

## Memorandum

To: MLMIC Policyholders

From: Joseph Milano

Date: September 12, 2018

Re: Approval of sale of MLMIC; payouts to policyholders

On September 6, 2018, after a public hearing, the New York State Department of Financial Services (“DFS”) approved of the conversion, demutualization and proposed sale of Medical Liability Mutual Insurance Company (“MLMIC”), the State’s largest medical malpractice insurer, to the National Indemnity Company, a subsidiary of Warren Buffet’s Berkshire Hathaway, for \$2.502 billion. The final step in the approval process is approval of the plan by vote of two-thirds of the votes cast by policyholder present or by proxy at a meeting to be held on September 14, 2018; MLMIC policyholders as of July 14, 2016 are eligible to vote. If the policyholders approve of the plan, the transaction must close by September 30, 2018.

Eligible policyholders from July 2013 to July 2016 are expected to receive a payment equal to nearly twice the malpractice premiums paid during that period. Although New York Insurance Law defines the policyholders eligible to be paid their proportional shares of the purchase price, it also recognizes that those policyholders may have assigned their legal rights to receive those payments to others. Therefore, the plan includes a procedure for the resolution of disputes where, for example, hospitals or medical groups dispute whether the policyholder is entitled to receive those payments. The determination of who may file an objection revolves around the interpretation of the definition of “Policy Administrator” in the plan; among other things, there must be a “designation” by the policyholder of an identified person as a “Policy Administrator”.

DFS has disagreed with the position urged by certain commenters that “the person that paid the premium is automatically entitled to the proceeds of the sale”, urging, instead that the “determination of who is entitled to the cash consideration depends on the facts and circumstances of the parties’ relationship and applicable law, to be decided either by agreement of the parties or by an arbitrator or court”.

Reports are pouring in of doctors, who would be eligible policyholders entitled to share in the proceeds of the sale, assigning their rights away without any consideration of the applicable law or even having been counseled as to what their rights are.

Should you have any questions or need any further information, please do not hesitate to call or send an e-mail to Joseph Milano or any of the other lawyers at Capell Barnett Matalon & Schoenfeld LLP.