

# ATTACHMENT 25

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

Merrimack Superior Court  
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Concord NH 03302-2880

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**NOTICE OF DECISION**

**Daniel John Mullen, ESQ  
Ransmeier & Spellman Professional Corporation  
PO BOX 600  
Concord NH 03302-0600**

Case Name: **Georgia Tuttle, M.D., et al v NH Medical Malpractice Joint Underwriting Assoc.**  
Case Number: **217-2010-CV-00294 217-2010-CV-00414**

Enclosed please find a copy of the court's order of October 09, 2012 relative to:

ORDER

October 10, 2012

William S. McGraw  
Clerk of Court

(485)

C: Kevin M. Fitzgerald, ESQ; W. Scott J. O'Connell, ESQ

RECEIVED

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CLERK OF COURT

# The State of New Hampshire

MERRIMACK, SS.

SUPERIOR COURT

Georgia Tuttle, M.D., et al.

v.

New Hampshire Medical Malpractice  
Joint Underwriting Association, et al.

Docket No. 217-2010-CV-414

## **ORDER**

This Court held a hearing on September 4, 2012 on the Motion to Approve the Plan of Allocation, Case Contribution Awards for Certain Class Members, and Class Counsel's Fees and Costs. After hearing and due consideration of all the evidence and arguments presented in the written and oral submissions, and considering the lack of opposition from Class Members after notice, the Court approves the proposed plan of distribution to the extent set forth in this Order. The Court's findings and rulings are detailed below. The Court denies the New Hampshire Medical Malpractice Joint Underwriting Association's requests for payment of costs from the distribution.

### **I. BACKGROUND**

This case arises from litigation between the parties described in Tuttle v. New Hampshire Medical Malpractice Joint Underwriting Ass'n, 159 N.H. 627 (2010) ("Tuttle I"). The Joint Underwriter's Association ("JUA") administers a mandatory risk sharing plan authorized by RSA 404-C. The plan provides access to medical professional liability insurance coverage to medical providers in the State of New Hampshire. The JUA is governed by a Board of Directors, which is vested with authority over the operation of the plan, subject to the oversight of the Insurance Commissioner. The JUA owes con-

tractual and regulatory duties to its policyholders. The rights and obligations between the JUA and the policyholders are set forth in the insurance agreement. The Insurance Department rules govern application of the excess surplus from premiums remaining after claims and expenses. N.H. Admin. Rules, Ins. 1703.07(d). Pursuant to these regulations, any excess surplus may be applied to reduce future assessments of the Association or may be distributed to policyholders. Id.

In 2009, the Insurance Commissioner issued an analysis determining that \$55,000,000 would fulfill the JUA's capital needs. The Legislature then passed Laws 2009, 144:1, which Plaintiffs challenged as unconstitutional. The law required the JUA to transfer a total of \$110,000,000 to the State's general fund during fiscal years 2009, 2010, and 2011. Plaintiffs sued, the trial court found in favor of Plaintiffs, and on appeal to the Supreme Court, the Court held that the language of the policies and the regulations, taken together, vests the policyholders with contractual rights in the treatment of any surplus for their benefit. Tuttle I, 159 N.H. at 633, 643-44, 650-52.

In July 2010, Plaintiffs brought this action to compel disbursement of the excess surplus. In June 2011, the legislature enacted N.H. Laws of 2011, Chapter 201 (codified at RSA 404-C:14). RSA 404-C:14, II required the JUA to conduct an evaluation to determine what funds it held that were "excess surplus funds:"

All such excess surplus funds have resulted from premiums paid under assessable and participating medical malpractice insurance policies, belong to the policyholders who paid these premiums, and shall be returned as directed under this section. Within 60 days from the effective date of this section, all excess surplus funds . . . shall be interpleaded into the Merrimack County Superior Court, docket no. 217-2010-CV-00414 for the purpose of adjudicating all policyholders' claims to excess surplus funds.

RSA 404-C:14, II. In addition, RSA 404-C:14, VI removes all participation from the Insurance Commissioner, "[t]he approval of the commissioner of insurance shall not be

required for any action contemplated under this section.” Pursuant to the law, the JUA interpleaded \$85,000,000 to this Court and segregated the remaining \$25,000,000 for payment of possible federal tax obligations.

