

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.

**CLASS REPRESENTATIVES' STATUS REPORT ON
CLASS NOTICE AND RELATED ISSUES¹**

Class Representatives Georgia Tuttle, M.D., LRGHealthcare, and Derry Medical Center, on behalf of themselves and the class of similarly-situated policyholders of the New Hampshire Medical Malpractice Joint Underwriting Association (“NHMMJUA”), and in advance of the Final Hearing scheduled for August 21, 2018, hereby provide this Status Report on Class Notice and Related Issues.

1. Attached is a true and accurate copy of the Class Notice and Class Representatives' Proposed Plan of Allocation and Distribution of Excess Surplus Funds Remaining After the Liquidation of the NHMMJUA (“Plan of Allocation”) sent to Class Members. *See* Exhibit A. Class members who were new policyholders after the Initial Distribution were provided an additional letter in its notice packet. *See* Exhibit B. These materials have been posted at www.nhmmjua-class-action.com.

¹ Capitalized terms have the same meaning as contained in the Plan of Allocation.

2. At the instruction of Class Counsel, and under the authorization of this Court, on June 15, 2018, the Claims Administrator mailed 3,566 notices to Class Members.² Of this total mailing, 750 notices were returned as undeliverable. By using an Advanced Address Search program, the Claims Administrator was able to re-mail 299 to new addresses of the 750 returned notices. Based on this, the Claims Administrator reports direct notice to 3,115 Class Members. This results in 87.3 percent of Class Members receiving direct notice. For comparison purposes, the notice provided in connection with the Initial Distribution Actions reached 88 percent of Class Members. *See* Exhibit C, Affidavit of Lori Castaneda dated April 20, 2012. The Claims Administrator indicated then and reiterates now that these percentages represent a very good deliverability rate.

3. In response to the Notice, the Claims Administrator received 178 postcards from Class Members that conveyed updated information and email addresses. The return postcard was included with the Class Notice to invite and facilitate the provision of such information. This information is being used by the Claims Administrator to communicate with Class Members.

4. As ordered by this Court and as detailed in the Class Notice, Class Members were required to provide to Class Counsel written objections to the Plan of Allocation, Request for Case Contribution Awards and Request for Attorney's Fees, as well as requests to be heard at the Final Hearing, postmarked no later than July 30, 2018.

5. **No Class Members** have objected to the Plan of Allocation.

6. **No Class Members** have asked to be heard at the Final Hearing.

² The Initial Distribution identified more than 6,200 unique policies. Because many Class Members hold multiple policies, the number of notices necessary was reduced significantly from that needed in connection with the Initial Distribution Actions.

7. Certain Class Members have contacted Class Counsel with updated contact or policyholder information. That information has been provided to the Claims Administrator for use in connection with issuing distributions.

8. Class Counsel has opened a custodial account for the benefit of the Class at Citizens Bank, a national bank with locations in New Hampshire, Account 1013340 (“Custodial Account”). On August 10, 2018, Class Counsel filed a proposed order providing for the maintenance and judicial supervision of this account through final distributions to Class Members.

9. Professor William B. Rubenstein, the Bruce Bromley Professor of Law at Harvard Law School and the sole author of *Newberg on Class Actions*, will be present at the Final Hearing to address any questions the Court may have on the opinions and conclusions contained in his expert report and affidavit.

Respectfully submitted,

Class Representatives Georgia Tuttle, M.D.,
LRGHealthcare, and Derry Medical Center

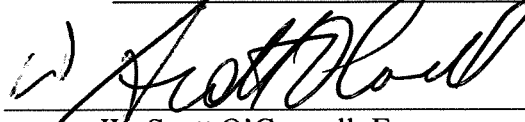
Dated: August 14, 2018



Kevin M. Fitzgerald, Esquire (NH BAR #806)
W. Scott O’Connell, Esquire (NH BAR #9070)
NIXON PEABODY LLP
900 Elm Street, 14th Floor
Manchester, NH 03101-2031
TEL: 603-628-4000

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of August, 2018, a copy of the foregoing *Status Report on Class Notice and Related Issues* was served by first class mail, postage prepaid, on J. David Leslie, Esquire, Eric A. Smith, Esquire, J. Christopher Marshall, Esquire, and Daniel J. Mullen, Esquire, counsel of record, and posted at www.NHMMJUA-Class-Action.com.

A handwritten signature in black ink, appearing to read "W. Scott O'Connell", written over a horizontal line.

W. Scott O'Connell, Esq.

EXHIBIT A



Control No: 1234567890
Claimant ID: JUB011111111

JUB1234567890



JANE CLAIMANT
123 4TH AVE
APT 5
SEATTLE, WA 67890

**If you purchased an insurance policy from the New Hampshire Medical
Malpractice Joint Underwriting Association (“NHMMJUA”)
you could receive money from a Class Action Plan of Allocation.**

Read this Notice carefully-it summarizes your rights.

What is this case about?

The NHMMJUA is dissolving. In 2015, the New Hampshire legislature enacted RSA 404-C:15-17, appointing a Receiver to wind down the NHMMJUA and directing certain funds remaining in the NHMMJUA be placed under Court control for return to NHMMJUA Policyholders through a class action consistent with previously adjudicated rights of Policyholders. On August 25, 2016, the Receiver of the NHMMJUA closed an Assumption Agreement transaction with The Medical Protective Company (“MedPro”) for the assumption of the NHMMJUA insurance obligations. For this assumption, MedPro was paid \$23,156,298.22. Approximately \$85 million remains in the custody of the Receiver. Although some of these remaining funds may be necessary to resolve further expenses and obligations of the NHMMJUA, a substantial portion is expected to be available for return to Policyholders. Class Counsel and the Receiver have negotiated, and the Receiver has obtained, court approval to transfer an initial interpleader of \$60,000,000 to be administered by the Court. Additional amounts remaining after the Receiver has paid or resolved the NHMMJUA’s final expenses and obligations will be interpleaded in one or more subsequent transfers. These funds collectively are in addition to the \$110,000,000 previously recovered and distributed to Policyholders. The Court has preliminarily certified this case as a class action and will consider final certification of the class and the enclosed Plan of Allocation, Case Contribution Awards, and Request for Attorneys’ Fees (“Plan of Allocation”) at a hearing to be held on **AUGUST 21, 2018**. You will **NOT** receive another notice of this hearing date. The Court has appointed **Kevin M. Fitzgerald** and **W. Scott O’Connell** of Nixon Peabody LLP as Class Counsel. If you are a Class Member, your rights will be affected by this legal action.

