STATE OF NEW HAMPSHIRE
BUREAU OF SECURITIES REGULATION
DEPARTMENT OF STATE
25 CAPITOL STREET
CONCORD, NH 03301

STAFF PETITION FOR RELIEF IN THE MATTER OF:

LOCAL GOVERNMENT CENTER, INC.; LOCAL GOVERNMENT CENTER REAL ESTATE, INC.; NEW HAMPSHIRE MUNICIPAL ASSOCIATION, LLC; LOCAL GOVERNMENT CENTER HEALTHTRUST, LLC; LOCAL GOVERNMENT CENTER PROPERTY-LIABILITY TRUST, LLC; HEALTHTRUST, INC.; NEW HAMPSHIRE MUNICIPAL ASSOCIATION PROPERTY-LIABILITY TRUST, INC; LGC-HT, LLC; LGC-PLT, LLC AND THE FOLLOWING INDIVIDUALS: MAURA CARROLL, KEITH R. BURKE, STEPHEN A. MOLTENBREY, PAUL G. BEECHER, ROBERT A. BERRY, RODERICK MACDONALD, PETER J. CURRO, APRIL D. WHITTAKER, TIMOTHY J. RUEHR, JULIA N. GRIFFIN, PAULA ADRIANCE, JOHN P. BOHENKO, AND JOHN ANDREWS

Now comes the Bureau of Securities Regulation, a part of the Corporations Division within the Department of State, and says as follows:

1. The New Hampshire Bureau of Securities Regulation, through its director, Joseph C. Long, respectfully submits to the Secretary of State a petition for him to enter a Cease and Desist Order to the above named Defendants. A draft copy of the proposed Cease and Desist Order is attached.
2. Further, the Bureau understands that the Secretary of State has designated that Donald

Mitchell be appointed as the presiding officer to conduct the hearing concerning the allegations set forth in the Cease and Desist Order to determine whether the Cease and Desist Order should be withdrawn or made permanent.

3. Finally, the Bureau petitions the Secretary of State to assign the Bureau of Securities Staff as his designee to present the case on behalf of the State.

THE PARTIES

I. Petitioner

4. The Petitioner is the New Hampshire Bureau of Securities Regulation (BSR), a part of the Corporations Division within the Department of State, which has been assigned oversight of so-called "Pooled Risk Management Programs" which are created pursuant to RSA 5-B:1 et seq. The BSR has been charged by the Secretary of State to oversee entities created under RSA 5-B, and to administer the New Hampshire Uniform Securities Act under RSA 421-B. Under this delegation, the BSR has the right, power and obligation to bring enforcement actions pursuant to RSA 5-B:4-a and RSA 421-B:22, :23 and :26.

II. Respondents

5. The respondents are companies and corporations offering products and services governed by RSA 5-B and RSA 421-B, and individuals acting as board members or executives of one or more of the following. They include:

a. Local Government Center, Inc. (LGC, Inc.), a New Hampshire nonprofit corporation with a principal place of business at 25 Triangle Park Drive, Concord, New Hampshire (The following entities have or had the same principal place of business since 2002);

b. Local Government Center Real Estate, Inc. (LGC Real Estate, Inc.), a New Hampshire nonprofit corporation;

c. HealthTrust, Inc., a defunct New Hampshire nonprofit corporation;

d. New Hampshire Municipal Association Property-Liability Trust, Inc. (NHMA Property-Liability Trust, Inc.), a defunct New Hampshire nonprofit corporation.

e. LGC-HT, LLC, a former Delaware limited liability company.

f. LGC-PLT, LLC, a former Delaware limited liability company.

g. The New Hampshire Municipal Association, LLC (NHMA, LLC), a New Hampshire limited liability company;

h. Local Government Center HealthTrust, LLC (HealthTrust, LLC), a New Hampshire limited liability company;

i. Local Government Center Property-Liability Trust, LLC (Property-Liability Trust, LLC), a New Hampshire limited liability company; and

j. Local Government Center Workers' Compensation Trust, LLC (Workers' Compensation Trust, LLC), a former New Hampshire limited liability company that was merged with LGC Property-Liability Trust, LLC.

k. Maura Carroll, was interim Executive Director of LGC, Inc. from September 5, 2009 until June 10, 2010, at which time she was appointed Executive Director of LGC, Inc. and Member of LLC's in (e), (f), (g) above. Prior to her appointment as interim Executive Director, she was General Counsel of LGC, Inc. and, prior to the establishment of LGC, Inc., General Counsel of HealthTrust, Inc. and LGC Property-Liability Trust, Inc.

l. Keith R. Burke, Stephen A. Moltenbrey, Paul G. Beecher, Robert A. Berry, Roderick MacDonald, Peter J. Curro, April D. Whittaker, Timothy J. Ruehr, Julia N. Griffin, Paula

Adriance, and John P. Bohenko were members of the board of trustees of the former entities listed in (d) and (e) above.

m. John Andrews was, at all times relevant to this petition up to September 4, 2009 the Executive Director of LGC, Inc. and predecessor entities HealthTrust, Inc. and NHMA Property-Liability Trust, Inc.

STATEMENT OF FACTS

Regulatory Background

6. In 1987, RSA 5-B was enacted, clarifying the authority of municipalities to band together to obtain certain risk management, or insurance, coverages. Prior to 2003, HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. offered health insurance and property-liability insurance, respectively, to municipalities and their employees as "Pooled Risk Management Programs" (hereinafter "Pools") pursuant to RSA 5-B. At that time, apart from an annual filing requirement to file certain data (including audit and actuarial information) with the Department of State, Corporations Division, there was no regulation of "Pools".
7. The NH Department of State was given regulatory oversight over Pools in 2009 and shortly thereafter began an investigation into a multi-part complaint against LGC, Inc. and the LLC Pools. LGC, Inc. challenged the scope of this regulatory oversight in an action for declaratory judgment through 2010, when the statute was amended, clarifying the Department of State's oversight. As a result of the statutory amendment, LGC, Inc.

dropped its challenge. The investigation first addressed the complaint: that member contributions were used to fund issues and programs not health and employee related; that member contributions were used for things not medically related; that "HealthTrust" was using member contributions to fund expenses above and beyond those necessary for the running of a Pool; and that earnings and surplus in excess of amounts required for reserves and administration were not being returned to the political subdivisions as required by statute. As this information was examined, further regulatory errata were noted, as set forth below and as set forth in the August 2, 2011 Report on The Local Government Center, a copy of which is attached hereto and incorporated by reference.

COUNT 1 - CORPORATE GOVERNANCE

A. Attempted Merger of Prior Nonprofit Corporations with LLCs

8. HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. were first incorporated as New Hampshire nonprofit corporations pursuant to RSA 292 on February 11, 1985 and June 3, 1986, respectively (HealthTrust, Inc. originally as "New Hampshire Municipal Association Health Insurance Trust" and NHMA Property-Liability Trust, Inc. originally as "NHMA Property Liability Insurance Trust, Inc."). HealthTrust Inc.'s Articles of Agreement state that the object for which the corporation is established is ".... To provide[ ] health benefits for employees and other persons related, directly or indirectly, by virtue of employment with a Member New Hampshire municipality ...." NHMA Property-Liability Trust, Inc.'s Articles of Agreement state that the object for which the

corporation is established is "... To obtain[ ], as an alternative to the prohibitively expensive insurance packages offered by private insurers, property and liability insurance necessary to prevent or lessen the incidence and severity of casualty losses ...."

9. In 2003, a plan was proposed to the respective boards of trustees of HealthTrust, Inc. and NHMS Property-Liability Trust, Inc. to house the nonprofit corporations in limited liability companies, with an umbrella corporation overseeing them. To effectuate this plan, a series of transfers was attempted. HealthTrust, Inc. attempted to merge with LGC-HT, LLC. a Delaware Limited Liability Company ("LLC") and NHMA Property-Liability Trust, Inc. attempted to merge with LGC-PLT, LLC, another Delaware LLC. Then, LGC-HT, LLC was merged with Local Government Center HealthTrust, LLC, a New Hampshire LLC, and LGC-PLT, LLC was merged with Local Government Center Property-Liability Trust, LLC, another New Hampshire LLC. However, the attempted merger of HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. with the Delaware LLC's violated New Hampshire law.

10. The statute governing the merger of nonprofit corporations, RSA 292:7, allows merger of a New Hampshire nonprofit corporation with either another New Hampshire nonprofit corporation, or with a foreign corporation registered in New Hampshire. Clearly, the Delaware LLC's were not nonprofit corporations.

11. RSA 292:7 further requires that, to effectuate a merger, a certified copy of the vote of the board of directors showing approval of such merger must be filed with both the office of the secretary of state and with the municipality of the principal place of business. Neither HealthTrust Inc. nor NHMA Property-Liability Trust, Inc. filed such a copy with either state or local officials.

12. As a result of the above, no merger took place. Because New Hampshire nonprofits must renew their registrations every 5 years, and because neither HealthTrust, Inc. nor NHMA Property-Liability Trust, Inc. did so, their charters were administratively dissolved in 2006 pursuant to RSA 292:25.

13. Thus, the assets held by HealthTrust, Inc. and by NHMA Property-Liability Trust, Inc. never legally transferred to the Delaware LLC's. It follows that these assets did not thereafter transfer to the New Hampshire LLC's. Questions arise as to what happened to the assets and what is the status of both the original and the purported successor organizations under RSA 5-B.

14. RSA 292:29, provides that the superior court, upon petition of any interested party, may order the doing of such act or thing as necessary for the protection of proprietary or other rights of the corporation.

