

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

**RECEIVER’S MOTION FOR APPROVAL OF OFFERING PROCESS  
FOR NHMMJUA COVERAGE-RELATED OBLIGATIONS**

Roger A. Sevigny, Insurance Commissioner for the State of New Hampshire, as Receiver (“Receiver”) of the New Hampshire Medical Malpractice Joint Underwriting Association (“NHMMJUA”), moves for approval of a process for offering the coverage-related obligations of the NHMMJUA pursuant to RSA 404-C:16, II. The proposed offering process is set forth on Exhibit A and a related Request for Proposals (“RFP”) and Retention Agreement with Milliman, Inc., are attached as Exhibits B and C. As reasons therefor, the Receiver respectfully states:

1. 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. RSA 404-C:16, II. 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. *Id.* 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. Affidavit of Peter A. Bengelsdorf, Special Deputy Commissioner, in Support of Motion for Approval of Offering Process for NHMMJUA Coverage-Related Obligations ("Bengelsdorf Aff.") ¶ 3.

2. 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. Bengelsdorf Aff. ¶ 4.

3. 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 or 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. Bengelsdorf Aff. ¶ 5.

4. 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 paragraph 13 below. Bengelsdorf Aff. ¶ 6.

5. 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 and the RFP attached as Exhibit B. 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. Bengelsdorf Aff. ¶ 7.

6. 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 (which will be finalized to reflect dates and any other minor adjustments) 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. Bengelsdorf Aff. ¶ 8.

7. 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 and the release letter required by the NHMMJUA's actuary, Towers Watson, attached to the RFP. 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. Bengelsdorf Aff. ¶ 9.

8. 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. Bengelsdorf Aff. ¶ 10.

9. The potential bidders and the Receiver will then enter into the confidentiality and release agreement attached to the RFP, 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. Bengelsdorf Aff. ¶ 11.

10. 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. Bengelsdorf Aff. ¶ 12.

11. 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. Bengelsdorf Aff. ¶ 13.

12. 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.

Bengelsdorf Aff. ¶ 14.

13. 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. The Receiver submits that the compensation and the terms of the proposed agreement are fair and reasonable and that engaging Milliman will assist in having an effective offering process. See Bengelsdorf Aff. ¶¶ 15-16.

14. The Receiver submits 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 in accordance with RSA 404-C:16, II. See Bengelsdorf Aff. ¶ 17.

WHEREFORE, the Receiver requests that the Court:

- a. Grant this motion;
- b. Enter an order in the form submitted herewith approving the process for offering the NHMMJUA coverage-related obligations set forth on Exhibit A, the RFP attached as Exhibit B, and the Milliman retention agreement attached as Exhibit C; and
- c. Grant such other relief as equity and justice may require.

Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE  
COMMISSIONER OF THE STATE OF NEW  
HAMPSHIRE, AS RECEIVER OF THE NEW  
HAMPSHIRE MEDICAL MALPRACTICE JOINT  
UNDERWRITING ASSOCIATION

By his attorneys,

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November 2, 2015

**Certificate of Service**

I hereby certify that a copy of the foregoing Receiver's Motion for Approval of Offering Process for NHMMJUA Coverage-Related Obligations, and the Proposed Order, were sent this 2<sup>nd</sup> day of November, 2015, by first class mail, postage prepaid to all persons on the attached service list.



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Eric A. Smith  
NH Bar ID No. 16952

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No. 217-2015-CV-00347

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## OFFERING PROCESS

The Receiver plans to offer the coverage-related obligations of the New Hampshire Medical Malpractice Joint Underwriting Association (“NHMMJUA”) as described below. The Receiver will use the attached Request for Proposals (“RFP”) to solicit expressions of interest.

The Receiver’s goal is to arrange for the assumption and novation of the NHMMJUA’s coverage-related obligations as direct obligations of an insurer or reinsurer on commercially reasonable terms through a competitive bidding process in accordance with RSA 404-C:16, II. To this end, the Receiver seeks to market the NHMMJUA coverage-related obligations widely to potential bidders. Desirable potential bidders will be financially sound insurance or reinsurance companies licensed to provide medical malpractice coverage in the State of New Hampshire that are able themselves or through affiliates or third-party administrators to effectively service the coverage-related obligations 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. Potential bidders interested only in the contingent liability exposure with respect to structured settlement annuities need not be licensed to provide medical malpractice coverage.

After Court approval of this offering process, the Receiver shall proceed as follows:

1. The Receiver through Milliman, Inc., which has been retained as a general consultant, shall within 10 days 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 to potential bidders. The Receiver expects that the RFP will be provided to approximately 12 - 15 potential bidders constituting a large percentage of the New Hampshire medical malpractice market.
2. Potential bidders shall then have 14 days to express potential interest and a desire to conduct due diligence, 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 shall 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 policies for renewal by the bidder), and note any other items that would make them appropriate acquirers of the obligations.
3. 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. The selection of the number of potential bidders that will be allowed to gain access to the evaluation material and the entities selected will be at the sole discretion of the Receiver. The Receiver will make such a selection, if any, within 7 days of the deadline for expressions of interest.