In August 2011, Plaintiffs filed a motion for certification of a settlement class. However, at a hearing on preliminary approval, the parties advised the Court that no settlement existed and asked the Court to certify the Class as a liability class. The Court denied the motion without prejudice, and Plaintiffs filed a supplemental motion. The supplemental motion moved to certify a class consisting of all JUA policyholders who purchased assessable and participating insurance contracts, issued on or after January 1, 1986 through the date of the final fairness hearing (“class period”). The Class Members would be the named insureds who purchased a policy, as reflected in the JUA books and records.

Plaintiffs sought certification only on their contract claim against the trustees. A breach of contract claim is a relatively straightforward matter. Unlike a tort claim, there is no requirement of individual proof of damages because damages are not an element of a breach of contract claim. See RESTATEMENT (SECOND) CONTRACTS § 347(2). Plaintiffs allege that all parties had the same—or substantially identical—insurance contracts with the same provisions, which remained unchanged in all material respects during the class period. Thus, the Court found that the proposed class appeared to meet the requirements of numerosity, commonality, typicality, adequacy, and predominance, and the Court preliminarily approved the Class on February 7, 2012 and ordered that notice be sent to the putative Class Members. <sup>1</sup> NEWBERG § 3:18; see Smilow v. Sw. Bell Mobile Sys., Inc., 323 F.3d 32, 40 (1st Cir. 2003) (affirming predominance where one claim alleged breach of contract); Oscar v. BMW of North Am., LLC, 274 F.R.D. 498, 506–07

(S.D.N.Y. 2011) (finding commonality fulfilled where one claim alleged breach of contract).

However, at oral argument on final certification the parties asked the Court to construe their cause of action as a contractual-right theory, without a breach. The JUA continued to deny any wrongdoing, but it did not dispute the Class's contractual rights. Despite this modified theory of recovery, Plaintiffs fulfilled their burden of proving that the Class Members share a question of law in common. This Court granted final certification on June 15, 2012.

Following certification, Class Counsel had already moved for summary judgment on the contractual right theory on May 1, 2012, the JUA responded on June 1, 2012, and this Court granted the Motion for Summary Judgment on June 27, 2012. Since liability had already been established by granting summary judgment, the only issue remaining is the appropriate distribution of the common fund. Superior Court Rule 27-A (h) specifically provides, "[I]f the court renders judgment in favor of a plaintiff class, the court may, in its discretion, order the defendant to pay damages . . . in any manner it deems appropriate." No party disputes that the distribution can be ordered by the Court in the circumstances of this case.

## II. DISTRIBUTION

Class actions in the Superior Court are governed by Superior Court Rule 27-A. The State class action rule is straight forward and simpler than the federal rule, although the New Hampshire Supreme Court has instructed trial courts to be guided by the provisions of Federal Rule of Civil Procedure 23. In re Bayview Crematory, LLC, 155 N.H. 781, 784 (2007). The Court hereby finds and rules as follows.

During the class period, the JUA did not make annual determinations of excess surplus funds available to policyholders. Accordingly, such determinations are not available to inform how the fund should be returned. Under these circumstances, Plaintiffs have proposed a Plan of Allocation dated March 13, 2012 (the “Plan of Allocation”), which provides, in substance, that each class member will receive a percentage distribution equal to their respective percentage of the total premiums paid since 1986. Because the only distinguishing factor among Class Members is the amount of premium each class member paid, the proposed Plan of Allocation uses premium data to divide the common fund on a member-by-member basis. Relying on the JUA's premium records, the Claims Administrator will calculate each class member's percent of total premiums paid from January 1, 1986. That percentage will be used, after deducting approved contributions awards, fees, and expenses, to determine each class member's share of the common fund. The Plan of Allocation returns between 37 and 40 percent of an individual member's premiums paid, but it does not attempt to consider the time value of premiums paid because this calculation could have federal tax implications that would decimate the entire common fund for all Class Members. In this way, the Plan of Allocation avoids retroactive tax assessments.

The Court finds that the Plan of Allocation provides a fair, reasonable and equitable basis to calculate distributions. The Court's finding is further confirmed by the absence of any objections.<sup>1</sup> The Plan of Allocation is adopted as the Order of this Court for the administration of the “Distribution Fund” as defined in paragraph C.8 of the Plan of

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<sup>1</sup> The Court recognizes there was one technical objection. However, the objector simply sought greater clarity in the form of distribution notices sent to the Class Members. Class Counsel has acknowledged it will accommodate this request, and the Court and objector are satisfied with Class Counsel's response. Accordingly, the Court considers this objection resolved and identifies no other objections to the Plan of Allocation or class scheme.

