MEDICAL LIABILITY INSURERS DOING VERY WELL IN NEW YORK

By Alan W. Clark*

The largest medical liability insurers licensed / authorized to do business in New York are financially doing well. This article will review examinations conducted by Department of Financial Services (DOFS) in New York and other State Agencies regulating medical liability insurers as well as public statements published online by medical liability insurers. These reports and disclosures demonstrate their financial solvency and strength as measured by accounting and industry standards including those established by the National Association of Insurance Commissioners (NAIC). The insurers reported assets including net premium dollars earned have generated substantial investment income and capital gains in the stock market which has contributed to an accumulation of large surplus and net income. In many cases this has allowed payment of substantial dividends to policyholders and members. Further, medical liability insurers in New York have not suffered any significant negative impact on their finances from the COVID shut downs. In sum, litigants and the public need not be frightened and misguided by insurance industry propaganda that large jury verdicts are imperiling their survival and justify large premium increases and ultimately will force physicians to relocate or give up the practice of medicine.

The largest medical liability insurance company in New York, Medical Liability Mutual Insurance Company (MLMIC Insurance Company), insures over 13,000 physicians and is rated by AM Best A+ (Superior) financial strength rating. According to the latest report of examination of MLMIC (dated 3/31/2022) by the DOFS, for the period 7/1/2016-12/31/2020, total gross premiums reported totaled over 1.8 billion dollars. https://www.dfs.ny.gov/system/files/documents/2022/06/34231f20.pdf On 10/1/2018, National Indemnity Company (NICO), a wholly owned subsidiary of Berkshire Hathaway, Inc. (BHI) a Warren Buffet conglomerate, acquired MLMIC which demutualized and became a stock company in which 200,000 shares were original issued at $100 par value for total of $20,000,000. NICO owns all the common shares. BHI became the investment manager for MLMIC. As part of demutualization in 2018, MLMIC paid NICO extraordinary dividend over 1.9 billion dollars.

The DOFS report documents that as of 12/31/2020 MLMIC had total net admitted assets of over 795 million dollars with total liabilities reported at over 147 million dollars leaving surplus as regards policy holders at just over 648 million dollars. The total liabilities include losses and loss adjusted expenses for claims of almost 93 million dollars. Assets included over 592 million dollars in bonds, over 4 million dollars in common stocks and over 279 million dollars in cash, cash equivalents and short-term investments. Moreover, during the period 2016-2020 MLMIC reported net investment income of over 243 million dollars and net capital gains of over 524 million making the total net investment gain almost 768 million dollars. During this period net income was reported at over 680 million dollars after payment of policyholder dividends of over 73 million dollars.

The DOFS reports that during the examination period COVID had no significant impact on MLMIC's operations or finances. The report documents that MLMIC had ratios of 7% for net premiums to policyholder's surplus, 7% for adjusted liabilities to assets and 2 yr. overall operating ratio of 114%, all very favorable and showing the strong financial solvency and strength of MLMIC.

The Doctors Company (TDC) which is part of the TDC Group, is incorporated in California and licensed to do business in all 50 states. According to summary of its 2020 annual report available on the internet, TDC is the nation's largest physician owned medical liability insurance company with over 80,000 members.https://www.thedoctors.com/siteassets/pdfs/financial-reports/2020-annual-report.pdf. They insure large hospital networks through Healthcare Risk Advisers (HRA) including Mount Sinai, Montefiore, Maimonides, and Bronx Care. The 2020 financial highlights include total assets of over 6.2 billion dollars and policyowner surplus of over 2.35 billion dollars. Direct premiums written is 1.117 billion dollars and net premiums earned 936 million dollars. The written premium to surplus ratio is reported to be 0.42:1 and reserves to surplus ratio is 1.24:1, both excellent ratios under NAIC standards. Under its tribute physician loyalty reward program, a total of 120 million dollars was paid to 10,000 retiring physicians. Tribute balances exceed 500 million dollars.

Examination report dated January 25,2021 by the California Department of Insurance reviews TDC's financial status from 12/31/2016-12/31/2019. https://www.insurance.ca.gov/0250-insurers/0300-insurers/0400-reports-examination/upload/The-Doctors-Company-CDI-Website.pdf The report notes that on July 31, 2019 TDC acquired Hospitals Insurance Company, Inc., (HIC), a New York medical liability insurer. For the year ending 12/31/2019, net investment income earned was over 70 million dollars, net realized capital gains were over 74 million dollars making total net investment gain over 145 million dollars. Premiums earned were over 623 million dollars with dividends paid to policyholders over 8.8 million dollars. Surplus as regards policyholders was over 2.2 billion dollars. Assets as of 12/31/2018 included just under 1.6 billion dollars in bonds, 122 million dollars in preferred stocks and 1.9 billion dollars in common stocks. Short term investments including cash equivalents were over 173 million dollars. Losses were just over 1 billion dollars with loss adjusted expenses 509 million dollars. As of 12/31/2019, net income was reported to be over 89 million dollars. TDC had a borrowing capacity of over 238 million dollars which was not drawn upon.

