

**Babu, George (DFS)**

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**From:** dfs.sm.MLMICdemutualization  
**Sent:** Tuesday, August 28, 2018 9:09 AM  
**To:** Satriana, Alyce (DFS)  
**Subject:** FW: MLMIC demutualization

Please upload. Thanks.

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**From:** Richard B. Frimer, M.D. [mailto:rfrimer@maplemedical.com]  
**Sent:** Monday, August 27, 2018 11:04 PM  
**To:** dfs.sm.MLMICdemutualization <mlmicdemutualization@dfs.ny.gov>  
**Subject:** Fwd: MLMIC demutualization

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*Pulmonary, Critical Care, Internal Medicine, Endocrinology, Cardiology, Gastroenterology, Rheumatology & Neurology*

Richard B. Frimer, M.D.

914-328-0932 (office)  
914-328-9851 (fax)  
[rfrimer@maplemedical.com](mailto:rfrimer@maplemedical.com)  
[www.maplemedical.com](http://www.maplemedical.com)

Begin forwarded message:

**From:** "Richard B. Frimer, M.D." <rfrimer@maplemedical.com>  
**Date:** August 27, 2018 at 10:59:32 PM EDT  
**To:** Carl Finger <carl@fingerandfinger.com>  
**Cc:** #Partners <partners@maplemedical.com>, Carmen Ortiz <cortiz@maplemedical.com>, Donna Katzenstein <dkatzenstein@maplemedical.com>  
**Subject:** FW: MLMIC demutualization



*Pulmonary, Critical Care, Internal Medicine, Endocrinology, Cardiology, Gastroenterology, Rheumatology & Neurology*

**From:** Richard B. Frimer, M.D.  
**Sent:** Monday, August 27, 2018 10:59 PM  
**To:** 'Linda.Krebs@dfs.ny.gov'  
**Subject:** MLMIC demutualization



*Pulmonary, Critical Care, Internal Medicine, Endocrinology, Cardiology, Gastroenterology,  
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Dear Superintendent Vullo:

Thank you for allowing me to testify at the hearing last week. The significant issue to be determined and requiring modification of the plan under NYS Insurance Law Article 7307, is the definition of "policyholders" entitled to vote on the plan and to receive the refund of premiums paid. As discussed, this is the first demutualization for a medical malpractice carrier in New York State history and a variety of issues require modification to the plan as proposed.

Principally the term "policyholders" must be defined, consistent with NYS Insurance Law Article 7307 as the parties who paid the insurance premiums. The uniqueness of this situation both in law and the history of demutualizations in NYS is that over 50% or more of the premiums were paid by "policyholders" who were not the insureds. Insurance Law Section 7307 states, in substance, that the "policyholder" is the party that "properly and timely paid to the insurer" the insurance premiums (Article 7307(e)(3)).

Simply put, the plan as proposed must be modified to reflect that the "policyholders" entitled to vote and receive the premium refunds must be the parties that paid the premiums. Moreover, the current methodology being employed by MLMIC has created enormous internal strife in medical groups and hospitals in NYS which ultimately will result in hundreds if not thousands of lawsuits which would be avoided by properly defining policyholders as set forth above.

Thank you for your continued consideration of this matter.

Sincerely,

Richard B. Frimer

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Babu, George (DFS)

From: Richard B. Frimer, M.D. <rfrimer@maplemedical.com>  
Sent: Friday, August 17, 2018 1:19 PM  
To: dfs.sm.MLMICdemutualization  
Subject: MLMIC

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*Pulmonary, Critical Care, Internal Medicine, Endocrinology, Cardiology, Gastroenterology, Rheumatology & Neurology*

Dear Sir/Madam:

I write in to supplement my prior correspondence and request to speak at the public hearing. It has come to my attention that included in both the voting and the planned refund are various entities and individuals who are no longer are plan administrators, policyholders, insureds, or have any other relationship with MLMIC. The decision as to whether MLMIC should demutualize, the most significant impact of which will be the potential change in availability of malpractice insurance in New York State and the costs thereof, must be made by those with a present interest in MLMIC. In the same way that having individuals with no interest because they never did and never will procure or pay for malpractice insurance makes no sense, having entities and individuals who do not currently maintain or pay for policies of insurance with MLMIC is ill-advised. The determination of the future of MLMIC must be made by those parties with an actual interest in the past AND future of MLMIC and those same parties should be receiving any payment.