Allocation. Capitalized terms in this Order have the same meaning as defined in the Plan of Allocation.

A. Composition of the Fund

The Distribution Fund represents all of the funds available for the satisfaction of all Class Member distributions, expenses, case contribution awards, and counsel fees and costs. The Distribution Fund consists of two parts: (1) the initial principal amount of \$85,000,000, interpleaded pursuant to RSA 404-C:14 and earnings thereon; and (2) such part of the Federal Tax Reserve not necessary to satisfy federal tax obligations of the JUA. The Distribution Fund constitutes the common fund in this case. The common fund in this case is comprised of JUA excess surplus funds have been accrued since 1986.

The Court currently has control of the interpleaded funds, which remain in the possession of the JUA. Part of the funds, totaling \$85,000,000, are available for distribution, while the remaining \$25,000,000 will be held as a Federal Tax Reserve. These two components of the Distribution Fund may be available for distribution to the Class at different times, as the Internal Revenue Service (“IRS”) process is continuing. Accordingly, the Court hereby authorizes Class Counsel and the Claims Administrator to proceed with two separate distributions to the Class. The Court finds that the marginal cost associated with a second mailing after the IRS issues are resolved is outweighed by the benefits of providing the Class with payments from the interpleaded funds as soon as practicable.

B. Effective Date of Disclosure

As of the Effective Date, the Court relinquishes control of the interpleaded \$85,000,000 and the JUA is hereby directed to tender \$85,000,000 and all accrued

earnings thereon to the Claims Administrator. Class Counsel and counsel for the JUA shall notify the Court when the IRS matter has reached resolution. Upon such notification, the JUA shall tender the balance of the Federal Tax Reserve to the Claims Administrator. The Claims Administrator shall distribute these funds under the terms of the Plan of Allocation and as provided herein. The Claims Administrator may make distributions to Class Members in two installments: the first, on or after the Effective Date, and the second, upon resolution of the IRS matter.

Along with distributions, the Claims Administrator shall also include some form of disclosure to ensure the transparency of the distribution award calculations. This disclosure should, at a minimum, include the relevant values and formula to allow Class Members to double check the accuracy of their payment calculation without the need to contact the Claims Administrator.<sup>2</sup> Class Counsel agreed that including the formula and relevant numerical values would not increase the expense of distributing the common fund, and they have said that they will accommodate this request. Additionally, the disclosure should instruct Class Members that they are entitled to seek an accounting and/or correction from the Claims Administrator and how to request that procedure, if necessary.

### C. Resolution of Competing Claims

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<sup>2</sup> The Claims Administrator could fulfill this requirement by including the formula used to calculate distributions and the following three numbers to allow Class Members to double check the accuracy of the Claims Administrator's final calculation: (1) total premiums paid by the Member; (2) the total premiums paid by all Members; (3) the total net funds available for distribution after subtracting all legal fees, taxes, and Court-awarded expenses. Alternatively, the Claims Administrator may include the following formula in a cover-letter-type page: premiums paid by the claimant multiplied by a certain fixed percentage equals the amount of the award. The fixed percentage is the distributable funds minus all legal fees, taxes, and Court-awarded expenses divided by the total aggregate premiums paid to the JUA. The total aggregate number should now be known, as the class period has closed.

Competing claims to a specific Class Member distribution shall be resolved by private binding arbitration to be conducted outside this action as described in the Class Notice and provided for in the Plan of Allocation. This procedure will result in any further litigation between Class Members taking place outside this Court, and thus eliminating further litigation expenses for the Class.

#### D. Attorneys' Fees

Class Counsel seeks an award of 25 percent of the gross Distribution Fund as their fee. They do not seek, at the outset, to recover a fee based upon funds which may be payable as taxes to the IRS. They request that any fee may be paid in two distributions, coinciding with the timing of Class distribution payments.