15. On August 31, 2011, LGC, Inc. admitted that the purported mergers of HealthTrust, Inc. and Property-Liability Trust, Inc. with the Delaware LLCs "was not completed appropriately." Members of the boards of directors of HealthTrust, Inc. and Property-Liability Trust, Inc. purportedly voted to revive the administratively dissolved non-profit corporations pursuant to RSA 292:30. Documents, along with necessary fees, were submitted to the Department of State, Corporations Division to revive. BSR staff is currently assessing the further legal implications of this action and expects to submit an amendment to its petition in the near future.

B. Pooled Risk Management Program Statutory Requirements

16. RSA 5-B:5, I(a) requires a Pool to "exist as a legal entity under New Hampshire law". Since the revival of HealthTrust, Inc. and Property-Liability Trust, Inc., the BSR believes that these are the only two entities currently authorized to operate the LGC pools under RSA 5-B. The purported successor organizations to HealthTrust, Inc. and Property-Liability Trust, Inc. – HealthTrust, LLC and Property-Liability Trust, LLC – were never merged with the original entities since by law the original entities were prevented from merging with the Delaware LLC's and thus no ownership or other interest in the original entities could be conveyed from the Delaware LLC's to the New Hampshire LLC's. In essence, we are left with two New Hampshire "shell" LLCs, purportedly being overseen by a non-germane corporation, illegally managing the assets and operations over a period of eight years of the now-revived HealthTrust, Inc. and Property-Liability Trust, Inc. Given LGC's admission that the merger was not completed, the BSR maintains that the current LLCs that emerged from the failed attempted to merge HealthTrust, Inc. and Property-Liability Trust, Inc. are not valid Pools under the requirements of RSA 5-B and are currently and illegally using the assets of the only two entities that are authorized to use those assets – namely HealthTrust, Inc. and Property-Liability Trust, Inc.

17. Additionally, RSA 5-B:5, I (a) requires pools to be housed in "a legal entity organized under New Hampshire law". The purported "merger" between each nonprofit and its corresponding Delaware LLC occurred on June 26, 2003. The purported "merger" between each Delaware LLC and its corresponding New Hampshire LLC occurred effective June 30, 2003. Apart from the questions raised by the above, and assuming for the sake of discussion that LGC Inc.'s assertion that LLCs are able to provide coverage to

members and to carry on daily activities as Pools is accurate, for a time, such Pools were explicitly not housed in "a legal entity organized under New Hampshire law".

18. RSA 5-B:5, I(b) requires that a Pool be governed by a board. Limited liability companies do not have boards. They have either "members" or "managers". A review of the annual filings with the secretary of state for HealthTrust, LLC and Property-Liability Trust, LLC from 2003 through 2010, and Workers' Compensation, LLC (when it existed as a separate entity) shows no claim that each LLC has a "board". Rather, LGC, Inc. claims that the "board" of Local Government Center, Inc. suffices for its LLCs as the "board" required under RSA 5-B:5, I(b). This is not the case. Limited liability companies do not have "boards". According to the LLC statute, RSA 304-C, they have "members" or "managers". When Local Government Center HealthTrust, LLC was formed in 2003, the filing with the Department of State, Corporations Division showed no claim that Local Government Center, Inc.'s board was the "member" or "manager"; rather, one John B. Andrews is listed as "member".

19. Current filings with the corporations division show no claim that the board of LGC, Inc. is the "member" of HealthTrust, LLC or Property-Liability Trust, LLC. Rather, Maura Carroll is listed as "member".

20. Originally, the board members of HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. were considered "trustees". Trustees are fiduciaries of the organization. As a fiduciary, "... [a] trustee is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of

behavior. ...".[1] As each member of the current "board" does not claim trustee status, there is not the same level of obligation to the organization. According to the corporations statute, RSA 293-A:8.30 a board member owes the organization the obligations of good faith and fair dealing. A trustee's standard is higher.

COUNT 2 - FINANCIAL MISMANAGEMENT

A. Requirement to Return Surplus

21. RSA 5-B:5, I(c) requires Pools to "[r]eturn all earnings and surplus in excess of any amounts required for administration, claims, reserves and purchase of excess insurance" to the participating political subdivision. Clearly, this statute requires that two basic analyses be done. First, a calculation must be made of amounts required for administration, claims, reserves and purchase of excess insurance. Once this calculation is complete, its sum must be subtracted from the funds collected and held by the Pool. The following discussion focuses on the health Pool, as it is by far the largest one.

22. The plain language of the statute speaks of "amounts required". The statute does not speak of amounts desired, or recommended, or good to have on hand. Contrasting the manner in which the now-defunct nonprofit HealthTrust, Inc. operated with the current Local Government Center, Inc. scheme is illustrative.

23. Historically, HealthTrust, Inc. used a percentage method, seeking to hold a percentage of claims as reserves. There is no indication that this method jeopardized HealthTrust's

[1] Appeal of Corporators of Portsmouth Sav. Bank, 129 N.H. 183, 203 525 A.2d 671, 685 (N.H. 1987) citing *Meinhard v. Salmon*, 249 N.Y. 458, 464 164 N.E. 545, 546 (1928) (quoting *Wendt v. Fischer*, 243 N.Y. 439, 444, 154 N.E. 303, 304 (1926)).

operations. Although the goal was to hold as reserves 20% of claims, HealthTrust, Inc.'s actuary in 2002 noted that this goal was rarely attained, with HealthTrust then holding close to 10% of claims as reserve. Some years it made money, some years it lost money, but it functioned properly with this reserve between 1987 and 2002.

24. In late 2002, HealthTrust, Inc.'s actuary proposed a change in the method of measuring "reserves". He recommended, and HealthTrust, Inc.'s board agreed, to utilize a concept known as "Risk Based Capital", or RBC. RBC is a commercial insurance concept. It was created by the National Association of Insurance Commissioners (NAIC) and finds its most common application in state regulation of for-profit insurance companies, not "nonprofit" pooled risk entities that are exempt from the insurance laws. It is meant as a measure of regulatory failure, not health, as it requires regulatory intervention when RBC is 2.0, with increasing regulatory intervention up to and including receivership as the RBC decreases. RBC was intended as a regulatory trigger for state regulators, not for management of surplus.

25. This method of measuring reserves, though, allowed HealthTrust, Inc. (and later HealthTrust, LLC) to begin to accumulate enough money to provide for "other activities". HealthTrust, Inc.'s actuary noted that with this extra money, as HealthTrust, Inc. built up the surplus, it could then use this built-up surplus "to invest *in other activities* (emphasis added) normally supported by a *surplus, e.g., marketing initiatives and product development*" (emphasis added). He said that investing in such activities while simultaneously closing the "Member's Balance gap" would require additional funds.

26. Thus, in 2002, the health pool began a process of accumulating additional reserves. This culminated with the pool, using the RBC method of measuring "reserves", reaching an RBC of "4.2" in 2007.

27. It also claimed it needed an amount "for administration" on top of this "4.2 RBC". It sought and obtained board approval for an additional ".5 RBC" for these claimed administrative needs. Thus, by 2007, HealthTrust, LLC was holding 4.7 RBC. That year, the .5 RBC for administrative purposes alone totaled $7,578,659. In 2008 this figure was $7,228,794. In 2009 it was $8,732,451. Yet in 2010 the ".5 RBC" figure was abandoned, and it was deemed sufficient for HealthTrust, LLC to hold for "administrative purposes" a flat $500,000.

28. Again, the statutory mandate under RSA 5-B:5, I (c) is to return sums in excess of those needed for administration, claims, reserves and the purchase of excess insurance. Clearly, ".5 RBC" is a chimera; administrative costs are not a fixed percentage of reserves. Sums in excess of those actually needed for "administration" must be returned.

29. There are different actuarial methods of analysis to determine prudent reserves. As noted, LGC, Inc. fixed on RBC. Another method is that proposed by the actuarial firm The Segal Company. In response to a legislative mandate for a recommendation for a limitation of reserves in pooled risk management programs and recommendation of administrative costs as a percentage of claims of these pools, Segal detailed a method of determining prudent reserves known as "Stochastic Modeling". As noted below, utilizing this method of reserve calculation showed that since 2003 LGC HealthTrust, could have functioned perfectly adequately holding significantly fewer reserves. It seems evident that if two different actuarial methods are equally creditable, and one assures sufficient

safety at a lower figure, the actuarial method which assures safety at the lower figure is the one contemplated by the statute, given the requirement to return surplus.

30. According to HealthTrust, Inc.'s actuary, in 2002 HealthTrust, Inc. was then holding reserves of $19 million, approximately 10% of prior year's claims, or an RBC of 2.1. It functioned adequately at that level.

31. Another important factor in actuarial analysis is the percentage of certainty. LGC, Inc.'s actuary has used a "95% confidence level" in setting reserves. This is adequate.

32. Segal used Stochastic Modeling to analyze the amount of reserve (or surplus, as Segal refers to it) maintained by LGC HealthTrust in 2009, comparing the RBC method with the Stochastic Modeling method. It found two things: first, that with an RBC ratio of 4.2 (this ignores the additional .5 RBC LGC HealthTrust retained for administrative costs), reserves for 2009 would have been $69.2 million; second, that LGC HealthTrust actually retained $79.5 million. Using Stochastic Modeling at a 95% confidence level, Segal found that LGC HealthTrust's target reserve level should have been $40.8 million.

33. Page 15 of the August 2, 2011 Report on Local Government Center shows a comparison of the RBC method of reserve measurement with Stochastic Modeling and straight percentage methods of reserve measurement.