4. The Receiver, through Milliman, shall then promptly make available to the potential bidders selected for due diligence, subject to the confidentiality and release agreement and the release letter, information concerning (a) the NHMMJUA incurred losses, (b) the NHMMJUA inforce business, and (c) the NHMMJUA contingent liability for structured settlements in the event an annuity insurer may not fully perform. The Receiver, through Milliman, will respond to questions and additional data requests by the potential bidders. Due diligence shall be completed by a date within 4 to 6 weeks to be specified by the Receiver.
5. Proposals shall be due by a date within 7 to 14 days after the close of the due diligence period to be specified by the Receiver and shall be submitted to the Receiver's counsel, Rackemann, Sawyer & Brewster, PC. The proposals shall set forth firm prices for the components of coverage-related obligations in which the bidder is interested both separately and in the aggregate. The Receiver will then review the proposals and select one or more than one bidder to negotiate an assumption and novation agreement or agreements on the basis proposed.
6. The Receiver shall consider the following in evaluating proposals and making a selection among them: (a) the price for assuming the NHMMJUA coverage-related obligations, (b) the bidder's financial condition, (c) for the incurred losses and inforce business, the bidder's experience in medical malpractice business, including in assuming and running off medical malpractice liabilities and claims, (d) for the incurred losses and inforce business, 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 receive proposals for either (i) the incurred losses and the inforce business or (ii) the contingent structured settlement annuity exposure. Proposals to assume only the incurred losses or only the inforce business will be disfavored. The Receiver is not required to select any proposal but in the event that no proposal is selected shall report immediately to the Court with recommendations for further action.
7. Promptly following selection of a proposal or proposals, the Receiver shall negotiate an assumption and novation agreement or agreements with the selected bidder or bidders. The agreement(s) shall be subject to approval by the Court. Promptly following negotiation of the agreement(s), the Receiver shall move for approval by the Court.

**New Hampshire Medical Malpractice Joint Underwriting Association, in  
Receivership**

**Receiver's Request for Proposals for the Transfer and Novation of Coverage-  
Related Obligations**

**I. Executive Summary**

This Request for Proposals is to obtain competitive proposals to the New Hampshire Insurance Commissioner as Receiver ("Receiver") of the New Hampshire Medical Malpractice Joint Underwriting Association ("NHMMJUA"), for the transfer and novation of all the NHMMJUA's coverage-related obligations. The Receiver requests these proposals pursuant to the mandates of New Hampshire House Bill 508 as enacted, 2015 N.H. Laws 263.

**II. Request For Proposals**

The Receiver of the NHMMJUA seeks bids for the assumption and novation of the NHMMJUA's coverage-related obligations as direct obligations of an insurer or reinsurer pursuant to RSA 404-C:16, II. Bidders should be financially sound insurance or reinsurance companies. Unless the bidder is interested in only the contingent liability for structured settlement liabilities, bidders must be licensed to issue medical malpractice liability insurance policies in the State of New Hampshire, experienced with such policies, and able themselves or through affiliates or third-party administrators to effectively service the coverage related obligations. Bidders interested only in the structured settlement contingent liability need not be licensed in New Hampshire. The aim of the assumption and novation is 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.

Proposals should address the three components of the NHMMJUA's coverage-related obligations discussed below: (i) incurred losses from inception of the NHMMJUA to the transaction date; (ii) the inforce book of business (ongoing premium, loss, policy service, claim handling and commission payments); and, (iii) contingent exposure to the NHMMJUA should any annuity insurer fail to pay the structured settlement amounts funded by the annuities purchased by the NHMMJUA. If a proposal does not address all three components, it should break-out the cost separately for each component that the insurer is prepared to assume.

**III. NHMMJUA History, HB 508 & Summary of Policies Issued**

**A. NHMMJUA Organization And Operations**

The NHMMJUA was established pursuant to Regulation No. 1700 (as amended) which was adopted by the Insurance Department of the State of New Hampshire,

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effective 9/30/75. The NHMMJUA was created as a result of the Insurance Commissioner's determination that professional medical liability insurance was not readily available in the voluntary market. The purpose of the NHMMJUA was to make available medical malpractice insurance for eligible risks. The NHMMJUA was authorized to write medical malpractice insurance and general liability coverage for physicians, hospitals, and all other providers of health care in the State of New Hampshire. Every insurer, as a condition of its authority to write liability insurance, including every insurer covering such perils in multiple peril package policies, on a direct basis within the State of New Hampshire, was required to be a member of the NHMMJUA.