It is worth noting that there have been various claims that the payment upon demutualization is not a refund of premium. The fact that the payments are intended for parties that no longer maintain or pay for policies of insurance with MLMIC indicates that this is in fact a refund of premium. It once again illustrates that the process is fatally flawed and that the ultimate distribution belongs to the parties who paid the premium. I hope to have the opportunity to directly present this information at the public hearing.

Thank you for your consideration,

Richard B. Frimer, M.D.

(914) 328-0932 (office)  
(914) 328-9851 (Fax)  
[rfrimer@maplemedical.com](mailto:rfrimer@maplemedical.com)  
[www.maplemedical.com](http://www.maplemedical.com)

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**From:** Richard B. Frimer, M.D. <rfrimer@maplemedical.com>  
**Sent:** Thursday, August 16, 2018 9:36 AM  
**To:** dfs.sm.MLMICdemutualization  
**Subject:** MLMIC hearing  
**Attachments:** Dr. Frimer's original letter to MLMIC 2008.pdf

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*Pulmonary, Critical Care, Internal Medicine, Endocrinology, Cardiology, Gastroenterology, Rheumatology & Neurology*

New York State Department of Financial Services

I wish to speak at the MLMIC demutualization hearing. By way of introduction, I was the physician who originally suggested that MLMIC demutualize in 2008 (see copy of attached letter sent to Edward Amsler). Having lobbied MLMIC off and on for over ten years to make this decision, I am in a unique position to address it at the public hearing.

I am the managing partner of a group of 22 physicians that joined MLMIC after MLMIC took over Frontier Insurance Company. We have been diligently paying the premiums for 15 plus years for all of the partners and employed physicians. These payments total over five million dollars since that time. We, like many other partnerships, employers and hospitals in our situation, are extremely displeased with the tentative 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 paid the premiums. The idea 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 patients and physicians. Lowering malpractice costs is ultimately in the best interest of patients as it reduces the cost of healthcare. Going forward this concept must be maintained.

With the above as background, we would then like to make the following points:

1. MLMIC represents the first demutualization of a medical malpractice company in New York State history. As such, there is no clear legal precedent but the intention of Insurance Law 7307 and the equities lie with the payments upon demutualization going to party that paid the premiums.
2. Unlike either a life insurance company or property casualty insurance company, the premium in medical malpractice is often paid by a third entity such as a practice administrator i.e. group practice, hospital. The concept of refunding the premium payout to the individual policyholders, many of whom never contributed any money toward their policy, defies logic.
3. MLMIC claims that only 40% of policyholders have a different "practice administrator" that might be entitled to the payment. However, many practices paid premiums on behalf of employees even though they were not designated "practice administrator." In addition, this percentage appears to grossly underestimate the actual number of employers

that paid premiums since in the early days of MLMIC there was no space to designate a "practice administrator." (or any reason to designate a policy administrator).

4. The money that enabled MLMIC to make this offering, was based on an investment portfolio that prospered during the last 5 years, the funds of which were garnered from the large premiums dutifully paid by employers and practices such as ourselves who labored to make each individual payment for our 22 doctors. The concept of returning those proceeds to physicians who never contributed at all to the success of MLMIC seems misguided and clearly is not the intended consequence of demutualization, the statute, or the equities of the situation.

5. Appointing people to vote on the demutualization who have no stake in the outcome and have not had any stake in the past performance only remains nonsensical. Worse yet, the stakeholders in past and future malpractice costs/stabilization and availability have been disenfranchised. MLMIC has essentially purchased the votes in favor of demutualization by arranging the payment of the funds not to the stakeholders but to those who it has conveniently defined as "policyholders" who outnumber stakeholders but who 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 the only result that is consistent with the underlying goals of MLMIC since its establishment as a mutual malpractice insurance company.

Thank you for your consideration.

Respectfully submitted,

Richard B. Frimer, M.D.