34. In late May, 2011, LGC, Inc. released a March 3, 2011 report of an actuary it hired to critique the Segal recommendation[2]. Among other things, this report again claimed that the insurance standard RBC was appropriate for a pooled risk management program (which by definition is not an insurance company). Yet among the many facets of this

[2] Milliman Report "Target Capital/Surplus for Healthcare" dated 3-3-11 by Catherine Murphy-Brown, FSA, MAAA (NB: this opinion cost LGC over $27,000.00)

report was the admission that LGC HealthTrust holds an additional reserve amount on its balance sheet called capital, surplus or risk reserve.

35. First, when a statute entirely separate from insurance laws creates "pooled risk management programs" and specifically defines each as "... not an insurance company ..." (RSA 5-B:6,I) , reference to insurance statutes is irrelevant. Second, there is no dispute that a pooled risk management program needs adequate reserves. As alluded to above, the "million dollar question" is the dividing line between prudent reserves and surplus. LGC's Milliman report notes that "as a general rule, HealthTrust targets a capital/surplus level of 420% of ACL" (4.2 RBC). Yet in comparing this surplus to the Segal recommendation, even Milliman notes Segal's "Maximum Level of Capital" (at a 99% Confidence level) would have been $18 million *less* than this Pool actually held in 2009. This would have been enough to cover the "bad year" of 2009 with its $14.3 million loss, even without considering the "good investment returns" that year (which Milliman did not detail). The "capital" held by LGC HealthTrust, $77.1 million, was above even the Pool's claimed sufficient level of 4.2 RBC, being 4.64 RBC (Segal had concluded that HealthTrust, LLC held $79.5 million.

36. Further analysis by Segal and comparison of RBC with Stochastic Modeling showed that LGC HealthTrust had the ability to hold prudent reserves at levels significantly less than "RBC". In view of the fact that HealthTrust, LLC held more in reserve than its own measure (RBC) would dictate, even more significant savings would have resulted. For example, in 2008, Stochastic Modeling would have allowed a reserve of $34.1 million. HealthTrust, LLC actually held $92.7 million, a difference of $58.6 million. In 2007, the Stochastic Model would have set prudent reserves at $31.3 million, with the Pool holding

$91.5 million, a difference of $60.2 million. In 2006, the difference between Segal's model and the Pool's holdings would have been $48.6 million.

37. Within HealthTrust, LLC's annual accounting filing requirement of RSA 5-B:2, there is a Note concerning the use of National Association of Insurance Commissioners standards for accounting purposes. HealthTrust, LLC claims exemption from statutory accounting practices as promulgated by NAIC, because they "are not insurers", further supports the view that insurance statutes are irrelevant. Since both RBC and statutory accounting practices are NAIC concepts, and since HealthTrust, LLC claims to be exempt from NAIC's statutory accounting practices because it is not an insurer, it should not be claiming NAIC's RBC as a proper method of measuring reserves.

38. An additional aspect of the "reserves vs. surplus" discussion is what LGC, Inc. does with the money it receives from the communities. Clearly a Pool is obligated to provide the insurance coverages contemplated under the Pooled Risk mandate of RSA 5-B, as well as to pay for costs of administration, claims, reserves and excess insurance. It is logical that a certain portion of these funds, not immediately necessary, would be prudently invested. Thus LGC, Inc. does invest. There is no theoretical quibble with the idea that money not immediately necessary for the operation of the Pools should be treated in this fashion. However, review of the public filings of HealthTrust, LLC for the years 2007, 2008 and 2009 shows a significant amount of money held in investment vehicles maturing in excess of five, and even 10 years. In 2007, the Pool reported it held $5.7 million in investments maturing between 5 and 10 years hence. It held $12.8 million in investments maturing in excess of 10 years. That year, it held 47% of its investments in such a manner. In 2008, the figures were: $4.8 million maturing between five and ten years,

$12.5 million over ten years hence, or 26% of its investments in such manner. In 2009, the figures were: $6.3 million maturing between five and ten years, $17.2 million maturing over ten years hence, or 30% of its investments held in such manner. From this arise two points: first, with such sizable investments held on such a long term basis, there is no ability to return the "surplus" these sums represent, as RSA 5-B:5, I (c) requires; second, if these funds are held for so long a period, how can it be argued that they are in fact needed for the operation of the Pool. Whether called surplus, or overcapitalization, the result is the same: the Pools hold too much money. This surplus must be returned to the members.

B. Additional 5-B:5, I(c) Analysis

39. LGC, Inc. further claims that a pool is entitled to retain not only "reserves" but also amounts necessary for "projected needs of the plan". It argues that RSA 5-B:5, I(f) allows the pool's management to assess adequacy of contribution. It claims that "the statute does not impose a reserve level, but has traditionally relied upon the risk pool boards, comprising member representatives, in consultation with their qualified actuaries, to determine the appropriate level of reserves for their membership, based on their experience and informed judgment."[3] It is noted that "traditional reliance" existed because prior to 2009 the statute contained no regulation. Again, by reference to the plain meaning of the statute, this subjective view must be rejected.

40. From the above, it can be seen that HealthTrust, LLC has held significant sums over and above those contemplated by RSA 5-B:5, I (c). Despite this, none of LGC, Inc.'s Pools

[3] LGC Position Paper dated December 20, 2010.

has ever returned the "earnings and surplus" RSA 5-B:5, I(c) demands, to the municipalities. It has, on occasion, subsidized the insurance rates to municipalities using the earnings and surplus. There is no support for this practice in the statute. Subsidization of insurance rates is not among those issues for which a Pool may retain money. Simple analysis of the phrase "... any amounts required for administration, claims, reserves, and purchase of excess insurance ...." demonstrates this.

41. As to amounts required for "administration", as noted above, LGC, Inc. set aside ".5 RBC" for HealthTrust, LLC for administrative purposes between 2006 and 2009. Coincidentally with the change in law authorizing regulation, in 2010, it changed its administrative requirement to a flat $500,000. From this it can be seen that the Pool did not need the more than $8 million in the prior year, or the more than $7 million in each of the three previous years. Amounts in excess of $500,000 for those years, being surplus to the needs of the organization, must be returned.

42. As to the second proper purpose for holding money, claims, there is no quibble with the view that the Pools must pay claims. This figure is undisputed. Likewise, it is beyond dispute that the statute authorizes HealthTrust, LLC to retain funds to purchase excess insurance. Sums for this purpose are not challenged. Note, though, that in 2010 LGC, Inc. stopped purchasing excess insurance.

43. Importantly, membership in the Pools is not fixed. Members come and go among the pools as their interests dictate. LGC, Inc.'s bylaws require that a member leaving the organization forfeits its right to participate in further actions of the Pool. Thus, a Pool member, paying into LGC, Inc., then leaving for another Pool provider, is forced to abandon its portion of the "earnings and surplus" which should be available to it. This

clearly is in violation of the plain language of the statute which does not authorize the year-over-year retention of money.

C. Other Improper Spending

44. LGC, Inc. has admitted that in 2007 it transferred what it claims was "1% of employer contributions" from HealthTrust, LLC to the workers' compensation Pool, totaling $2,746,202.60, plus an additional $1,754,678.56. It further admits that in 2008 it transferred 1% of what it claims were employer contributions from HealthTrust, LLC to the workers' compensation Pool, totaling $2,876,145.13 plus an additional $762,866.32. It admitted on its website that between 2004 and 2008, it caused LGC HealthTrust alone to contribute over $14.5 million to the "strategic plan". Clearly, if there is enough money to take 1% from one pool and transfer it to another, or to create a "strategic plan," including salary increases and establishing a defined benefit retirement plan (see below), as opposed to supplying the insurance coverage contracted for, it has surplus. The statute requires the return of surplus to the participating political subdivisions.

45. That LGC, Inc. agrees it improperly transferred money is seen in the recent resolutions of the Board of Directors. On June 2, 2011, the board issued two Votes in which it was resolved that the "1%" taken from HealthTrust, LLC and used to support the worker's compensation Pool would be returned, via a note, payable over time to HealthTrust, LLC, out of Workers' Compensation surplus, if any exists. Clearly this is an acknowledgement that the money was improperly taken in the first instance. Apart from the illusory nature of the deal, this begs two questions: first, is this surplus money then

going to be returned to the cities and towns from which it was taken; and second, how can "surplus" be used for this, when "surplus" is required to be returned to the members.

46. Note further that these resolutions do not address the monies taken from Property-Liability Trust, LLC or the Workers' Compensation Pool for the strategic plan. Calculation of these funds together with the HealthTrust, LLC takings for the years 2004 through 2008 shows a total of $19,228,760.

47. LGC, Inc. and the Pools from which the monies were taken must repay municipalities these funds.

48. When communities purchased health coverage from HealthTrust, LLC, they provided funds which came both from the community employer and from the employee. The charge has been made that LGC, Inc. used employee funds as part of 1% skimmed from both the health and the property-liability funds to start and subsidize a workers' compensation Pool and for other purposes. In answer to this charge, LGC, Inc. provided information from 2004 and 2007 from which analyses had been done to determine a percentage of the premium which could be attributable to the employee's contribution, and efforts were made not to utilize this percentage in taking the 1%.

