

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

Merrimack Superior Court
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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**

Enclosed please find a copy of the court's order of September 06, 2018 relative to:

Order on Custody of Excess Surplus Funds

filed into #217-2010-CV-414 and copied into 217-2015-CV-347

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

Docket No. 217-2010-CV-00414

Georgia Tuttle, M.D., LRGHealthcare and Derry Medical Center,
On Behalf of Themselves And Those Similarly Situated

v.

New Hampshire Medical Malpractice Joint Underwriting Association

2018 APR 10 AM 10:22

SUPERIOR COURT

029176

~~PROPOSED~~ ORDER ON CUSTODY OF EXCESS SURPLUS FUNDS

After consideration of the Receiver’s proposed bill of interpleader tendering funds to this Court pursuant to RSA 404-C:17, and hearing from counsel in both actions at a joint status conference, the Court hereby finds and rules as follows:

1. The Court accepts jurisdiction and control over all funds (including investments) tendered by the Receiver from the NHMMJUA Receivership proceeding into this action (the “*Tuttle* Class Action”) “for purposes of adjudicating all policyholders claims in these funds” as provided by RSA 404-C:17.

2. 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 this case as a mandatory limited fund class action as authorized the March 13, 2018 order of the New Hampshire Supreme Court in this matter.

3. Class Counsel is authorized to open a custodial account at Citizens Bank for the purpose of holding all funds tendered to this Court by the Receiver. The account shall be in the following name: "Nixon Peabody LLP as Court Appointed Class Counsel in the matter *Tuttle v.*

NHMMJUA, et al., Docket No. 217-2010-CV-414 (Merrimack County Superior Court, New Hampshire).” The Court authorizes Nixon Peabody to utilize its W-9 for the purposes of opening this account and Nixon Peabody as class counsel shall be responsible for such reporting and payment of taxes on investment returns as is required by law. The Court, however, retains exclusive jurisdiction and control over this account. Class Counsel has no discretion to disburse funds. Disbursement of funds shall only occur upon further order of this Court.

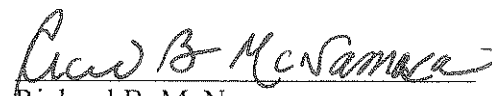
4. Any taxes, costs or other charges incurred by Class Counsel on account of investment earnings under this management agreement or in the administration thereof from opening until distribution shall be treated as a reimbursable expense from the Distribution Fund and may be tendered to the Court for approval of the same.

5. Class Counsel shall provide the Receiver with account and routing information for the custodial account. Upon receipt of this account and wiring information, the Receiver shall wire the tendered funds or investments to the custodial account. Once the tendered funds or investments are so transferred, the Receiver is discharged from all claims, liabilities, and obligations with respect to the tendered funds (including investments) and shall not further participate in this action with regard to these tendered funds.

6. Class Counsel shall maintain the tendered funds in short term instruments such as Treasury Bills or equivalents. Class Counsel has no discretion to provide any differing investment instructions.

SO ORDERED

Date: ~~August~~ ^{Sept. 6} _____, 2018


Richard B. McNamara
Presiding Justice