**B. HB 508**

On 7/20/15 the Governor signed into law HB 508 and on 7/22/15 the Merrimack County Superior Court issued an order placing the NHMMJUA in Receivership pursuant to RSA 404-C:15-:17 and RSA 402-C. HB 508 contained certain provisions which impact on-going coverage and the transfer/novation of the NHMMJUA's coverage-related obligations, namely, the Receiver shall:

1. Not cancel a policy in effect except if the policyholder fails to comply with the terms of the policy including payment of premium. RSA 404-C:15, II (a);
2. Not accept any new applications for insurance after the effective date of RSA 404-C:15, II (b);
3. Continue paying broker commissions;
4. Renew any policy in effect as of the effective date of HB 508 but not issue any NHMMJUA policy with an effective date after 12/31/15, except that until 12/31/15, the Receiver may issue extended reporting coverage on policies issued before 12/31/16. RSA 404-C:15, II (c);
5. Issue notice of nonrenewal in compliance with RSA 417-C to policyholders with renewal dates on or after 1/1/16. RSA 404-C:15, II(d);
6. Upon non-renewal of any claims-made policy issued by the NHMMJUA that is in force as of the effective date of HB 508, calculate the amount of tail coverage premium collected using reasonable actuarial methodologies and standards of practice, and return the tail coverage premium to the policyholder. Such "tail coverage premium" has been separately identified in the NHMMJUA's financial statements as the "Vested Retirement Reserve". RSA 404-C:15, II (e).
7. The Receiver is directed to promptly seek competitive bids to have all the coverage-related obligations under policies issued by the NHMMJUA assumed by an insurer or insurers. The assumption and novation agreement(s) shall be on commercially reasonable terms. They shall provide for continued protection of the NHMMJUA's 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. RSA 404-C:16, II

**C. The Petition (7/22/15 Order of Rehabilitation).**

A copy of the petition and Order of Rehabilitation will be provided to each interested person.

**IV. NHMMJUA Coverage Related Obligations**

**A. Policy Terms and Limits**

The NHMMJUA issued policies only in New Hampshire from 9/30/75 to present to four major groups: (1) Physicians, Surgeons, and Dentists Medical Professional Liability (claims made and occurrence), (2) Hospital Professional Liability (claims made and occurrence), (3) Miscellaneous Professional Liability (claims made and occurrence) and (4) General Liability (occurrence only). The NHMMJUA was required to provide coverage to all eligible insureds when requested. In other words the NHMMJUA was unable to underwrite (refuse coverage for any licensed health care provider seeking coverage). As such it did not underwrite in the sense of risk selection. Physicians and hospitals are subject to experience rating. The NHMMJUA claims are handled through its service provider, The Hays Companies. The Receiver understands that the case reserving philosophy has remained virtually unchanged for a number of years. Insurance policies are effective for one year subject to minimum limits of \$25,000 for each claimant and \$75,000 for all claimants in any one policy year and subject to maximum limits of \$1,000,000 for each claimant and \$3,000,000 for all claimants in any one policy year. Additional separate coverage for the general liability of the insured for property damage is also made available by the NHMMJUA. Such coverage is effective for one year and is subject to a minimum limit of \$25,000 per occurrence and a maximum limit of \$100,000 per occurrence. As of 9/30/15 there were approximately 389 policies in force.

Policies are issued on either an occurrence or claims-made basis. Under an occurrence basis policy, coverage is provided to the policyholder for claims incurred during the policy year. Under a claims-made policy, coverage is provided to the policyholder for claims made during the policy year. The Association provides "tail" coverage for qualifying claims-made policyholders who request it.

**B. Business Breakdown**

Summary of 12/31/14 Reserves Carried In Financial Statement (000):

Loss Reserves/IBNR/RBNE/Case Reserves (24 open claims)	\$11,821
Expense IBNR/RBNE/Case Reserves	3,564
ULAE	<u>1,304</u>
Total	\$16,689

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12/31/14 Breakdown of Loss IBNR/RBNE (rounded):

Physicians & Surgeons	78.3%
Hospitals	19.9%
General Liability	0.01%
Miscellaneous	1.9%

12/31/14 Breakdown From Inception Between Claims Made and Occurrence Ultimate Losses (rounded):

	% Occurrence <u>12/14</u>	% Claims Made <u>12/14</u>	% All Losses <u>12/14</u>
Physicians/Surgeons	68.9%	31.1%	88.6%
Hospital	80.9%	19.1%	9.6%
Misc. Healthcare	100%		1.3%
General Liability	100%		<u>0.3%</u>
			100

Written Premium Last Seven Years (\$ million) including tail coverage premium:

<u>2014</u>	<u>2013</u>	<u>2012</u>	<u>2011</u>	<u>2010</u>	<u>2009</u>	<u>2008</u>
2.8	3.0	3.5	3.2	6.6	6.4	9.6

**C. Structured Settlements Summary/Contingent Liability**

Prior to 1986, the NHMMJUA entered into a number of structured settlements with claimants (“SS Claimants”) pursuant to which payments were to be made over a period of time. To fund those payment obligations, the NHMMJUA purchased annuities from life insurers whereby the life insurer made payments directly to the SS Claimants. The SS Claimants were not a party to the annuity contract issued by the life insurer (“Annuity Insurer”). In the event of the Annuity Insurer’s impairment the NHMMJUA could be contingently liable to the extent the Annuity Insurer does not meet its payment obligations in full. With the exception of Monarch Life (an insurer in rehabilitation since 1993), the financial condition of the Annuity Insurers is good. A list is available of the in force annuities making payments to SS Claimants. The list is sorted by Annuity Insurer/SS Claimant/year of annuity issuance/estimated last payment.

