

SUPERIOR COURT

No. 217-2015-CV-00347

2. On May 26, 2016, the Receiver filed the Receiver's Motion for Approval of Assumption Agreement with MedPro (the "Approval Motion"), together with the Receiver's Motion for Order of Notice Regarding Hearing on Motion for Approval of

Assumption Agreement with MedPro. The Court issued an Order of Notice scheduling the hearing on the Approval Motion for August 5, 2016.

3. As set forth in the Approval Motion, the purpose of the Assumption Agreement is to provide for the assumption of the coverage-related obligations of the NHMMJUA pursuant to RSA 404-C:16, II as a step toward the ultimate dissolution of the NHMMJUA. The Assumption Agreement identified the NHMMJUA policies to be assumed by MedPro as the policies on lists attached as Schedules “C” and “D”. The “Insured Book” spreadsheets that constituted Schedule “C” and the spreadsheet of in-force policies that constituted Schedule “D” were provided by the third-party administrator of the NHMMJUA business, The Hays Group, Inc. (“Hays”). The Receiver was informed and believed that Schedule “C” listed the historic policies issued by the NHMMJUA, while Schedule “D” listed in-force policies as of January 31, 2016.

4. However, the Receiver subsequently learned that Schedule “C” was not complete. On June 23, 2016, a NHMMJUA policyholder, Dr. Roger Belson, contacted the Receiver’s counsel and Nixon Peabody to report that the Schedule C list of NHMMJUA policies (which had been posted on the Insurance Department’s website) did not include seven of his policy years. Nixon Peabody advised the Receiver that the years were included in the information that it had received from Hays in connection with the earlier surplus distribution in the class action litigation. Upon inquiry, Hays confirmed that Dr. Belson had the additional seven years of coverage. (Only seven other persons contacted the Receiver to ask about the Notice of Hearing. None of them noted any missing coverage.)

5. The Receiver asked Hays why Schedule “C” did not include the seven years for Dr. Belson. Ultimately, Hays advised that the “Insured Book” Excel spreadsheets which had been used as Schedule C were manually prepared and may not have fully reflected information in Hays’ electronic system. Also, Hays reported that it had provided its electronic information to Nixon Peabody, not the Insured Book. This is contrary to what the Receiver had previously been advised.

6. The Receiver was greatly concerned by the fact that Schedule C did not include all of Dr. Belson’s coverage, as this suggested that there might be other coverage also not identified on Schedule C. To determine the scope of the problem, the Receiver requested the electronic information from Hays. On July 1, 2016, Hays provided two spreadsheets: (1) the “Hays” list, which Hays advised contains data from Hays’ Rating Management System covering January 1, 2004 to December 31, 2016, and (2) the “Marsh” list, which Hays advised contains data originally from Marsh covering July 13, 1981 to December 2, 2006.

7. The Receiver attempted to determine the extent of the additional policy information included in the Hays and Marsh lists but not on Schedule “C”. However, comparing three Excel files with data in different formats proved technically difficult. Accordingly, on July 5, 2016, the Receiver engaged IT consultants to attempt to make the comparison. The Receiver’s goal has been to determine the extent of the additional coverage in order to present and discuss it with MedPro with the aim of including the additional policies on a revised Schedule “C”.

8. The process for determining the additional policy information proved time-consuming. On July 12, 2016, the Receiver advised MedPro of the issue and that

the Receiver was working to evaluate the extent of additional coverage to be incorporated into a revised Schedule "C". The Receiver also apprised Nixon Peabody of the issue.

9. The Receiver's IT consultants sought to combine the information from the original Schedule C spreadsheets, the Hays list and the Marsh list. Since the three spreadsheets used different formats for names and dates, and the data contained many variants of a name (including inconsistent use of initials, titles, and abbreviations) significant IT efforts and manual review was required to normalize the data from the spreadsheets so the data could be incorporated into a single spreadsheet.

10. By July 23, 2016, the Receiver had prepared a spreadsheet that included the information from the original Schedule C, the Marsh list and the Hays list. The Receiver's team then worked to identify the additional coverage that appeared on the Marsh and Hays lists but not on Schedule "C". The original Schedule "C" listed 6,579 insureds and 47,698 coverage periods. By July 25, 2016, the Receiver's team had preliminarily identified approximately 295 new insureds and 3,946 additional coverage periods (subject to further checking to determine if any were duplicates).