Who is a Class Member?

The Class includes “All entities or individuals who purchased insurance from the NHMMJUA on or after January 1, 1986.” *Individuals insured under the policies are **not** Class Members unless they can provide evidence of direct payment of premiums for coverage.* If you were a Class Member of the prior class action, ***Tuttle, et al. v. NHMMJUA***, Merrimack County Superior Court Docket No. 217-2010-cv-00414 (“Prior *Tuttle* Class”), you are also a member of this Class.



What is my Share of the Plan?

Class Counsel has proposed a Plan of Allocation, a copy of which is enclosed. This proposal follows the same method of distribution approved in the Prior *Tuttle* Class Action. If approved by the Court, Class Members may be entitled to a percentage share of the distribution equal to the Policyholder’s percentage of total premiums paid since January 1, 1986. This *pro rata* distribution may be reduced by Court-approved awards to the lead plaintiffs, costs of notice and administration, and attorneys’ fees, costs, and expenses (“Net Distribution Fund”) described in the enclosed Plan of Allocation.

Like the Prior *Tuttle* Class, it is possible that there will be more than one distribution to Class Members. This is because approximately \$25 million has been reserved from distribution in the event the IRS contests any of the final tax filings made by the NHMMJUA. The deadline for the IRS to contest these filings is September 2, 2018. The full amount of funds available for distribution should be known later this year.

What must I do to participate?

If you received this notice addressed to you directly, you have been identified as a Class Member and you do not need to take any action if you wish to participate in this class action and obtain a portion of the Net Distribution Fund. If premiums for a NHMMJUA policy were paid by a medical practice, hospital or other corporate entity, the entity is a Class Member. Named insureds are **not** class members unless they provide, or previously provided, proof they individually paid the premiums. If you received a payment in the Prior *Tuttle* Class distribution, you have already fulfilled the requirements to receive a payment from this new distribution.

If you did not receive this notice addressed to you directly, but believe that you are a Class Member, you must contact the Claims Administrator IN WRITING on or before **JULY 16, 2018**, so the validity of your claim can be researched and determined.

Is there any other way I can get a distribution from the NHMMJUA other than this Class Action?

No. The Court overseeing this proceeding has declared this to be a “Mandatory Class.” This means that any Policyholder who wants a portion of the Net Distribution Fund must participate in this proceeding. There is no right to “opt out” of this action and pursue an individual claim.

What happens next?

You should review the Plan of Allocation. If you are a Class Member and agree with the plan, you do not need to do anything further. If you are a Class Member and object to any portion of the plan, you must state your objection IN WRITING and mail it to Class Counsel on or before **JULY 30, 2018**. Objections postmarked after this deadline will not be considered. If you wish to speak at the Final Hearing about your objection, you must mail a written request to Class Counsel on or before **JULY 30, 2018**. Requests to speak at the Final Hearing postmarked after this deadline will not be considered.

If you believe that you are a Class Member but did not receive a prior distribution or did not receive this notice directly, you must contact the Claims Administrator IN WRITING at the address listed below on or before **JULY 16, 2018**. Written requests postmarked after this deadline will not be considered.

Where can I learn more information?

Information will be posted at www.nhmmjua-class-action.com. You can check that site periodically for updates.

Who is Class Counsel?

The Court has appointed the same attorneys who handled the Prior *Tuttle* Class action: Kevin M. Fitzgerald and W. Scott O’Connell, Nixon Peabody, LLP, 900 Elm Street, Manchester, NH 03101. Class counsel’s telephone number is (603) 628-4000. These attorneys have worked with the Lead Plaintiffs since 2012 to preserve, protect, and defend the Policyholders’ rights to a further distribution of funds.



How will Class Counsel be paid?

Class Counsel will be paid in the same manner as in the Prior *Tuttle* Class Action. As detailed in the Plan of Allocation, Class Counsel asks the Court to award a percentage of the total recovery secured for this distribution. This is what the court ordered in the Prior *Tuttle* proceeding. There will be a public hearing to consider any objections from Class Members concerning this issue. In the Prior *Tuttle* Class action, there were no objections.

Who is the Claims Administrator?

Class Counsel has retained Garden City Group, LLC (“GCG”) to serve as Claims Administrator in this proceeding. Its contact information is:

NHMMJUA Class Action
c/o GCG
P.O. Box 10253
Dublin, OH 43017-5753
Toll Free Number: 1 (888) 714-2403.

What should I do if I have questions?

If you have further questions about this process or your rights in this proceeding, you should contact Class Counsel or the Claims Administrator. **DO NOT CONTACT THE COURT** AS IT WILL NOT BE ABLE TO ANSWER QUESTIONS ABOUT YOUR INDIVIDUAL SITUATION.

Schedule of Important Dates

Unless otherwise modified by the Court, important dates of upcoming events include:

- June 15, 2018:** (1) Notice to Class Members to be sent with Plan of Allocation;
(2) Class Counsel’s deadline to file Plan of Allocation.
- July 16, 2018:** Postmark deadline for written notice to Claims Administrator at the address above for those who did not receive a distribution in *Tuttle II* but who believe he/she/it is a Class Member.
- July 30, 2018:** (1) Postmark deadline for written notice to Claims Administrator at the address above from Class Members or Putative Class Members with any objection to the Plan of Allocation;
(2) Postmark deadline for written notice to Claims Administrator at the address above from Class Members or Putative Class Members who wish to speak to the Court at the Final Hearing scheduled for August 21, 2018 concerning the Plan of Allocation.
- August 21, 2018:** Court hearing on the Plan of Allocation at 10:00 am, Merrimack County Superior Court, Concord, New Hampshire.