It is well settled, as a matter of common law, that if attorneys' efforts create or preserve a fund for the benefit of others, in addition to their own clients, a court is empowered to award fees from the fund. Hensley v. Eckerhart, 461 U.S. 424, 429 (1983). The American rule that litigants are responsible for their own attorneys' fees rests upon the equitable doctrines of quantum meruit and unjust enrichment. MANUAL FOR COMPLEX LITIGATION (FOURTH) § 14.121 (2011) (hereinafter "MANUAL"). A person who obtains the benefit of a lawsuit without contributing to its cost is unjustly enriched at the successful litigants' expense. Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980). Historically, attorney's fees were awarded from a common fund based on a percentage of that fund. See MANUAL § 14.121. The decision to award attorneys' fees in the common fund case is committed to the sound discretion of the trial court, which must consider the unique contours of the case. See Fed. R. Civ. Pro. 23(h) comm. note. The MANUAL sets forth the following non-exhaustive factors for a court to consider:

the size of the fund and the number of persons who actually receive monetary benefits; any understandings reached with counsel at the time of appointment concerning the amount or rate for calculating fees; any budget set for the litigation; or other terms proposed by counsel or ordered by the court; any agreements or understandings, including side agreements, between attorneys and their clients or other counsel involved in the litigation; any substantial objections to the settlement terms or fees requested by counsel for the class by class members . . . ; the skill and efficiency of the attorneys; the complexity and duration of the litigation; the risks of nonrecovery and nonpayment; the amount of time reasonably devoted to the case by counsel . . . ; and the awards in similar cases.

MANUAL § 14.121. Consideration of these factors supports the award requested by the Class Counsel.

First, as the Manual notes, "[a]warding attorneys 25% of a common fund represents a typical benchmark." MANUAL § 14.121. Class Counsel have presented a lengthy affidavit from Professor William B. Rubenstein, the Sidley Austin Professor at Harvard Law. This affidavit persuasively argues that this percentage is appropriate in this case. Rubenstein Aff. ¶ 34. Rubenstein is a highly credentialed expert witness, as he publishes, presents, and testifies regarding class actions, class action distribution and attorneys' fees awards, and new developments in class actions generally. Rubenstein Aff. exs. A & B. He also serves as the current author of NEWBERG ON CLASS ACTIONS, which this Court extensively cited in prior orders regarding this litigation. Id.

Additionally, this case is distinct from other cases with similar fund sizes for a number of reasons, but key among them are that: this case involved approximately eight discrete actions in various "theaters;" no Class Member objected to the distribution plan or amounts; 91 percent of the Class received notice; and Class Counsel was able to obtain recovery of 100 percent of the surplus funds at issue. Rubenstein Aff. ¶ 47. Class Counsel invested substantial time and resources in this case and the numerous forums in which it represented Class Members in order to secure and protect the common fund.

These various parts of the case each involved substantial risk, thereby increasing the potential injury to Class Counsel if the case ended without securing the fund. Rubenstein Aff. ¶¶ 50, 53. However, each discrete forum also involved a different legal skill and topic area; this case required legal knowledge of insurance law, constitutional law, contract law, health law, standing requirements, equitable remedies, and appellate work. Rubenstein Aff. ¶¶ 47, 49. This diversity added to the complexity of the case, also putting a greater burden on Class Counsel.

The Court also finds particular significance in the fact that not a single class member objected to Class Counsel's request for fees. In In re Rite Aid Corp. Securities Litig., 396 F.3d 294, 305 (3rd Cir. 2005), the court noted that in a securities class action involving 300,000 class members, the fact that only two class members objected to the fees was a "rare phenomena." Here, there were no objections. This class is far smaller, as it is a local class, made up almost completely of New Hampshire residents, many of whom have been actively involved in the conduct of the litigation. Nonetheless, the fee award is supported by 316 ex ante engagement letters representing 5 percent of the Class providing for a 25 percent contingent fee. This contingent fee was the product of arm's length negotiation with the Lead Plaintiffs, all of whom support this award, and all of whom are sophisticated business people. These facts demonstrate the market reasonableness of the award.

Class Counsel also participated in lobbying efforts to secure, preserve, and protect the common fund. Although Class Counsel seeks recovery for these proceedings, it has presented no support to convince the Court that such an award is appropriate. There is authority for the proposition that a court may award fees for hours spent working on "something other than the present litigation" as long as the level of relatedness to the

ongoing litigation was calculated to and did bring about the common fund recovery under the court's control. Wininger v. SI Mgmt. L.P., 301 F.3d 1115, 1121 n.3 (9th Cir 2002). Nonetheless, the Court does not believe that fees can properly be awarded for lobbying efforts.

