

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 217-2010-CV-414

Georgia Tuttle, M.D., et al.

vs.

New Hampshire Medical Malpractice
Joint Underwriting Association, et al.

**SUPPLEMENTAL AFFIDAVIT OF GEORGIA A. TUTTLE, M.D.
IN SUPPORT OF THE *CY PRES* PROVISION OF THE PLAN OF ALLOCATION**

I, Georgia A. Tuttle, M.D., being first duly sworn according to law, depose and state that the following is true:

1. I make this sworn statement based on personal knowledge.
2. I previously submitted an Affidavit in support of the Plan of Allocation, Case Contribution Awards, and Class Counsel's Fees and Costs, dated July 12, 2018, which is incorporated herein by reference.
3. In 2015, the New Hampshire state legislature enacted RSA 404-C:15-17, which required the NHMMJUA to be placed in a liquidating receivership under the Court's supervision and dissolved. RSA 404-C:17, IV includes a *cy pres* provision for distribution of unclaimed excess surplus funds. This same provision is included in the Plan of Allocation and applies to funds that cannot be distributed due to the inability to locate a Class Member after reasonable efforts have been made. For those unclaimed funds, the *cy pres* provision contemplates transfer to an existing, non-lapsing fund to be administered by the N.H. Department of Health and Human Services and utilized to provide aid grants to health care providers servicing medically underserved populations through the Department's state loan repayment program.

4. I and other Class Members have supported, and continue to support, this *cy pres* distribution as an appropriate use of unclaimed funds well aligned with the professional and civic goals of the Class. The NHMMJUA was created in part to stabilize the cost of medical malpractice insurance to ensure the availability of healthcare across New Hampshire. This *cy pres* provision will similarly help to ensure access to care, particularly to underserved populations.

5. I personally have worked diligently, along with Class Counsel and the other Lead Plaintiffs, to ensure as much of the new common fund as possible reaches the Class Members. The Initial Distribution yielded a 98.53 percent success rate for return of claims, with a relatively small reverter of 1.47 percent for which no policyholder could be located. Likewise, only a relatively small percentage of residual funds is expected to remain following the anticipated distribution of the new Common Fund tranche.

6. The enacted *cy pres* provision allows for distribution of these limited unclaimed funds in a balanced way that delivers needed support to underserved patient populations and the health care providers who work with them, thereby providing an overall benefit to the Class. In this manner, these funds will be thoughtfully used to attract and retain providers who share a professional nexus with Class Members, who are acting in the interest of Class Members by supporting statewide access to health care, and whose interests reasonably approximate those of Class Members.

7. There is a connection between the professional, ethical and geographic characteristics and interests of future *cy pres* beneficiaries and those of the Class. In light of this connection, it is a fitting use of unclaimed residual funds to assist those beneficiaries.

8. The geographic breadth of the Class Members, a group comprised of health care

providers throughout the State of New Hampshire, closely matches the range of the anticipated *cy pres* beneficiaries.

9. The *cy pres* provision is also preferable to other potential methods for distributing unclaimed residual funds, such as escheat to the State or reversion to the defendant. The *cy pres* provision targets the funds specifically to the Class Members' interest in supporting those—who are likely to be similarly professionally situated to Class Members—fulfilling the important goal of promoting accessible health care services throughout the State.

10. Because the *cy pres* provision contemplates that the N.H. Department of Health and Human Services administer the funds through an existing, dedicated assistance program, there is little to no risk of self-dealing within the selection process for grant recipients. That process will be neutrally and soundly managed by a State agency and untethered to the Class Members themselves.

11. For all of these reasons, the proposed *cy pres* distribution provision promotes and supports interests that lie as near as possible to the overarching goals of the Class Members. Accordingly, I support it and ask that the Court approve its inclusion in the Plan of Allocation independent of RSA 404-C:17, IV.

FURTHER THE AFFIANT SAYETH NAUGHT

August 23, 2018

Georgia A. Tuttle, M.D.
Georgia A. Tuttle, M.D.

STATE OF MAINE
COUNTY OF HANCOCK

On this 23RD day of August, 2018, before me, the above-named Georgia A. Tuttle, M.D. personally appeared and acknowledged that she executed the within Affidavit and that the within statements made by her are true and correct to the best of her knowledge and belief.

