

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE

_____))
IN THE MATTER OF:))
))
Local Government Center, Inc.;))
Local Government Center Real Estate, Inc.;))
Local Government Center Health Trust, LLC;))
Local Government Center Property-Liability Trust,))
LLC;))
Health Trust, Inc.;))
New Hampshire Municipal Association Property-Liability) Case No: C2011000036
Trust, Inc.;))
LGC – HT, LLC;))
Local Government Center Workers’ Compensation))
Trust, 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 A. Griffin; and John Andrews))
))
RESPONDENTS))
_____)

**MOTION IN SUPPORT OF MOTION TO QUASH SUBPOENA FILED BY THE
PROFESSIONAL FIREFIGHTERS OF NEW HAMPSHIRE**

NOW COMES the Petitioner in the above-referenced matter, the Bureau of Securities Regulation, by and through its attorneys, Bernstein, Shur, Sawyer, & Nelson, P.A., and joins the motion to quash the subpoena *duces tecum* issued to the Professional Firefighters of New Hampshire (the “subpoena”) by the Local Government Center, Inc. (“LGC”) requiring a production of documents and testimony at a deposition scheduled for January 23, 2012.

1. The Bureau adopts the arguments suggested by the Professional Firefighters in support of their motion to quash. In addition, the Bureau offers the following reasons to

quash the subpoena.

2. The Bureau is concerned that the effort to force third parties to participate in formal discovery will require the parties in this matter to expend time and resources on issues not involved in this dispute and are further concerned that the effort to require Mr. Lang or others from the Professional Firefighters to testify may be the product of institutional antagonism unhelpful to resolving the instant enforcement action. *See Professional Firefighters of New Hampshire v. Local Government Center, Inc.*, 159 N.H. 699, 992 A.2d 582 (2010) and *Professional Firefighters of New Hampshire v. Local Government Center, Inc.*, 151 N.H. 501, 861 A.2d 789 (2004). Finally, the Bureau doubts that the subpoena will lead to relevant, discoverable information.

3. In considering the likelihood that a discovery effort will produce discoverable information, the Hearing Officer must consider the purpose and intent of the action before him. Every litigation has a purpose, much like every business or non-profit entity has a mission. Matters relevant to the purpose of this action, or relevant to a legal defense, may be discovered. Discovery targeting information that is not relevant to these proper subjects should not be permitted.

4. The Bureau has essentially a three-fold purpose in pursuing this enforcement action dictated by the statutory authority given to it by the Legislature and believes it may be helpful to describe these interests here.¹

The Bureau Intends, in an Exercise of its Statutory Responsibility,
to Establish that the Respondent Trusts Overcharge Member Cities and Towns.

5. The Respondent entities are part of pooled risk management programs that act as

¹ The Bureau apologizes for the fact that this statement is of necessity an over

trusts, specifically authorized by statute to reduce insurance costs to benefit political subdivisions of the state. R.S.A. 5-B:1. If properly qualified, these programs avoid oversight as insurers and are not taxed. *Id.* However, the trusts are expressly committed to the supervision of the Secretary of State who enjoys broad powers to investigate and impose penalties for violations of the trusts' statutory authority. R.S.A. 5-B:4-a.

6. The Respondent Trusts are stewards of other people's money and must act with complete fidelity to their statutory purpose and the reasons for their existence. The trusts may not act in their own self-interest, take up interests not authorized by statute or operate to the detriment of the members they serve. One example of a failure to comply with statutory requirements illustrates just how easily the trusts may fail to act as careful stewards of other people's money.

7. The trusts properly maintain financial reserves to cover reasonable expenses and to pay out claims made against their insurance-type programs. The maintenance of financial reserves is a proper exercise of the trusts' stewardship of other people's money. The Respondent Trusts must not, however, maintain surpluses. R.S.A. 5-B:5, I,c (Each trust must "[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 subdivisions."). Presumably, the Legislature imposed this requirement because the use of managed risk pools was intended to reduce costs borne by municipalities and consequently to hold the line on local taxes.

8. Legislative submissions made by the Respondents estimate that the trusts hold millions of dollars in surplus beyond what is necessary for the prudent operation of the

simplification.

trusts. If true, the Bureau is entitled to consider and determine if these surplus funds must be returned to the towns and cities who are members of the trusts.

9. Moreover, the Bureau need not accept the Respondent Trusts' own calculation of what is and what is not surplus. The Respondents admit they rely on a standard to set reserves used by the insurance industry. *See* LGC Answer at 12-13. The express purpose of the Legislature, however, in authorizing pooled risk management programs is to reduce standard insurance costs and therefore the Respondents are exempt from insurance regulations. *See* R.S.A. 5-B:1. The Bureau contends that the Respondent Trusts grossly over estimate their costs and reserves, in part because they rely on insurance industry standards, and will seek the return of these funds to the towns and cities who are members.

10. Discovery intended to inform the Hearing Officer as to whether the Respondent trusts have overcharged their members to build up illegal surpluses is proper. It is doubtful that the Professional Firefighters hold information relevant to this subject.

The Bureau Intends to Prove that the Failure of the Respondent Trusts to Maintain Properly Independent Corporate Existences Undermines the Operation of the Pooled Risk Management Trusts.

11. The Respondent Trusts do not have independent boards of directors as the Bureau maintains they must under R.S.A. 5-B:5, I, a & b. The Respondent Trusts do not have separate bylaws as required by R.S.A. 5-B:5, I, e. Instead, they are governed by one supervising board organized and maintained by the Local Government Center, Inc. that operates with only one set of bylaws. The Bureau, consistent with its supervisory authority, contends the single board cannot serve many masters.