What follows is a summary of the financial status of each of the Annuity Issuers:

Aurora – The NHMMJUA originally purchased certain annuities from Executive Life Insurance Company. Pursuant to the rehabilitation plan for Executive Life, Aurora National Life Insurance Company assumed obligations to pay these annuity benefits. Swiss Re subsequently acquired Aurora, and earlier this year Reinsurance Group of America Inc. took control of Aurora. Aurora is not rated by A.M. Best.

Genworth – The Genworth insurers are rated “A-” by A.M. Best.

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Manulife – The Manulife Financial Group insurers are rated “A+” by A.M. Best.

CIGNA – The CIGNA insurers are rated “A” by A.M. Best.

Executive Life Insurance Company of New York (“ELNY”) – Pursuant to a Restructuring Plan adopted in ELNY’s New York liquidation proceeding, ELNY’s obligations to pay annuity benefits were transferred to Guaranty Association Benefit Company (“GABC”). GABC was organized by the member life and health insurers of NOLHGA affected by the liquidation of ELNY. With one exception, GABC is currently paying the ELNY contracted annuity benefits to SS Claimants. In that one case, the NHMMJUA purchased an annuity from Liberty Life Insurance Company to “top-up” the GABC-provided benefit so that the claimant would receive the full amount specified in the structured settlement.

Monarch Life – Monarch Life has been the subject of a Massachusetts runoff rehabilitation proceeding since 1993. During that period, it has paid its obligations in the normal course of business.

Liberty Life Insurance Company – Liberty Life is rated “A” by A.M. Best

### V. Possible Structure of Assumption Reinsurance Agreements

The Receiver is prepared to consider proposals from insurers to assume as their own direct obligation all or some of the coverage-related obligations of the NHMMJUA but the more comprehensive the proposal, the more attractive that proposal will be to the Receiver. Proposals should address the three components of the NHMMJUA’s coverage-related obligations: (i) incurred losses to the transaction date; (ii) the inforce book of business (ongoing premium, loss, policy service, claim handling and commission payments); and, (iii) contingent exposure to the NHMMJUA should any annuity insurer fail to pay the structured settlement amounts funded by the annuities purchased by the NHMMJUA. Proposals may propose to assume and novate all three components, both components (i) and (ii), or component (iii). Proposals addressing only component (i) or component (ii) will be disfavored. Proposals should break-out the price separately for each component of the NHMMJUA’s coverage-related obligations (of the three described above) the insurer is prepared to assume and provide the price for each component and in the aggregate.

### VI. Proposals and Conditions

#### A. Access to information.

1. Potential bidders interested in reviewing information concerning the coverage related obligations of the NHMMJUA in order to develop a proposal in response to this Request for Proposals must respond on or before \_\_\_\_\_, 2015 by email to Raji Bhagavatula, Milliman, Inc. (\_\_\_\_\_), with a copy to \_\_\_\_\_ (\_\_\_\_\_) clearly noting “RFP NHMMJUA” in the subject line and (a) identifying the components of the coverage related obligations they are potentially interested in acquiring, (b) providing a general

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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 policyholders for renewal by the acquirer), and (c) noting any other items that would make them appropriate acquirers of the obligations.

2. The Receiver retains the right to select a subset of potential acquirers with whom to proceed based on their initial responses to this Request for Proposals and other available information.
3. Information concerning the coverage-related obligations of the NHMMJUA is confidential. Before receiving information concerning those obligations, the potential bidder must sign a confidentiality and release agreement in the form attached to this Request for Proposals and the release letter provided by the actuary. The potential bidder will maintain the confidentiality of information provided using the same precautionary measures it uses to ensure confidentiality of its own proprietary materials. Access to the information materials will be restricted to those engaged in the development of the response to this Request for Proposals.

### **B. Supplement to Request for Proposals**

If it becomes necessary to revise any part of this Request For Proposals, or if additional information is necessary to enable an exact interpretation of provisions of this Request for Proposals, revisions will be provided to all firms who have expressed interest in this Request for Proposals in writing to Raji Bhagavatula, Milliman, Inc.

### **C. Due Diligence Process**

The selected potential bidders will be allowed to submit questions and request additional information or data during the due diligence phase via email. All questions and responses will be made available to the selected potential bidders.

