

ADR Process

Background

- MLMIC has received both regulatory and policyholder approval for the conversion of MLMIC to a stock company and on October 1, 2018 (the “Closing Date”), it closed on the sale of MLMIC to National Indemnity Company (the “Transaction”) for cash consideration in the amount of \$2,502,000,000 (the “Cash Consideration”).
- Insurance Law § 7307(e)(3) defines those persons entitled to receive the proceeds of the conversion, i.e., the Cash Consideration, as each person who had a policy of insurance in effect at any time during the three-year period preceding the MLMIC Board’s adoption of a resolution on July 15, 2016 approving the Transaction (the “Eligible Policyholders”), and explicitly provides that each Eligible Policyholder’s equitable share of the Cash Consideration shall be determined based on the amount of net premiums properly and timely paid on that policyholder’s eligible policy which is allocable to such three-year period as a fraction of the total of such net premiums paid on eligible policies.
- Disputes have arisen between certain Eligible Policyholders, on the one hand, and certain medical groups, hospitals, and other parties (the “Objectors”), on the other hand, regarding the distribution of certain portions of the Cash Consideration.
- MLMIC’s plan of conversion provides a procedure for resolution of disputes between Eligible Policyholders and Objectors. As to these disputed claims, the Cash Consideration that relates to such claims will be placed in an escrow account.
- The September 6, 2018 decision of the New York State Superintendent of Financial Services (the “Superintendent”) directs that any Objector that does not have a good faith basis for asserting that it is a policy administrator should withdraw their objection. The provisions of the decision of the Superintendent delineating the requirements for an Objector to be considered as a policy administrator shall be binding on Eligible Policyholders and Objectors.
- As to those objections that are not withdrawn, the decision of the Superintendent requires that MLMIC withhold payment of the Cash Consideration attributable to those Objectors and place such funds in an escrow account, with the status of such escrow to be reported back to the Superintendent within 90 days of the closing of the Transaction. At the end of the 90 day period, the Superintendent may direct disbursement of all or any portion of the funds in the escrow. During or after the 90 day period, MLMIC may release funds from escrow to the extent that (i) MLMIC receives joint written instructions from the Eligible Policyholder and the Objector; or (ii) MLMIC receives a non-appealable order of an arbitration panel or court.

Dispute Resolution Process

- The decision of the Superintendent provides that the Eligible Policyholders and Objectors have an initial period of 90 days from the closing of the Transaction to resolve their disputes. During that period, the

parties are free to independently mediate or negotiate, initiate legal action, or take any other steps that the parties may believe necessary to resolve the dispute.

- As an alternative, and as required by the decision of the Superintendent, MLMIC is providing an alternative dispute resolution process to provide a structured process where Eligible Policyholders and Objectors may attempt to resolve disputes (the “Company ADR Process”). MLMIC has engaged National Arbitration and Mediation (“NAM”), an organization that specializes in mediation, for this purpose. NAM’s ADR Specialists will be supervised and directed by the Honorable Karla Moskowitz (Ret.), formerly of the New York Supreme Court, Appellate Division, First Department. ***Participation in the Company ADR Process will be entirely voluntary, and unless the parties mutually resolve their dispute in mediation or otherwise, all parties will continue to have any legal rights and remedies that are otherwise available to them.*** No one participating in the ADR Process needs to be represented by any lawyer(s) or third-party consultants of any kind, and the cost of retaining the ADR Specialists shall be borne by MLMIC.
- As soon as possible, but within 30 days of the Closing Date of the Transaction, the Eligible Policyholder and the Objector shall notify MLMIC of their intention to participate in the Company ADR Process by signing the enclosed Opt-In Notice (the “Opt-In Notice”) and returning it to MLMIC as instructed on the form. Any Opt-In Notice submitted more than 30 days after the Closing Date may be accepted at the sole discretion of the ADR Specialists.
- In the event that an Objector’s claim relates to multiple Eligible Policyholders then, if the parties so agree, and subject to the discretion of the ADR Specialist, a single ADR meeting may address multiple Eligible Policyholders’ disputes.
- Upon receiving the Opt-In Notice from both the Eligible Policyholder and the Objector, MLMIC shall send a written notice of acknowledgement to both the Eligible Policyholder and the Objector (the “Acknowledgement Letter”). The Acknowledgement Letter shall confirm MLMIC’s receipt of the Opt-In Notice from both parties. Subject to any other steps or process that may, depending on the circumstances, be suggested by the ADR Specialists, within 15 days of the date of the Acknowledgement Letter, the Eligible Policyholders and the Objectors to a dispute shall submit a letter to the ADR Specialist to whom they will be referred (the “Position Statements”). The Position Statements need not follow any particular format, and should simply and succinctly summarize the party’s position as to why they are entitled to receive a portion of the Cash Consideration that will be paid in connection with the Transaction.
- Following the submission of the parties’ Position Statements, at a time mutually agreed upon by the parties and the ADR Specialist, the ADR Specialist shall meet telephonically with the parties (the “ADR Meeting”). At the ADR Specialist’s discretion, the ADR Meeting may be in person. The format, structure, and procedure of the ADR Meeting shall be entirely at the discretion of the ADR Specialist. There shall be no transcription of the ADR Meeting.
- Should the ADR Meeting result in a successful resolution of the dispute, the ADR Specialist shall be equipped with a form to be signed by the parties, and upon submission to MLMIC the funds relating to the dispute shall be distributed from the escrow account as directed by the parties’ agreement.