

Babu, George (DFS)

From: Wissner-Gross, Sigmund S. <SWissner-Gross@brownrudnick.com>
Sent: Tuesday, August 28, 2018 2:44 PM
To: dfs.sm.MLMICdemutualization
Subject: Proposed MLMIC/NICO Transaction
Attachments: Wilhoite Declaration 082818.pdf

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Dear Ms. Krebs:

Please find attached the expert Declaration of Charles A. Wilhoite, which is being submitted by Richard Stone and me, on behalf of the policyholders we represent, to supplement the prior submissions we have made and to supplement Mr. Stone's oral presentation to the Superintendent made at the hearing on August 23. In accordance with the Notice of Public Hearing and the Superintendent's instructions on August 23 that any further submissions may be made by today, we ask that the attached expert report be included as part of our submission.

If you can confirm receipt of this email and the attached Declaration, and further confirm that this further submission will be included as part of our presentation to the Superintendent, that would be most appreciated.

Regards,

Sigmund Wissner-Gross



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DECLARATION OF CHARLES A. WILHOITE

I, Charles A. Wilhoite, CPA/ABV/CFF, CMA, ASA, CFM, CGMA, CBA, CVA, CFE, hereby declare as follows:

1. I am a managing director of Willamette Management Associates, a professional services firm specializing in the fields of business valuation, forensic analysis, and transaction financial advisory services. The firm was established in 1969 and I have been with the firm since 1990. I serve as national director of the firm's tax-exempt entity and health care services practice. A copy of my *Curriculum Vitae* is attached hereto as **Exhibit A**.

2. During my 28-plus years of continuous employment with my firm, I have directed the valuation of, and issued financial opinions regarding, thousands of ownership interests in a wide variety of businesses for transactional, taxation, and dispute resolution purposes. My professional experience includes serving as financial advisor to several entities regarding the sale of medical malpractice insurance companies or equity interests in such companies, culminating in the issuance of fairness opinions with regard to the subject transactions. Further, I am frequently retained to estimate the fair market value of intangible assets, and allocate value among identifiable intangible assets and goodwill resulting from business transfers.

3. I have been retained to provide my opinion regarding the reasonableness of the \$2.502 billion cash transaction price (the "Purchase Consideration") proposed for the

acquisition of Medical Liability Mutual Insurance Company (“MLMIC”) by National Indemnity Company, a subsidiary of Berkshire Hathaway, Inc. (“NICO”).

4. For the purpose of developing this declaration, I have reviewed the “Valuation analysis of Medical Liability Mutual Insurance Company,” prepared by Ernst & Young Investment Advisers LLP, dated May 18, 2018 (the “E&Y Analysis”). Additionally, I have considered publicly available information regarding (i) MLMIC, (ii) the medical professional liability (“MPL”) insurance industry, (iii) publicly traded companies and merged and acquired companies operating in the MPL insurance industry, and (iv) general macroeconomic and microeconomic market-based returns and MPL industry-based returns.

5. Based on my prior, direct involvement in transfers of MPL insurance companies, review of the E&Y analysis, and consideration of relevant industry and economic information previously referenced, it is my opinion that the proposed Purchase Consideration is materially less than the current fair market value of MLMIC. The following factors serve as the foundation for my opinion:

- MLMIC was established in 1975, and reported net premium written (“NPW”) and net income of \$410 million and \$120 million, respectively, in fiscal year 2017 (E&Y Analysis, p. 5). Currently, MLMIC represents the 5th largest MPL insurance underwriter in the country based on NPW (E&Y Analysis, p. 49).
- The Purchase Consideration offered—\$2.502 billion—reportedly results in implied price/book value (“P/BV”) and price/tangible book value (“P/TBV”) multiples of 1.05x and 1.06x based on MLMIC’s fiscal year-end 2017 book

value. (E&Y Analysis, p. 5) However, given that MLMIC's book value as of June 30, 2018, is approximately \$107 million higher (per the Quarterly Financial Summary published on the MLMIC website for June 30, 2018), or \$2.497 billion, the implied P/BV multiple is actually 1.0x.

