

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

**AFFIDAVIT OF PETER A. BENGELSDORF, SPECIAL DEPUTY
COMMISSIONER, IN SUPPORT OF MOTION FOR APPROVAL OF
OFFERING PROCESS FOR NHMMJUA COVERAGE-RELATED
OBLIGATIONS**

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 Offering Process for NHMMJUA Coverage-Related Obligations. 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 a process for offering the coverage-related obligations of the NHMMJUA. The proposed offering process is set forth on Exhibit A to the Motion. A related Request for Proposals (“RFP”) and a proposed Retention Agreement with Milliman, Inc., are attached as Exhibits B and C to

the Motion. The offering process, the RFP, and the proposed Retention Agreement were prepared under my direction.

3. The recently enacted Act regarding the dissolution of the NHMMJUA, 2015 Laws 263 (“Act”), directs the Receiver to obtain competitive bids to have an insurer or insurers assume and novate the coverage-related obligations of the NHMMJUA as direct obligations of the insurer. The Act seeks to provide continued protection for the NHMMJUA policyholders against liability and expense in accordance with the coverage terms of their policies as well as providing for established obligations to claimants under such policies. The Receiver accordingly has sought to identify the coverage-related obligations of the NHMMJUA and considered how best to arrange for the assumption and novation of the NHMMJUA’s coverage-related obligations as direct obligations of an insurer or insurers on commercially reasonable terms through a competitive bidding process.

4. There are three components of the NHMMJUA’s coverage-related obligations: (a) the obligations for incurred losses under NHMMJUA policies from the inception of the NHMMJUA in 1975 to the present, including reserves for pending claims and incurred but not reported claims; (b) the obligations for the inforce book of NHMMJUA business consisting of approximately 389 policies as of September 30, 2015, including the ongoing premium, loss, policy service, claim handling and commission obligations; and, (c) the contingent exposure to the NHMMJUA under structured settlements funded by annuities purchased by the NHMMJUA should any of the insurers that issued the approximately 25 annuities in effect as of September 30, 2015 fail to pay amounts due.

5. The Receiver seeks to market the NHMMJUA coverage-related obligations widely to potential bidders to obtain the necessary protection for policyholders and claimants at a reasonable price through a competitive bidding process. Desirable bidders will be financially sound insurance or reinsurance companies. Bidders for the incurred losses and inforce NHMMJUA business must be licensed to provide medical malpractice coverage in the State of New Hampshire and able themselves or through affiliates or third-party administrators to effectively service the coverage-related obligations for incurred losses and inforce business. Bidders interested only in the contingent liability exposure with respect to structured settlement annuities need not be licensed in New Hampshire because that part of the NHMMJUA's coverage-related obligations is a financial exposure not involving claims handling or policy servicing.

6. The Receiver concluded that the most effective way to widely market the NHMMJUA obligations would be to retain as a consultant a firm that is well-known in the insurance business with wide contacts with insurers and reinsurers. The Receiver accordingly obtained proposals from a leading consulting firm and a leading broker to assist in marketing the NHMMJUA obligations. After reviewing these proposals, the Receiver determined that both firms were well qualified and could effectively market the business. The Receiver also considered the firms' responsiveness during the proposal process and the rate structures proposed (one proposed fees based on hours, the other based on a percentage of the "margin" charged by the assuming insurer(s)). The Receiver concluded that based on responsiveness and the likely cost, he should engage Milliman, Inc., as a consultant to market the NHMMJUA business, subject to approval of

the Court. The terms of the proposed engagement are addressed in paragraphs 15-16 below.

7. The Receiver has conferred with Milliman concerning the most effective way to market the NHMMJUA obligations, and the Receiver has developed the proposed offering process set forth on Exhibit A to the Motion and the RFP attached as Exhibit B to the Motion. Before embarking on the actual offering, the Receiver seeks the Court's approval of the proposed process. The time frames set forth in the proposal will run from the date of Court approval. They include ranges to allow the Receiver to adjust them to reflect holidays and other matters that may require slight alterations to the schedule.

8. Within 10 days from approval, the Receiver through Milliman will contact entities believed to be potential bidders, including the entities that who have previously contacted the Receiver to express interest in the NHMMJUA business. Milliman will provide the Receiver's RFP attached as Exhibit B to potential bidders. The RFP contains basic information concerning the NHMMJUA and its obligations, describes the Act, and sets forth the process and conditions for bidding on the NHMMJUA coverage-related obligations. The Receiver expects that the RFP will be provided to approximately 12-15 potential bidders representing a large percentage of the New Hampshire medical malpractice market.