EmPRO Insurance Company (EMPRO), domiciled and licensed in New York, is the state's 3rd largest admitted medical liability insurer. According to its press release dated June 1,2023 as of 12/31/2022 EmPRO started operations in 9/2020 as a wholly owned subsidiary of Physician's Reciprocal Insurers (PRI) which provided EmPRO with 100 million dollars of capitalization from its surplus. https://www.myempro.com/press-release-empro-insurance-celebrates-two-years-of-growth-and-progress. EmPRO has assumed all of PRI's active NY business and transitioned 100% of PRI's insureds. EmPRO is managed by PRIMMA LL, PRI's wholly owned attorney in fact (AIF). As of 12/31/2022 EmPRO reports assets of 395 million dollars, liabilities of 283.7 million dollars, reserves of 176.9 million dollars and surplus of 112.1 million dollars. Gross premiums are stated as 178.4 million and net income 12.1 million dollars. The Press Release boasts that EmPRO has thrived during the COVID pandemic. Moreover, EmPRO states that its success has resulted in a 425 million dollar improvement in PRI and complete turnaround of its business since 2017, when PRI was in danger of insolvency and now has consistent investment income. Due to its continued success EmPRO is becoming a regional carrier expanding its business operations to NJ, Connecticut, and Pennsylvania.

MedPro RRG Risk Retention Group (MedPro) is domiciled in Washington, DC and licensed in NY. An RRG is a corporation or LLC functioning as an insurance company. Except for its domiciliary state an RRG is not subject to any State's laws and regulations. https://www.cmfgroup.com/medpro-rrg/ . All insureds must also be members of RRG. MedPro is reinsured 95% by Medical Protective (Med Protective), part of the Med Pro Group, a Berkshire Hathaway company (BHI). This provides a level of security and comfort for insureds. EmPro is also serviced by Princeton Insurance Company, another BHI company. Most recent examination report accepted 4/24/2020 by the DC Department of Insurance, Securities and Banking (DISB) reviews the period of 1/1/2014-12/31/2018. https://disb.dc.gov/sites/default/files/dc/sites/disb/publication/attachments/MedPro%20RRG%20Risk%20Retention%20Group.pdf. The report notes that MedPro is a member of the Berkshire Hathaway holding company group. As of 12/31/2018 total assets were over 110 million dollars with cash assets almost 47 million dollars. Liabilities were total of just under 104 million dollars including losses of 7 million dollars and loss expense 2.6 million dollars. The surplus to policyholders was reported as 6.8 million dollars. During the period in question ceded premiums (paid to reinsurer for transferring portion of the risk) were 152 million dollars with ceded unearned premiums 89 million dollars. Ceded loss reserves were 474 million dollars. Currently, MedPro RRG is rated A++(Superior) by A.M. Best. Further, MedPro providers NY physicians with choice of consent policies with basic liability coverage of 1 million dollars per occurrence and 3 million dollars in aggregate. Additional coverage is available to purchase with limits of 2.3 million dollars per occurrence and 6.9 million in aggregate.

These facts clearly demonstrate that medical liability Insurers are doing very well in New York. Their continuing cries that "nuclear" jury verdicts will justify substantial premium increases and threaten medical providers ability to practice medicine in New York is belied by the evidence of their financial success and superior ratings. Medical liability insurers have made substantial gains over the years by investing earned premium dollars and reserves in the market as permitted under New York Insurance Laws and regulations. See NY CLS Ins, Art. 14. Investment income and capital gains have substantially grown over the years due to favorable market conditions resulting in dividend payments and large policyholder surpluses. Net income has increased. Their ratios of reserve development to surplus also satisfy the bench marks set forth by the NAIC and the insurance law. (Insurance Law § 4117 (Consol., Lexis Advance through 2023 released Chapters 1-358))

The evidence is apparent that medical liability insurers benefit by litigation delay. Nowadays, the average medical malpractice case takes 4-5 years to prosecute to conclusion. During this time delay medical liability insurers are free to invest their premiums and reserves in various market securities and equities such as bonds and stocks as permitted under NY Insurance laws earning substantial interest and capital gains. Under current NY law, liability insurers do not have to pay interest to plaintiffs on personal injury settlements or jury verdicts except in limited circumstances involving wrongful death claims as set forth by statute. (EPTL § 5-4.3 (Consol., Lexis Advance through 2023 released Chapters 1-358)).

So why should an insurer settle a medical malpractice claim early in the litigation process when it can make significant interest and investment income during the long delay? A modest 6% annual interest on a $100,000 investment today for five years at simple interest will yield $130,000 in 5 years. Stock market gains over a similar 5-year period will likely average much higher and at times reach double digits. There simply is no accountability to injured persons who must wait it out for their case to reach trial and then not be compensated for the long delay and loss of money value. A dollar today is worth more than the same dollar in 5 years from now. It is fundamentally unfair for injured persons not to be compensated for the time value loss of money. It is about time that the New York's legislature amends the CPLR to allow for pre-verdict interest to allow for past damages in personal injury awards. Allowing pre-verdict interest would greatly encourage prompt resolution of claims. Such proposals are currently pending in the NYS Assembly and Senate committees. See article PRE-VERDICT INTEREST IN PERSONAL INJURY ACTIONS: IT'S ABOUT TIME! By Alan W. Clark published NYLJ August 9, 2023.

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