**D. Proposals.** Proposals must be submitted as set forth below. Proposals must contain the elements and accept the conditions specified.

1. Submission of Proposals. Two (2) copies of the Proposal, including all information required below, must be provided to the Receiver care of J. David Leslie, Rackemann, Sawyer & Brewster, 160 Federal Street, 15<sup>th</sup> floor, Boston, MA 02110-1700 by 10:00 a.m. Eastern Time on \_\_\_\_\_ . Proposals will be opened at that time. Any proposal received after that time whether by mail or otherwise will be returned unopened. Proposals should be provided in a sealed envelope with the title RFP NHMMJUA. It is recommended that each proposal package be hand delivered in person or by overnight delivery. The Receiver assumes no responsibility for delays in any form of carrier, mail, or delivery service causing the proposal to be received

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after the above referenced due date and time. Submission by fax, telephone, or email is not permitted.

2. Cover Sheet. Each proposal must include a cover sheet, duly signed by an officer of the bidder, that acknowledges that the bidder has read this Request for Proposals, understands it, and agrees to be bound by its terms and conditions.
3. Contents of Bid. All proposals shall include the following elements. Emphasis should be on completeness and clarity of content.
  - a. Cover sheet
  - b. Name and address of bidder, including the corporate officer authorized to submit the bid
  - c. Description of bidder's history, ownership, organizational structure, and principal offices
  - d. Listing of bidder's New Hampshire insurance licenses or certificates of authority
  - e. Description of bidder's experience with medical malpractice liability insurance business, including any experience with medical malpractice business in New Hampshire
  - f. Price for assumption and novation of NHMMJUA coverage related obligations as direct obligations of the bidder. Specify if bidder is seeking to assume all or less than all of (a) the NHMMJUA's incurred obligations, (b) the NHMMJUA's inforce business, and (c) the NHMMMUA's contingent liabilities for structured settlement annuities, and specify the price for each component and in the aggregate.
  - g. Description of bidder's plans to service the former NHMMJUA business, including policy services and claims handling, specifying the entities and persons to be principally responsible for policy services and claims handling and their locations.
  - h. Description of bidder's financial condition, including attaching a copy of bidder's audited financial statements as of December 31, 2014 and its most recent unaudited quarterly financial statements.

### D. Conditions

All proposals shall be subject to the following conditions.

1. Oral Communications. Any oral communications by the Receiver or his representatives concerning this Request for Proposals are not binding and shall in no way modify the Request for Proposals or the obligations of the bidder or any selected firm.

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2. Assignment and Transfer. Any selected firm is prohibited from assigning or otherwise transferring its proposal or any part of its rights, title, or interest therein or its agreement with the Receiver pursuant thereto to any other person without the prior written consent in writing of the Receiver.
3. Accuracy of Information. The information contained herein and to be provided by the Receiver is believed to be accurate but cannot be warranted as such. It is incumbent upon each bidder to make such inquiries relative to exposures as necessary to present a firm bid. The Receiver and his representatives shall not be liable for errors or omissions. It is assumed that all proposers will have made such investigations or inspections as required to be fully informed as to the intent and character of the exposures to be covered. No bid will be accepted if made on a "subject to inspection" basis.
4. Confidentiality and Release Agreement and Release Letter. All potential bidders must sign the confidentiality and release agreement with the Receiver and the release letter with Towers Watson to gain access to the data and information concerning the NHMMJUA business to be provided in either oral or written form.
5. License. The bidder must be licensed and authorized to transact the business of insurance in the State of New Hampshire.
6. Court Approval. The Receiver's agreement with the successful bidder is subject to approval by the Superior Court for Merrimack County, New Hampshire, which is supervising the receivership of the NHMMJUA. The Receiver will move for approval of the agreement promptly after it is entered. The agreement will not be effective until it is approved by the Court and if not approved shall be of no force and effect.
7. Indemnification. The selected firm shall defend, indemnify and hold harmless the Receiver and his representatives from any and all claims and costs of any nature whether for personal injury, property damage or other liability arising out of or in any way connected with the firm's negligent acts or omissions under the agreement.
8. Costs. The Receiver is not responsible for any expenses incurred by any firm in preparing and submitting a proposal in response to this Request for Proposals or in negotiating and entering an agreement with the Receiver.

**E. Evaluation Criteria**

The Receiver will evaluate each submission in consultation with his representatives. The Receiver intends to select one or more bidders with whom to negotiate an assumption/novation agreement in accordance with the bids. However, the Receiver reserves the right to reject all bids. Selection will be made on the following criteria:

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1. The price for assuming the NHMMJUA coverage-related obligations;
2. The bidder's financial condition;
3. The bidder's experience in medical malpractice business, including in assuming and running off medical malpractice liabilities and claims;
4. The bidder's plans and ability to provide runoff services to the NHMMJUA policyholders, including policy services and claims handling, and the qualifications of the persons to provide such services; and
5. The completeness, clarity and quality of the proposal submission.