Distributions to Class Members will not occur until the Court approves the Plan of Allocation and any appeal period associated with such order has expired.

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SUPERIOR COURT

Docket No. 217-2010-CV-414

Georgia Tuttle, M.D., et al.

vs.

New Hampshire Medical Malpractice
Joint Underwriting Association, et al.

**CLASS REPRESENTATIVES' PROPOSED PLAN OF ALLOCATION
AND DISTRIBUTION OF EXCESS SURPLUS FUNDS REMAINING AFTER
THE LIQUIDATION OF NHMMJUA**

The Plaintiffs—who are the Court-appointed Class Representatives—submit this Proposed Plan of Allocation (“Proposed Plan”) for the fair, equitable, and reasonable allocation and distribution of excess surplus funds to Class Members resulting from the liquidation of the New Hampshire Medical Malpractice Joint Underwriting Association (“NHMMJUA”).

Current Procedural Posture of the Case

1. On May 24, 2018, this Court granted preliminary certification of a class that includes policyholders who purchased accessible and participating medical malpractice insurance coverage from the NHMMJUA from January 1, 1986, through December 31, 2015 (the “Class”). A copy of this Order may be viewed at www.nhmmjua-class-action.com. Plaintiffs are the designated Class Representatives. The undersigned attorneys have been appointed as Class Counsel.

2. On August 21, 2018, the Court will have a final hearing to confirm final class certification (the “Final Hearing”). The Court will also consider other issues including the fair, equitable, and reasonable allocation of funds to Class Members and an award of attorneys’ fees

to Class Counsel for their work to protect and preserve assets of the NHMMJUA for the benefit of the Class since the initial \$110 million distribution ordered in October 2012. Since that initial distribution, the work of the Class Representatives and Class Counsel has resulted in a new common fund of approximately \$85 million, the net proceeds of which will be available for distribution to the Class as ordered by the Court after the August 21, 2018 Final Hearing.

3. The Class Representatives, who served that role in the initial class distribution, have considered these complex issues in some detail. As a result of that consideration, as well as their prior experience with these issues, the Class Representatives have developed this Proposed Plan for consideration by the Class and the Court.

Summary of Relevant Facts

4. On October 9, 2012, the Merrimack Superior Court entered an order approving the Class Representatives' prior Plan of Allocation for the distribution of \$110 million to class members. Class Counsel completed that distribution to then-existing class members with the assistance of the Claims Administrator. The overwhelming majority of class members, their successors, or heirs were located and 98.5 percent of the net proceeds were distributed.

5. In the weeks after the initial distribution was approved, activities were undertaken by various state actors to examine the NHMMJUA to determine whether it needed to be reformed, changed, or dissolved. All of these activities threatened in material ways the vested contractual rights of policyholders established in *Tuttle I* and *Tuttle II* to NHMMJUA excess surplus funds.

6. The Class Representatives and Class Counsel, Nixon Peabody LLP, have closely monitored these activities and have taken action during the past five years to protect the vested rights of policyholders and to preserve NHMMJUA assets for a further distribution(s).

Specifically, the Class Representatives and Nixon Peabody have been materially involved with

the following proceedings occurring after the *Tuttle II* final hearing and distribution (collectively, the “Post Distribution Actions”), all of which threatened the availability of further excess surplus funds to policyholders:

1. *First Legislative Study Commission regarding the future of the NHMMJUA*

After enacting RSA 404-C:14, the Legislature authorized different study commissions to examine possible changes to NHMMJUA that might have impacted the excess surplus funds owed to policyholders. *See* SB 170, Chapter 201:2, Laws of 2011; HB 489, Chapter 293:2, Laws of 2014. This commission examined many alternatives including dissolution, sale, conversion, and merger. All options created risk that excess surplus funds might be impaired and not available to policyholders. Nixon Peabody attended, provided testimony, and otherwise participated in all hearings about the future of the NHMMJUA. In all such proceedings, Nixon Peabody advocated for protecting the vested rights of policyholders to further excess surplus funds. Among other things, Nixon Peabody communicated that any reformulation of the NHMMJUA that impaired the vested rights of policyholders would likely result in further legal action.

2. *Second Legislative Study Commission regarding the future of the NHMMJUA*

A second legislative study commission was required by HB 489, Chapter 293:2, Laws of 2014. This commission continued the work of the first. Nixon Peabody once again, attended, provided testimony, and otherwise participated in all hearings of the second commission. In all such proceedings, Nixon Peabody advocated for protecting the vested rights of policyholders to further excess surplus funds. Among other things, Nixon Peabody communicated that any reformulation of the NHMMJUA that impaired the vested rights of policyholders would likely result in further legal action.

3. *2015 Department of Insurance Public Hearings and Report on
"Availability of Medical Malpractice Insurance"*

The Department of Insurance ("DOI") examined the NHMMJUA, as well as other market participants, to determine whether there were sufficient insurance options from the private market such that the NHMMJUA was no longer a necessary residual market mechanism. The DOI took written comments and testimony from the public. Nixon Peabody prepared certain policyholders for testimony, provided both oral and written input, reviewed and analyzed other submissions, and continued advocacy for protecting the vested rights of the putative class. In its report, the DOI concluded that the NHMMJUA was no longer needed and proposed legislation for its dissolution. The DOI's proposed legislation failed to provide adequate protections for the vested rights of the putative class. Nixon Peabody continued its advocacy for the putative class with stakeholders and continued to inform that the failure to provide policyholder protections would likely result in further litigation.

