic.

Number three, MLMIC claims that only 40 percent of policyholders have a different, quote, practice administrator that might be entitled to the payment. However, many practices paid premiums on behalf of employees

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even though they were not designated, quote, practice administrators. In addition, this percentage appears to grossly underestimate the actual number of employers that pay premiums since in the early days of MLMIC there was no space on the application form to designate a practice administrator or any reason to designate a policy administrator.

Number four, the money that enabled MLMIC to make this offering was based on an investment portfolio that prospered during the last five years. The funds of which were garnered from the large premiums dutifully paid by employers of practices such as ourselves who labored to make each individual an every individual payment for our 22 doctors. The concept of returning those proceeds to physicians who never contributed to the success of MLMIC seems misguided and clearly is not the intended consequence of

demutualization, the statute or the equities of the situation.

Number five, appointing people to vote on demutualization who have no stake in the outcome have not had any stake in the past performance of the company defies all logic. Many of these physicians in fact have fled MLMIC to other companies, not unlike the situation with those physicians who previously fled MLMIC in 2008 for the risk retention group. Worse yet, the true stake holders in past and future malpractice costs stabilization and availability have been disenfranchised.

MLMIC has essentially purchased the votes in favor of a demutualization by arranging the payment of the funds not to the stake holders but to those who it has conveniently defined as policyholders who outnumber stake holders but never sought, procured or paid for malpractice insurance.

We respectfully submit that this

demutualization has strayed far off course from its original intent and the intention of any mutual. It should not proceed in its current formulation. The only logical option is to allow the real parties in interest who procured obtained and paid for malpractice insurance to vote on the demutualization and to make the distribution, if approved, to the entities who paid the premiums. This is the only result that is consistent with the underlying goals of MLMIC since it was established as a mutual malpractice insurance company.

Thank you for your consideration.

SUPERINTENDENT VULLO: Thank you, Doctor. So let me just -- Maple Medical is what, the employer of the physicians is that the case?

DR. FRIMER: Yeah, there are four partners and the rest are employed physicians.

SUPERINTENDENT VULLO: And so if

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I'm understanding you what your concern is, is the payout from the consideration for this transaction would go to the individual physicians, as opposed to the employer?

DR. FRIMER: Correct.

SUPERINTENDENT VULLO: And does Maple Medical have any designation forms that the physicians signed making Maple Medical the policy administrator for purposes of these policies?

DR. FRIMER: So let's pick six of the physicians -- many of our physicians have been with us for 30 -- we've been around since 1985, 30 years. Back then there was no designation for a practice administrator on the form.

SUPERINTENDENT VULLO: You mean a policy administrator?

DR. FRIMER: Policy administrator. Okay.

SUPERINTENDENT VULLO: Yeah, yeah. Okay.

DR. FRIMER: Subsequently, some

people who didn't check off Maple Medical as the policy administrator, we paid the premium for. We never got one letter from MLMIC saying, oh by the way, you're paying the premium on this doctor, we don't have them -- we don't have you designated as the practice administrator. There's this artificial attempt to make a big deal in the distribution about policy practice administrators when in fact there was no diligence on MLMIC's part for designating who's what. Nobody in their wildest imagination anticipating this happening.

SUPERINTENDENT VULLO: So on a renewal, say, of these policies, who made the determinations whether to renew the policy, was it the physicians?

DR. FRIMER: We would get -- no, it was the employer. We would get a renewal bill, we'd pay the bill promptly, we'd get a declaration page

and the declaration page may or may not have been accurate as far as the top box that was checked for policy administrator. But again, we paid all the premiums, MLMIC never once, not once and I assume other groups are the same, said wait a minute, there's a problem with this page.

SUPERINTENDENT VULLO: No, I understand that, but the -- you paid the premiums but the policyholder were the doctors. The policyholders are the doctors?

DR. FRIMER: Correct.

SUPERINTENDENT VULLO: Right. And what about dividends. Were dividends paid out during the time period?

DR. FRIMER: No. Dividends came back and they reduced the subsequent payment.

SUPERINTENDENT VULLO: So they reduced the amount of the premium?

DR. FRIMER: Correct.

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SUPERINTENDENT VULLO: So that wasn't a distribution to either the group or to the doctor?

DR. FRIMER: No, just distribution.

SUPERINTENDENT VULLO: Thank you.

DR. FRIMER: Thank you. Thank you very much.

SUPERINTENDENT VULLO: Okay. We have next Philip Schuh from the Medical Society of the State of New York. Is that doctor?

MR. SCHUH: No.

SUPERINTENDENT VULLO: Okay. All right.

Mr. Schuh, please.

MR. SCHUH: Thank you. I wasn't going to go into my background but I'm a non-practicing CPA.

SUPERINTENDENT VULLO: Okay. That's fine.

MR. SCHUH: My name is Philip Schuh and I'm the CEO of the Medical Society of State of New York. On

behalf of the over 20,000 physicians, residents and student members, I want to thank you for the opportunity to present testimony on a proposal of MLMIC to convert from a mutual owned company to a domestic stock property casualty company.

As noted in our written statement, which I previously provided to your office, we believe that MLMIC's Alliance with Berkshire Hathaway will fortify its finances and enable MLMIC to continue its missions to ensure physicians, dentists and hospitals to have access to quality medical malpractice insurance coverage and risk management services long into the future.

