

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

) ) IN THE MATTER OF THE WINDING DOWN OF: ) THE NEW HAMPSHIRE MEDICAL MALPRACTICE ) JOINT UNDERWRITING ASSOCIATION ) ) ) )	No. 217-2015-CV-00347
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**AFFIDAVIT OF PETER A. BENGELSDORF, SPECIAL DEPUTY COMMISSIONER, IN SUPPORT OF MOTION FOR APPROVAL OF ADMINISTRATION AGREEMENT WITH THE HAYS GROUP, INC.**

I, Peter A. Bengelsdorf, depose and say:

1. I was appointed Special Deputy Commissioner of the New Hampshire Medical Malpractice Joint Underwriting Association (“NHMMJUA”) by Roger A. Sevigny, Insurance Commissioner for the State of New Hampshire, as Receiver (“Receiver”) of the NHMMJUA. I submit this affidavit in support of the Receiver’s Motion for Approval of Administration Agreement with The Hays Group, Inc. The facts and information set forth are either within my own knowledge gained through my involvement with this matter, in which case I confirm that they are true, or are based on information provided to me by others, in which case they are true to the best of my knowledge, information, and belief.

2. In the motion, the Receiver moves for approval of an administration agreement (the “Administration Agreement”) between the Receiver and The Hays Group, Inc. (“Hays”). The Administration Agreement was negotiated under my direction.

3. Hays has been the manager of the NHMMJUA for many years pursuant to contracts with the NHMMJUA. As manager, Hays has operated and managed the NHMMJUA and provided most of the services necessary for the ongoing business of the NHMMJUA, including policy servicing and claims handling. Hays has managed the NHMMJUA during 2015 pursuant to the Servicing Carrier and Administration Agreement between the NHMMJUA and Hays dated December 26, 2014 (the “2014 Agreement”). Since the receivership commenced on July 24, 2015, Hays has provided services under the 2014 Agreement subject to limitations in a letter of delegation from the Receiver and in accordance with the direction of the Receiver.

4. By its terms, the 2014 Agreement expires on December 31, 2015. However, the services provided by Hays under the 2014 Agreement, in particular policy services and claims handling, will continue to be necessary at least until the offering process has been completed and the Court has approved an agreement with another insurer or insurers to assume and novate the coverage-related obligations of the NHMMJUA pursuant to RSA 404-C:16, II. The Receiver has accordingly negotiated the Agreement with Hays to provide for the continued operations of the NHMMJUA during the remainder of the receivership. The Agreement will only become effective upon approval of the Court. Agreement § I, first par. The 2014 Agreement will be terminated upon the effective date of the Agreement. Id.

5. Under the Agreement, Hays agrees to operate and manage the NHMMJUA in accordance with directives of the Receiver through the date that the transaction contemplated by RSA 404-C:16, II closes. Agreement § I, second par. The Agreement recognizes that the Receiver will seek to transfer all incurred liabilities under

policies issued by the NHMMJUA, the obligations under in-force policies issued by the NHMMJUA, and the contingent liability for structured settlements in the event the annuity purchased to fund such settlements were not to perform (the “Transaction”). *Id.* sixth Whereas clause. Hays agrees to manage the NHMMJUA through the date the Transaction closes, and at least until the incurred liabilities and obligations under in-force policies have been assumed by another insurer (the “Transaction Date”). *Id.* § I, second par.

6. From the effective date of the Agreement to the Transaction Date, Hays will continue to provide the services it has provided to manage and operate the NHMMJUA, subject to the limitations of the Act and the Receiver’s letter of delegation. Agreement §III. Those services include issuing renewal policies and handling claims. See *id.* § III(C) and (E). Hays will also assist the Receiver in connection with the winding down of the NHMMJUA, including handling of hardship grant applications and responding to requests for information in connection with the Transaction and cooperating with acquirers or purchasers of any NHMMJUA business. *Id.* § III(L).

7. As part of the Transaction, another insurer will assume responsibility for the incurred liabilities and in-force policies and thus take over policy services and claims handling. Accordingly, the Agreement provides for Hays to provide more limited services after the Transaction Date, including assisting the Receiver in the winding down of the NHMMJUA and maintaining records of the NHMMJUA as directed by the Receiver. Agreement § IV.

8. The 2014 Agreement provided for Hays to be paid \$77,500 per month for “normal policy services.” It further provided that if material changes in operation result

in significant increase in the servicing requirements, Hays and the NHMMJUA will reconsider the compensation. 2014 Agreement § IV. Since July 24, 2015, Hays has provided services in support of the Receiver that were not contemplated when the 2014 Agreement was entered. Hays accordingly requested additional compensation under the 2014 Agreement and sought higher monthly compensation when negotiating the new agreement. See Agreement fifth Whereas clause. After negotiation, the Receiver and Hays agreed on a monthly compensation of \$85,250. This is a ten percent increase above the monthly rate in the 2014 Agreement and reflects additional services provided due to the receivership of the NHMMJUA.

9. The Agreement provides for Hays to receive \$85,250 per month from the effective date through the Transaction date and sixty days thereafter (to allow for a transition period to the new insurer). Agreement § V(A). The Agreement also provides for Hays to receive an additional \$7,750 per month from July 24, 2015 to the effective date of the Agreement to compensate for additional services provided under the 2014 Agreement due to the receivership. *Id.* § V(B). Amounts under both § V(A) and § V(B) will be prorated for partial months. The parties recognize that the Transaction may take different forms and that it may involve more than one acquirer and may not involve the transfer of all coverage-related obligations at one time. In that case, the Agreement provides for good faith negotiation over compensation depending on the scope of the Transaction and the services Hays will provide during the transition period. *Id.* § V(D).

10. The Agreement further provides that after the Transaction Date and the sixty day transition period, Hays will be compensated on an hourly basis. Agreement § V(E). The hourly rates for Hays personnel are set forth on the attachment to the

Agreement. Hays advises that those hourly rates are lower than it has charged other clients.

11. Other provisions are set forth in the Agreement, including mutual indemnities for actions against one party arising from a failure to perform by the other (Agreement § VIII) and a limitation on liability arising from a determination that a governing legislation or regulation is unconstitutional or illegal (*id.* § IX). These provisions continue provisions in the 2014 Agreement. The exclusive venue for any dispute arising out of the Agreement is the Court. *Id.* § X.

12. I believe that the compensation and the terms of the Agreement are fair and reasonable and that the continued engagement of Hays to administer the NHMMJUA under the Agreement will further the efficient and economical operation of the receivership.

Signed under the penalties of perjury this 1<sup>st</sup> day of December, 2015.

*Peter A. Bengelsdorf*

Peter A. Bengelsdorf  
Special Deputy Commissioner of the New Hampshire  
Medical Malpractice Joint Underwriting Association

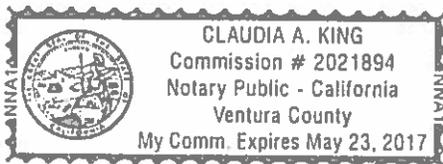
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA  
COUNTY OF VENTURA

On December 1, 2015 before me, CLAUDIA A. KING-NOTARY PUBLIC, personally appeared Peter A. Bengelsdorf, Special Deputy Commissioner of the New Hampshire Medical Malpractice Joint Underwriting Association, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature

*Claudia A. King*  
Signature of Notary Public