49. LGC, Inc. has claimed that the data from which the 2004 determination was made was no longer available due to a computer malfunction. The information provided was from a re-creation of the data. At that time, the percentage it attributed to the employee portion of the premium was 12%. In 2007 another determination was made; the supporting data was retained and LGC, Inc. determined that the employee portion of the contribution was 18%. No calculation determining estimated employee contribution was made in 2005, 2006, 2008, 2009 or 2010. Never explained was why this was not done on an annual

basis. We are thus left with only the incomplete calculations of LGC, Inc. supporting the view that no employee or retiree contributions to heath care premiums were used to subsidize the creation and support for its workers compensation pooled risk coverage.

50. Another view is that since healthcare was a bargained-for benefit, the whole of the benefit belongs to the employee. This is especially true where salary raises were denied due to the rise in healthcare costs, and the value of the health coverage was considered part of the employment "package". Under this scenario, the use of any surplus funds from the healthcare fund would be improper.

51. As to retirees, between 2004 and 2007 100% of retiree-paid premiums went towards health care costs, as retirees' health insurance is not subsidized by their former employers. Thus any retiree contribution to HealthTrust, LLC and taken to support the workers' compensation Pool was improperly taken[4].

52. The board recognized that it was creating a conflict with the interests of employees and employers and said that consideration should be given to segmenting funds. There was concern that employee money could be used to support a property-liability program to defend a town against a lawsuit brought by or on behalf of an employee. Yet, as noted above, no consistently reliable analysis concerning the segmentation or segregation of employee contributions from the 1% taken for workers' compensation was done, and the idea that the whole of the health care benefit (whoever paid for it) was part of the employee compensation and thus not to be "borrowed" was not accepted.

53. Furthermore, as to the "employer" contribution, there is no showing there ever was an agreement by the municipalities that their contributions to one line of coverage to be used for another line, or for purposes apart from the purchase of the specific coverage

[4] LGC claims it segregated these funds.

bargained for. This is evident in the Position Paper issued by the City of Portsmouth on Return of Surplus Health Insurance Premiums under letter dated November 19, 2010, and the Town of North Hampton's publicized demand for return of similar funds. The only discussion of the issue appears to have been at the level of the board. To reiterate, if there is enough money to siphon off sums for purposes apart from health care or property-liability coverage, there is more than is needed for these coverages. This is surplus. For both the reason that this is surplus, and that municipalities did not agree to this diversion of funds, sums used for this purpose must be returned to the cities and towns.

54. One question raised by LGC, Inc.'s record of expenditures has been their propriety. Analysis of certain of the 2006 expenditures shows them to be "pass through", in that as LGC paid the expenditure, it was repaid by the organization attending the event. Whether or not these accounts were "pass through", it required the time and efforts of LGC, Inc. personnel to set up the affairs and to account for their repayment. However, other expenses clearly are not related to the mission of the Pools. These include expenses for various charitable sponsorships, such as $3,000.00 for the 15th Annual Special Olympics, NH Chief of Police Golf Tournament, marked "4-Way Split", ("4-way split" is LGC, Inc.'s accounting method whereby the cost is divided among HealthTrust, Property-Liability Trust, LGC, and (at the time) the workers' compensation Pool, $2,000.00 for sponsorship for the SEA Road Race & Fitness Walk on 4-7-07 ("Master Sponsor" level, the highest) charged to LGC, and $5,000.00 "Gold Sponsorship" for a NH Excellence in Education event on 6-10-06, marked "4-Way Split". *Any* charitable giving by this taxpayer-funded organization is improper. These expenses are not justified as "required

for administration" or any of the other headings under RSA 5-B:5, I(c) and sums thus spent are to be returned to cities and towns.

55. Analysis of HealthTrust, LLC's RSA 5-B:2 filings between 2002 and 2009 show certain "distributions to parent". These include distributions to parent for property purchases totaling $4,302,092 (without note in the financial statement); distributions to parent for "building improvement" of $100,000.00 (without note in the financial statement); and distribution to parent – investment in LGC Real Estate, Inc. and the workers' compensation Pool of $3,930,370. These expenses, totaling $8,332,462 are not related to proper purposes as defined by RSA 5-B:5, I(c).

56. Additional questionable spending involves amounts spent on outside experts. For example, despite employing six of its own attorneys, in 2006 LGC spent over $285,000.00 on lawyers. In litigation on the right-to-know law with the Professional Firefighters of NH, LGC, Inc. was ordered by the court to repay the firefighters' attorney's fees. These sums were not properly incurred by LGC, Inc.

57. Prior to 2007, employees of LGC, Inc. participated in a ***deferred compensation*** retirement plan, in which employees could divert a certain portion of their compensation away from direct receipt and thus immediate taxation. There was no employer contribution. In 2007, the "board" decided to accept the proposal of then-executive director Andrews to establish a ***defined benefit*** retirement program. This was done using $2,561,747 of employer money[5], matched with the accumulated deferred compensation contribution of any employee wishing to join the defined benefit plan. This money was required to establish a funding mechanism to provide the payments. As an ongoing

[5] Annual filings for 2007 and 2008: includes $1,798,917 as LGC's contribution to fund the Plan plus $762,830 to fund past service liability expense.

expense, LGC, Inc. must now pay 7.25% while employees must pay 5%.[6] The funding to establish and continue this defined benefit plan must be returned to the cities and towns.

D. Improper Tying Arrangement

58. Statutory limitations on what organizations may constitute or associate with Pooled Risk Management programs are set forth in RSA 5-B:3. As noted below, LGC, Inc. has forced a predicate non-qualifying association membership on its Pool members. The statutory language states that "

> a political subdivision, by resolution of its governing body, may establish and enter into agreements for obtaining or implementing insurance by self-insurance; for obtaining insurance from any insurer authorized to transact business in this state as an admitted or surplus lines carrier; or for obtaining insurance secured in accordance with any method provided by law; or for obtaining insurance by any combination of the provisions of this paragraph. Agreements made pursuant to this paragraph may provide for pooling of self-insurance reserves, risks, claims and losses, and of administrative services and expenses associated with them among political subdivisions. To accomplish the purposes of this chapter, 2 or more political subdivisions may form an association under the laws of this state or affirm an existing association so formed to develop and administer a risk management program **having as its purposes reducing the risk of its members; safety engineering; distributing, sharing, and pooling risks; acquiring insurance, excess loss insurance,** or

[6] According to the 5-27-11 NH Union Leader article, this defined benefit plan is only 80.46% funded.

reinsurance; and processing, paying and defending claims against the members of such association. (emphasis added.)

59. Beyond simple existence as a government subdivision, the statute does not impose a condition on a member for Pool membership. However, LGC, Inc.'s bylaws contain a requirement that in order to join their pools, a municipality must belong to LGC, Inc. and purchase membership in the non-Pool organization, NHMA, LLC. Although there are several levels of membership (full, associate, service), and although the cost of the latter two categories of membership are nominal (ranging from $70.00 to $400.00 per year), the costs associated with full membership can be substantial. (2010 total: $880,769.89.)

60. LGC, Inc. points to language in RSA 5-B:3 to justify the requirement. But NHMA describes itself as "*a non-profit, non-partisan membership organization of municipalities ... provid[ing] advocacy support for member municipalities, plus educational and training programs for local government officials and employees ...*" LGC, Inc.'s mission is "*... to strengthen the quality of its member governments and the ability of their officials and employees to serve the public ...*" Comparison of these words with the plain language of RSA 5-B:3,I demonstrates no connection between them. Since NHMA, LLC and LGC, Inc. are not themselves pooled risk management programs, requiring communities to pay to belong to either or both violates RSA 5-B:3, I. These are supposed to be public pools.

61. This is not to say that membership in LGC, Inc. or in NHMA, LLC is worthless. But because this predicate membership condition is not authorized by statute, any Pool member which was forced to pay for membership in this non-qualifying organization is

entitled to reimbursement of the costs imposed by this improper tying condition, beginning with 2010's $880,769.89.

COUNT 3 - VIOLATIONS OF THE NEW HAMPSHIRE SECURITIES ACT

A. Violation of Section 421-B:11, I: Offer and/or Sale of Unregistered Securities

62. Section 421-B:11, I of the New Hampshire Securities Act requires all securities offered or sold in New Hampshire to be registered, exempt, or federally covered securities. Section 421-B:17,V places the burden of proof on the person claiming such an exemption, exclusion from the definition of a security, or that the instruments are federally covered securities. Here, that person would be LGC, Inc. and its affiliate LLCs.

63. Further, if a claim of preemption or exclusion is made, LGC, Inc., through its affiliate LLCs has offered and sold, and is continuing to offer and sell, two separate types of securities: (1) Membership interests in NHMA, LLC; and (2) "risk pool" contracts offered and sold by the affiliate LLCs.

64. First, LGC, Inc. is offering and selling "investment contracts" which are securities under RSA § 421-B:2, XX(a) in the form of "Municipal, Associate, and Service Memberships" interests in the NHMA, LLC. These memberships must be distinguished from "Equity Memberships" in NHMA, LLC, which there is only one, LGC, Inc.

65. Second, each of the three operating units, Health Trust, LLC, Property-Liability Trust, LLC, (and Workers' Compensation Trust, LLC when it existed separately), have offered

and sold, and as to the former two LLC's are continuing to offer or sell, "risk pool" contracts which are also investment contracts and securities under RSA § 421-B:2, XX(a). None of the operating units had any employees of their own. LGC, Inc. provided the personnel to operate these units.

66. As a result, each operating unit is the issuer and seller of its securities because it passed title to the securities interests sold. As LGC, Inc. furnished the employees as necessary to the individual operating unit, LGC, Inc. was also a "seller", as were all LGC, Inc. employees involved in the marketing of the contracts.