Proposals to assume all three components of the NHMMJUA coverage-related obligations will be favored, but the Receiver will be pleased to receive proposals addressing either (a) the incurred liabilities and the inforce business or (b) the contingent structured settlement annuities exposure. Proposals for the incurred liabilities or the inforce business alone will be disfavored.

Firms whose proposals are not accepted will be notified in writing.

## CONFIDENTIALITY AND THIRD PARTY RELEASE AGREEMENT

The Recipient and the New Hampshire Insurance Commissioner, solely in his capacity as Receiver ("Receiver") of the New Hampshire Medical Malpractice Joint Underwriting Association ("NHMMJUA"), agree as follows so that Recipient may obtain access to certain confidential information concerning the NHMMJUA (the "Evaluation Material") in connection with Recipient's evaluation of coverage-related obligations of the NHMMJUA being offered by the Receiver.

1. Recipient acknowledges that the Evaluation Material was prepared solely to be relied upon by the NHMMJUA and/or the Receiver, and not by any other party. As such the NHMMJUA, the Receiver, and their consultants, agents, attorneys, and representatives (including but not limited to Milliman, Inc., Hays Group, Inc., Towers Watson, Inc., the Special Deputy Commissioner, and Rackemann, Sawyer & Brewster PC) (collectively "Receiver Parties") make no representations or warranties regarding the Evaluation Material to Recipient or any other third party. Recipient acknowledges that Receiver Parties have no responsibility to inform Recipient of any updates, changes, corrections or supplementations to the Evaluation Material. Recipient represents that it will place no reliance on the Evaluation Material that would result in the creation of any duty or liability under any theory of law by Receiver Parties to Recipient.
2. Recipient understands the Evaluation Material includes complex, technical analysis, and that the Recipient should be aided by its own actuary or other qualified professionals when reviewing the Evaluation Material.
3. Recipient agrees that it will not provide any portion of the Evaluation Material to any other person, except to: (a) Recipient's officers, employees, representatives and agents ("Affiliates"), but only if Recipient has full power and authority to bind Affiliate to the terms of this Agreement and does bind Affiliate to the terms; and (b) Recipient's professional advisers so long as they have agreed with Recipient to be subject to the same terms as Recipient under this Agreement. Recipient agrees that it will not refer to or disclose the Evaluation Material to any third party without the Receiver's prior written consent.
4. Recipient agrees that it will fully indemnify and hold the Receiver Parties and their respective directors, officers, employees and agents ("Indemnified Parties"), harmless from any claims, damages, costs or losses (including reasonable attorneys' fees) incurred by Indemnified Parties arising out of or in any way related to the breach of this Agreement by Recipient or any third parties to whom Recipient distributes the Evaluation Material.
5. Recipient agrees it will not bring any claim or lawsuit, under any theory of law, against the Receiver Parties related in any way to the Evaluation Material or to the offering of the NHMMJUA coverage-related obligations to potential bidders and bidders.
6. Recipient agrees that it will either return Evaluation Material to the Receiver or destroy the Evaluation Material (a) if it does not bid on any coverage-related obligations of the NHMMJUA, (b) if it does bid, if it is not a selected bidder, or (c) if it is selected, if it is not approved by the Court. Recipient agrees not to retain any Evaluation Material unless it is a successful bidder approved by the Court.

7. Recipient agrees to submit any dispute between it and any of the Receiver Parties relating to Recipient's receipt of the Evaluation Material, and the interpretation and enforceability of this Agreement, to binding arbitration. The arbitration, conducted pursuant to the Commercial Arbitration Rules of the American Arbitration Association, will be conducted before three neutral and independent arbitrators, one selected by the Receiver Parties, one by Recipient and the third by the first two. The award may be confirmed in any court of competent jurisdiction.

RECEIVER

RECIPIENT

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## RETENTION AGREEMENT

This agreement (“Agreement”), dated as of xxxxxx, 2015, is entered into by and between Milliman, Inc. (“Consultant”), a corporation organized and existing under the laws of the State of Washington, and Roger Sevigny, Insurance Commissioner of the State of New Hampshire, solely in his capacity as Receiver (“Receiver”) of the New Hampshire Medical Malpractice Joint Underwriting Association (“NHMMJUA”).

**WHEREAS**, pursuant to the mandate of New Hampshire House Bill 508, as enacted, and the Order of Rehabilitation entered by the Superior Court for Merrimack County, New Hampshire (“Court”), the Receiver is seeking to find insurers/reinsurers to assume all or some of the following coverage related obligations of the NHMMJUA:

1. The loss and loss adjustment expense liabilities of the NHMMJUA at the time of the assumption. The carried loss and loss adjustment expense reserves at December 31, 2014 were roughly \$16.7 million both gross and net of reinsurance recoveries.
2. The rights to the inforce business of the NHMMJUA (including premium, loss, policy service, claims handling and commission payments) and potential new business opportunities.
3. Contingent exposure to the NHMMJUA should any annuity insurer fail to pay the structured settlement amounts funded by the NHMMJUA. There were originally 39 such annuity contracts now reduced to approximately 25 as a result of deaths or other reasons. The NHMMJUA has contingent liability for this exposure.