Class Counsel argued that Angoff v. Goldfine, 270 F.2d 185 (1st Cir. 1959), supports Class Counsel's recovery for these activities. However, the Court does not agree that Angoff stands for the broad proposition that any activity related to identifying or otherwise securing a common fund is compensable. Rather, the Court reads Angoff to mean that when a firm represents Class Members in multiple legal venues, Class Counsel may recover for all legal activities related to securing the common fund. Id. at 190–91. The Court agrees with this proposition and has acknowledged the various venues in which Class Counsel represented the interests of the Class Members in this case. However, nothing in the cases cited by Class Counsel suggests that efforts before the legislature, amounting to lobbying, are similarly compensable. A court does not have the expertise to determine whether or not the work of an attorney in lobbying is appropriately compensable. Nonetheless, Class Counsel explained that they spent roughly 1 percent of their time in this case on lobbying efforts. Accordingly, the 25 percent contribution need not be reduced to account for activities that are not compensable.

Finally, the lodestar multiplier crosscheck is also within the range of other comparable common fund cases, further confirming the reasonableness of the award. Although the Court decided to use the POF method, it also relies on the lodestar method to double check the fairness and reasonableness of the 25 percent attorney award. Class Counsel's expert, Rubenstein states that the lodestar method reflects a multiplier of 4.5 to 6, confirming that a 25 percent award is slightly high—because a usual multiplier is 1

to 3—but still reasonable. Rubenstein Aff. ¶ 33. Rubenstein also included Class Counsel’s lobbying efforts as part of the crosscheck, Rubenstein Aff. ¶ 60, but these fees do not alter the lodestar crosscheck analysis to any significant extent. See Cook v. Niedert, 142 F.3d 1004, 1016 (7th Cir. 1998) (“it is unlikely that a minor change in the hourly totals would have an effect on the final amount of the fee award”).

In light of the highly diverse and complex nature of this case, the long duration, and the substantial risk Class Counsel undertook, this case was substantially different from most class actions. Rubenstein Aff. ¶ 48. And, Class Counsel succeeded in all of these forums to the greatest extent possible; 100 percent recovery. Accordingly, Class Counsel’s 25 percent distribution award is justified. See Peterson v. John J. Reilly, Inc., 105 N.H. 340, 353 (1964) (approving fee award for attorneys responsible for securing a common fund).

#### E. Costs

The Claims Administrator shall distribute \$920,301 (pending final and/or updated affidavit) to Class Counsel from the Distribution Fund for the expenses incurred on behalf of the Class as detailed in Revised Exhibit K to the Supplemental Affidavit of W. Scott O’Connell. The Court finds that these expenses were reasonable and necessary in furtherance of the common fund and helped secure, protect, and defend the Distribution Fund for the Class. See e.g., Weisburgh v. Fidelity Magellan Fund, 167 F.3d 735, 737 (1st Cir. 1999) (“law firms are not eleemosynary institutions, and lawyers whose efforts succeed in creating a common fund . . . are entitled not only to reasonable fees, but also to recover . . . expenses, reasonable in amount, that were necessary to bring the action to a climax.”); Wells v. Dartmouth Bancorp, Inc., 813 F. Supp. 126, 129 (D.N.H. 1993). The

Court's finding is further confirmed by the absence of any objections from the Class as to these expenses.

The Claims Administrator shall not distribute any amount to the JUA for the expenses incurred as detailed in the JUA Motion for Costs. Although the JUA incurred these expenses in furtherance of calculating and administering distributions to the Class, these costs were associated with correlating data for policyholders from many years ago. These costs only served part of the Class, and would not have been necessary had the JUA made annual analyses regarding surplus funds. This was a decision within the purview of the JUA and its Board throughout the course of the class period. The JUA has presented no authority supporting its request to charge all Class Members for the costs associated with consolidating data to locate only a portion of the Class. Additionally, an award to the JUA at this time would benefit current members—who may or may not be entitled to recover in this case—at the expense of Class Members who are entitled to recover and may no longer be JUA policyholders. Accordingly, the JUA's Motion for Costs is DENIED.