MLMIC been a strong advocate for the physician community and we greatly appreciate their partnership with MSSNY for over 40 years. Indeed, it was MSSNY that helped to establish MLMIC in the mid 1970s when no other carrier in

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New York State was willing to write medical malpractice coverage. Physicians because of the concern that the risk at that point that was becoming uninsurable. Companies were bailing of New York and MSSNY worked to create MLMIC. MLMIC has been MSSNY's endorsed carrier for medical liability insurance since that time. We fully believe that their alliance with Berkshire will strength their stability to meet the needs of physicians and their patients as we grapple with one of the most challenging liability adjudication systems in the country.

As we affirm our support for the demutualization today, we also wish to share some concerns that physicians have expressed regarding the objection procedure under Schedule 1 by which a previously designated policy administrator can claim to write to the conversion proceeds. It is clear that the statute intends for the

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policyholder to receive the consideration as a result of the demutualization.

As previously stated in Section 7307 of the Insurance Law, it provides that each person who had a policy of insurance in the effect at the time during the three years period immediately preceding the date of adoption of the resolution to convert a stock company shall be entitled to receive the consideration payable in voting common shares of the insurer and other considerations or both. We're concerned that the terminology that permits the policy administrator to cause the proceeds to a policyholder to be placed in escrow when it believes it has a legal right may cast too wide of a net. We certainly understand that there are many employer employee relationships and group physician relationships where it is clear that the entity should receive the payment

based upon the perimeters of the practice contract.

However, we are worried about the possibility of the door being left too wide open for the previously designated administrator to claim all those funds. Some physicians have expressed concerns that entities such as health systems, which previously are designated as PAs, many of which have enormous resources could coerce a physician to give up their statutory right to these proceeds because of the fear of excessive litigation costs. Therefore, we suggest that there be a condition to assure a strict deadline for release of the funds fro the escrow following the close of the transaction whereby the funds will be awarded to the policyholder at the conclusion of such period if the process for resolving the dispute has not been concluded.

Again, we thank you to the Department to allow the organization,

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MSSNY to make this representation and actually I'm very impressed. I've been in a lot of meetings with Mr. Amsler and you're one of the few people that managed to keep him to 15 minutes or less.

SUPERINTENDENT VULLO: Thank you. Thank you, Mr. Schuh for your testimony. So the Medical Society of the State of New York, do you have a particular geographic region or is it --

MR. SCHUH: We are a statewide organization.

SUPERINTENDENT VULLO: You're a statewide organization.

You have how many members?

MR. SCHUH: A little over 20,000.

SUPERINTENDENT VULLO: Is that the largest organization in New York?

MR. SCHUH: We are the organization that represents physicians statewide regardless of specialty. There are many specialty organizations

but we're the group that brings them all together.

SUPERINTENDENT VULLO: And this question about the escrow. So the plan of conversion provides for a process where there's a policy administrator who has a good faith legal basis for believing that they are entitled to the proceeds of the transaction by virtue of a signed designation form, that if they submit an objection they -- the money, the transaction consideration would go into an escrow fund. So just to be clear, it's just placing the money in an escrow fund and not making a determination to actually have that money be released to them, it's just an escrow provision.

MR. SCHUH: It's a fact that in a lot of instances you are going to be having a large organization with much resources and an individual physician. Despite everything that's been said, there are still many physicians that

are sole practices that are individuals that have moved to an organization, a larger organization, clinically integrated practice or a hospital and they believe that they're entitled to that distribution but they don't have the resources to ultimately fight any type of negative distribution.

SUPERINTENDENT VULLO: Okay. Got it. Okay. So -- I mean, this is something that I've given some thought to and I will continue to give thought to it and I can tell you that I'm the last person that wants ongoing litigation to the extent, or even dispute, because -- and to not have any differences in ability to fund the litigation or anything else, be part of any consideration in terms of any decision making that would be made in that process.

So I appreciate though your comments on that and I will give that further thought and if there's anyone

else that has comments on that particular provision, the dispute resolution provision, because I'm going to spend a good amount of time thinking about that as well, so I appreciate your comments.

MR. SCHUH: Thank you.

SUPERINTENDENT VULLO: Thank you.

The next we have is Sigmund Wissner-Gross or May Orenstein, I guess, Brown Rudnick LLP or somebody else.

MR. WISSNER-GROSS: Actually, Richard Stone will be speaking since we have -- we're representing common clients and we have the 10 minute cap.

SUPERINTENDENT VULLO: Perfect.

MR. STONE: We have a short handout for you. So Richard Stone will speak.

SUPERINTENDENT VULLO: Terrific. Thank you. Appreciate it.

MR. STONE: Yes.

SUPERINTENDENT VULLO: So Richard

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Stone will speak?

MR. STONE: Yes.

SUPERINTENDENT VULLO: And that's you. Thank you, sir. Thank you.

MR. STONE: Well, first, thank you very much for allowing us to speak today on behalf of our clients Dr. Mark DeStagna, Saul Moden and Irving Friedman.

I had prepared remarks to discuss today but I heard so many new things today that I have to reconsider what I was going to say. Our PowerPoint and our class action are directed to two primary issues. Transparency and disclosure and the fairness and equitability of the price, because Superintendent, to the policyholders who are getting a payout based on the total price that is the most important consideration as to whether the deal is fair and equitable. I realize there were other considerations that have to be weighed, but to them the amount of

money they're getting and the process by which that was determined, goes directly to fairness and equitability.

