

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Merrimack Superior Court
163 North Main St./PO Box 2880
Concord NH 03302-2880

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

NOTICE OF DECISION

FILE COPY

Case Name: **In the Matter of the Winding Down of: The New Hampshire Medical
Malpractice Joint Underwriting Association**
Case Number: **217-2015-CV-00347**

Please be advised that on September 11, 2018 Judge McNamara made the following order relative to:

Receiver's Monthly Status Report for August 2018

"Approved."

Order Approving Interim Distribution, Interpleader and Related Discharge of Receiver

"So Ordered."

copy attached

September 11, 2018

Catherine J. Ruffle
Clerk of Court

(485)

C: J. Christopher Marshall, ESQ; Daniel John Mullen, ESQ; W. Scott J. O'Connell, ESQ; Kevin M. Fitzgerald, ESQ; Eric A. Smith, ESQ; J. David Leslie, ESQ

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

_____)
)
 IN THE MATTER OF THE WINDING DOWN OF:)
)
 THE NEW HAMPSHIRE MEDICAL MALPRACTICE)
 JOINT UNDERWRITING ASSOCIATION)
 _____)

No. 217-2015-CV-00347

2016 AUG 10 AM 11:02
 SUPERIOR COURT

029176

~~[PROPOSED]~~

**ORDER APPROVING INTERIM DISTRIBUTION
INTERPLEADER AND RELATED DISCHARGE OF RECEIVER**

On consideration of the amended motion of Roger A. Sevigny, Insurance Commissioner for the State of New Hampshire, as Receiver ("Receiver") of the New Hampshire Medical Malpractice Joint Underwriting Association ("NHMMJUA"), assented to by Policyholders appearing in this proceeding, for approval of an interim distribution, interpleader and discharge, together with the supporting affidavit of Peter A. Bengelsdorf, Special Deputy Commissioner, it is hereby found and ORDERED as follows:

1. The Court previously approved the Assumption Agreement with The Medical Protective Company dated May 16, 2016, as amended, and the Assumption Agreement transaction closed on August 25, 2016. The Receiver has paid the price called for by the Assumption Agreement for transfer of the NHMMJUA coverage-related obligations as contemplated by RSA 404-C:17, III, and the Receiver has paid the administrative and operational expenses of the NHMMJUA and the expenses of the receivership on an ongoing basis.

97

2. The net assets of the NHMMJUA presently held by the Receiver exceed the remaining costs and obligations of the NHMMJUA in receivership, including the administrative and operational expenses of the NHMMJUA, the expenses of the receivership, potential tax obligations of the NHMMJUA, and a reasonable reserve for unknown and unexpected obligations of the NHMMJUA, by approximately \$60,000,000.

3. These assets are distributable from the NHMMJUA estate and should be tendered now by the Receiver into Merrimack County Superior Court docket no. 217-2010-CV-00414 (the "*Tuttle* Class Action") pursuant to RSA 404-C:17, III.

4. Because there is no Superior Court rule governing an interpleader action, and RSA 404-C:17, III provides the interpleader of funds directed by the statute "shall not prejudice the rights of any class of NHMMJUA policyholders with respect to these funds", the Court shall adjudicate interests in the tendered funds in the *Tuttle* Class Action as a mandatory limited fund class action as authorized by the March 13, 2018 Order of the New Hampshire Supreme Court in this matter.

5. The New Hampshire Supreme Court has determined this Court has broad equitable powers as well as express authority under Sup. Ct. R. 16 (h) to fashion remedies for class members from these tendered funds.

6. The approximately \$25,500,000 in net assets that will remain in the NHMMJUA estate after the initial \$60,000,000 distribution hereby authorized is a reasonable reserve to pay the remaining costs and obligations of the NHMMJUA in receivership, including the administrative and operational expenses of the NHMMJUA, the expenses of the receivership, potential tax obligations of the NHMMJUA, and to provide a reasonable reserve for unknown and unexpected obligations.

7. Under RSA 404-C:17, III, the Receiver is to tender the remaining assets of the NHMMJUA into the *Tuttle* Class Action for the purposes of adjudicating all policyholder claims in those funds. Under RSA 404-C:17, IV, the Receiver is not to be involved in the determination of policyholder rights by the interpleader court. The Receiver and the NHMMJUA have no interest in the funds to be so tendered into the *Tuttle* Class Action.

8. The Receiver's Amended Motion for Approval of Interim Distribution, Interpleader and Related Discharge is GRANTED as follows.

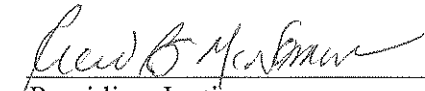
9. The Receiver is authorized to distribute \$60,000,000 from the assets of the NHMMJUA in cash and/or Treasury Bills at market value and to tender those funds into the *Tuttle* Class Action by promptly causing their transfer to the Citizens Bank account of Nixon Peabody, LLP as Class Counsel, Account Number 1013340, established by class counsel pursuant to the separate order of this Court (the "*Tuttle* Class Action Account").

10. Upon transfer of the \$60,000,000 into the *Tuttle* Class Action Account, the Receiver is discharged from any responsibility for the transferred funds. The Receiver (including the Special Deputy Commissioner and the Receiver's consultants, agents, and attorneys) shall have no obligations or liabilities with respect to the transferred funds.

11. Upon transfer of the tendered funds into the *Tuttle Class Action* Account, those funds shall not be part of the NHMMJUA estate, and they are transferred free and clear of any rights of the NHMMJUA, the Receiver, or the NHMMJUA's creditors. All claims against the NHMMJUA or the Receiver are limited to and may only be satisfied from the assets remaining in the NHMMJUA estate.

So Ordered.

Dated: 9/11/12



Presiding Justice

**RICHARD B. MCNAMARA
PRESIDING JUSTICE**