4. *2015 N.H. Laws Chapter 15-0265 (codified at RSA 404-C:17)*

The Senate and the House took up competing versions of legislation concerning the dissolution of the NHMMJUA. HB 489 mirrored the DOI's proposed legislation and failed to adequately protect the vested rights of policyholders. Testimony provided by the DOI indicated a position that the prior class had no further rights to excess surplus funds and that only a small number of recent policyholders who paid premiums after the hearing ordering the initial distribution arguably were entitled to a limited premium refund. Indeed, the DOI's legislation proposed remaining funds escheating to the state. The proposed NHMMJUA liquidation and related regulatory activity thus suggested another effort to confiscate policyholders' excess surplus funds for state use.

Nixon Peabody provided extensive opposition, written advocacy, and analysis in this agency process that indeed policyholders had continuing vested rights to any newly-identified surplus funds. Recognizing the possibility of further litigation to protect funds for policyholders, the Senate, with considerable assistance from the Class Representatives and Nixon Peabody, made significant changes to HB 489 that expressly acknowledged the vested rights of policyholders.

Working with representatives of the Governor, the Attorney General, the DOI, legislative leadership, and members of the prior class, Nixon Peabody was able to avoid further litigation by helping to negotiate additional changes that: (1) recognized the continuing vested rights of policyholders; (2) compelled the return of excess surplus funds to policyholders through an adjudication process managed by this Court in the docket of the initial distribution; (3) granted standing to policyholders in the NHMMJUA liquidating receivership in order to ensure a commercially-reasonable process for the assumption of insurance obligations and the resulting preservation of surplus funds; (4) required the payment of excess surplus funds into this Court and docket for the adjudication of distributions to policyholders through a class action; and (5) the State of New Hampshire nor any of its agencies had any rights to these funds.

5. In the Matter of the Winding Down of the New Hampshire Medical Malpractice Joint Underwriting Association, *Docket No. 217-2015-CV-00347 (Merrimack County)*

Nixon Peabody appeared for and represented the Class Representatives in the statutorily-directed dissolution of the NHMMJUA. In that role, Nixon Peabody regularly consulted with the Receiver's counsel on many issues, including the bid process for selecting a company to assume the NHMMJUA insurance contracts, the qualifications of the bidders and proposals, the consideration paid for the assumption of the contracts, the indemnities provided, notice to policyholders, counsel and assistance with legal arguments to reduce state tax obligations, review

of monthly status reports, a partial distribution to policyholders, an appropriate reserve to satisfy any potential tax obligations, and joinder in a requested release and discharge for the Receiver upon partial payment of excess surplus funds. Nixon Peabody attended all of the hearings concerning this liquidation proceeding. All of the actions above were intended to minimize expenses in order to maximize the new common fund for distribution.

6. *Renewed Class Action in Superior Court to Adjudicate the Distribution of Excess Surplus Funds in the Tuttle II Proceeding. See RSA 404-C:17, III; Tuttle v. New Hampshire Medical Malpractice Joint Underwriting Ass'n, et al., Docket No. 217-2010-CV-00414 (Merrimack County)*

Nixon Peabody prepared and filed multiple iterations of pleadings concerning class certification, appointment of counsel, and approval of notice. Nixon Peabody also briefed court-raised issues such as jurisdiction, class certification, adequacy of class representatives in the event of conflict issues, authority for an interpleader process in the absence of a rule of procedure, the authority for a mandatory class in the absence of a rule of procedure, and compliance with the Order directing the preparation and filing of an Interlocutory Appeal to the New Hampshire Supreme Court.

7. *Rule 9 Interlocutory Appeal Without Ruling to the New Hampshire Supreme Court, New Hampshire Supreme Court No. 2017-0427*

By order of the trial court, Nixon Peabody prepared a Rule 9 Interlocutory Appeal Without Ruling on two questions: (1) the authority of the trial court to administer a mandatory class; and (2) if so, whether substantially the same process as used in the initial class distribution proceeding could be used to adjudicate the amount of distributions owed to policyholders. Nixon Peabody prepared the interlocutory statement, appeared for hearing on the same, filed the appeal with the Supreme Court, prepared and filed the appendix, prepared and filed a Motion for Summary Affirmance, and prepared and filed the appeal brief on the questions accepted.

Nixon Peabody analyzed the Supreme Court's Remand Order authorizing a mandatory class and the use of the prior process and procedures to determine amounts to be distributed.

8. *Remand to Superior Court for the Adjudication of Distributions owed to Policyholders. See RSA 404-C:17, III; Tuttle v. New Hampshire Medical Malpractice Joint Underwriting Ass'n, et al., Docket No. 217-2010-CV-00414 (Merrimack County)*

Nixon Peabody revised all pleadings, class notice, and Plan of Allocation to conform to the Remand Order and renewed its Motion for Preliminary and Final Class Certification, Appointment of Counsel, and Approval of Notice. Nixon Peabody also resumed discussions with Receiver's counsel, proposing an increased initial distribution of \$60 million with a \$25 million reserve to be held until the limitations period to challenge the NHMMJUA federal tax filings lapses on September 2, 2018.

Significantly, all of the Post Distribution Actions were undertaken on behalf of the Class Representatives as well as 313 other individual policyholders who retained Nixon Peabody. While Nixon Peabody was not formally re-appointed as Class Counsel until recently, such work was done by, and mindful of, the interests of the putative class, and the putative class was benefited by the creation and preservation of the new common fund.

During nearly the six years since the initial class distribution was ordered, Nixon Peabody has acted in the Post Distribution Actions to protect additional excess surplus funds for all policyholders under the precedent that this firm helped establish. The work has been challenging, ongoing and occurred in multiple fora where efforts to deprive policyholders of their continuing vested rights were attempted. Throughout this nearly six-year post distribution period, Nixon Peabody has needed to assert policyholder rights, often with the specter of further litigation, to protect these substantial—indeed historic-- surplus funds from confiscation.

7. The Remand Order confirmed the NHMMJUA's liability to pay excess surplus funds into court for distribution to policyholders by way of a mandatory, so-called "no opt out" class action. The only issue remaining to be determined in the class action is the amount of distribution to each policyholder.

8. To facilitate a fair, efficient, and equitable procedure for determining the amount of distribution to each Class Member, the Class Representatives propose the following Plan of Allocation. The method of determining a Class Member's share is the same method used in the initial distribution.