#### F. New Hampshire Medical Society

The New Hampshire Medical Society ("NHMS") shall not receive a distribution. Class Counsel seeks a distribution amount of \$50,000 for time and resources that the NHMS spent in securing, protecting, and defending the common fund. However, Class Counsel has not cited any authority for this distribution, and the Court has not identified any. Although it would be appropriate for NHMS to bill the Class for its participation in this case, Class Counsel's \$50,000 distribution does not correspond to the value of NHMS's time or resources. This proposed distribution is more like a donation. See Lane v. Page, No. CIV 06-1071 JB/ACT, 2012 WL 1940574 at \*42 (D.N.M. May 22,

2012) (citation omitted) (“The cy pres doctrine is an equitable doctrine under which courts distribute unclaimed portions of a class-action judgment or settlement funds to a charity that will advance the interests of the class.”). It is unsupported by any precedent. Cf. Passtou, Inc. v. Spring Valley Ctr., 501 A.2d 8, 15 (D.C. 1985) (denying class counsel recovery from non-parties who benefitted from a class action but were not class members). The Court has previously discussed the possibility of unclaimed funds and whether a cy pres distribution would be appropriate. However, even if NHMS would be an appropriate recipient of unclaimed funds after the initial Class distributions, NHMS is not an appropriate recipient of any common fund distributions in the initial disbursements.

#### G. Incentive Awards

Courts routinely approved incentive awards to compensate named plaintiffs for the services they provided and the risk they incurred during the course of litigation. See e.g., Cook v. Niedert, 142 F.3d 1004, 1016 (7th Cir. 1998); Nilsen v. York Cnty., 382 F. Supp. 2d 206, 215 (D. Me. 2005); In re Lupron (R) Mktg. & Sales Practices Litig., 228 F.R.D. 75, 98 (D. Mass. 2005) (incentive awards “serv[e] an important function in promoting class action settlements, particularly where . . . the named plaintiffs participated actively in the litigation.”).

In deciding whether to grant class representatives incentives awards, courts look to a number of factors including whether the named plaintiffs protected the interests of the class members, whether the named plaintiffs have assumed substantial indirect or direct financial risk in the amount of time and effort expended by the named plaintiffs. Van Vranken v. Atl. Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995). Applying these criteria to the incentive award to the 105 policyholders who contributed to the

minimum contingent fee is appropriate. This commitment ensured the retention of Class Counsel and allowed this case to proceed. The total incentive award for the policyholders is \$1,065,997.

The Claims Administrator shall make contribution awards from the Distribution Fund to the Class Members in the amounts identified in Exhibit C to the Affidavit of W. Scott O'Connell in Support of the Plan of Allocation, Case Contribution Awards, and Class Counsel's Fees and Costs. The Court finds that financial risk undertaken by these policyholders to fund a guaranteed minimum contingent fee and their other service to the Class was required to secure Class Counsel and the ultimate protection of the Distribution Fund, which benefited the entire Class. The Court finds that it is reasonable, fair, and just to acknowledge these contributions and leadership with a payment from the Distribution Fund as a case contribution award, separate and apart from their respective distribution. The Court's finding is further confirmed by the absence of any objections from the Class as to these contribution awards.

#### H. Claims Administrator

The Claims Administrator is authorized to continue reasonable efforts to locate Class Members for the payment of any applicable distribution. The Claims Administrator is authorized to recognize representatives of deceased or defunct Class Members for receipt of a distribution. The Claims Administrator is authorized, without prior approval of the Court, to pay to PricewaterhouseCoopers from the Distribution Fund up to \$150,000 for any additional services provided with regard to resolution of issues with the IRS. The Court finds that these additional sums may be reasonably necessary in order to finalize issues with the IRS. The Claims Administrator is also authorized without prior approval of the Court to pay itself from the Distribution Fund up to \$55,500 for its

fees and costs associated with administering the distributions. The Court finds that these additional sums may be necessary in order to finalize the administration of the Distribution Fund. These services benefit the Class.

Exclusive jurisdiction is hereby retained over the Parties and the Class Members for all matters relating to the Action, including the administration, interpretation, effectuation, or enforcement of the Plan of Allocation and this Final Order, including any additional applications for fees and expenses incurred beyond those authorized for payment in this Order.

Upon entry of judgment, all claims for surplus funds arising from NHMMJUA policies issued on or after January 1, 1986 through the date of this Order are hereby precluded.

**SO ORDERED.**

10/9/12

**DATE**

Richard B. McNamara

**Richard B. McNamara  
Presiding Justice**