

August 27, 2018

Maria T. Vullo
Superintendent
New York State Department of Financial Services
One State Street
New York, NY 10004

VIA EMAIL: mlmicdemutualization@dfs.ny.gov

Re: Medical Liability Mutual Insurance Company (“MLMIC”) Plan of Conversion

Dear Superintendent Vullo,

I submit this comment on behalf of Mather Hospital (the “Hospital”) for your review of MLMIC’s Plan of Conversion (the “Plan”). The Hospital believes the Plan is fair and equitable, is in the best interests of policyholders and the public, and supports the approval of the Plan. However, the Hospital requests that MLMIC allow a de-facto Policy Administrator the opportunity to avail itself of the objection process, as outlined in the Plan.

The Hospital and Harbor View Medical Services, PC, the Hospital’s captive PC (the “PC”)(together, “Mather”), have purchased MLMIC professional liability policies and paid premiums for all its employed physicians, including the relevant time period of July 15, 2013 through July 14, 2016. Mather was formally designated as Policy Administrator for each policy, with the exception of three (3). As Policy Administrator, Mather paid the premium, managed, and received the benefit of dividends on each policy. In fact, MLMIC identified Mather physician policies by a Mather group policy number and all MLMIC communications were made with Mather concerning the employed physicians’ policies and claims management status. To date, no Mather employed physician has exercised control over or assumed financial responsibility for a professional liability policy.

The objection process as outlined in the Plan allows a Policy Administrator to file an objection to the cash disbursement if the policyholder refuses to execute a consent form (“Consent”) or assignment of benefits (“Assignment”). The objection triggers the placement of the cash disbursement into escrow and allows the parties an opportunity to reach a fair and equitable agreement with respect to the disbursement of the cash proceeds. Although many Mather physicians have executed a Consent or Assignment, some Mather physicians have refused. In those instances, Mather has availed itself of the objection process.

However, the objection process is available only where Mather is formerly designated Policy Administrator. Mather submitted objections with respect to the 3 policies where it was not formerly designated as the Policy Administrator, yet performed all the duties and assumed all the

responsibilities of a Policy Administrator. MLMIC refused to accept the objections and I enclose for your reference one of MLMIC's communications memorializing the rejection.

I attended the public hearing, held on August 23, 2018, and had the opportunity to hear the public testimony presented in connection with the proposed Plan. In addition, I have spoken with numerous stakeholders concerning the Plan's operation. It seems patently unfair that a physician policyholder would receive the entire cash disbursement where the employer paid the premiums, benefitted from the dividends and assumed all responsibilities of managing the policy. **And, in fact, there is a good faith argument that the policyholder is not automatically entitled to the cash disbursement, since NYS Insurance Law § 7307(e)(3) provides that the equitable share of the policyholder shall be determined by the premiums "such policyholder has properly and timely paid..." This language raises the question of whether the policyholder is entitled to the equitable share where the policyholder *has not paid* the policy premiums.**

While there are issues regarding the distribution of the cash consideration, the only method of reaching a fair outcome is to place the cash in escrow and allow the parties an opportunity to work together to determine a just allocation.

Thank you for the opportunity to submit this comment in support of the Plan's approval.

Sincerely,



Kenneth Roberts
President

enc.

From: [Conversion coordinator](#)
To: [Merritt, Tracey](#)
Subject: [EXTERNAL] RE: Objection to cash disbursement
Date: Friday, August 24, 2018 9:37:41 AM

External Email. Use Caution.

Please note that a comprehensive review of our records reveal a policy administrator designation was not submitted by the eligible policyholder during the eligibility period.

As clarification, the dispute process only applies in the case of disputes by policy administrators or EPLIP employers, as defined in the policyholder information statement, who were previously designated to act on behalf of eligible policyholders during the eligibility period.

MLMIC recognizes that eligible policyholders have the right outside the plan of conversion to assign their right to receive their allocable share of the cash consideration. MLMIC will honor any properly drafted and signed assignment that it receives from eligible policyholders on a timely basis, recognizing that the record date policyholder vote is scheduled for September 14, 2018.

Unless the signature of the eligible policyholder is notarized, the assignments should come directly from the eligible policyholders in order to mitigate concerns about the validity of the assignments. In addition, it would be administratively difficult to honor assignments of less than the entire amount that has not otherwise been designated to be paid to a policy administrator or EPLIP employer.

The receipt of multiple forms of assignment may delay the distribution of cash consideration allocable to eligible policyholders who have made assignments as MLMIC reviews the forms of assignment. In order to streamline the process, MLMIC has prepared a form of assignment that may be used by eligible policyholders. The form of assignment can be accessed by clicking [here](#).

Thank you

Conversion Coordinator

From: Merritt, Tracey <TMerritt@matherhospital.org>
Sent: Monday, August 20, 2018 3:03 PM
To: Conversion coordinator <Conversion_coordinator@mlmic.com>
Subject: Objection to cash disbursement

Please be advised that Mather Hospital ("Hospital"), located at 75 North Country Road, Port Jefferson, NY 11777, believes it has a legal right to receive the Cash Consideration allocated to the Eligible Policyholder ("EP") identified below in connection with the MLMIC Berkshire Hathaway transaction.

As employer of the EP, the Hospital, directly or indirectly, made all premium payments on the policy, requested any changes required to the policy, and was eligible to receive all dividends and return premiums during the relevant time period. As such, the Hospital believes that it fits within the definition of Policy Administrator within the plan of conversion. Therefore, the Hospital objects to the payment of the allocation of Cash Consideration directly to the EP, and requests that the Cash Consideration be held in escrow by the Conversion Agent until MLMIC receives joint written instructions from the EP and the Hospital as to how the allocation is to be distributed, or a non-appealable order of an arbitration panel or court with proper jurisdiction ordering payment of the Cash Consideration.

A copy of this communication has been provided to the EP.

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| EP _____ | Policy Number _____ |
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|-----------------|---------|
| Shug-Hung Young | 3398428 |
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Best regards,

Tracey Merritt

General Counsel

Legal Department

[Mather Hospital](#)

75 North Country Road

Port Jefferson, NY 11777

Tel: (631) 686-1464

Email: tmerritt@matherhospital.org

Northwell Health

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