Certain Definitions Applicable to the Proposed Plan of Allocation

As used in this Plan, the following terms shall have the following meanings:

9. "**Administration Costs**" means the all costs necessary to implement this Plan of Allocation, including the costs of the Claims Administrator for services provided including providing Notice and for issuing distributions.

10. "**Binding Arbitration**" means the process that will be used if there are competing claims to the distribution owed, e.g., to a Named Insured who actually paid premiums for coverage or to a representative of a defunct or deceased policyholder, that cannot be resolved by the Claims Administrator. The arbitration shall be conducted in New Hampshire and shall involve all competing claimants to the disputed share. The arbitration shall be governed by New Hampshire law without resort to its choice of law principles. All attorneys' fees for any arbitration shall be paid by the respective competing claimants and the cost of the arbitrator shall be paid by the Claims Administrator from the policyholder distribution at issue.

11. "**Claims Administrator**" means Garden City Group, LLC ("GCG"), which shall administer the distribution of funds to class members.

12. **“Class” and “Class Members”** mean all Policyholders or Named Insureds that purchased and paid the premiums for Participating and Assessable insurance coverage from the JUA from January 1, 1986, until the date of the Final Hearing. Only the person or entity that purchased Participating and Assessable insurance coverage and paid the related premiums as reflected on the books and records of the NHMMJUA, or as recognized by the Claims Administrator upon a timely Proof of Claim, or as recognized by the Binding Arbitration process, shall be eligible to receive proceeds from this Plan. Named Insureds who actually paid the premium for coverage or representatives of defunct or deceased Policyholder(s) may be eligible to receive proceeds from this distribution upon a timely and valid claim made to the Claims Administrator to be recognized as a Class Member. Disputes by rival claimants to such shares shall be resolved by Binding Arbitration.

13. **“Class Action”** means this proceeding to determine the amount to be distributed to Class Members. The Court has ordered that this will be administered a mandatory class, which means no Class Member can opt out of this proceeding to pursue a different action. This proceeding is the only means by which policyholders can obtain a portion of excess surplus funds resulting from the dissolution of the NHMMJUA.

14. **“Class Counsel”** means Nixon Peabody LLP.

15. **“Class Representatives”** mean the three named plaintiffs in this action, Georgia Tuttle, M.D., Derry Medical Center, and LRGHealthcare

16. **“Common Fund”** means the aggregate funds protected and secured by the Class Representatives and Class Counsel for the benefit of Class Members.

17. **“Distribution Fund”** means the sum of (i) the initial amount of SIXTY MILLION DOLLARS (\$60,000,000) tendered pursuant to RSA 404-C:17, III; and (ii) such part

of the Receiver's Reserve remaining after all of the obligations of the NHMMJUA have been reasonably provided for from the Reserve, resolved or satisfied.

18. **"Effective Date of Plan" or "Effective Date"** means the date upon which the Final Order becomes a judgment with all applicable appeal periods having expired.

19. **"Final Hearing"** means the hearing scheduled for August 21, 2018, that will be held to consider final class certification as well as all remaining issues, including the entry of judgment, the Plan of Allocation, case contribution awards for Class Representatives, and attorneys' fees and costs.

20. **"Final Order"** means the proposed order to be entered by the Court approving the Distribution substantially in the form attached to the Motion for Class Certification.

21. **"Named Insureds"** means the Person listed as the Client Name in the books and records of the NHMMJUA.

22. **"Net Distribution Fund"** means the Distribution Fund less (i) any Administration Costs as defined herein; (ii) any case contribution awards to the Class Representatives; and (iii) any attorneys' fees and costs awarded to Class Counsel.

23. **"Notice"** means the notice approved by the Court for publication.

24. **"Person"** means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

25. **"Plan of Allocation" or "Plan"** means this document.

26. **“Policyholder”** means the Person listed as the Client Name or the Firm Name in the books and records of the NHMMJUA and who paid the premiums for the insurance coverage.

27. **“Prior Distribution”** or **“Initial Distribution”** means the return of the One Hundred Ten Million Dollars (\$110 million), net of expenses, case contribution awards, and attorneys’ fees and costs, approved by the Court in October 2012.

28. **“Total Premiums”** means all *premiums* collected by the NHMMJUA net of any applicable credits for the period January 1, 1986, through the date of the Final Hearing.

29. **“Total Net Premiums”** means all premiums paid by Class Members net of any applicable credits for the period January 1, 1986, through the date of the Final Hearing.

The Net Distribution Fund

30. The Distribution Fund is the total common fund of approximately \$85 million resulting from the work of the Class Representatives and Nixon Peabody over the past six years. All approved administrative fees and expenses, case contribution awards, and attorneys’ fees and costs will be paid from the Distribution Fund. The funds remaining after these payments constitute the Net Distribution Fund, which will be distributed to the Class Members as ordered by the Court.

Determination of a Class Member’s Share of the Net Distribution Fund

31. After considering the cost, complication, and potential adverse tax implications of other allocation methods, the Class Representatives and Class Counsel recommend as follows: A fair, efficient, reasonable, and equitable method for determining a Class Member’s share of the Net Distribution Fund payable to such Class Member is to calculate the percent of Total Net Premium paid by each Class Member and apply that same percentage against the Net Distribution Fund. This method constitutes a return of premiums paid as opposed to an

investment product in which interest is accrued for excess premiums paid which, if utilized, could result in adverse federal tax obligations. The Claims Administrator shall utilize policyholder data, provided by the NHMMJUA and approved by Class Counsel, to calculate the percentage share and amount allocated to each Class Member. The Claims Administrator will provide Class Counsel a master list of distributions calculated for each Class Member. Class Counsel will file with the Court, prior to issuing and distributions, the administrative costs and fees incurred by the Claims Administrator that will be deducted from the Distribution Fund. After passage of the Effective Date, Class Counsel is authorized to pay all approved case contributions awards and attorneys' fees and costs from the Distribution Fund. Also after the passage of the Effective Date, Class Counsel is authorized to make distributions to Class Members from the Net Distribution Fund. Distributions to Class Members from the Net Distribution Fund shall be only after the Effective Date and after: (i) all matters with respect to case contribution awards, attorneys' fees and costs, and disbursements have been resolved by the Court; and (ii) all Administration Costs have been approved and paid.