I. Contracts are Investment Contracts Under the *Howey* Test

67. The New Hampshire Act does not define an investment contract. Further, there are no New Hampshire *state* cases indicating the appropriate legal test for investment contracts. However, in the past, the Bureau has adopted the four prong test for investment contracts established in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). *See e.g., In re Gary Arthur Gahan*, COMO5-028 (N.H Bur. Sec. Reg., Dec. 30, 2008); *In re Viatical Investments, Status As Securities*, Into4-003 (N.H. Bur. Sec.Reg. Oct. 10, 2004). The four prongs are: (1) investment of money; (2) in a common enterprise; (3) with the expectation of a profit; (4) to come solely through the efforts of the promoter or some third party.

68. The "risk pool" contracts offered and sold by Health Trust, LLC and Property-Liability Trust, LLC (and formerly Workers' Compensation Trust, LLC) meet this definition. The "members" pay each Pool for the coverage desired. This is the investment of money.

69. The money is paid to the individual pool. Each pool constitutes the common enterprise.

70. The individual pool invests the money received and makes a substantial investment income. This income, over and above the operating expenses of the pool, is required by

statute to be returned to the municipalities which have purchased risk pool contracts during the year coverage was purchased. Because the municipalities are aware of this statutory obligation, this obligation constitutes the necessary "expectation of profit" element.

71. The substantial investment income is generated by the individual Pools and LGC, Inc. which hired professionals to manage the investments. The municipality "members" have no voice in this investment process. Thus, the profits are "through the efforts of the promoter or some third party." As a result, the fourth element of the *Howey* test is met.

72. Since all four elements of the *Howey* test have been met, the "risk pool" contracts are investment contracts, and, therefore, are securities subject to regulation under the New Hampshire securities act.

II. Alternatively, the Contracts are Investment Contracts Under the Risk Capital Test

73. Courts and some *State* securities agencies have recognized an alternative test for establishing an investment contract. The SEC and the courts construing the *federal* securities acts have not accepted the alternative test. This alternative test also has four elements and several of the risk capital elements are similar to the *Howey* test, but are broader. The four elements as set out in *State v. Hawaii Market Center, Inc.*, 52 Haw. 642, 485 P.2d 105 (1971) are: (1) An investment furnishing initial value to an offeror; (2) A portion of this initial value is subjected to the risks of the enterprise; (3) The furnishing of the initial value is induced by the offeror's promise or representation which gives rise to a reasonable understanding that a valuable *benefit of some kind*, over and above the

initial value, will accrue to the offeree as a result of the operation of the enterprise; and (4) by someone other than the investor.

74. The payment of the consideration paid by the municipalities for the "risk pool" contracts satisfies the first element. Likewise, the Pool satisfies the enterprise requirement. Further, the Pools were formed with no capital contribution.

75. Therefore, the consideration paid for the "risk pool" contract will be used to meet the Pools' obligations to provide the coverage promised. Therefore, consideration is "risk capital." The Pool is raising the capital to prove the services it is obligated to perform under the "risk pool" contract.

76. The main difference between the risk capital test and the *Howey* test lies in the expectation of a *benefit* rather than an expectation of a *profit*. The *Howey* cases have interpreted profit to be restricted to payment of money. On the other hand, the risk capital cases have interpreted "benefit" to include non-money right to use or receive something; for example, the right to use a golf course to be constructed by the promoter. *See e.g., Silver Hills Country Club v. Sobieski*, 55 Cal.2d 811, 361 P.2d 906 (1961). In this case, the benefit is the "risk" coverage to be supplied.

77. Finally, the fourth element of the risk capital test is merely an explanation of the type of efforts which will satisfy "the efforts of others" test.

78. All of the membership and risk pool contracts meet the risk capital test for investment contract. All municipalities and other potential purchasers are required to become members of NHMA, LLC and pay dues. These dues are used for lobbying purposes. NHMA, LLC has no other source of income other than these dues. Therefore, the dues become risk capital of NHMA, LLC.

79. The benefit in the case of the "risk pool" contract, of course, is the right to receive the coverage under the pool contract. The BSR has checked its registration record and has found that none of the above securities has been registered for sale in New Hampshire. By reason of the foregoing, LGC, Inc., Health Trust, LLC, Property-Liability Trust, LLC, the former Workers' Compensation Trust, LLC, and NHMA, LLC have violated and (with the exception of the Workers' Compensation Trust, LLC) are violating, and, unless a cease and desist order is issued, will continue to violate Section 421-B:11(I) of the New Hampshire Securities Act.

B. Violation of Section 421-B:6, I of the Securities Act: Failure to Register as Broker-Dealers and Issuer-Dealers

I. LGC is a Broker-Dealer

80. The above identified LLCs, purportedly affiliates of LGC, Inc. are, or were, the "issuer" as defined in Section 421-B:2, XIII of the Act. Each of the three affiliates is also a "seller" of the "risk pool" investment contracts because they pass title to the identified investment contracts.

81. However, the LLC's offering the "risk pool" investment contracts have no employees. As a result, any work that needs to be done concerning the offer or sale of these contracts is done by LGC, Inc. by agreement.

82. Providing these services to the LLCs brings LGC, Inc. within the definition of a "broker-dealer" under Section 421-B:2, III, which states:

"Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others....

83. Section 421-B:5, then, requires a broker-dealer to register with the BSR.

84. The Bureau has examined its records and finds no current or past registration of Respondent LGC, Inc. as a broker-dealer.

85. Therefore, LGC, Inc. has violated the New Hampshire Uniform Securities Act and is subject to discipline under Sections 421-B:23 and 421-B:26-a.

II. Employees of LGC, Inc. Are "Agents"

86. Likewise, the employees of LGC, Inc. which are involved in the offer or sale of the "risk pool" investment contracts, come within the definition of an "agent" under RSA 421-B:2, II, and must be registered under RSA 421-B:5.

87. The BSR has searched its records and has found no past or current registration of any employee of LGC, Inc. as a registered agent of LGC, Inc.

88. Therefore, LGC, Inc.'s employees have violated the New Hampshire Securities Act, and subject to an enforcement action under sections 421-B:23 and 421-B:26, III.

89. Under Section 421-B:26, III-a of the Act, LGC, Inc., the LLC Respondents, and all the individual Respondents are also subject to an administrative enforcement action for the non-registration of the LGC, Inc. employees. Under three separate theories, the corporate Respondent LGC, Inc. is a direct control person of its employees and liable under Section 421-B:26, III-a. It is also liable under the doctrine of respondeat superior. *See e.g.*, *Hollinger v. Titan Capital Corp.*, 914 F.2d 1564 (9th Cir. 1990) (en banc) (broker-dealer liable for acts of its employees). Finally, LGC, Inc. is liable as a broker-dealer who

"materially aid[ed] in the act or transaction constituting the violation either knowingly or negligently."

90. Likewise, individual Respondents John Andrews and Maura Carroll are subject to an administrative enforcement action for the non-registration of the LGC, Inc. employees. See RSA 421-B:26, III-a (imposing liability on, among others, principal executive offices and directors). Respondent Andrews was the executive director of LGC, Inc. (and its' predecessors) from its inception until he retired. Respondent Carroll served as general counsel for LGC, Inc. until 2010. As such, she is subject to an administrative enforcement action as an employee of LCG, Inc. under Section 421-B:26, III-a. Further, upon Respondent Andrews' retirement, Respondent Carroll assumed the position of executive director, a position she currently holds. Like Respondent Andrews, she is subject to an administrative enforcement action under Section 421-B:26, III(a).

91. The remaining individual Respondents were members of the Board of Directors of LGC, Inc. They claimed to direct the actions of the limited liability companies Health Trust, LLC, Property-Liability Trust, LLC and NHMA, LLC. As such, they had direct control of each of these LLCs. As such, they are subject to administrative enforcement under RSA 421-B;26, III-a, as control persons:

> RSA 421-B:26, III-a. Every person who directly or indirectly controls a person liable under paragraph I, II, or III every partner, principal executive officer, or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the acts or transactions constituting the violation, either

knowingly or negligently, may, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or an administrative fine not to exceed $2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal penalties imposed pursuant to RSA 421-B:24 or civil liabilities imposed pursuant to RSA 421-B:25. No person shall be liable under this paragraph who shall sustain the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which the liability is alleged to exist.

92. Finally, the remaining individual Respondents, as members of the Board of Directors of LGC, Inc. claim *indirect* control of the limited liability companies HealthTrust, LLC, Property-Liability Trust, LLC and NHMA, LLC. Defendant LGC, Inc. was the sole "equity member" of these LLCs and claims to have acted as the "managing member".

93. By reason of the foregoing, the above named individuals and entities have violated, are violating, and, unless a cease and desist order is issued, will continue to violate RSA 421-B:26 of the New Hampshire Securities Act.

C. Violation of Section 421-B:3, I(b) and (c) of the Act: Untrue Statements of Material Fact and Omissions of Material Fact in Connection with the Offer, Sale of Purchase of Securities and Engaging Conduct Which Operates or Would Operate a Fraud or Deceit

Untrue Statements of Material Fact and Omissions of Material Fact in Connection with the Offer and/or Sale of Non-equity Membership Interests in NHMA, LLC

94. Respondents LGC, Inc. and its affiliate NHMA, LLC have made, and are currently making, in connection with the offer and/or sale of the non-equity "memberships" in NHMA, LLC, which are securities in the form of an investment contract, directly and indirectly, untrue statements of material facts in violation of 431-B:3, I(b).

