

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

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)  
IN THE MATTER OF THE WINDING DOWN OF: )

THE NEW HAMPSHIRE MEDICAL MALPRACTICE )  
JOINT UNDERWRITING ASSOCIATION )  
\_\_\_\_\_)

No. 217-2015-CV-00347

**RECEIVER'S REPORT REGARDING AMENDMENT  
TO ASSUMPTION AGREEMENT WITH MEDPRO**

Roger A. Sevigny, Insurance Commissioner for the State of New Hampshire, as Receiver ("Receiver") of the New Hampshire Medical Malpractice Joint Underwriting Association ("NHMMJUA"), submits the following report to inform the Court and interested persons of an amendment to the Assumption Agreement (the "Assumption Agreement" or "Agreement") between the Receiver and The Medical Protective Company ("MedPro").

1. As set forth below and in the Affidavit of Peter A. Bengelsdorf, Special Deputy Commissioner, submitted herewith, the Receiver has learned that the list of policies attached to the Assumption Agreement as Schedule "C" was not complete. The purpose of this report is to advise the Court and interested persons of this issue, the steps the Receiver has taken to determine the scope of the problem and to develop a complete list, and the Receiver's discussions with MedPro regarding an amendment to the Assumption Agreement to substitute the new policy list as a revised Schedule "C".

2. Background. 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. Affidavit of Peter A. Bengelsdorf, Special Deputy Commissioner, Regarding Amendment to Assumption Agreement with MedPro ("Bengelsdorf Aff.") ¶ 2.

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. Bengelsdorf Aff. ¶ 3.

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.) Bengelsdorf Aff. ¶ 4.

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. Bengelsdorf Aff. ¶ 5.

6. The Schedule “C” problem. 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. Bengelsdorf Aff. ¶ 6.

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". Bengelsdorf Aff. ¶ 7.

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. Bengelsdorf Aff. ¶ 8.

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. Bengelsdorf Aff. ¶ 9.

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). Bengelsdorf Aff. ¶ 10.

11. Discussions with MedPro. 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. Bengelsdorf Aff. ¶ 11.

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. Bengelsdorf Aff. ¶ 12.

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. Bengelsdorf Aff. ¶ 13.

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. Bengelsdorf Aff. ¶ 14.

15. Revised Schedule “C”. 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”. Bengelsdorf Aff. ¶ 15.

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. Bengelsdorf Aff. ¶ 16.

17. The Amendment. 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 hereto. 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. Bengelsdorf Aff. ¶ 17.

18. The Receiver believes 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. See Bengelsdorf Aff. ¶ 18.

19. The Receiver submits as Exhibit 2 hereto 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 this Report and the supporting affidavit, and (b) it refers to the Assumption Agreement as amended by the Amendment. Bengelsdorf Aff. ¶ 19.

Respectfully submitted,

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

By his attorneys,

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July 29, 2016

**Certificate of Service**

I hereby certify that a copy of the foregoing Receiver's Report Regarding Amendment to Assumption Agreement with MedPro, together with the supporting affidavit, was sent this 29th day of July, 2016, by first class mail, postage prepaid to all persons on the attached service list. The Report, and the Revised Schedule "C", is also being posted to the website of the New Hampshire Insurance Department.



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Eric A. Smith  
NH Bar ID No. 16952

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No. 217-2015-CV-00347

**SERVICE LIST**

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 Manchester, NH 03101-2031

**AMENDMENT TO ASSUMPTION AGREEMENT**

**THIS AMENDMENT TO ASSUMPTION AGREEMENT** is made this 28 day of July, 2016 between Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, solely in his capacity as Receiver (the "Receiver") of the New Hampshire Medical Malpractice Joint Underwriting Association (the "NHMMJUA"), and The Medical Protective Company ("MedPro").

**WHEREAS:**

A. The Receiver and MedPro entered the Assumption Agreement dated May 13, 2016 ("Agreement") under which the Receiver agreed to cede and assign to MedPro, and MedPro agreed to assume, the NHMMJUA Obligations (as defined therein) on the terms and conditions set forth in the Agreement.

B. The Policies that are the subject of the Agreement are defined therein in part as the policies of insurance issued by the NHMMJUA from its inception as listed on Schedule "C".