Jessica K-B Lawson
Justice of the Peace/Notary Public
My Commission Expires: 6.9.22

JESSICA K-B LAWSON
Notary Public, Maine
My Commission Expires June 9, 2022



THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 217-2010-CV-414

Georgia Tuttle, M.D., et al.

vs.

New Hampshire Medical Malpractice
Joint Underwriting Association, et al.

**SUPPLEMENTAL AFFIDAVIT OF THOMAS BUCHANAN
IN SUPPORT OF THE *CY PRES* PROVISION OF THE PLAN OF ALLOCATION**

I, Thomas Buchanan, being first duly sworn according to law, depose and state that the following is true:

1. I make this sworn statement based on personal knowledge.
2. I previously submitted an Affidavit in support of the Plan of Allocation, Case Contribution Awards, and Class Counsel's Fees and Costs, dated July 12, 2018, which is incorporated herein by reference.
3. In 2015, the New Hampshire state legislature enacted RSA 404-C:15-17, which required the NHMMJUA to be placed in a liquidating receivership under the Court's supervision and dissolved. RSA 404-C:17, IV includes a *cy pres* provision for distribution of unclaimed excess surplus funds. This same provision is included in the Plan of Allocation and applies to funds that cannot be distributed due to the inability to locate a Class Member after reasonable efforts have been made. For those unclaimed funds, the *cy pres* provision contemplates transfer to an existing, non-lapsing fund to be administered by the N.H. Department of Health and Human Services and utilized to provide aid grants to health care providers servicing medically underserved populations through the Department's state loan repayment program.

4. I and other Class Members have supported, and continue to support, this *cy pres* distribution as an appropriate use of unclaimed funds well aligned with the professional and civic goals of the Class. The NHMMJUA was created in part to stabilize the cost of medical malpractice insurance to ensure the availability of healthcare across New Hampshire. This *cy pres* provision will similarly help to ensure access to care, particularly to underserved populations.

5. The enacted *cy pres* provision allows for distribution of these limited unclaimed funds in a balanced way that delivers needed support to underserved patient populations and the health care providers who work with them, thereby providing an overall benefit to the Class. In this manner, these funds will be thoughtfully used to attract and retain providers who share a professional nexus with Class Members, who are acting in the interest of Class Members by supporting statewide access to health care, and whose interests reasonably approximate those of Class Members.

6. There is a connection between the professional, ethical and geographic characteristics and interests of future *cy pres* beneficiaries and those of the Class. In light of this connection, it is a fitting use of unclaimed residual funds to assist those beneficiaries.

7. The geographic breadth of the Class Members, a group comprised of health care providers throughout the State of New Hampshire, closely matches the range of the anticipated *cy pres* beneficiaries.

8. The *cy pres* provision is also preferable to other potential methods for distributing unclaimed residual funds, such as escheat to the State or reversion to the defendant. The *cy pres* provision targets the funds specifically to the Class Members' interest in supporting those—who are likely to be similarly professionally situated to Class Members—fulfilling the important goal

of promoting accessible health care services throughout the State.

9. Because the *cy pres* provision contemplates that the N.H. Department of Health and Human Services administer the funds through an existing, dedicated assistance program, there is little to no risk of self-dealing within the selection process for grant recipients. That process will be neutrally and soundly managed by a State agency and untethered to the Class Members themselves.

10. For all of these reasons, the proposed *cy pres* distribution provision promotes and supports interests that lie as near as possible to the overarching goals of the Class Members. Accordingly, I support it and ask that the Court approve its inclusion in the Plan of Allocation independent of RSA 404-C:17, IV.

FURTHER THE AFFIANT SAYETH NAUGHT

August 23, 2018



Thomas Buchanan

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

On this 23rd day of August, 2018, before me, the above-named Thomas Buchanan personally appeared and acknowledged that he executed the within Affidavit and that the within statements made by him are true and correct to the best of his knowledge and belief.



Justice of the Peace
State of New Hampshire
My Commission Expires February 10, 2021

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 217-2010-CV-414

Georgia Tuttle, M.D., et al.

vs.

New Hampshire Medical Malpractice
Joint Underwriting Association, et al.