12. There have been ongoing disputes among the parties about the propriety of the corporate entities maintained by the Respondent Trusts. The Respondent Trusts have

changed the manner of their corporate existence in the recent past to address some concerns voiced by the Bureau and the Bureau appreciates these voluntary actions. The Respondent Trusts, however, insist that they may be properly governed by a single LGC board. Review of but one example readily makes clear the conflict of interest that results from the decision to have only one board of directors and makes clear why this approach should be condemned.

13. The Health Trust transferred more than \$17 million over time to the Workers Compensation Trust.² The single LGC governing board acknowledged this cumulative transfer long after the fact with a note in June 2011, but even then, the board adopted a note that lacks standard enforceable terms such as a payment schedule and interest. As a result, the note fails to protect the interests of the Health Trust and is illusory.

14. Not all members of the Health Trust are also members of the Workers Compensation Trust. The municipal members who only participate in the Health Trust now have their assets applied for the benefit of the members of the Workers Compensation Trust, without interest and without a specific plan for repayment.

15. Further, the single LGC board does not protect the interests of the public employees who contribute to the costs of their health insurance through wage concessions and through negotiated direct payments. These employees have not agreed to underwrite the costs of workers compensation coverage and the single LGC board has failed to protect them.

16. Public employees also are not told that their health insurance contributions are

² The LGC claims this practice stopped in 2010. LGC Answer at 18. The Answer does not explain why this practice was discontinued.

used to pay for workers compensation coverage. Presumably, a governing board whose only concern was the careful management of the Heath Trust's funds would not permit these employees to be so misinformed.

17. The Bureau contends that an independent board acting solely as the stewards of the Health Trust may not have considered it appropriate to transfer the \$17 million at issue. Certainly, an independent board would have, at the very least, insisted upon complete disclosure and documentation, and would have demanded a repayment schedule and interest. The Respondent Trusts disagree with this contention.

18. Discovery intended to inform the Hearing Officer as to whether the single LGC board governed by a single set of bylaws acted properly or acted under an intolerable conflict of interest is relevant to this proceeding. It is doubtful that the Professional Firefighters hold information relevant to this subject.

The Bureau intends to prove that the Respondents Operate in a Manner that Qualifies them as Unlicensed Sellers of Unregistered Securities.

19. The Bureau contends that the Respondents, who by definition are not insurers, solicit payments from their members, invest those monies for profit and promise in their marketing materials to return "dividends." If this is true, these investments legally qualify as securities and are subject to registration requirements. R.S.A. 421-B:2, XX, a ("Security' means any ... investment contract... 'Security' does not include any insurance"). As well, the persons or entities that sell securities must be licensed for this purpose. R.S.A. 421-B:6. The Respondents deny that they sell investments for profit and return dividends. They claim that they need not legally register or be licensed and are not subject to a regimen of examination designed to

prevent fraud in the offering or sale of investments. See R.S.A. 421-B:8 and 21.

20. Discovery intended to inform the Hearing Officer as to whether the Respondents sell securities to its members is relevant to this proceeding. It is doubtful that the Professional Firefighters hold information relevant to this subject.

WHEREFORE, the Petitioner prays that the Hearings Officer:

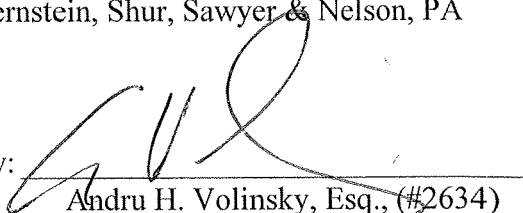
- A. Grant the Motion to Quash filed by the Professional Firefighters; and
- B. For such other and further relief as may be just.

Respectfully submitted,

Bureau of Securities Regulation
By and Through Their Attorneys,
Bernstein, Shur, Sawyer & Nelson, PA

January 10, 2012


By:



Andru H. Volinsky, Esq., (#2634)
Bernstein, Shur, Sawyer & Nelson, PA
670 N. Commercial Street, Ste. 108
P.O. Box 1120
Manchester, NH 03105-1120
(603) 623-8700

January 10, 2012

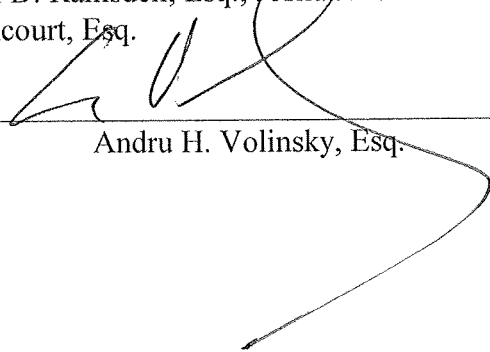
By:



Roy W. Tilsley, Jr., Esq. (#9400)
Bernstein, Shur, Sawyer & Nelson, PA
670 N. Commercial Street, Ste. 108
P.O. Box 1120
Manchester, NH 03105-1120
(603) 623-8700

CERTIFICATION OF SERVICE

I, Andru H. Volinsky, hereby certify that a copy of the above pleading was this date, forwarded to Jeffrey D. Spill, Esq., Earle F. Wingate, III, Esq., Kevin B. Moquin, Esq., Eric Forcier, Esq., Adrian S. Laroche, Esq., William C. Saturley, Esq., Brian M. Quirk, Esq., David I. Frydman, Esq., Michael D. Ramsdell, Esq., Joshua M. Pantescio, Esq., Mark E. Howard, Esq., and Jaye L. Rancourt, Esq.



Andru H. Volinsky, Esq.