So in terms of transparency and disclosure, today is the first time that I heard, or that in any disclosure that I read, that KBW offered a fairness analysis or opinion, as Mr. Amsler said. In their disclosure, in the proxy material provided to the policyholders, there's no such statement. All that is said is that KBW reviewed various models, it doesn't say they offered an opinion, it doesn't say they approved a price, it doesn't say that came up with a range of prices. So in terms of disclosure, the policyholders, and we as the representatives and I think you as superintendent, need to know exactly what KBW said. Was it a range of numbers, was it book value, was it a multiple to book value as Ernst and Young in their report suggests is

appropriate. That exact information has to be disclosed to policyholders before they can make a decision, and I suggest before you can also, Superintendent.

Secondly, this is the first time that the company MLMIC has disclosed that the pricing model used in 2016 was book plus 100 million. The only place that was ever disclosed previously was in a footnote to the financials for the buyer. Okay? Which I dug up myself but was never disclosed by MLMIC in its proxy material or otherwise. That's extremely important information primarily because based on the Ernst and Young analysis of GAAP value today of book value, they're not getting book plus 100 million. I'm going to go through that in a minute.

So that needs to be explored in more detail before anyone can pass on the fairness and equitability. So I'm going to go right to the numbers, if I

could, on page four of our handout.

Based on what was said today, the prior price in 2015, the model, was book value plus 100 million. We're not conceding that that's a fair and equitable price. We looked at the Ernst and Young report which, you know, not one person from the buyer or the seller today has mentioned the report, which you correctly by law authorized to be prepared, which was detailed and analytical and whether or not the numbers contained in that report for book value and for multiples to book value which comparable companies have typically sold is fair reasonable. No one's disputed that. As far as I'm concerned that's an admitted piece of information. Ernst and Young's conclusion is that companies typical in the medical malpractice area, sell for more than book value to a multiple. The average multiple is 1.5. That doesn't necessarily mean that MLMIC

should attract a 1.5 multiple, but our analysis with our expert says in a range of 1.3 to 1.8 is consistent with current market parameters. We have no idea of what negotiation took place. We don't know whether they got a fairness opinion or not, we don't know what the range of fairness was that was offered by KBW. And more importantly, KBW's analysis was two years ago. Where's their fairness opinion from 2018. This is a two and a half billion dollar transaction, a significant financial event in the lives of thousands of doctors across the state and they have no backup for their conclusion that this is a fair and equitable price.

On the numbers, the NY report which you sanctioned and I assume the State paid for. On page 20 has a value, a series of values for adjusted GAAP.

SUPERINTENDENT VULLO: The state

did not pay for it. Milliman paid for it.

MR. STONE: Okay, MLMIC paid for it. Well, it's interesting that Milliman paid for it because it says that MLMIC can't rely on it and the policyholders can't rely on it.

SUPERINTENDENT VULLO: That's the way it works.

MR. STONE: Okay.

SUPERINTENDENT VULLO: There's lots of things that the company pay for but the Department requests and it's -- yeah. That's the way we regulate the insurance market in the country.

MR. STONE: Further odd that they didn't mention it at all today because they paid for it, but I'll leave that alone. So based upon our analysis, the median price, the median book value as of 2017, 12/31, is 2,667, 2 billion 667 million. As I say, 167 million more than the consideration.

Moreover, book value has gone up,

not down. The company earned $148 million in the first six months of the year. 107 of it went to surplus, according to the financials they published just last week. That's two seven seven four based upon the same analysis. 100 million plus two seven seven four is two eight seven four, almost $2.9 billion, $400 million more than the purchase price. That's not a rounding error. That would significantly increase the amount of money that each doctor in this room and each doctor in this state would get and is a very large number for them to have not addressed or considered in this hearing or in any of their writing.

Secondly, the E&Y report doesn't explain why its analysis uses a book value multiple of one or less than one. It has a series of comparable transactions. If you get the median number, based upon those comps it's 1.5. Our analysis, and we did higher

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an expert and we're going to submit that experts's opinion to the record if the superintendent will allow us, is that the range is between 1.3 and 1.5 for comparable companies. MLMIC is not in liquidation. MLMIC is a company, according to Ernst and Young that has one of the largest surpluses of any comparable company in the United States. Part of the reason this transaction is taking place is because the company can dividend $1.9 billion to the buyer on Day 1 out of the $2.5 billion that are being paid. These factors, the disclosure, the process, the actual opinion of KBW, process by which the price was determined and why it is so much lower than the numbers that would be -- the numbers that are based upon the Ernst and Young independent report need to be fully examined before the transaction is approved. We want the transaction to go through. Our doctor clients want

the transaction to go through but we want it to go through at a fair and equitable price, which I submit is the primary consideration for our clients.

SUPERINTENDENT VULLO: So thank you for that. And you are free to submit anything. As I said earlier, we have a five-day window and so please submit anything through August 28 and we'll consider it.

So who are your clients? They're three physicians?

MR. STONE: They're three physicians are Marcus DeStagna, a dentist, Saul Moden, an ENT, and Irving Friedman a cardiologist.

SUPERINTENDENT VULLO: And they're all policyholders in MLMIC today?

MR. STONE: Yes.

SUPERINTENDENT VULLO: Current policyholders?

MR. STONE: Yes.

SUPERINTENDENT VULLO: So they're

entitled to vote on the transaction --

MR. STONE: Correct.

SUPERINTENDENT VULLO: And they would receive consideration from the transaction?

MR. STONE: Yes.