32. All distributions from the Net Distribution Fund pursuant to this Plan shall be deemed final and conclusive against all Class Members.

33. All proceedings with respect to the administration of this Plan by Class Counsel or the Claims Administrator shall be subject to the jurisdiction of the Court.

34. All disputes between or among Policyholders and Named Insureds as to the rights in any distribution shall be resolved by Binding Arbitration.

35. Funds remaining in the Net Distribution Fund six months after the distribution has been issued shall be transferred to the New Hampshire State Treasurer as provided in 404-C:17 IV (a).¹

36. If you object to any of the terms above and want the Court to consider your objection, you must send to Class Counsel a *written* objection postmarked on or before July 30, 2018. Your objection must state the reasons for the objection and why you do not want the Court to proceed in this fashion. If you want to speak at the Final Hearing on this issue, you must also make that request in this objection.

Case Contribution Awards for the Three Class Representatives

37. Class Representatives Georgia Tuttle, Derry Medical Center, and LRGHealthcare were appointed as the class representatives in this matter. They also served that role in the prior class action proceedings.

38. The Class Representatives have been active with Class Counsel throughout the Post Distribution Actions to help preserve and protect the excess surplus funds for distribution to Class Members. This help has taken time and commitment above and beyond other Class Members.

39. As is usual and customary in class action litigation, courts consider case contribution awards for class representatives who have provided service to class counsel in securing the common fund.

40. In recognition of this superior commitment and value-added service, Class Counsel requests that a contribution award of Twenty-five Thousand Dollars (\$25,000) be given

¹ RSA 404-C:17 IV (a) states: Funds that cannot be distributed to a policyholder in the interpleader proceeding referenced in this section due to the inability to locate the policyholder after reasonable efforts shall not be subject to RSA 471-C and shall be transferred to a fund within the treasury to be administered by the department of health and human services which shall utilize such undistributed funds to provide grants in aid to health care providers servicing medically underserved populations through the department's state loan repayment program.

to each of the three Class Representatives and treated as an expense of the Common Fund. Class Counsel believes that this award appropriately recognizes the significant contributions made by these Class Representatives in helping to secure this award. Case contribution awards were approved to certain Class Members for certain substantial contributions provided in advance of the Prior Distribution.

41. If you object to the Case Contribution Award for the Class Representatives and want the Court to consider your objection, you must send to Class Counsel a *written* objection postmarked on or before July 30, 2018. Your objection must state the reasons for the objection and why you do not want the Court to proceed in this fashion. If you want to speak at the Final Hearing on this issue, you must also make that request in this objection.

Award of Attorneys' Fees and Costs

42. As it did in connection with the Prior Distribution, Class Counsel will file a motion seeking an award of the costs incurred as well as twenty-five percent (25%) of the Common Fund for its fees.

43. Class Counsel has worked through all of the Post Distribution Actions to protect and preserve the Common Fund on a contingency fee basis. The Post Distribution Actions have resulted in a Common Fund of approximately Eighty-Five Million Dollars (\$85 million). This is in addition to the One Hundred Ten Million Dollars (\$110 million) secured for the Prior Distribution. Class Counsels' actions since 2009 have secured excess surplus funds for Class Members of approximately One Hundred Ninety-Five Million Dollars (\$195 million).

44. No Class Members have paid any fees in connection with the approximate Eighty-Five Million Dollars (\$85 million) resulting from the Post Distribution Actions.

45. Class Counsel was retained by 316 individual Class Members with retention agreements that provided for a twenty-five percent (25%) contingency fee award. While New

Hampshire law permits a higher contingency fee percentage, Class Counsel agreed to a lower percentage than permitted by law.

46. The law is well-developed that a percentage of the Common Fund is an appropriate way to compensate class counsel for the work, financial risk, and skill necessary to create the Common Fund.

47. In connection with the Prior Distribution, no Class Members objected to the Class Counsels' request for the fee award of twenty-five percent (25%) of the Common Fund.

48. After considering the factors above and other information submitted, the Court ultimately awarded to Class Counsel twenty-five (25%) percent of the then-existing Common Fund as their fee.

49. Class Counsel requests that this Court award as attorneys' fees to Class Counsel twenty-five (25%) of the new Distribution Fund of approximately \$85 million.

50. If you object to the Attorneys' Fee request and want the Court to consider your objection, you must send to Class Counsel a *written* objection postmarked on or before July 30, 2018. Your objection must state the reasons for the objection and why you do not want the Court to proceed in this fashion. If you want to speak at the Final Hearing on this issue, you must also make that request in this objection.

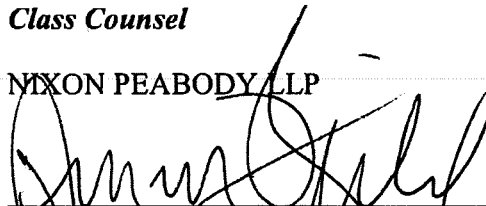
51. On or before July 13, 2018, Class Counsel will file with the Court a Memorandum of Law in Support of the Plan of Allocation, Case Contribution Awards and Attorneys' Fee Award with supporting declarations from the Class Representatives and Class Counsel. Also, Class Counsel anticipate filing a declaration from William B. Rubenstein, the Sidley Austin Professor of Law at Harvard Law School and the author of *Newberg on Class Actions*, concerning Class Counsel's fee request. This additional declaration will be filed in advance of

the Final Hearing. Once filed, these documents may be viewed at www.nhmmjua-class-action.com.

