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In the Matter of the Plan of Conversion of  
MLMIC Insurance Company (f/k/a Medical  
Liability Mutual Insurance Company)  
and the Acquisition of Control of MLMIC  
Insurance Company by National Indemnity  
Company

**ORDER PURSUANT TO THE  
SUPERINTENDENT'S DECISION  
DATED SEPTEMBER 6, 2018**

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**WHEREAS**, on September 6, 2018, the Superintendent of Financial Services (the "Superintendent") issued a Decision (the "Decision"), following a public hearing, approving: (a) the Plan of Conversion (the "Plan") filed by MLMIC Insurance Company (f/k/a Medical Liability Mutual Insurance Company), an insurance company domiciled in New York ("MLMIC"), for the conversion of MLMIC from a mutual property/casualty insurance company to a stock property/casualty insurance company pursuant to New York Insurance Law (the "Insurance Law") § 7307 (the "Demutualization"); (b) the acquisition of MLMIC by National Indemnity Company ("NICO"), a stock insurance company domiciled in Nebraska that is a member of the Berkshire Hathaway Group, pursuant to Insurance Law § 1506 and 11 N.Y.C.R.R. § 80-1.6 (New York Insurance Regulation 52) (the "Acquisition"); and (c) amendments to MLMIC's Charter and By-laws, including MLMIC's name change (together with the Acquisition and the Demutualization, the "Transaction");

**WHEREAS**, on October 1, 2018, MLMIC and NICO closed the Transaction;

**WHEREAS**, pursuant to the Plan, the purchase price paid by NICO for the Acquisition was to be paid to the Eligible Policyholders,<sup>1</sup> allocated according to the formula set forth in

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<sup>1</sup> Insurance Law § 7307(e)(3) defines the group of persons who are entitled to receive the proceeds of the Demutualization (referred to herein as the "Eligible Policyholders") as the persons who had policies in effect during the three-year period preceding the adoption by MLMIC's Board of Directors of a resolution pursuant to Insurance Law § 7307(b) specifying the reasons for and the purposes of the proposed conversion, and the manner in which the conversion is expected to benefit policyholders and the public. MLMIC's Board of Directors adopted such resolutions on July 15, 2016, thereby setting the three-year period of eligible policies as the three years preceding such date. The Plan further defined what it meant for a policy to be "in effect" during such time.

Insurance Law § 7307(e)(3), except that such Eligible Policyholders could assign their legal rights to such consideration to other persons;

**WHEREAS**, pursuant to the Plan, an EPLIP Employer<sup>2</sup> or Policy Administrator<sup>3</sup> who had not been specifically designated by the Eligible Policyholder to MLMIC to receive the Eligible Policyholder's consideration but nevertheless believed it had a right to such consideration could submit an objection to MLMIC before the public hearing held by the Department of Financial Services (the "Department") on August 20, 2018, such that MLMIC's agent would hold the consideration relating to such objection in escrow until MLMIC received joint written instructions from the Eligible Policyholder and the objector or a non-appealable order of an arbitration panel or court with proper jurisdiction directing how such payment should be distributed;

**WHEREAS**, in the Decision, the Superintendent addressed the proposed escrow process set forth in the Plan and, among other things, in order to provide for a limited escrow time period and an efficient method of resolving disputes, requested that MLMIC provide an alternative dispute resolution process (the "ADR Process") overseen by an individual with experience in alternative dispute resolution (the "ADR Specialist") at MLMIC's expense to assist Eligible Policyholders and objectors to resolve their disputes in a fair and expedited manner and avoid excessive litigation and expense. The Decision noted that such ADR Process must be voluntary and should be fair and expeditious, and would not limit any person's legal rights, but that parties can agree to be bound by the ADR Specialist's process and decision;

**WHEREAS**, with respect to the objections timely received by MLMIC in accordance with such procedures and such funds therefore held in escrow, the Superintendent directed in the Decision that: (a) MLMIC report to the Department the status of objections, including the number of any unresolved objections, 90 days after the closing of the Transaction (the "90 Day Report"); and (b) after receiving the 90 Day Report, the Superintendent would determine whether further action by the Department is necessary to ensure full payment of the consideration of the Transaction, including whether the Superintendent would direct that MLMIC release the remainder of the escrow to the Eligible Policyholders;

**WHEREAS**, the Superintendent also directed in the Decision that any person who filed an objection pursuant to the Plan on the basis that such person was the Policy Administrator to an Eligible Policyholder during the three-year eligibility period without a good faith basis for

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<sup>2</sup> The Plan defined "EPLIP Employer" as "with respect to an Employee Professional Liability Insurance Policy, the employer designated on the declarations page of such Policy." Capitalized terms in such definition have the meaning ascribed to such terms in the Plan.