95. These material misrepresentations include, but are not limited to, the following:

    a. That LGC, Inc. can require forced membership in NHMA, LLC before allowing the purchase of the risk management coverages offered in HealthTrust, LLC and Property-Liability Trust, LLC;

    b. That LGC, Inc. falsely claimed that the New Hampshire nonprofit corporations HealthTrust, Inc., NHMA Property-Liability Trust, Inc., and LGC, Inc. were legally and properly merged with HealthTrust, LLC and Property-Liability Trust, LLC, respectively; and

    c. By means of the illegal merger noted above, LGC, Inc. represented to members of the public and public officials that it was the parent company overseeing the operation of the Pools and could legally operate them.

96. Respondents LGC, Inc. and its affiliate NHMA, LLC have omitted to disclose and are currently omitting to disclose, in connection with the offer and/or sale of the non-equity "memberships" in NHMA, LLC, which are securities in the form of an investment contract, directly and indirectly, material facts.

97. These material omissions include, but are not limited to, the following:

a. Failure to disclose that the securities are not registered;

b. Failure to disclose that LGC, Inc and NHMA, LLC should be but are not licensed as broker-dealers;

c. That the securities should be but are not registered; and

d. That LGC, Inc. employees should be but are not licensed as agents.

D. Violation of Section 421-B:3, I (c) of the Act: Engaging in any Act, Practice, or Course of Business that Operates or Would Operate as a Fraud or Deceit upon any Person

98. Respondents LGC, Inc. and NHMA, LLC, in connection with the offer and/or sale of the Non-equity Membership Interests in Respondent NHMA, LLC, have engaged, and are engaging in acts, practices, and/or courses of business that has operated, and continues to operate, as a fraud or deceit upon other persons in violation of Section 421-B:3, I (c) of the Act.

99. These acts, practices, and courses of business include, but not limited to, the following:

a. Requiring a community to pay for NHMA, LLC membership despite a lack of authority to do so in RSA 5-B;

b. Diverting 1% of the income of HealthTrust, LLC and Property-Liability Trust, LLC to support workers' compensation insurance coverage and for other non-germane purposes, without informing communities which paid for health and property-liability coverage that this was being done;

c. Expending monies to establish a defined benefit retirement plan, thereby increasing overhead and creating an ongoing financial obligation;

d. Holding monies in reserve in excess of those required to cover administration, claims, reserves and the purchase of excess insurance; and

e. Converting the assets of the nonprofit corporations HealthTrust, Inc. and NHMA Property-Liability, Inc.

E. Untrue Statements of Material Fact and Omissions of Material Fact in Connection with the Offer and/or Sale of the "Risk Pool" investment Contracts in the Defendant Affiliate LLCs

100. Respondents LGC, Inc. and its affiliate LLCs (except NHMA, LLC) as well as the individual Respondents Andrews and Carroll, have made, and are currently making, in connection with the offer and/or sale of the "Risk Pool" investment contracts in the Respondent Affiliate LLCs, directly and indirectly, untrue statements of material facts in violation of 431-B:3, I(b).

101. These material misrepresentations include, but are not limited to, the following:

a. That LGC, Inc. can require forced membership in NHMA, LLC before allowing the purchase of the risk management coverages offered in HealthTrust, LLC and Property-Liability Trust, LLC;

b. That LGC, Inc. falsely claims that the New Hampshire nonprofit corporations HealthTrust, Inc., NHMA Property-Liability Trust, Inc., and LGC, Inc. were legally and properly merged with HealthTrust, LLC and Property-Liability Trust, LLC, respectively; and

c. By means of the illegal merger noted above, LGC, Inc. represented to members of the public and public officials that it was the parent company overseeing the operation of the LLC Pools and could legally operate them.

102. Respondents LGC, Inc. and its affiliate LLCs (except NHMA, LLC), as well as the individual Respondents Andrews and Carroll, have failed to reveal, and are currently failing to reveal, in connection with the offer and/or sale of the "Risk Pool" investment contracts issued by each of the Respondent Affiliate LLCs, material omissions in violation of 431-B:3, I(b).

103. As to the Pools, these material omissions include, but are not limited to, the following:

a. Failure to disclose that the securities are not registered;

b. Failure to disclose that LGC, Inc and NHMA, LLC should be but are not licensed as broker-dealers;

c. That the securities should be but are not registered; and

d. That LGC, Inc. employees should be but are not licensed as agents.

F. Violation of Section 421-B:3, I (c) of the Act: Engaging in Any Act, Practice, or Course of Business that Operates or Would Operate as a Fraud or Deceit upon any Person

104. Respondents LGC, Inc. and its Respondent Affiliate LLCs (except NHMA, LLC), as well as the individual Respondents Andrews and Carroll, in connection with the offer and/or sale of the "risk pool" investment contracts issued and sold by the

various Respondent Affiliated LLCs have engaged, and are engaging, in acts, practices, and/or courses of business that have operated, and continues to operate, as a fraud or deceit upon other persons in violation of RSA 421-B:3, I (c) of the Act.

105. These acts, practices, and courses of business include, but not limited to, the following:

a. Requiring a community to pay for NHMA, LLC membership despite a lack of authority to do so in RSA 5-B;

b. Diverting 1% of the income of HealthTrust, LLC and Property-Liability Trust, LLC to support workers' compensation insurance coverage and for other non-germane purposes, without informing communities which paid for health and property-liability coverage that this was being done;

c. Expending monies to establish a defined benefit retirement plan, thereby increasing overhead and creating an ongoing financial obligation;

d. Holding monies in reserve in excess of those required to cover administration, claims, reserves and the purchase of excess insurance; and

e. Converting the assets of the nonprofit corporations HealthTrust, Inc. and NHMA Property-Liability, Inc.

106. By reason of the foregoing, all Respondents, directly and indirectly, have violated, are violating, and, unless ordered to cease and desist, will continue to violate section 421-B:3, 1(b) and (c) of the Act. As a result, they are subject to administrative proceedings under RSA's 421-B:23, 421-B:26, III and III-a, and 421-B:26-a.

107. In determining whether the entry of a cease and desist order is appropriate, it should be remembered that the state and federal courts, when construing similar, if not

identical, provisions in the federal Securities Acts of 1933, 15 U.S.C. §77 q(a) and the Uniform Securities Act (1956), on which the New Hampshire statute is based, have held *that proof of scienter is not an element which the Bureau needs to allege and prove. See e.g., Aaron v. SEC*, 446 U.S. 680, 100 S.Ct. 1945 (1980); *State v. Shama Resources Ltd.*, 127 Idaho 267, 899 P.2d 977 (1995).

108. This conclusion is in keeping with the public policy of not allowing false information to be disseminated to the public and preventing injury to the public. Consistent with this policy, the state does not care what the intent of the person disseminating the information is, it merely wants the wrongful dissemination to stop.

STATEMENT OF LAW

COUNT 1 – RSA 292

1. HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. were voluntary corporations within the meaning of RSA 292:1 and were established for some or all of the purposes designated therein.
2. HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. operated under articles of agreement containing the provisions required under RSA 292:2, including the a provision for disposition of the corporate assets in the event of dissolution of the corporations, including the prioritization of rights of shareholders and members to corporate assets.
3. Pursuant to RSA 292:7, any corporation organized or registered in accordance with the provisions of this chapter may merge with or acquire any other corporation formed

pursuant to RSA 292 by a majority vote of such corporation's board of directors or trustees, at a meeting duly called for that purpose, and by recording a certified copy of such vote in the office of the secretary of state and in the office of the clerk of the town or city in this state which is its principal place of business. In the case of a foreign nonprofit corporation registered in New Hampshire, a copy of the amendment or plan of merger, certified by the proper officer of the state of incorporation, shall be filed with the secretary of state, together with the fee provided in RSA 292:5. The surviving corporation in a merger shall continue to have all the authority and powers vested in the merging corporations, including any powers previously conferred upon them by the legislature. HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. violated this provision by attempting to merge with Delaware LLCs that were not and could not be registered pursuant to RSA 292. Furthermore, HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. violated this provision by failing to file a copy of any amendment or plan of merger in the office of the secretary of state and in their home city of Concord, New Hampshire.

4. Pursuant to RSA 292:25, I, every corporation organized under this chapter shall every 5 years make a return in writing to the secretary of state upon blanks to be furnished by him and shall pay a fee of $25. The return shall be signed by the president or other officer of said corporation. The return shall state the corporation's principal address and the names and addresses of all the officers and directors or the governing board of the corporation. Any corporation which does not renew its charter as provided in this subdivision shall have its charter repealed, revoked and annulled; shall lose any right or title to the name under which it was incorporated; and shall be so advised in writing by the secretary of

state. HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. were subject to this provision and after failing to renew their charters in 2005 were notified by the secretary of state that its charter was repealed, revoked, and annulled.

5. Pursuant to RSA 292:25, II, the disposition of any corporate assets of any corporation that is dissolved under RSA 292:25 shall be performed in accordance with RSA 292:29. HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. are subject to this provision.

6. Pursuant to RSA 292:29, I, any corporation whose charter is repealed, revoked and annulled pursuant to this subdivision shall, nevertheless, continue as a body corporate for the term of 3 years from the date such charter is repealed, revoked, and annulled for the purpose of presenting and defending suits by or against it and of closing and settling its concerns and distributing its assets, including the disposition and transfer of all corporate assets and property, subject to paragraph III. HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. are subject to this provision.