Respectfully submitted,

Class Counsel

NIXON PEABODY LLP

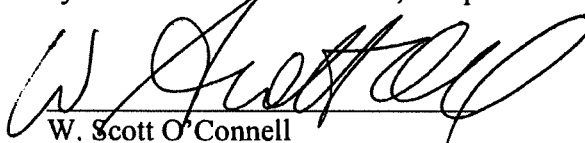


Kevin M. Fitzgerald, Esquire (# 806)
W. Scott O'Connell, Esquire (# 9070)
900 Elm Street, 14th Floor
Manchester, NH 03101
T: (603) 628-4000

Dated: June 15, 2018

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June, 2018, a copy of the foregoing *CLASS REPRESENTATIVES' PROPOSED PLAN OF ALLOCATION AND DISTRIBUTION OF EXCESS SURPLUS FUNDS REMAINING AFTER THE LIQUIDATION OF NHMMJUA* was served electronically and by first-class mail, postage prepaid, on all counsel of record, distributed to Class Member with the Court-Approved Notice by the Claims Administrator, and posted at www.nhmmjua-class-action.com.



W. Scott O'Connell

EXHIBIT B



Control No: 1234567890
Claimant ID: JUB011111111

JUB1234567890



JANE CLAIMANT
123 4TH AVE
APT 5
SEATTLE, WA 67890

Dear Former NHMMJUA Insured:

According to the books and records of the New Hampshire Medical Malpractice Joint Underwriting Association (NHMMJUA), you were a "Named Insured" in an insurance policy issued in or after October, 2012. We recently provided the attached class action notice to the entity reflected in the NHMMJUA records as the purchaser of the policy under which you were insured that it is a Class Member because it paid the premium associated with your coverage. See enclosed notice. For purposes of this distribution, therefore, Class Counsel is treating the entity as the Class Member in connection with a class distribution resulting from the liquidation of the NHMMJUA.

Please be in touch with the entity if you believe this is mistaken and you are entitled to some portion of the distribution because you paid some or all of the premium for your NHMMJUA coverage. If the entity no longer exists, you may contact the Claims Administrator identified in the attached notice before the deadline listed in notice with the necessary information to be recognized as a Class Member.

Sincerely,

Claims Administrator
NHMMJUA Class Action
c/o GCG
P.O. Box 10253
Dublin, OH 43017-5753

QUESTIONS? CALL TOLL-FREE 1 (XXX) XXX-XXXX

To view GCG's Privacy Notice, please visit www.choosegcg.com/privacy-notice/

EXHIBIT C

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 217-2010-CV-414

Georgia Tuttle, M.D., et al.

Plaintiffs,

v.

New Hampshire Medical Malpractice
Joint Underwriting Association, et al.

Defendants.

**AFFIDAVIT OF LORI L. CASTANEDA REGARDING
NOTICE DISSEMINATION AND CLAIMS ADMINISTRATION**

STATE OF WASHINGTON)
)
COUNTY OF KING) ss.:

LORI L. CASTANEDA, being duly sworn, deposes and states as follows:

I. I am a Senior Director of Operations with The Garden City Group, Inc. (“GCG”). The following statements are based on my personal knowledge and information provided by other GCG employees working under my supervision, and if called on to do so, I could and would testify competently about these issues. GCG has been providing comprehensive legal administration services for over 25 years. Our team has served as administrator for over 2,500 cases. In connection with serving as administrator in those cases, we have disseminated over 700 million emails notices, handled over 28 million phone calls, processed over 50 million claims, and distributed over \$33 billion in benefits. GCG’s legal notices have appeared in more than 40 languages in approximately 170 countries.

2. GCG was retained by Lead Counsel for Plaintiffs (“Class Counsel”) in the above-captioned litigation (the “Litigation”) relating to the New Hampshire Medical Malpractice Joint Underwriting Association (“NHMMJUA”) to serve as the Claims Administrator.

3. In its capacity as Claims Administrator, to date GCG has performed, among other duties, the following: (a) received NHMMJUA data from Class Counsel and established a dedicated Settlement database; (b) organized and analyzed the electronic data of over 60,000 NHMMJUA premiums paid records; (c) consolidated individual listings with policy numbers; (d) consolidated individual listings with entities who were the NHMMJUA policyholders (where provided in the data); (e) formatted the Notice of Class Action, Proposed Plan of Allocation, Motion For Attorneys’ Fees and Expenses, Case Contribution Awards and Final Hearing (“Notice”) and the Claim by Affidavit of Named Insured(s) Who Paid Premiums for Coverage, Owner(s) or Administrator(s) of Defunct or Deceased Policyholder of the NHMMJUA or Address Corrections (“Claim Form”); (f) printed and mailed the Notice to all possible addresses, both personal and business, for Class Members; (g) formatted a Publication Notice; (h) published the Publication Notice in seven separate newspapers; (i) worked with the New Hampshire Medical Society (“NHMS”) to research and update addresses for undeliverable notices; (j) established, and are maintaining, a toll-free telephone number (1-888-714-2403) dedicated to this Settlement that is accessible 24 hours a day, 7 days a week; (k) established, and are maintaining, a website (www.NHMMJUA-Class-Action.com) dedicated to this Settlement; (l) worked with Class Members to determine policy numbers, Named Insureds, and premiums paid for specific policyholders; (m) processing undeliverable mail; (n) processing other communications about the Litigation; (o) providing reports to Counsel regarding statistics in the Litigation, and (p) providing this affidavit to Counsel for filing with the Court attesting to the completion of the notice process and about our work as Claims Administrator.

RECEIPT AND HANDLING OF DATA FROM CLASS COUNSEL

4. On March 9, 2012, Class Counsel provided NHMMJUA data with the names, addresses, and historical yearly premiums paid data for 59,420 NHMMJUA payment entries. Additionally, on March 21, 2012, GCG received supplemental data from Class Counsel containing NHMMJUA data for premiums paid in 2011 and 2012, which after cross-checking with the first data received, resulted in 82 additional premiums paid records, representing 70 policies. The total number of records received from NHMMJUA represents 6,240 unique policy numbers.