SUPERINTENDENT VULLO: And just for everybody's benefit because I appreciate your comments about Ernst and Young, and I just want to say, pursuant to the statute, as I said earlier, the Department hired an appraiser, it's an independent appraisal for the Department's benefit and so I take nothing negative from the fact that MLMIC didn't testify about it because that was the appraiser that was hired by the Department to provide independent advice to us on the fairness and I can assure everyone that we will look very carefully at the fairness of the consideration of the transaction in making our determination. So that's just the

structure of why Ernst and Young, and I appreciate your comments on that. You're saying something about a multiple 1.3 or 1.5 times what?

MR. STONE: Times book value.

SUPERINTENDENT VULLO: What kind of book value? There's lots of different ways of looking at book value.

MR. STONE: Correct. There are two analyses, one does tangible book value, one does book value. And they don't vary that much. The numbers might be something like 1.4 times book and 1.3 times tangible book, because tangible book is a very small subtraction in this type of company.

SUPERINTENDENT VULLO: Okay.

MR. STONE: But that analysis is there. And by the way, that's the only numerical analysis that my clients and others in the class have. They don't have any analysis provided by the company as to why this is a fair price.

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In a typical transaction where a company is being taken over, the company has meetings. It has a fairness opinion, it discloses the fairness opinion, it discloses the nature of the fairness opinion, how they came to that conclusion. So I can vote. Is that a fair deal to me or is the number too low and they should go back to the board.

The other thing that is striking is, it appears that the only party they negotiated with, the only party they negotiated with was with NICO, with Berkshire. So the company was not exposed to the general market and there are other buyers or potential buyers, doctors being one of them, who they could have at least discussed it with.

SUPERINTENDENT VULLO: Do you know whether any of those other buyers would pay more money.

MR. STONE: I wouldn't know that. I wouldn't know honestly.

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SUPERINTENDENT VULLO: Yeah, so...

MR. STONE: The point is, people need to make an informed decision --

SUPERINTENDENT VULLO: Totally agree.

MR. STONE: -- and based on this record they can't do it.

SUPERINTENDENT VULLO: Okay. Your clients would -- they all received the notice for the vote and the materials and that was with all that, so there's no question that they received all that.

MR. STONE: No. They received everything. They raised this issue and they called us and said is this a fair price.

SUPERINTENDENT VULLO: Did they vote at annual meetings for the Board of Directors of MLMIC?

MR. STONE: I don't have an answer to that he question.

SUPERINTENDENT VULLO: Thank you.

Appreciate it.

MR. STONE: Thank you very much.

SUPERINTENDENT VULLO: And again, please feel free to submit anything else that you have in that area. Thank you.

So the next we have is Bruce Flanz from MediSys Health Net. I have here on behalf of Jamaica Hospital Medical Center and Flushing Hospital Medical Center.

Mr. Flanz, thank you.

MR. FLANZ: Thank you. I'm going to take this rare occasion to raise a microphone. I don't get to do that often. So good morning and thank you.

SUPERINTENDENT VULLO: I think we may be afternoon but that's okay.

MR. FLANZ: My name is Bruce J. Flanz, I'm the president and CEO of MediSys Health Network, that's Jamaica Hospital Medical Center, Flushing Hospital Medical Center and affiliated organizations and I've been with our

organization for 43 years.

Our organization has an interest in the hearing because we have paid the premiums for MLMIC policies covering more than 90 employed physicians and we believe that our organization is legally entitled to receive the cash consideration from MLMIC from the conversion and it is in the best interest of the public for our organization to receive this cash consideration. In order to protect the legal entitlement, we need full access to the objection procedure.

At the outset I want to make it clear that we support the proposed plan of conversion and are not seeking any delay in approval or implementation of the proposed plan. Rather, we are seeking to make sure that the objection procedure is open to our facilities and the multicultural medically needy communities that we serve.

Our interest in today's hearing

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derives from the physician arrangements that are in place in two important safety net hospitals in Queens. Jamaica Hospital Medical Center and Flushing Hospital Medical Center. Collectively, our hospitals and related facilities provide more than 830,000 encounters, patient encounters annually, including 40,000 inpatient admissions, 625,000 outpatient visits, 165,000 emergency department encounters and over 5,000 obstetrical deliveries.

Both hospitals are voluntary hospitals, a term that reflects their status as New York State not-for-profit tax exempt organizations with volunteer boards. Their mission is to meet community needs. Both hospitals are considered safety net hospitals because their primary role is to provide care to underserved populations primarily covered by Medicaid and Medicare which do not pay the full cost of providing care to those populations. Both

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hospitals do not have the ability to cross subsidize those costs from commercially insured patients and have no endowments to fall back on. Over the last 12 years Queens county, the most culturally diverse county in the United States, despite a growth in population to now 2.3 million people lost six of our 15 hospitals due to inadequate payments from government payers.

These hospital closures have placed an even greater financial burden on our two fragile safety net hospitals which remain responsible for providing medical care to the underserved communities.

Jamaica Hospital Medical Center has been providing quality healthcare to its community since 1891, located in an impoverished community of nearly 780,000 on the VanWyck Expressway and is the closest hospital to JFK International Airport. Jamaica

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Hospital Medical Center is a full-service hospital that operates a broad range of ambulatory and inpatient services and a designated level one trauma center.