9. Potential bidders will then have 14 days to express potential interest and a desire to conduct due diligence, which will be subject to the confidentiality and release agreement with the Receiver attached to the RFP and the release letter required by the NHMMJUA's actuary, Towers Watson. In the document expressing potential interest, the potential bidders are to identify the components of the coverage-related obligations

they are potentially interested in acquiring, provide a general description of how they will proceed to value each of the coverage-related obligations in which they are interested (including their preliminary views on key assumptions such as credit for investment income, transition of claims handling, acquisition of NHMMJUA in force policy obligations for renewal by the acquirer), and note any other items that would make them appropriate acquirers of the obligations.

10. The Receiver may choose to limit the number of persons to conduct due diligence based on the information in the expressions of interest and any other available information (e.g., A.M. Best's financial strength rating for the proposed acquirer). The Receiver does not plan to limit the number of potential bidders, but due diligence involves time and resources, and it may be useful to have the ability to focus the process if it appears desirable to do so. The Receiver will make such a selection, if any, within 7 days of the deadline for expressions of interest.

11. The potential bidders and the Receiver will then enter into the confidentiality and release agreement, and each potential bidder will sign the release letter required by the NHMMJUA's actuaries, Towers Watson, to obtain access to confidential information. The Receiver, through Milliman, will then promptly make available to the potential bidders information concerning (a) the NHMMJUA incurred losses, including its reserves and pending claims, (b) the NHMMJUA inforce business, including policies and premiums, and (c) the NHMMJUA contingent liability for structured settlements in the event an annuity insurer may not fully perform, including the annuities in force. (The Receiver is in the process of assembling that information now.) The Receiver, through Milliman, will respond to questions and additional data requests

by potential bidders. Due diligence shall be completed by a date within 4 to 6 weeks to be specified by the Receiver.

12. Proposals will be due by a date within 7 to 14 days after the close of the due diligence period to be specified by the Receiver. The proposals must set forth firm prices for the components of coverage-related obligations in which the bidder is interested both separately and in the aggregate.

13. The Receiver will then review the proposals and select one or more than one bidder with whom to negotiate an assumption agreement or agreements on the basis proposed. In evaluating proposals and making a selection among them, the Receiver will consider the following:

- (a) the price for assuming the NHMMJUA coverage-related obligations;
- (b) the bidder's financial condition;
- (c) for the incurred losses and inforce business components, the bidder's experience in the medical malpractice business, including in assuming and running off medical malpractice liabilities and claims;
- (d) for the incurred losses and inforce business components, the bidder's plans and ability to provide runoff services to the NHMMJUA policyholders; and
- (e) the completeness, clarity and quality of submission.

Proposals to assume all three components of the NHMMJUA coverage-related obligations will be favored, but the Receiver will be pleased to consider proposals for either (a) the incurred loss and inforce business components, or (b) the contingent structured settlement annuity exposure component. Proposals to assume only the incurred loss component or only the inforce business component will be disfavored. The

Receiver will not be required to select any proposal but in the event that no proposal is selected will report immediately to the Court with recommendations for further action.

14. Promptly following selection of a proposal or proposals, the Receiver will negotiate an assumption agreement or agreements with the selected bidder or bidders. The agreement(s) will be subject to approval by the Court. Promptly following negotiation of the agreement(s), the Receiver will move for approval by the Court.

15. To facilitate the offering process and seek to encourage interest from a wide range of potential acquirers, the Receiver proposes to engage Milliman as a general consultant through the retention agreement attached as Exhibit C. The agreement provides for Milliman to provide services in marketing the NHMMJUA coverage-related obligations, including initial marketing, the due diligence process and, assisting in evaluating bids. Agreement § 1. Milliman will be compensated on an hourly basis. Id. § 3. It is expected that the compensation will total between \$150,000 and \$300,000.

16. I believe that the compensation and the terms of the proposed retention agreement are fair and reasonable and that engaging Milliman will assist in having an effective offering process.

17. I believe that the proposed offering process and RFP are consistent with the Act and reasonably calculated to facilitate the effective marketing of the NHMMJUA coverage-related obligations to obtain competitive bids on commercially reasonable terms to protect policyholders and claimants.

Signed under the penalties of perjury this 28 day of October, 2015.

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

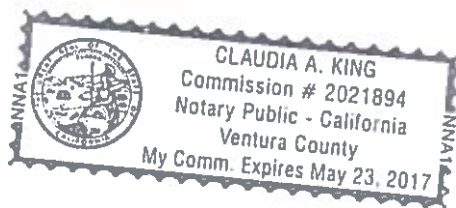
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy or validity of

STATE OF CALIFORNIA
COUNTY OF VENTURA

On October 28, 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