11. On July 25, 2016, the Receiver provided MedPro with a revised list noting the additional coverage periods and new insureds, together with analysis concerning the scope of the additional coverage. The Receiver noted that work on the enhanced Schedule C to identify duplicate names and coverage periods was ongoing, and that as a result the number of additional policies and insureds might decrease.

12. The Special Deputy Receiver and the Receiver's counsel discussed the situation with MedPro in a call later on July 25, 2016. During the call, the Receiver's team offered to respond to any questions MedPro might have. The Receiver also asked

MedPro to advise whether MedPro would be prepared to move forward on the basis of a revised Schedule C with the new insureds and additional coverage periods. Between July 25 and July 28, 2016, the Receiver responded to MedPro's questions and arranged for a call with MedPro representatives, including its actuaries, and the NHMMJUA's actuaries. On July 26, 2016, the Receiver informed MedPro of the slightly reduced number of new insureds and additional coverage periods described in paragraph 15 below.

13. On July 28, 2016, MedPro advised the Receiver that the assumption of additional coverage periods and insureds presented additional exposure, data risk and expense but that it would be willing to assume the additional coverage as listed on a revised Schedule "C" for additional consideration of \$500,000. This represents an increase of approximately 2.2% from the original consideration of \$23 million.

14. The Receiver considered that a revised Schedule "C" would reflect additional coverage periods and insureds and that MedPro could reasonably have concern about NHMMJUA data and potential additional expense related to the data. The Receiver's counsel also discussed the potential price increase with Nixon Peabody. In the circumstances, the Receiver concluded that agreeing to the increase was reasonable to get the transaction done in furtherance of the statutory goal of arranging for the assumption of the NHMMJUA policies by another insurer. Nixon Peabody agreed.

15. During the week of July 25, 2016, the Receiver continued to review and revise the list to identify and remove duplicate coverage and insureds. As finalized on July 28, 2016, the list – the Revised Schedule "C" – reflected 274 new insureds and 3,708 additional coverage periods (including periods attributable to new insureds). These

additions are equivalent to 4.2% of the 6,579 insureds and 7.8% of the 47,698 coverage periods on the original Schedule "C".


16. The Receiver cross-checked the insured names on the Revised Schedule "C" for the 1986-2012 period with the names on the database used by Nixon Peabody for the earlier surplus distribution approved by the Court in the class action, which concerned policyholders for that same period. Nixon Peabody had previously arranged to have its IT consultant provide the database to the Receiver. The Receiver successfully reconciled Revised Schedule "C" to the Nixon Peabody database. The Receiver is accordingly comfortable that the revised Schedule "C" is consistent with the Nixon Peabody database.

17. On July 28, 2016, the Receiver and MedPro entered an Amendment to the Assumption Agreement. A copy of the Amendment is attached as Exhibit 1 to the Report. The Amendment provides for the substitution of the Revised Schedule "C" including the new insureds and additional coverage periods for the original Schedule "C". It also provides for a \$500,000 increase in the price as provided in Section 2.1 of the Assumption Agreement to \$23.5 million. The Assumption Agreement otherwise remains unchanged and in effect.

18. I believe that the Amendment provides for MedPro to assume the additional exposures presented by the Revised Schedule C on commercially reasonable terms, and that the Assumption Agreement, as amended by the Amendment, is commercially reasonable and will serve to protect the policyholders of the NHMMJUA. The Receiver accordingly recommends that the Court approve the Assumption Agreement, as amended, pursuant to RSA 404-C:16, II.

19. The Receiver submits as Exhibit 2 to the Report a revised form of proposed approval order. The revised proposed approval order is the same as the proposed form of approval order submitted with the Approval Motion except that (a) it adds references to the Report and this affidavit, and (b) it refers to the Assumption Agreement as amended by the Amendment.

Signed under the penalties of perjury this 28 day of July, 2016.


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

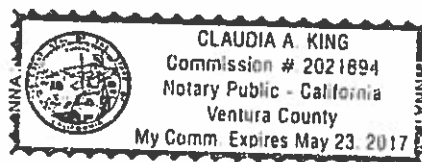
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA
COUNTY OF VENTURA

On July 28, 2016 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 
Signature of Notary Public