As a level one trauma center, Jamaica provides high quality trauma care in the most medical -- most urgent medical emergencies experienced by a large medically underserved community surrounding the hospital, as well as first responders, victims of violence, people in serious car accidents, the over 60 million people who pass through JFK International Airport each year and the rare air plane accident at JFK.

Jamaica hospital's emergency department accounts for nearly 120,000 visits each year and is the 22nd busiest emergency department in the United States.

In addition to the hospital -- in addition, the hospital provides 280,000 ambulatory care visits and 2,300

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obstetrical deliveries. Approximately 21 percent of the patients transported by ambulance in Queens are brought to Jamaica hospital's emergency department. Jamaica hospital has faced historic financial challenges largely as a result of the population the facility serves. The hospital's community represents a disproportionately high percentage of Medicaid recipients, as well as patients with chronic illness.

Approximately 80 percent of the hospital's patients are covered by government payers that 60 percent Medicaid and 20 percent Medicare, which pay less than the full cost of providing services to the population.

Similarly, Flushing Hospital Medical Center is located in the diverse community of Flushing New York since 1884 and now provides critically important services to a largely poor and underserved population. In

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addition to emergency care, Flushing hospital delivers more than 2,900 babies a year and provides inpatient psychiatry and substance abuse services that are desperately needed in Queens. Much of Flushing Hospital's primary service area, a population of over 730,000 suffer from poverty and many Medicaid eligible and uninsured residents, as well as many documented and undocumented persons, some of whom speak limited or no English.

Similar to Jamaica Hospital, with a preponderance of government payers, and again, they too have 60 percent Medicaid and 20 percent Medicare as a source of payment for services provided to patients. Flushing has struggled with deficits and cash flow pressures.

TGH Medical Services, PC was created by Jamaica Hospital Medical Center in the mid 1990s as a mechanism to recruit and retain physicians, to staff the hospital and its many

programs. At that time, the hospital was facing financial challenges and it was difficult to recruit and retain physicians at a lower compensation and benefits level that it could afford.

The PC was created to provide an entity through which physicians could be recruited and retained. TGH could flexibly set up small practice locations in the community consistent with the needs of the population. At the same time, given the low levels of funding from Medicaid and Medicare and the significant uninsured population, the hospital has had to subsidize TGH over the years for the cost of employing the physicians that staff the hospital, its programs, including paying for the premiums of MLMIC policies.

The New York State Department of Health and the dormitory authority of the State of New York have been provided supplemental assistance to

both hospitals so that we could continue to provide important services to the community, notwithstanding the deficits and cash flow pressures that result from inadequate funding from Medicaid and Medicare.

In that process, the anticipated distribution from MLMIC was incorporated into the hospital's cash flow projections since TGH Medical Services, PC and Flushing Hospital paid the premiums on behalf of their employed physicians and expect to receive the distribution associated with the transaction. Any distribution that is not received by the hospital will undoubtedly put significant additional financial pressure on our hospitals.

Thank you very much for letting me speak today.

SUPERINTENDENT VULLO: Thank you. So just -- do you know, how many policyholders are we taking about in

the entities that you are testifying on behalf of? How many policyholders whose premiums were paid for by the employer are you talking about, is it 90?

MR. FLANZ: 90, yes.

SUPERINTENDENT VULLO: It's 90. And you said something about -- do you want to answer these?

MR. FLANZ: If he can assist me. Thank you.

SUPERINTENDENT VULLO: Sure. If you can, if you just identify -- you're Jeffrey Thrope?

MR. THROPE: Yes, I am.

SUPERINTENDENT VULLO: So you're Counsel?

MR. THROPE: I'm Counsel from Foley and Lardner.

SUPERINTENDENT VULLO: Great. Appreciate it. So there are 90 policyholders. And are you saying that the hospitals have -- on their books have put a dollar amount of anticipated

receipts?

MR. THROPE: Both. In that final point that Mr. Flanz was making is that in weekly meetings with the New York State Department of Health concerning the supplemental support that's needed to keep these very needed facilities open, one of the items in the cash flow was an estimate of the amount that would be received from this conversion as cash consideration since the hospitals or the affiliated PC paid the premiums. Now --

SUPERINTENDENT VULLO: What is that amount? Because you're saying -- you're talking about that's for like 90 physicians. What is that amount?

MR. THROPE: It's approximately $24 million.

SUPERINTENDENT VULLO: And do these physicians, do they sign designations for the hospital that has a policy administrator.

MR. THROPE: Right. That's what

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Mr. Flanz wanted me to get into.

SUPERINTENDENT VULLO: If you could please.

MR. THROPE: In terms of having the process be fair and equitable, the objection process as written in the plan, we believe the wording recognized that there are a variety of situations because it says that the policy administrator named on the declaration page or otherwise acting as the policy administrator. And so among the 90 physicians that we're talking about, there are a variety of situations, some are listed on the declarations page, some have signed designations of policy administrator at some point in time, not necessarily at the beginning of their policy. Some have signed other documents that reflect the status and -- and I think this goes to a question you asked an earlier speaker -- the administrative personnel from the professional corporation and

Flushing Hospital have, for the most part, in most of those physicians, performed the role of policy administrator. And the concern is that there have been some informal statements coming out that the wording of the plan only for the access to the objection process, only applies to people listed on the declarations page, in essence making the words "or otherwise" meaningless. And what we're asking is that those words be given their meaning, which is to reflect the various cases. So in the case of these -- this organization, about 75 percent of the physicians involved have either signed a consent that came from MLMIC or signed an assignment or signed some other document acknowledging that the money should go to the hospital or the PC.