<sup>3</sup> The Plan defined "Policy Administrator" as "a Person designated on the declarations page of the applicable Policy or otherwise as the administrator of the Policy on behalf of the applicable Policyholder, or any successor to such Person. For the avoidance of doubt, such Person may be an organization, a professional practice group or a third party." Capitalized terms in such definition have the meaning ascribed to such terms in the Plan. The Decision clarified that to be designated as a Policy Administrator "otherwise" means "there must be evidence of a designation by the policyholder of that person to act as a Policy Administrator, which means to be designated by the policyholder as 'the agent of [the] Insured[] . . . for the paying of [p]remium, requesting changes in the policy; including cancellation thereof, and for receiving dividends and any return [p]remiums when due.'"

asserting that such person was designated by the applicable Eligible Policyholder as such should communicate to MLMIC the withdrawal of such objection;

**WHEREAS**, MLMIC provided the 90 Day Report to the Department on December 31, 2018, as supplemented since that date, with MLMIC reporting that, as of January 10, 2019, approximately 95.5% of the overall proceeds of the Transaction has been distributed to Eligible Policyholders;

**WHEREAS**, MLMIC reports that, as of January 10, 2019, the balance of the escrow account is \$112.5 million, which represents approximately 4.5% of the overall proceeds of the Transaction, relating to objections not yet resolved (the "Unresolved Objections"); and

**WHEREAS**, regarding the funds that MLMIC continues to hold in escrow, the Department has been informed that: (a) certain parties voluntarily have engaged or are continuing to engage in the ADR Process; (b) other parties have engaged in litigation or other methods of resolving their disputes; and (c) other parties are not engaging to resolve their disputes.

**NOW, THEREFORE**, it is hereby ORDERED as follows:

1. The Superintendent continues to encourage all persons involved in disputes regarding the escrowed funds to resolve their differences in a prompt, fair and equitable manner and reiterates that: (a) the parties maintain all legal rights to pursue their claims that they otherwise have absent the Decision and this Order; and (b) whether funds are held in escrow has no effect on the respective legal rights of the parties to such funds.

2. As set forth in the Decision, the escrow procedures set forth in the Plan shall not result in funds being held in escrow indefinitely and require that the relevant parties are actively engaging to resolve their disputes. Accordingly:

(a) Where parties are currently engaged in dispute resolution either by the ADR Process, arbitration or litigation, and the relevant funds are currently escrowed, the parties must inform the tribunal overseeing such dispute as to the escrow procedure in the Decision and this Order, with the parties having independent recourse with the court, the ADR Specialist or other tribunal regarding the continuation of the escrow.

(b) All persons who filed Unresolved Objections must inform MLMIC within 45 days of the date of this Order whether: (i) they are participating in any method to resolve their disputes, whether through negotiation, the ADR Process, or through an arbitration or a court process; or (ii) they are not engaging in any dispute resolution process. Those in category (ii) will have the opportunity to opt into the ADR Process provided by MLMIC within 60 days of the date of this Order. As such, the corresponding Eligible Policyholders for those in category (ii) likewise will have the opportunity to opt into the ADR Process provided by MLMIC within 60 days of the date of this Order.

- (c) For each Unresolved Objection that remains active in the ADR Process, MLMIC should continue to provide such ADR Process at MLMIC's expense until the resolution of such matter.
- (d) Funds shall continue to be held in escrow by MLMIC or its agent for the Unresolved Objections only where MLMIC has received, within 120 days of the date of this Order, joint written instructions, a court order, if applicable, or joint notice that the parties are actively engaging in a dispute resolution process or litigation (any of the foregoing, an "Active Dispute Resolution Notice"). For any Unresolved Objection where no such Active Dispute Resolution Notice is received by MLMIC by 120 days from the date of this Order, MLMIC shall release the applicable escrowed funds to the Eligible Policyholder in accordance with Insurance Law § 7307(e)(3) as promptly as practicable after such date.

3. MLMIC shall provide a copy of this Order to all parties to the Unresolved Objections (both the parties who filed the Unresolved Objections and the relevant Eligible Policyholders) within ten days of the date of this Order, along with: (i) forms that the parties who filed the Unresolved Objections may use to indicate their status described in paragraph 2(b) above; (ii) forms for the parties to opt into the ADR Process pursuant to paragraph 2(b) above; and (iii) instructions for returning the foregoing forms to MLMIC.

Dated: January 14, 2019  
New York, New York



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MARIA T. VULLO  
Superintendent of Financial Services