Thank you,

**Richard B. Frimer, M.D**

(914) 328-0932 (office)

(914) 328-9851 (Fax)

[rfrimer@maplemedical.com](mailto:rfrimer@maplemedical.com)

[www.maplemedical.com](http://www.maplemedical.com)

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Andrew M. Goldstein, M.D.  
Lisa H. Youkeles, M.D.

Louis D. Vizioli, MD  
Geoffrey E. Hulse, MD  
Leah M. Spinner, MD

## *Internal Medicine*

Shari Glickstein, M.D.  
Richard B. Lask, M.D.  
Martin H. Biers, M.D.  
Tatyana Z. Morton, M.D.

William Zarowitz, M.D.  
Todd R. Shinnick, M.D.  
Joanne Tamburri, M.D.

*Endocrinology, Diabetes and Metabolism*  
Bonnie Wolf Greenwald, M.D.

*Nephrology and Internal Medicine*  
Catalina E. Cincu, M.D.

*Cardiology*  
Oscar Blanco-Franco, M.D.

September 25, 2008

Medical Liability Mutual Insurance Company  
2 Park Avenue, Rm. 2500  
New York, NY 10016

ATTENTION: Mr. Amsler.

Dear Mr. Amsler:

Thank you for taking the time to talk to me the other day. I would like to summarize the substance of that phone conversation and outline my concerns so that you might forward them to MMLIC'S board.

I, like many other MMLIC share holders have become deeply concerned not only by the ongoing medical liability crisis in New York but by MMLIC's precarious financial position. New challenges are being created by the increasing defections of doctors to various risk retention groups. More recently, two large groups in our area formed a risk retention group based in Vermont and started recruiting doctors to leave MMLIC.

The increasing threat posed by risk retention groups cannot be viewed with complacency. In addition to siphoning off premium dollars, they have the potential to adversely risk select and leave MMLIC with greater exposure. Even more egregious is the fact that if these physicians fail in their high risk entrepreneurial venture, they can then re-enter MMLIC with essentially no adverse consequences. Perhaps it is time to make them pay a "premium" to get back into the company.

170 Maple Avenue, Suite G1  
White Plains, NY 10601  
Tel: (914) 328-0932  
Fax: (914) 328-9851

143 Maple Avenue  
White Plains, NY 10601  
Tel: (914) 683-8610  
Fax: (914) 683-8635

30 Davis Avenue  
White Plains, NY 10605  
Tel: (914) 328-2151  
Fax: (914) 328-2359

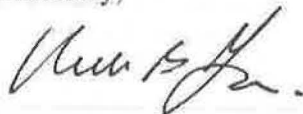
I think that the answer to the problem might be to create a better sense of ownership for the MMLIC shareholder. The entire concept of "mutual" has been lost on the individual physicians. As you recall, I have suggested the possibility of demutualizing MMLIC.

Demutualization would create a true stock company with individual ownership by physician shareholders. By distributing stock according to a formula which takes into account both years of membership and total lifetime premium paid, MMLIC will essentially reward those physicians who have been with the company the longest, many of whom have founded the company. Demutualization would also allow MMLIC to take in outside investment capital and offer more diversified and profitable lines of business such as life and disability to physicians. By way of example, the AMA Insurance Agency offers diversified insurance products to doctors; some of these however, are not as attractive as that offered in the New York marketplace. MMLIC could potentially offer more innovative products. Life insurance firms that have demutualized such as John Hancock and MetLife have substantially increased their revenues following conversion.

I know that you addressed some of these issues on the phone but I can assure you that the time has come for MMLIC to take action. Tort reform in New York is appearing less likely. I think that MMLIC must take definitive business measures to enhance its financial position. In conjunction with this move, the shareholders of the company must get a greater sense of ownership and understand the specific advantages of being a MMLIC stockholder. Otherwise, the company will confront further defections and further erosion in its financial base.

Thank you for voicing my concerns to the board and I await your response.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard B. Frimer". The signature is fluid and cursive, with a long horizontal stroke at the end.

Richard B. Frimer, MD

D: 9/25/2008

T: 10/1/2008/ds