SUPERINTENDENT VULLO: So then that's taken care for that 75 percent.

MR. THROPE: For those.

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SUPERINTENDENT VULLO: Right. For those consents.

MR. THROPE: For others, there are a variety of situations. Some people are no longer employed and it takes more time to find them. Others may not completely understand the issue and require further discussion and there are some who dispute the legal entitlement of the entity that paid the premiums and served these other functions to receive the money. And so yesterday these organizations filed somewhere between -- around 30 objections and each objection is supported by an affidavit from the policy, the staff who performed those functions in the PC and the hospital supporting -- and with whatever documentation there is in each case -- supporting the good, as you said it, the good faith belief, A, that they've served as the policy administrator and, B, that they're legally entitled to the

funds. And we're not asking MLMIC or the Department to determine if there's a dispute. Let's say one of those policyholders that's listed on the policy. And by the way, I think that you all know that this problem derives from the fact that this type of insurance cannot be written as a group policy.

SUPERINTENDENT VULLO: Of course. Uh-huh.

MR. THROPE: Was it able to be written as a group policy, then the PC would have gotten a group policy and there would be a list of people and there would be no issue. So this confusion resulted from that and from I think one of the other speakers indicated that there wasn't always even a place to fill in policy administrator. But in any event, those have been filed and we're not looking for MLMIC -- if there's a dispute about either the policy administrator role or

the funds and the legal entitlement to the funds, the plan does not require MLMIC or the Department to resolve those, those are to be resolved, the money held in escrow, further discussions with the physicians and we fully expect that a significant part of those objections will end up being withdrawn or resolved with a joint instruction, which is what's called for in Schedule 1 of the plan. And that in a few cases there may be a need for arbitration or litigation, which is what exactly is in the plan. So just to summarize, this group supports the plan and is talking about the public interest in implementing the objection procedure in a manner that --

SUPERINTENDENT VULLO: I understand.

MR. THROPE: -- accomplishes the purpose of -- which is both in the public interest and fair and equitable.

SUPERINTENDENT VULLO: I

understand completely. So -- but just for the 90 physicians that we're talking about, do you either have a consent or you filed an objection and the sum total is all the 90?

MR. THROPE: Correct.

SUPERINTENDENT VULLO: So that's everything that's before us, right? So they're all taken care of either by the consent form or by the objection and your legal issue is whether the "or otherwise" fits in with that and I understand --

MR. THROPE: I mean, there's -- just to clarify. The consent form is a document that was generated by MLMIC only for those policyholders that MLMIC had listed on the declaration page.

SUPERINTENDENT VULLO: I understand.

MR. THROPE: So some people received that. And our -- my client received it as well, so they've been signing those consent forms. There

also -- there's also a process that was issued for assignment. So where the -- either the consent form didn't come or the amount or time period was not correct, there have been assignments that are in the process of being -- that have been signed --

SUPERINTENDENT VULLO: Right and so those assignments --

MR. THROPE: -- and notarized.

SUPERINTENDENT VULLO: -- are going to result in the hospital --

MR. THROPE: Correct. Correct.

SUPERINTENDENT VULLO: -- or whatever the employee receiving the consideration.

MR. THROPE: Right. There are three. There are three. There's objections, assignments and consents.

SUPERINTENDENT VULLO: Got you. There's objections, assignments and the consents.

MR. THROPE: Right.

SUPERINTENDENT VULLO: But all 90

physicians are taken care of in those three categories. I just want to make sure they're all taken care of.

MR. THROPE: Yes. The issue is to make sure that someone in MLMIC --

SUPERINTENDENT VULLO: I understand.

MR. THROPE: -- doesn't say well, we didn't have this one listed as a policy administrator on that period of time and therefore your objection is reject.

SUPERINTENDENT VULLO: I understand the issue. Okay. And again, just -- this is a procedure and I can tell you that the Department was involved to make sure that there was a procedure because we don't want there to be a dispute and we want a procedure where people are going to resolve their differences hopefully in an amicable way because you have people who support this transaction but there's a question as to who should get paid. It's a very

important consideration. I get that. But so -- so we want to make sure that the procedure works, and just to be clear, nothing in this procedure prevents anyone from exercising whatever legal rights they have because I can't take that away from anyone. Not that I want to see litigation, I'm not saying -- but I want to be very clear there, there may be employment agreements, I don't know all of this, that have arbitration provisions in it, there may -- you know, people have their legal rights, you know, if they feel like they're entitled to the consideration. We wanted to create some kind of a process so that people are not dragging on and -- but people have to voluntarily submit to them and hopefully we'll be able to resolve this. So I appreciate all of this and we will be in touch on this and we will --

MR. THROPE: Thank you.

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SUPERINTENDENT VULLO: -- you know, work this out again. We have to decide on the overall transaction but I understand and appreciate your testimony about the good work that your physicians and the hospitals do.

MR. FLANZ: I just want to thank you very much again for giving us the opportunity to speak on behalf of our safety net hospitals.

SUPERINTENDENT VULLO: Of course. Appreciate it. Thank you.

MR. THROPE: Thank you.

SUPERINTENDENT VULLO: We have one left. Laura Alfredo from Greater New York Hospital Association.

MS. ALFREDO: Good afternoon. Mr. Thrope just stepped on all my lines so -- which is probably good news for you.

SUPERINTENDENT VULLO: Okay.