C. The Receiver subsequently determined that Schedule "C" was not complete.

D. The Receiver and MedPro have agreed to substitute a Revised Schedule "C" for the Schedule "C" to the Agreement on the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**ARTICLE I  
DEFINITIONS AND INTERPRETATION**

**1.1 Definitions.**

In this Amendment, except as otherwise expressly provided, capitalized words or expressions shall have the meanings set out in the Agreement with the additions set forth below:

- (a) "Amendment" means this Amendment and the schedule annexed hereto.
- (b) "Revised Schedule 'C'" means the schedule annexed hereto.

**1.2 Interpretation.**

The principles of interpretations set forth in Section 1.2 of the Agreement apply to this Amendment.

**ARTICLE II  
AMENDMENT**

**2.1 Amendments.**

The Receiver and MedPro hereby agree that the Agreement is amended as follows:

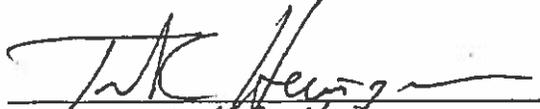
- (a) Revised Schedule "C" shall be substituted for the Schedule "C" annexed to the Agreement, and each reference to Schedule "C" in the Agreement shall be deemed to refer to Revised Schedule "C".
- (b) "\$23,500,000" shall be substituted for "\$23,000,000" in the first clause of Section 2.2 of the Agreement so that the clause shall read: "In consideration of MedPro's assumption of the NHMMJUA Obligations, on Closing the Receiver will pay MedPro a sum equal to \$23,500,000 (the "Price") subject to the following adjustments:".

**2.2 Agreement.**

Subject to the amendments set forth in Section 2.1 of this Amendment, the Agreement remains in effect in accordance with its terms and conditions.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the day and year first above written.

**THE MEDICAL PROTECTIVE COMPANY**

By:   
Name: Trent G. Heidemeyer  
Title: SUP, General Counsel & Secretary

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

By:   
Name: Peter A. Bengelsdorf  
Title: Special Deputy Commissioner

743 PAGE REVISED SCHEDULE "C" OMITTED

(Will be posted on New Hampshire Insurance Department website at  
[http://www.nh.gov/insurance/legal/nhid\\_nhmmjua\\_recvrshp.htm](http://www.nh.gov/insurance/legal/nhid_nhmmjua_recvrshp.htm) and filed at the hearing)

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No. 217-2015-CV-00347

**[REVISED PROPOSED]**

**ORDER APPROVING ASSUMPTION AGREEMENT WITH MEDPRO**

On consideration of the motion of Roger A. Sevigny, Insurance Commissioner for the State of New Hampshire, as Receiver (“Receiver”) of the New Hampshire Medical Malpractice Joint Underwriting Association (“NHMMJUA”), for approval of an Assumption Agreement with The Medical Protective Company (“MedPro”) dated May 13, 2016 and attached as Exhibit A to the motion, together with the supporting affidavit of Peter A. Bengelsdorf, Special Deputy Commissioner, and the Receiver’s Report regarding an Amendment to Assumption Agreement dated July 28, 2016 and attached as Exhibit 1 to the report, together with the supporting affidavit of Peter A. Bengelsdorf, and after hearing, it is hereby found and ORDERED as follows:

1. The Receiver’s selection of MedPro after the offering process approved by the Court on November 18, 2015 is consistent with RSA 404-C:16, II.
2. The Assumption Agreement, as amended by the Amendment to Assumption Agreement (together, the “Agreement”), is on commercially reasonable terms and provides for continued protection for the NHMMJUA’s policyholders against

liability and expense in accordance with the coverage terms of their policies, as well as for established obligations to claimants under such policies, consistent with RSA 404-C:16, II.

3. The Receiver's Motion for Approval of Assumption Agreement with MedPro is granted, and the Agreement is approved.

4. The Receiver is authorized to fulfil the Receiver's obligations under the Agreement in accordance with the terms of the Agreement both before and after Closing.

5. The transfer and assignment of all rights, obligations and liabilities regarding the NHMMJUA Obligations to MedPro in accordance with the terms of the Agreement is approved.

6. As of Closing, MedPro shall assume the NHMMJUA Obligations as defined in the Agreement as its own direct obligations in accordance with the terms of the Agreement. MedPro does not assume any other obligations of the NHMMJUA, and specifically does not assume any Excluded Claims as defined in the Agreement.

7. As of Closing, the NHMMJUA Obligations shall be assumed and novated as direct obligations of MedPro, and the Receiver (including the Special Deputy Commissioner and the Receiver's consultants, agents, and attorneys) and the NHMMJUA (including its administrators, consultants, agents and attorneys) shall have no liability in respect of the NHMMJUA Obligations.

So Ordered.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Presiding Justice