



## **MIIXed Up: A Closer Look into NJ's Largest Medical Malpractice Insurance Company Liquidation**

Another chapter in the ongoing saga of the Medical Inter-Insurance Exchange (MIIX) was opened on March 11, 2010 when a "Notice of Motion to Extend Bar Date For Assertion of Claims" was filed by the NJ Attorney General's office.

Based largely on actuarial projections (which, in hindsight, were wrong, but that is for another article) MIIX Insurance Group went into "voluntary solvent runoff" in 2002, despite having \$1.2 billion in reserves. From 2002 until 2008, MIIX existed almost exclusively to pay claims against former policyholders.

On April 9, 2008, the MIIX order of liquidation was filed. Consistent with all liquidations, the Court established what is called a "notice of claim" (or "Bar") date, which is the last date that creditors of a liquidated company can make a claim for unpaid receivables. The MIIX Bar date was set for one year from the liquidation, April 9, 2009. Shortly thereafter, a problem was identified. When an "admitted" NJ insurance carrier goes under, the NJ Property-Liability Insurance Guaranty Association (PLIGA) steps in to provide \$300,000 of coverage per covered claim. Unfortunately, as a creditor itself, PLIGA only covers claims up until the Bar date. Any claim filed after the Bar date is not covered, so former MIIX policyholders are left on their own to respond to claims.

While there have been numerous insurance company liquidations in NJ, the MIIX liquidation is unique. MIIX primarily sold occurrence-type policies. These policies obligated MIIX to cover any claim, whenever filed, if it related to an event which occurred during the policy period. Due to the nature of medical malpractice insurance claims, physicians simply cannot know whether or not they will have a claim in the future. The "two-year" statute of limitations in New Jersey offers little solace, because it follows a "discovery" rule, which allows patients an indefinite amount of time to learn that possible negligence occurred, before the two-year clock begins to tick. There are other exceptions as well, particularly for minors. Consequently, setting any notice of claim date places former policyholders in personal jeopardy.

Given this significant potential exposure, physician lobbying groups began pressing the NJ Department of Banking and Insurance (DOBI) to request an extension of the Bar date from the Court. Claims were still being filed against former MIIX policyholders, so the longer the extension, the more claims would fall within PLIGA protection.

Meanwhile, the market began to respond. Most carriers put together some form of MIIX "gap" coverage to protect their insureds in the event physicians wanted more than the \$300,000 of coverage provided by PLIGA, or to cover claims if and when the PLIGA coverage expires.

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Concerned about the time frame, but also recognizing the private market solutions, DOBI successfully petitioned the court to extend the bar date, but by just one year, April 9, 2010. In its petition, DOBI specifically noted that, *“Allowing PLIGA to handle such claims for another year will allow insured physicians the additional time necessary to fully evaluate whether they need to purchase ‘gap coverage’ i.e. supplemental insurance for as-yet unreported incidents that occurred prior to the termination of their coverage with MIIX.”*

Though “gap” policies are available for many, carriers writing such coverage make it available only to physicians who also obtain their primary coverage from that carrier. This leaves a significant group of physicians without available coverage, particularly hospital-employed physicians, physicians who have left the state, and physicians who have retired.

So with the first revised bar date set to expire on April 9, 2010, physician groups began lobbying for another extension, using precisely the same arguments as the prior year. It seems their wish was granted when the motion to extend the Bar date – again for just one year – was filed with the Court. If granted, the new Bar date will be set at April 9, 2011.

While a one-year extension seemingly does nothing more than postpone the same problems another year, sources familiar with the matter believe that DOBI is working toward a permanent remedy. If it successfully finds a solution to the MIIX problem, perhaps the final chapter in the MIIX story will come to an end.

By Brian S. Kern, JD – April, 2010