MS. ALFREDO: Superintendent Vullo, Ms. Evangelista, Mr. Doody and Mr. Bozzo, thank you for having us.

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Thank you for this time.

We are here to talk -- can't hear. It needs to go even higher than for you, Bruce.

We're here to talk about the objection procedure as well and as I think everybody knows we've been focused on this procedure and a number of other sort of logistical issues on behalf of our members. I'm Laura Alfredo, I'm the General Counsel of the Greater New York Hospital Association or Hospital Trade Association comprised of many hospitals in New York, most hospitals in New York and in several other states. And I'm making these statements on behalf of our New York members.

I want to make two points before I start. The first is that, as I think you know, we've had numerous discussions with MLMIC over the last several weeks, as I said, about a variety of issues, including this

objection procedure and they have been animated and at times very energetic but always in good faith and I want to thank them for making the time to engage with us as they're trying to bring this transaction to a close. We really do appreciate it and while we didn't come out at a place that is satisfactory to us, we understand their position. We happen to disagree with it but we want to thank them for the consideration they've given and their leadership.

The other point I want to make is that we do not wish -- we're not seeking a modification of the plan, we're not seeking an amendment of the plan, we're not seeking to delay this process.

SUPERINTENDENT VULLO: Do you support the plan?

MS. ALFREDO: In fact, we support the plan and wish for there to be clarifying language included in your

final order along the lines of what Mr. Thrope was just discussing which is merely to address the words on the page in the plan currently which we feel encompass the situation that Mr. Flanz' hospitals and several other hospitals, s well as some practices are in. It's all there. It just needs to be applied in accordance with its own plain language. That's what we're asking you to do. Greater New York will submit much more detailed comments by the deadline in which we will include proposed language for you to consider.

So clearly we have several member with a keen interest in this transaction on many different levels, including what it may or may not mean for the med mal market, which although is competitive and, you know, all of the things that people commented on, they're far more qualified to comment on as to the market than I am, but I will say this: With the consolidation

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in the hospital field, the opportunities to get really good quality insurance for physicians, particularly for institutions like Jamaica and Flushing, are not so great and we have been concerned with the entrance of RRGs and the lack of transparency and the lack of financial stability of some of them and what that means for the claims environment and the hospitals and other large organizations that are often sued with these physicians. But we support this transaction and we think that it will be in a positive on that point.

Many of our hospitals and a number of them are exactly in the same position as MediSys. Community safety net organizations with affiliated practices purchasing policies on behalf of their employed physicians for claims arising out of their employment. And like MediSys, many of these organizations need to attract quality

physicians to places where it's not so easy to attract and made the decision to go with what has been the Cadillac of insurance, which is MLMIC over the years, paying the premiums, performing all of the activities that one would consider to be a policy administrator type of role but not in every case with the right words in the right box on the piece of paper for a variety of reasons, which really all boil down to happenstance. You know, we heard about how it wasn't always an option to check the box in the application over the years. I would add to that the people who filled out the applications varied, it might have been the doctor, it might have been a line administrator, it might have been the CFO of the hospital, it varied. So we have hospitals that have some of their policyholders with policies that carry the policy administrator designation and some who don't in the same time

period where in every case the hospital performed exactly the same functions, including most importantly paying for the premiums.

We've got hospital with employed doctors who have, you know, three policy years, some of which they have a designation of their employer on the piece of paper and some of which they don't. Again, not because of the legal or factual change but because happenstance. And what we think is a fair and equitable result is for all those policy administrators, whether you want to call them de facto or something else, but if you've performed the functions of a policy administrator including paying the premium, you should have an equal right to access the objection procedure and I don't think it needs to be said, we're referring to the procedure outlined in Schedule 1 of the plan objection to cash consideration.

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As Jeff Thrope said the words on the page would indicate -- and by that I mean the definition of policy administrator, it would indicate and in fact we thought it indicated, that there was a recognition of the whole variety of scenarios out there where, you know, due to this or otherwise language that you may have a designation that landed you on the declarations page as the policy administrator, or you may not but you were still the policy administrator. And looking at that language "or otherwise" seemed to mean that MLMIC was acknowledging the variety of experiences out there and created, presumably with DFS's approval, you know, a flexible approach that would be fair. And again, that approach is to access an objection procedure in which MLMIC is a stake holder not an adjudicator. So it's really a question of who gets to access that procedure,

get the money placed into escrow pending dispute resolution not the ultimate question of who is entitled, which as you pointed out, may depend on all sorts of ancillary documents like employment agreements and other arguments that MLMIC cannot and should not have any role in weighing in on.

So, you know, our request of the Department is actually to just acknowledge that the way that the plan that the objection procedure is written right now encompasses all of those policy administrators that it should not be limited in this sort of way artificial way to just those who happen to have the right word in the right box, which is not fair and equitable, but should be applied consistently if a party can represent that it was -- that it did function as the policy administrator during the relevant time periods. Now, some of these entities have submitted affidavits to give their

position added umph. Some of them may have indicated in their objection letters that they serve these objection, but it's there and we believe that that should be enough for MLMIC to allow the triggering of the objection procedure and then whatever disputes may arise or may exist over the validity of that -- that policy administrator status will be taken care of between the policy holder and the policy administrator and ultimately the parties will come back and advise MLMIC of the outcome of that dispute, either through joint instructions or the submission of a final order.

SUPERINTENDENT VULLO: So just a few -- thank you.

So are you saying that the categories that you are sort of talking about the policy administrators, those policy administrators have submitted objections as part of this procedure?