- P/BV multiples in 2017 for the three guideline public companies whose operations appear most closely aligned with those of MLMIC ranged from 1.5x to 1.6x. (E&Y Analysis, p. 37)
- The average and median P/BV multiple resulting from relevant MPL insurance industry transactions was 1.3x and 1.4x, respectively. (E&Y Analysis, p. 43)
- The E&Y analysis states, explicitly, with regard to the Net Asset Value ("NAV") method, that the NAV method is (i) consistent with the notion that a business is worth the sum of its parts, (ii) generally less subjective than income or market-based approaches, (iii) may not fully capture the going concern value of a business, (iv) may not fully capture the profitability of the business and its ability to generate future cash flow, and (v) most of MLMIC's assets have readily observable market values. (E&Y Analysis, p. 7) The indicated fair market value of MLMIC based on the NAV method is \$2.450 billion to \$2.880 billion. (E&Y Analysis, p.19).

6. In sum, the proposed Purchase Consideration of \$2.502 billion, representing a premium of just 2.12% relative to the low-end and a discount of 13.12% from the high-end of the estimated NAV of MLMIC, does not represent fair and reasonable consideration for the policyholders of MLMIC. The insufficiency of the proposed Purchase

Consideration likely is attributable to the fact that (i) MLMIC was not exposed to the market and therefore the Purchase Consideration offered was not subjected to upward pricing pressure from competing bidders, and (ii) the proposed Purchase Consideration and transaction are not supported by an independent fairness analysis and related fairness opinion. The MPL insurance industry guideline public company and guideline transaction data presented in the E&Y Analysis, and published empirical studies, indicate that observable transaction, or “control,” premiums relative to book value typically exceed 30%. Applying a 1.3x P/BV multiple to the MLMIC current book value of \$2.497 billion, implying a 30% control premium, would result in the Purchase Consideration increasing to \$3.246 billion.

7. It is my understanding that MLMIC entered into exclusive negotiations with NICO, ultimately agreeing to the Purchase Consideration offered. Given that NICO’s parent company, Berkshire Hathaway, controls an estimated 11.2% of the MPL domestic (i.e., US) insurance market (E&Y Analysis, p. 49), and that the ultimate acquisition of MLMIC would result in Berkshire Hathaway controlling more than double the market share of its nearest rival—the Doctors Co.—(E&Y Analysis, p. 49) the implied P/BV multiple of 1.05x (1.0x on a current BV basis) does not adequately reflect the total value of the potential significant economic benefits afforded to Berkshire Hathaway—or any other potential acquirer of MLMIC operating within the MPL insurance industry. It is noteworthy that the Doctors Co., and ProAssurance Corporation, the 2nd and 4th largest MPL insurance underwriters in the nation, represent the most active acquirers of MPL insurance industry participants since 1997. (E&Y Analysis, p. 43) The

acquisition of MLMIC by Berkshire Hathaway, the Doctors Co., or ProAssurance Corporation would immediately provide significant market share and increased geographical presence to the acquirer, thereby affording meaningful economic opportunities for enhanced operating results. The alternative to the acquisition of MLMIC and MLMIC's MPL insurance industry domestic and New York market share by an industry participant, of course, would be the costly and time-consuming endeavor of developing or pursuing increased market share through competition.

8. Based on my review and analysis to date, Purchase Consideration reflecting a P/BV multiple more closely approximating the observed, market-based transactional level of 1.3x appears reasonable. A P/BV multiple at this level attributes value to the over 43-year operating history and estimated 4.2% MPL insurance domestic (i.e., US) market share maintained by MLMIC. Further, a P/BV multiple at this level considers the risk inherent in the MLMIC operating structure, historical and prospective returns, and the MPL book of business as a P/BV multiple of 1.3x reflects a discount of approximately 19% relative to the P/BV multiple observed for publicly traded MPL companies of comparable size with a comparable focus. Finally, a P/BV multiple of at least 1.3x is consistent with my own professional experience regarding completed transactions involving the transfer of MPL insurance-focused companies.

9. Based on information provided to me, it is my understanding that the Purchase Consideration was established based on a pricing structure represented by the book value of MLMIC plus \$100 million. Based solely on this fixed pricing structure, and

the estimated book value of MLMIC as of June 30, 2018, or \$2.497 billion, total Purchase Consideration should, at the very least, increase to \$2.597 billion.