**WHEREAS**, to facilitate the offering and transfer of the coverage related obligations, the Receiver is seeking certain services as described in the scope below from the Consultant. The Receiver and Consultant are each a “Party” to the Agreement and are collectively referred to herein as “the Parties.”

**NOW THEREFORE**, in consideration of the mutual covenants contained herein (the receipt and sufficiency of which is hereby acknowledged), the Parties agree as follows:

### **Section 1. Scope of Services**

Consultant shall provide the services identified in this Section to the Receiver (“Services”). Consultant’s Services are expected to be provided in its capacity as a general consultant where the Receiver would look to Consultant to facilitate the broad offering of the coverage related obligations described above to the reinsurance/insurance marketplace.

Consultant shall provide the following Services in its capacity as a general consultant:

1. Consultant shall assist the Receiver in identifying potential insurers/reinsurers (also referred to as interested parties) to assume the coverage related obligations of the NJMMJUA.

2. Consultant shall assist the Receiver in implementing the “offering plan” approved by the Court describing the process for the offering and placement of the coverage related obligations described above and the Receiver’s decision-making process vis-à-vis any proposals.
3. Consultant shall assist the Receiver in preparing the Request For Proposals (RFP) to be made available to interested parties.
4. After the Court’s approval, Consultant shall distribute the Receiver’s RFP to potentially interested parties. The RFP will state that it is the Receiver’s RFP and not Consultant’s RFP.
5. Consultant shall assist the Receiver in identifying the data and information that will be made available to potential interested parties, subject to a confidentiality agreement, to enable them to analyze the coverage related obligations.
6. Consultant shall facilitate the Q&A process with potential interested parties
7. Consultant shall facilitate due diligence including ensuring that responses to questions posed by interested parties and any additional data requests are responded to appropriately by the Receiver.
8. Upon receipt of proposals, Consultant shall offer comments on the proposals to the Receiver and assist the Receiver in analyzing the proposals. The Receiver will evaluate the proposals and decide how best to proceed including accepting or rejecting any and all such proposals. Consultant’s comments on the proposals will only be one component of what will be considered by the Receiver in deciding how to move forward.
9. Consultant shall assist the Receiver on an as needed basis in negotiations with interested parties regarding potential agreements to assume all or some of the coverage related obligations.
10. Consultant shall assist the Receiver in presenting agreement(s) reached to the Court for approval.

**Section 2. Anticipated Staffing**

Raji Bhagavatula will be responsible for the project. She will be assisted by other Consultant professionals on an as needed basis.

**Section 3. Fees and Billing**

The professional fees associated with the services described in the scope section are expected to be in the range of \$150,000 to \$300,000. In addition the Consultant will be reimbursed for all reasonable expenses including travel and other communication related expenses such as conference calls, mailing, overnight courier, etc.

The Parties agree that the Receiver shall pay to Consultant a fee based on the following hourly rates for 2015 for the job categories listed below:

<u>Job Category</u>	<u>Rates Per Hour</u>
Raji Bhagavatula	\$775
Principal	\$600-\$775
Fellow	\$350-\$450
Associates	\$250-\$350
Analysts	\$145-\$250

It is expected that due to the nature of the work, the work will be performed by personnel in the Fellow to Principal job categories. The billing rates for each job category may increase by up to 5% on June 30 of each year subject to the written approval of the Receiver.

If Consultant, while performing the Services, determines that the cost of completing Services will exceed \$300,000, then Consultant shall notify the Receiver and shall obtain the Receiver's consent prior to completing the Services.

If Consultant, while performing the Consulting Services, determines that there is need to perform Actuarial Services, the Consultant will submit a separate budget for such services.

Consultant shall submit monthly invoices to the Receiver for all Services specifying the hours spent by job category and tasks performed and including fees and expenses.

#### **Section 4. Timing**

Work shall commence upon approval of this Agreement by the Court (the "Effective Date") and will be completed as soon as practicable. Consultant's ability to perform Services above is subject to the reasonable cooperation of the Receiver. Either Party may terminate this Agreement on thirty days written notice to the other.

#### **Section 5. Reliance on Data**

Consultant will rely on data and other information provided by the Receiver. Consultant will not audit or verify data and other information provided by the Receiver or conduct a detailed systematic review of such data and information. Accordingly, Consultant shall not be responsible for any inaccurate or incomplete data or information that is provided to Consultant and incorporated into any of Consultant's Work Product (as defined below) during the course of the Services.