MS. ALFREDO: Yes. Certainly any

members of the Greater New York Hospital Association have done so.

SUPERINTENDENT VULLO: So we have that. So just what's your definition of a policy administrator?

MS. ALFREDO: Actually, the definition that we've been using in talking to our members is MLMIC's definition of policy administrator. There's a designation form -- I don't know when it went into effect -- but it outlines a variety of functions that policy a administrator plays. So what I would say is payment of premiums, the right to receive the benefit of dividends, which could have been in the form of premium credits, the ability to have information exchanged with the administrator on behalf of the policyholder as the agent and there may be something else about renewals but all of those sort of administrative functions that hospitals and practices have typically done when they're

administering policies on behalf of their employees.

SUPERINTENDENT VULLO: So all of the objections that your members have filed are from hospitals or other entities that have actually paid the premium for the physician that's the policyholder?

MS. ALFREDO: That is my -- I mean, I'm not their counsel.

SUPERINTENDENT VULLO: Right. And I'm not -- but that's --

MS. ALFREDO: I can't speak to every objection but that's certainly the understanding, right.

SUPERINTENDENT VULLO: Okay. So just -- I'd be happy to, you know, receive any written comments on any of this, you know, within that five-day window of the statute through August 28th. Just to be clear to everyone who doesn't know what this is all about, we've heard a bunch of witnesses testify about it. This is simply --

and I know it's important -- but it is simple a process for when the transaction if approved closes and the consideration is paid by the buyer that there's a portion of that consideration that will be put in an escrow because there's a potential dispute between the physician and the physician's employer or hospital or something else as to who's actually entitled to the consideration for the transaction. It doesn't have any impact on the issues in the transaction or the fairness of the transaction or the other things. It's just to address that potential because we are in a situation where the statute says policyholder and the policyholders are the physicians but there may be legal rights that the relationship between physician and employer may create some claim that the employer is entitled to this consideration just, you know, for among other reasons because the premiums were

paid by the employer. And that's what this is all about, so I don't want to make it -- it's an important issue but I don't want to make -- it's not an issue that effects the transaction itself but just something that is important and I've paid a bit of attention to it and the escrow procedure is just putting the money there and I'll just tell you, my consideration is there has to be a good faith legal basis to do it because the statute says the policyholder gets the money and even in escrow, to some extent, is denying the policyholder the right that the policyholder has. So if there's a good faith legal basis and these designations and all of that provide that, you know, and I have to really think about that because that's what the statute requires in terms of payment, and I'll tell you, you know, that I don't want some open-ended process either, so -- to go on for

years and years we're going to have to figure out -- I don't want to -- I'm not going to be the arbitrator, MLMIC's not going to be the arbitrator, but we want to make sure that, you know, if this is approved that there's a rational and a process for people to be heard and to insure that the right person gets the consideration for this subgroup that may have, you know, a dispute over that question. That's all.

MS. ALFREDO: It's really about the fairness of the implementation than anything else but there is an important point to be made which is that there is a right conferred in the plan now, in the proposed plan to policy administrators.

SUPERINTENDENT VULLO: Agreed.

MS. ALFREDO: There has been a decision made, whether you want to call it equitable or something else, a decision about the equity of giving

that class of entities the right to file an objection and what that entails and what we're arguing is that it should not be artificially or unreasonably or arbitrarily cutoff and narrowed. It should be afforded to anybody who performed those functions.

SUPERINTENDENT VULLO: Understood. I understand. We're going to look at that, you know, but again, just the -- because the context here is creating the escrow sort of changes, in some respects, a potential presumption of who's entitled to the money because right now the statute says the policyholder, so it has to be defined in some way.

MS. ALFREDO: Right.

SUPERINTENDENT VULLO: Such that, you know, it's a good faith legal basis where, you know, someone who's looking at the rights of the parties would determine that that objection actually has a legal basis for making the claim.

They may not win it but have an objective legal basis for making the claim. And that what we will spend time thinking about more in terms of any other solutions we have on that.

MS. ALFREDO: Right. And we will submit something to you very shortly.

SUPERINTENDENT VULLO: Great. Thank you. Appreciate it.

MS. ALFREDO: Thank you very much.

SUPERINTENDENT VULLO: Thanks for your testimony. Thank you.

So I promised this, and maybe I've starved everybody, so maybe we'll be okay, but I promised this and I will hold to it, is there anybody else? So we've gone through everybody who has registered to testify. Is there anybody else that wants to be heard? No one. Okay.

So this concludes the public hearing on the proposed sponsored demutualization of MLMIC and I want to

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thank everyone who came here and especially for all the witnesses who testified. The transcript prepared by the stenographer, the policyholder information statement, the plan of conversion, all related documents and all of the written and oral testimony that we receive will be become part of this hearing record. It will remain open, as I said, until August 28 and after that date the Department will consider all of the evidence and the comments received and render its decision regarding the proposed transaction. So again, anybody have anything else to submit. You must do so by August 28 and I encourage them to do that. All the information is on our website.

Again, I want to thank my terrific staff for all the great work that they've done on this transaction and the hearing is closed.

Thanks so much.

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(TIME NOTED: 12:52 P.M.)

CERTIFICATION

I, STEFANIE KRUT, a Notary Public in and for the State of New York, do hereby certify:

THAT the foregoing is a true and accurate transcript of my stenographic notes.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of August 2018.

STEFANIE KRUT