10. I make this Declaration on my own personal knowledge and do so under penalty of perjury as if under oath in a court of law.

Dated: August 28, 2018



Charles A. Wilhoite

EXHIBIT A

Curriculum Vitae of Charles A. Wilhoite

CHARLES A. WILHOITE, CPA

Charles Wilhoite is a managing director of Willamette Management Associates, based in our Portland, Oregon, practice office. He is also national director of the firm's tax-exempt entity and health care services practice.

Charles has performed the following types of valuation assignments: merger and acquisition valuations, post-acquisition purchase price allocations, business and stock valuations, ad valorem property tax valuations, forensic analyses, ESOP feasibility studies and employer stock valuations, and economic damages calculations.

Charles also has particular expertise in the valuation and economic analysis of professional practices, with a heavy concentration in the health care field. He has testified throughout the country with regard to valuation and economic issues across a variety of industries, including a wide variety of health care-related matters.

Charles has performed business, stock, and intangible asset valuations for clients in the following industries: accounting and consulting, alcoholic and nonalcoholic beverage, apparel, automobile dealerships, automobile parts distribution, banking and finance, construction and contracting, consumer finance, distribution, education, equipment leasing, food service, forest products, health care, insurance, leasing, manufacturing, medical and dental practice, printing, publishing, railroads, retailing, shipping, television broadcasting, textiles, transportation and trucking, and wholesaling.

In addition, Charles has estimated the value and/or remaining useful life for the following types of intangible assets: bank customers—deposit, loan, trust, and credit card, certificates of need, computer software, customer relationships, employment contracts, favorable leases, franchise agreements, going concern, goodwill, medical charts and records, noncompete covenants, patent applications, royalty agreements, trained and assembled workforce, trademarks and service marks, and trade names.

PREVIOUS EXPERIENCE

Before joining Willamette Management Associates, Charles was a senior auditor for KPMG, an international accounting and consulting firm. At KPMG, Charles specialized in audits in the following industries: automobile, banking and financial institutions, government, health care, manufacturing and construction, lumber, retail, and real estate.

EDUCATION

Bachelor of Science, accounting, Arizona State University

Bachelor of Science, finance, Arizona State University

PROFESSIONAL DESIGNATIONS/AFFILIATIONS

Certified Public Accountant (“CPA”)—Oregon State Society of Certified Public Accountants
Accredited in Business Valuation (“ABV”)—American Institute of Certified Public Accountants
Certified in Financial Forensics (“CFF”)—American Institute of Certified Public Accountants
Accredited Senior Appraiser (“ASA”)—American Society of Appraisers (Business Valuation)
Certified Management Accountant (“CMA”)—Institute of Management Accountants
Certified in Financial Management (“CFM”)—Institute of Management Accountants
Chartered Global Management Accountant (“CGMA”)—American Institute of Certified Public Accountants
Certified Business Appraiser (“CBA”)—Institute of Business Appraisers
Certified Valuation Analyst (“CVA”)—National Association of Certified Valuators and Analysts
Certified Fraud Examiner (“CFE”)—Association of Certified Fraud Examiners

Charles is also a member of the Oregon Society of CPAs, the ESOP Association, and the American Health Lawyers Association. Charles served as the conference chairperson for the American Society of Appraisers 20th Annual Advanced Business Valuation Conference. Charles previously served as a member of the AICPA ABV Credential Committee, the AICPA FVS 2013 Conference Planning Committee, and the ASA’s Health Care Special Interest Group (“HSIG”) subcommittee.

Charles serves/served on the following boards of directors:

Oregon Health & Science University, Past Chair
Oregon Health & Science University Medical Group
The Portland Business Alliance, Past Chair
The Portland Development Commission, Past Chair
Oregon Children’s Foundation – SMART, Past Chair
The Urban League of Portland, Past Chair
Jesuit High School
Portland State University Foundation
The Nature Conservancy, Vice Chair
The Oregon State Bar
Meyer Memorial Trust, Chair
U.S. Bank of Oregon
Federal Reserve Bank Economic Advisory Council – 12th District
Federal Reserve Bank of San Francisco – Portland Branch
Legacy Health, Vice Chair
PacificSource Health Plans
Metal Toad Media
Northwest Natural Gas