#### **Section 6. Third-Party Rights**

This Agreement is solely for the benefit of Consultant and the Receiver and does not confer, nor shall it be deemed to confer, any rights of any kind on any other person or entity. Consultant's written and/or oral analyses, findings, conclusions or other work product ("Work Product"), shall be prepared solely for the use of the Receiver and shall

become and remain the property of the Receiver. No person or entity, other than the Receiver, is entitled to rely on Consultant's Work Product, and Consultant may include a legend on its Work Product so stating. The Receiver shall not identify Consultant by name in any communication or disclosure to third parties except as expressly contemplated under this Agreement. The Receiver may identify Consultant to other consultants and vendors to the Receiver, in public filings with and proceedings before the Court, to interested parties, and to other persons involved in the receivership of the NHMMJUA. Any other disclosure or use of Consultant's name requires the prior written approval of Consultant.

The Receiver will require all interested parties to sign a release letter as a condition to making an offer on the business. Such a letter will require that the interested parties acknowledge the following among other items in writing:

- Consultant is acting as a facilitator and general consultant and is providing services solely on behalf of the Receiver and not for the benefit of any other parties. It will advise the party reviewing the information to obtain independent professional advice.
- It will include disclaimers with respect the data and information as referenced above and the third party shall be responsible to make its own assessment of the accuracy and reasonableness of the data.
- It will include a hold harmless and release of any liability of Consultant, among others, to the potential interested parties.

#### **Section 7. Court Approval**

This Agreement is subject to approval by the Court. The Receiver will move for such approval in conjunction with seeking approval for the offering process. In the event the Court does not approve this Agreement, the Agreement shall be of no force and effect.

#### **Section 8. Limitation Of Liability**

Consultant will perform all Services in accordance with applicable professional standards. In the event of any claim arising from Services provided by Consultant at any time, the total liability of Consultant, its officers, directors, agents and employees to the Receiver shall not exceed three million dollars (\$3,000,000). This limit applies regardless of the theory of law under which a claim is brought, including negligence, tort, contract, or otherwise. In no event shall Consultant be liable for any type of incidental or consequential damages. The foregoing limitations shall not apply in the event of the intentional fraud or willful misconduct of Consultant.

#### **Section 9. Disputes.**

In the event of any dispute arising out of or relating to the engagement of Consultant by the Receiver, the parties agree that the dispute will be resolved by final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration

Association. The arbitration shall take place before a panel of three arbitrators. Within 30 days of the commencement of the arbitration, each party shall designate in writing a single neutral and independent arbitrator. The two arbitrators designated by the parties shall then select a third arbitrator. The arbitrators shall have a background in either insurance, actuarial science or law. The arbitrators shall have the authority to permit limited discovery, including depositions, prior to the arbitration hearing, and such discovery shall be conducted consistent with the Federal Rules of Civil Procedure. The arbitrators shall have no power or authority to award punitive or exemplary damages. The arbitrators may, in their discretion, award the cost of the arbitration, including reasonable attorney fees, to the prevailing party. Any award made may be confirmed in any court having jurisdiction. Any arbitration shall be confidential, and except as required by law, neither party may disclose the content or results of any arbitration hereunder without the prior written consent of the other parties, except that disclosure is permitted to a party's auditors and legal advisors and the Court.

#### **Section 10. Choice Of Law.**

The construction, interpretation, and enforcement of this Agreement shall be governed by the substantive contract law of the State of New Hampshire without regard to its conflict of laws provisions. In the event any provision of this agreement is unenforceable as a matter of law, the remaining provisions will stay in full force and effect.

#### **Section 11. Confidentiality.**

Any information received by Milliman from the Receiver will be considered "Confidential Information." However, information received from the Receiver will not be considered Confidential Information if (a) the information is or comes to be generally available to the public during the course of Milliman's work, (b) the information was independently developed by Milliman without resort to information from the Receiver, or (c) Milliman appropriately receives the information from another source who is not under an obligation of confidentiality to the Receiver. Milliman agrees that Confidential Information shall not be disclosed to any third party except as approved by the Receiver as part of the offering process.

#### **Section 12. Entire Agreement**

This Agreement sets forth the entire understanding and agreement between the Parties as to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions.

#### **Section 13. Non-Assignability**

This Agreement will be binding upon the Parties, their successors and assigns. Neither party shall assign or delegate, in whole or in part, its rights and obligations hereunder to any person, firm or corporation, including without limitation a parent, a subsidiary or an affiliated company, without first obtaining the other party's written approval.

**IN WITNESS WHEREOF**, and intending to be legally bound hereby, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date(s) set forth below.

MILLIMAN, INC.

ROGER A. SEVIGNY, INSURANCE  
COMMISSIONER OF THE STATE OF  
NEW HAMPSHIRE, SOLELY AS  
RECEIVER OF THE NEW HAMPSHIRE  
MEDICAL MALPRACTICE JOINT  
UNDERWRITING ASSOCIATION

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_