7. Pursuant to RSA 292:29, III, the superior court may at any time when it shall be made to appear, upon the petition of any interested party, that the protection of proprietary or other rights requires the doing of any act or thing by or in behalf of any such corporation, order the doing of such acts or things, and for this purpose may appoint and authorize an agent to act for and in the name of such corporation, and any action so ordered and done shall be effective corporate action. HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. are subject to this provision.

8. Pursuant to RSA 292:29, IV, all corporate assets and property are to be disposed of in accordance with the provisions for dissolution as set forth in the articles of agreement, the

bylaws, and in accordance with RSA 292:8 and 292:9. HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. are subject to this provision.

9. Pursuant to RSA 292:8, the corporation may generate funds through its members, including, but not limited to: issuance of membership certificates or stock certificates, or both, in the corporation; receipt of contributions to capital; and assessment of dues and fees on members. HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. are subject to this provision.

10. Pursuant to RSA 292:9, any such corporation, or 1/4 of the members thereof, may apply by petition to the superior court, or in the case of a charitable corporation to the superior court or the probate court, in the county in which the corporation is located, for a decree of dissolution, or for such other relief as may be just; and the court, after due notice to all parties interested and a hearing, may decree that the corporation be dissolved, subject to such limitations and conditions as justice may require. The court shall have the right to appoint a guardian ad litem in the event that any members or shareholders, or both, are unknown or have abandoned a stock interest or membership interest in the corporation. The guardian ad litem shall file a report with the court setting forth its findings with respect to: the attempt to notify the unknown shareholders or members or both; any response from the unknown shareholders or members or both; and the length of time since the date of last contact by the unknown shareholder or member with the corporation. The court shall have the discretion, after reviewing the report of the guardian ad litem, to conclude the extent of the rights and interests of the shareholders or members, or both, who are unknown or have abandoned their interests. No member or shareholder shall be entitled to receive an amount from a dissolution of assets greater

than the member's or shareholder's total contribution to capital or purchase price, or both, of membership certificates. Any and all funds which may be payable to members or shareholders, or both, who have been adjudicated to have abandoned their interests under this section shall revert to the corporation as capital assets. HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. are subject to this provision.

11. Pursuant to RSA 292:30, I, any corporation whose charter has been repealed, revoked and annulled may at any time procure a revival of its certificate of incorporation, together with all the rights, franchises, privileges and immunities and subject to all of its duties, debts and liabilities which have been secured or imposed by its original charter and all amendments thereto; provided, that if the corporation name is no longer available the corporation shall file with its revival an amendment changing its name or a consent to use its original name. HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. are subject to this provision.

COUNT 2 – RSA-5:B

12. Pursuant to RSA 5-B:1, the purpose of Pooled Risk Management Programs is to provide for the establishment of pooled risk management programs and to affirm the status of such programs established for the benefit of political subdivisions of the state. The legislature finds and determines that insurance and risk management is essential to the proper functioning of political subdivisions; that risk management can be achieved through purchase of traditional insurance or by participation in pooled risk management programs established for the benefit of political subdivisions; that pooled risk

management is an essential governmental function by providing focused public sector loss prevention programs, accrual of interest and dividend earnings which may be returned to the public benefit and establishment of costs predicated solely on the actual experience of political subdivisions within the state; that the resources of political subdivisions are presently burdened by the securing of insurance protection through standard carriers; and that pooled risk management programs which meet the standards established by this chapter should not be subject to insurance regulation and taxation by the state. Respondents are subject to this section.

13. Members of the Pooled Risk Management Programs operated by Respondents are "political subdivisions" within the meaning of RSA 5-B:2, III.

14. Among other activities, Respondents perform "risk management" within the meaning of RSA 5:B2, IV.

15. Pursuant to RSA 5-B:3, I, a political subdivision, by resolution of its governing body, may establish and enter into agreements for obtaining or implementing insurance by self-insurance; for obtaining insurance from any insurer authorized to transact business in this state as an admitted or surplus lines carrier; or for obtaining insurance secured in accordance with any method provided by law; or for obtaining insurance by any combination of the provisions of this paragraph. Agreements made pursuant to this paragraph may provide for pooling of self-insurance reserves, risks, claims and losses, and of administrative services and expenses associated with them among political subdivisions. To accomplish the purposes of this chapter, 2 or more political subdivisions may form an association under the laws of this state or affirm an existing association so formed to develop and administer a risk management program having as its purposes

reducing the risk of its members; safety engineering; distributing, sharing, and pooling risks; acquiring insurance, excess loss insurance, or reinsurance; and processing, paying and defending claims against the members of such association. Respondents violated this provision by imposing an additional requirement for membership in their Pooled Risk Management Programs by requiring that members of the programs also become members of the LGC, Inc. and NHMA, LLC.

16. Pursuant to RSA 5-B:5, I(a), each pooled risk management program shall exist as a legal entity organized under New Hampshire law. HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. violated this provision in that their charters were repealed, revoked, and annulled pursuant to RSA 292:25, I in 2006. Furthermore, LGC-HT, LLC and LGC-PLT, LLC violated this provision in that for a period and after a purported merger, the pooled risk management programs were operated by entities organized under Delaware law.

17. Pursuant to RSA 5-B:5, I(b), each pooled risk management program shall be governed by a board the majority of which is composed of elected or appointed public officials, officers, or employees. LGC, Inc., HealthTrust, LLC, and Property-Liability Trust, LLC violated this provision by using assets which did not belong to them, i.e., the assets of HealthTrust, Inc. and NHMA Property-Liability Trust, Inc., to operate pooled risk management programs. Respondents further violated this provision after the purported merger of the prior non-profit entities into LLCs by eliminating the governance of each pooled risk management program by a board and transferring the governance to single member LLCs.

18. Pursuant to RSA 5-B:5, I(c), each pooled risk management program shall return all earnings and surplus in excess of any amounts required for administration, claims, reserves, and purchase of excess insurance to the participating political subdivisions. Respondents violated this provision by retaining earnings and surplus in excess of amounts required for administration, claims, reserves, and purchase of excess insurance and illegally using such earnings and surplus to maintain excessive reserves, to fund discretionary spending – including the establishment of a defined benefit pension program, and to subsidize one pooled risk management programs with the earnings and surplus of another.

19. Pursuant to RSA 5-B:4-a, I(a), the secretary of state shall have exclusive authority and jurisdiction to bring administrative actions to enforce the Pooled Risk Management Programs statute. Respondents are subject to this provision.

20. Pursuant to RSA 5-B:4-a, I(b), the secretary of state shall have exclusive authority and jurisdiction to investigate and impose penalties for violations of this chapter, including but not limited to fines and rescission, restitution, or disgorgement. Respondents are subject to this provision.

21. Pursuant to RSA 5-B:4-a, II, the secretary of state shall have all powers specifically granted or reasonably implied in order to perform the substantive responsibilities imposed by the Pooled Risk Management Programs statute. Respondents are subject to this provision.

22. Pursuant to RSA 5-B:4-a, VI, whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of the Pooled Risk Management Programs statute or any rule or order under the statute, the

secretary of state shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from such violations. The order shall be calculated to give reasonable notice of the rights of the person to request a hearing on the order and shall state the reasons for the entry of the order. All hearings shall be conducted in accordance with RSA 421-B:26-a. Respondents are subject to this provision

23. Pursuant to RSA 5-B:4-a, V, in any investigation to determine whether any person has violated or is about to violate the Pooled Risk Management Programs statute or any rule or order under the statute, upon the secretary of state's prevailing at hearing, or the person charged with the violation being found in default, or pursuant to a consent order issued by the secretary of state, the secretary of state shall be entitled to recover the costs of the investigation, and any related proceedings, including reasonable attorney's fees, in addition to any other penalty provided for under the statute.

24. Pursuant to RSA 5-B:4-a, VII(a), any person who, either knowingly or negligently, violates any provision of the Pooled Risk Management Programs statute or any rule or order thereunder, may, upon hearing, and in addition to any other penalty provided for by law, be subject to an administrative fine not to exceed $2,500. Each of the acts specified shall constitute a separate violation. Respondents are subject to this provision.

25. Pursuant to RSA 5-B:4-a, VII(b), after notice and hearing, the secretary of state may enter an order of rescission, restitution, or disgorgement directed to a person who has violated the Pooled Risk Management Programs statute, or rule or order under the statute. Rescission, restitution, or disgorgement shall be in addition to any other penalty provided for under the statute. Respondents are subject to this provision.

COUNT 3 – RSA 421-B

26. Pursuant to RSA 421-B:2, I-b, "affiliate" means any person directly or indirectly controlling, controlled by, or under common control with another person. LGC, Inc., HealthTrust, LLC, Property-Liability Trust, LLC, Workers' Compensation Trust, LLC, and NHMA, LLC are "affiliates" within the meaning of RSA 421-B:2, I-2.

27. Pursuant to RSA 421-B:2, II, "agent" means any individual, other than a broker-dealer, issuer or issuer-dealer, who represents a broker-dealer, issuer or issuer-dealer in effecting or attempting to effect purchases or sales of securities or an individual other than an investment adviser who represents an investment adviser by providing investment advice or who is an investment adviser representative. LGC, Inc. employees involved in the offer and sale of Pooled Risk Management Program contracts are "agents" within the meaning of RSA 421-B:2, II.

28. Pursuant to RSA 421-B:2, III, "broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. LGC, Inc. is a "broker-dealer" within the meaning of RSA 421-B:2, III because it performs or has performed any work needed to be done concerning the offer or sale of membership contracts by HealthTrust, LLC, Property-Liability Trust, LLC, Workers' Compensation Trust, LLC, and NHMA, LLC.