**SUPPLEMENTAL AFFIDAVIT OF MITCHELL B. JEAN, ESQ.
IN SUPPORT OF THE *CY PRES* PROVISION OF THE PLAN OF ALLOCATION**

I, Mitchell B. Jean, Esq., being first duly sworn according to law, depose and state that the following is true:

1. I make this sworn statement based on personal knowledge.
2. I previously submitted an Affidavit in support of the Plan of Allocation, Case Contribution Awards, and Class Counsel's Fees and Costs, dated July 11, 2018, which is incorporated herein by reference.
3. In 2015, the New Hampshire state legislature enacted RSA 404-C:15-17, which required the NHMMJUA to be placed in a liquidating receivership under the Court's supervision and dissolved. RSA 404-C:17, IV includes a *cy pres* provision for distribution of unclaimed excess surplus funds. This same provision is included in the Plan of Allocation and applies to funds that cannot be distributed due to the inability to locate a Class Member after reasonable efforts have been made. For those unclaimed funds, the *cy pres* provision contemplates transfer to an existing, non-lapsing fund to be administered by the N.H. Department of Health and Human Services and utilized to provide aid grants to health care providers servicing medically underserved populations through the Department's state loan repayment program.

4. LRGHealthcare and other Class Members have supported, and continue to support, this *cy pres* distribution as an appropriate use of unclaimed funds well aligned with the professional and civic goals of the Class. The NHMMJUA was created in part to stabilize the cost of medical malpractice insurance to ensure the availability of healthcare across New Hampshire. This *cy pres* provision will similarly help to ensure access to care, particularly to underserved populations.

5. LRGHealthcare's then-Senior Vice President for Financial Strategy and External Relations, Henry Lipman, attended an April 22, 2015 legislative hearing on H.B. 508, relative to the dissolution of the New Hampshire medical malpractice joint underwriting association. Mr. Lipman testified in support of using funds that could not be distributed to policyholders for public purposes in a balanced manner that would not only provide financial assistance to New Hampshire health care providers, but would also continue to incentivize the recruitment of providers in rural areas of the State through loan repayment.

6. The enacted *cy pres* provision allows for distribution of these limited unclaimed funds in a balanced way that delivers needed support to underserved patient populations and the health care providers who work with them, thereby providing an overall benefit to the Class. In this manner, these funds will be thoughtfully used to attract and retain providers who share a professional nexus with Class Members, who are acting in the interest of Class Members by supporting statewide access to health care, and whose interests reasonably approximate those of Class Members.

7. There is a connection between the professional, ethical and geographic characteristics and interests of future *cy pres* beneficiaries and those of the Class. In light of this connection, it is a fitting use of unclaimed residual funds to assist those beneficiaries.

8. The geographic breadth of the Class Members, a group comprised of health care providers throughout the State of New Hampshire, closely matches the range of the anticipated *cy pres* beneficiaries.

9. The *cy pres* provision is also preferable to other potential methods for distributing unclaimed residual funds, such as escheat to the State or reversion to the defendant. The *cy pres* provision targets the funds specifically to the Class Members' interest in supporting those—who are likely to be similarly professionally situated to Class Members—fulfilling the important goal of promoting accessible health care services throughout the State.

10. Because the *cy pres* provision contemplates that the N.H. Department of Health and Human Services administer the funds through an existing, dedicated assistance program, there is little to no risk of self-dealing within the selection process for grant recipients. That process will be neutrally and soundly managed by a State agency and untethered to the Class Members themselves.

11. For all of these reasons, the proposed *cy pres* distribution provision promotes and supports interests that lie as near as possible to the overarching goals of the Class Members. Accordingly, LRGHealthcare supports it and asks that the Court approve its inclusion in the Plan of Allocation independent of RSA 404-C:17, IV.

FURTHER THE AFFIANT SAYETH NAUGHT


August 23rd, 2018



Mitchell B. Jean, Esq.

STATE OF NEW HAMPSHIRE
COUNTY OF BELKNAP

On this 23rd day of August, 2018, before me, the above-named Mitchell B. Jean, Esq. personally appeared and acknowledged that he executed the within Affidavit and that the within statements made by him are true and correct to the best of his knowledge and belief.



My Commission Expires: 3-25-2020