5. GCG established a dedicated database for the NHMMJUA data. The data was organized and analyzed for three purposes: first, to identify all possible addresses to mail Notices to Class Members; second, to consolidate policies where individuals were listed and place them with the underlying entity that was the policyholder; and third, to distinguish between individual policyholders and entities as policyholders.

NOTICE TO THE CLASS VIA U.S. MAIL

6. GCG established a database for all the records which were to receive Notice. GCG then processed all addresses through the National Change of Address ("NCOA") database.¹

7. GCG thereafter formatted the Notice. A true and correct copy of the Notice is attached hereto as Exhibit A.

8. On March 16, 2012 (the "Notice Date"), Notices were mailed, via first-class U S. Mail, to 8,239 potential Class Members. Of the 8,239 Notices mailed, 48 were mailed to entities with a consolidated list of individuals who were matched to the entities' policy number(s). On

¹ The NCOA database is the official United States Postal Service technology product, which makes change of address information available to mailers to help reduce undeliverable mail pieces before mail enters the mailstream. This product is an effective tool to update address changes when a person has completed a change of address form with the Post Office. The address information is maintained on the database for 48 months.

March 22, 2012, ("Supplemental Notice Date") a supplemental mailing of 213 Notices were mailed to potential Class Members, which was derived from the second set of data received from Class Counsel. A total of 8,452 Notices were mailed to Class Members.

9. GCG also promptly mailed a copy of the Notice and or Claim Form to any potential Class Member who requested one.

10. Of the 8,452 Notices mailed, approximately 885 Notices of unique policyholders were returned as undeliverable. This group of undeliverable notices represents less than 12% of all premiums paid to NHMMJUA. Based on the undeliverable notice statistics, over 88% of the premiums paid to NHMMJUA received actual Notice.

PUBLICATION OF THE SUMMARY NOTICE

11. At Class Counsel's request, GCG published Notice in an effort to reach any Class Member that many not have received direct Notice. The Publication Notice was published in the following seven newspapers on March 21, 2012: (1) The Citizen; (2) Concord Monitor; (3) New Hampshire Union Leader; (4) Portsmouth Herald; (5) The Telegraph; (6) Valley News; and (7) The Wall Street Journal. These publications reached a total circulation of over 1.7 million readers. As of April 20, 2012, GCG has identified twenty-one (21) claims that have been received from potential Class Members that did not have a direct Notice delivered to them. A copy of the Publication Notice and the tear sheets from each newspaper are attached hereto as Exhibit B.

TOLL- FREE NUMBER

12. Beginning on March 16, 2012, GCG set up and continues to maintain an automated toll-free telephone number (1-888-714-2403), to accommodate inquiries from Class Members and to respond to frequently asked questions. The interactive voice response system dedicated to this settlement is accessible 24 hours a day, 7 days a week. GCG has responded to

each message promptly, and will continue to accommodate Class Member inquiries. As of April 15, 2012, GCG has received 455 incoming calls to the Call Center.

WEBSITE

13. GCG established and is maintaining a website dedicated to this Litigation (www.NHMMJUA-Class-Action.com) to provide additional information to Class Members and to answer frequently asked questions. Users of the website can review Important Dates, review the Notice, download a Claim Form, review Court Documents, and have frequently asked questions answered. The website address was set forth in the mailed Notice and in the Publication Notice. The settlement website was operational beginning on March 16, 2012, and is accessible 24 hours a day, 7 days a week. As of April 15, 2012, GCG has received 1,225 visits to the website.

COMMUNICATIONS WITH CLASS MEMBERS

14. On April 5, 2012, Class Counsel held a Webinar to answer questions from potential Class Members. GCG participated in this Webinar.

15. As a result of the Webinar, dozens of potential Class Members contacted GCG in order to request specific information relating to the premiums they paid to NHMMJUA. GCG promptly researched and responded to all of these calls.

REMAILED NOTICES

16. As of April 15, 2012, the United States Postal Service has returned 25 Notices to GCG with an updated address, and these Notices have been re-mailed to the new addresses of record. Through researching using the NHMS database, an additional 759 Notices were remailed to updated addresses.

CLAIMS

17. The proposed Plan of Allocation provides that Class Members are automatically included in the Litigation unless they opt-out. Class Members were only required to file a Claim

Form if they paid premiums but believe another entity might be identified as the policyholders, if they were an owner of a defunct entity which was policyholder of a NHMMJUA policy, or if they are the legal representative of a deceased policyholder of a NHMMJUA policy. Claim Forms were required to be postmarked by April 16, 2012. The court-approved Notice describes this claims process in more detail. GCG is in the process of reviewing all claims and will update Counsel and the Court with final numbers once this review is completed. As of April 20, 2012, GCG had received 176 timely Claim Forms.

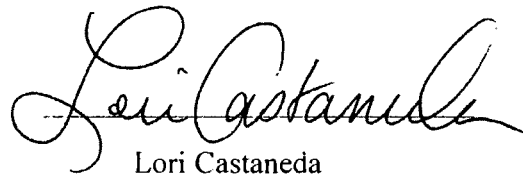
18. As of April 20, 2012, no Class Member has provided notice of Opt-Out to the Claims Administrator as required in the Notice to be excluded from the Class.

REPORTING

19. GCG provides reports to Counsel concerning the number of returned mail received, the number of Claim Forms received, the number of visits to the website, the number of calls to the IVR, and the number of administrative mail received.

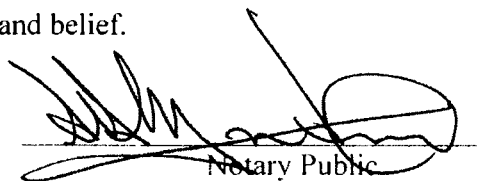
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 20th day of April 2012, in Seattle, Washington.


Lori Castaneda

Lori Castaneda personally appeared before me and swore that the statements contained in this affidavit are true to the best of her knowledge and belief.

DATED: April 20, 2012


Notary Public

ADRIENNE D. BUNTEN
Notary Public
State of Washington
My Commission Expires
March 7, 2015