29. Pursuant to RSA 421-B:2, XX(a), "security'" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit sharing agreement; membership interest in a limited liability company; partnership interest in a registered limited liability partnership; partnership interest in a

limited partnership; collateral trust certificate; preorganization certificate or subscription; transferable shares; investment contract; investment metal contract or investment gem contract; voting trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining right, title or lease or in payments out of production under such a right, title or lease; or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. Municipal, associate, and service memberships in NHMA, LLC are "securities" within the meaning of RSA 421-B:2, XX(a).

30. Pursuant to RSA 421-B:2, XIII, "issuer"' means any person who issues or proposes to issue any security and any promoter who acts for an issuer to be formed. HealthTrust, LLC, Property-Liability Trust, LLC, Workers' Compensation Trust, LLC, and NHMA, LLC are all issuers within the meaning of RSA 421-B:2, XIII. Each of the four affiliates are also "sellers" of the above identified investment contracts because they pass title to the identified investment contracts.

31. RSA 421-B:2, XX(a) does not define an investment contract. Further, there are no New Hampshire *state* cases indicating the appropriate legal test for investment contracts. However, in the past, the Bureau has adopted the four prong test for investment contracts established in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). *See e.g., In re Gary Arthur Gahan*, COMO5-028 (N.H Bur. Sec. Reg., Dec. 30, 2008); *In re Viatical Investments, Status As Securities*, Into4-003 (N.H. Bur. Sec. Reg. Oct. 10, 2004). The four prongs are: (1) investment of money; (2) in a common enterprise; (3) with the expectation of a profit; (4) to come solely through the efforts of the promoter or some third party. The municipal,

associate, and service memberships are "investment contracts" within the meaning of RSA 421-B:2, XX(a). First, members paid each Pooled Investment Program for the coverage desired, constituting an investment of money. Second, each program existed as a common enterprise of members and managers. Third, since members were aware that the programs had a statutory obligation to return surplus to members under RSA 5-B, awareness of this obligation constitutes the necessary expectation of profit. Fourth, the substantial investment income is generated by the individual LLCs, LGC, Inc. and professionals hired to manage the investments, while the municipality "members" have no voice in the investment process. Thus, the profits are though the efforts of a promoter or some third party. The Pooled Risk Management Program contracts offered and sold by HealthTrust, LLC, Property-Liability Trust, LLC, and Workers' Compensation Trust, LLC are "investment contracts" within the meaning of RSA 421-B:2, XX(a).

32. Courts and *State* securities agencies have recognized an alternative test for establishing an investment contract. The SEC and the courts construing the *federal* securities acts have not accepted the alternative test. This alternative test also has four elements and several of the risk capital elements are similar to the *Howey* test, but are broader. The four elements as set out in *State v. Hawaii Market Center, Inc.,* 52 Haw. 642, 485 P.2d 105 (1971) are: (1) An investment furnishing initial value to an offeror; (2) A portion of this initial value is subjected to the risks of the enterprise; (3) The furnishing of the initial value is induced by the offeror's promise or representation which gives rise to a reasonable understanding that a valuable *benefit of some kind*, over and above the initial value, will accrue to the offeree as a result of the operation of the enterprise; and (4) the offeree does not receive the right to exercise practical or actual control over managerial decisions. The payment of

the consideration paid by the municipalities for the Pooled Risk Management Program contracts *satisfies* the first element. Likewise, the program satisfies the enterprise requirement. Further, each program was formed with no capital contribution. Therefore, the consideration paid for the "risk capital" contract will be used to meet the program's obligations to provide the coverage promised. The main difference between the risk capital test and the *Howey* test lies in the expectation of a *benefit* rather than an expectation of a *profit*. Profit has been interpreted to mean payment of money. On the other hand, benefit includes non-money rights to use or receive something. For example, the right to use a golf course to be constructed by the promoter. *See e.g., Silver Hills Country Club v. Sobieski*, 55 Cal.2d 811, 361 P.2d 906 (1961). In this case, it is the "risk" coverage to be supplied. Finally, the fourth element of the risk capital test is merely an explanation of the type of efforts which will satisfy "the efforts of others" test. Thus, all of the membership and Pooled Risk Management Program contracts meet the risk capital test for an investment contract. All municipalities and other potential purchasers are required to become members of the NHMA, LLC and pay dues. These dues are used for lobbying purposes. NHMA, LLC has no other source of income other than these dues. Therefore, the dues become risk capital of NHMA, LLC. The benefit received for joining NHMA, LLC is that the municipality receives the right to buy Pooled Risk Management Program contracts from any or all of the programs.

33. Pursuant to RSA 421-B:6, I, it is unlawful for any person to transact business in this state as a broker-dealer, issuer-dealer or agent unless such person is licensed under RSA 421-B. LGC, Inc. violated this provision by failing to obtain a broker-dealer or issuer-dealer license. Employees of LGC, Inc. involved in the offer or sale of Pooled Risk

Management Program contracts violated this provision by failing to obtain licenses as agents of LGC, Inc., either as a broker-dealer or issuer-dealer.

34. Pursuant to RSA 421-B:6, II, it is unlawful for any broker-dealer or issuer-dealer to employ an agent unless the agent is licensed. LGC, Inc. violated this provision by failing to obtain agent licenses for its employers involved in the offer or sale of Pooled Risk Management Program contracts.

35. Pursuant to RSA 421-B:11, I, all securities offered or sold in New Hampshire must be registered, exempt, or federally covered securities. LGC, Inc., HealthTrust, LLC, and Property-Liability Trust, LLC violated this provision by offering securities that were not registered, exempt, or federally covered securities.

36. Pursuant to RSA 421-B:17, V, the burden of proof of the claiming an exemption, exclusion from the definition of a security, or that the instruments are federally covered securities is on the person claiming it. LGC, Inc., HealthTrust, LLC, and Property-Liability Trust, LLC are subject to this provision.

37. Pursuant to RSA 421-B:23, I(a), whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order under this chapter the secretary of state shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. LGC, Inc., HealthTrust, LLC, Property-Liability Trust, LLC, the former Workers' Compensation Trust, LLC, and NHMA, LLC are subject to this provision.

38. Pursuant to RSA 421-B:26, III, any person who, either knowingly or negligently,

violates any provisions of this RSA 421-B may, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation or denial of any registration or license, including the forfeiture of any application fee, or an administrative fine not to exceed $2,500, or both. Each of the acts specified shall constitute a separate violation. LGC, Inc., HealthTrust, LLC, Property-Liability Trust, LLC, the former Workers' Compensation Trust, LLC, and NHMA, LLC are subject to this provision.

39. Pursuant to RSA 421-B:26, III-a, every person who directly or indirectly controls a person liable under paragraph III, every partner, principal executive officer, or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the acts or transactions constituting the violation, either knowingly or negligently, may, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or an administrative fine not to exceed $2,500, or both. Each of the acts specified shall constitute a separate violation. LGC, Inc., HealthTrust, LLC, Property-Liability Trust, LLC, the former Workers' Compensation Trust, LLC, NHMA, LLC and all individual Respondents are subject to this provision.

40. Pursuant to RSA 421-B:26, III-b, notwithstanding any provision to the contrary, violation of a cease and desist order may result in an administrative fine not to exceed $2,500 per day for as long as such violation continues. This fine shall be in addition to any other penalties provided. LGC, Inc., HealthTrust, LLC, Property-Liability Trust,

LLC, the former Workers' Compensation Trust, LLC, and NHMA, LLC are subject to this provision.

41. Pursuant to RSA 421-B:26, VIII, any person who, either knowingly or negligently, engages in any conduct prohibited by RSA 421-B:10, I(b)(2), (7), (10), (12), or (13) may, upon hearing, and in addition to any other penalty provided for by law, be subject to an administrative fine not to exceed $2,500, or both. Each of the acts specified shall constitute a separate violation. LGC, Inc., HealthTrust, LLC, Property-Liability Trust, LLC, the former Workers' Compensation Trust, LLC, and NHMA, LLC are subject to this provision.

RELIEF REQUESTED

The staff of the Bureau of Securities Regulation request that the Secretary of State take the following action:

1. Find as fact the allegations contained in Counts 1, 2 and 3 of the Statement of Facts of this petition.

2. Make conclusions of law as stated in the Statement of Law relative to the allegations contained in the Statement of Facts.

3. Order Respondents to cease and desist in accordance with RSA 5-B:4-a, VI and RSA 421-B:21, I.

4. Order Respondents to pay administrative fines in accordance with RSA 5-B:4-a, VII(a), RSA 421-B:26:III, RSA 421-B:26, III-a, RSA 421-B:26, III-b, and RSA 421-B:26, VIII.

5. Order Respondents to pay the cost of investigation of this matter in accordance with RSA 5-B: 4-a, V, RSA 421-B:22, IV and RSA 421-B:23, II as appropriate.

6. Order the Respondents to pay restitution to member political subdivisions of its Pooled Risk Management Programs pursuant to RSA 5-B:4-a, VII(b) and RSA 421-B:26, V.

7. Take such other actions as necessary for the protection of New Hampshire political subdivisions and enforcement of RSA 5-B and RSA 421-B.

RIGHT TO AMEND

The Bureau Staff reserves the right to amend this Petition for Relief and to request that the Secretary of State take additional administrative action. Nothing herein shall preclude the Bureau Staff from bringing additional enforcement action under NH RSA 5-B or NH RSA 421-B.

Respectfully submitted,

Joseph C. Long, Director

9/2/11
Date