

**THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION**

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)
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;)
HealthTrust, Inc; New Hampshire Municipal Association)
Property-Liability 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 N. Griffin, Paula Adriance,)
John P. Bohenko, and John Andrews)
_____)

Case No:

C-2011-0036

ANSWER OF RESPONDENTS BEECHER, ET AL. TO BSR'S STAFF PETITION

NOW COME Respondents Paul G. Beecher, Keith R. Burke, Robert A. Berry,¹ Peter J. Curro, Julia N. Griffin, April D. Whittaker and Timothy J. Ruehr (The Beecher Respondents), by and through their counsel, Howard & Ruoff, PLLC, and submit the following Answer to the New Hampshire Bureau of Securities Regulation's (BSR) Staff Petition for Relief:

Beecher Respondents Introductory Statement

The BSR named several former members of the Board of Directors of LGC, Inc., and one current member, as individual respondents in its Staff Petition filed on or about September 2, 2011. The BSR generally accuses the Beecher Respondents of engaging in violations of the Pooled Risk Management Programs statute, RSA Chapter 5-B, and the New Hampshire Securities statute, RSA Chapter 421-B.

¹ The BSR has agreed to withdraw Mr. Robert Berry as a named respondent for health reasons.

The Beecher Respondents are comprised by municipal employees, educators, and education administrators, both active and retired, of the very political subdivisions served by the LGC. All of the respondents were volunteer members of the LGC Board and did not receive compensation for the substantial time and resources they committed to the proper direction of the LGC. In addition, with regard to the core activities alleged in the BSR's Petition, the Beecher Respondents solicited and received legal advice from an outside law firm. Moreover, the Beecher Respondents retained or had the benefit of outside industry consultants to provide advice and assistance to the Board in making its decisions. The Beecher Respondents at all times acted reasonably and in good faith with respect to all allegations made by the BSR, and at no point committed either a knowing or negligent violation of the statutes at issue.

BSR's Petition makes no effort to allege or describe particular acts by any individual Beecher Respondent. Similarly, the Petition appears to attribute all allegations indiscriminately to all of the individual Beecher Respondents, regardless of the nature of the allegations or when they may have occurred. The BSR made its sweeping and undifferentiated accusations despite knowing, or having to reason to know, that most of the individual Beecher Respondents had resigned their service on the Board before many of the alleged activities occurred with respect to the claims of violations of RSA Chapters 5-B and 421-B. As more particularly set forth in the Answer, Respondents Beecher, Berry, Griffin, and Whittaker were no longer members of any LGC-related Board after 2005. Respondent Burke was no longer a member of any LGC-related Board after 2007. Respondent Ruehr was no longer a member of any LGC-related Board after 2008.

Petition Introduction

¶¶ 1-3: Paragraphs 1-3 of the Petition are merely introductory and require no response.

The Parties

¶ 4: Paragraph 4 contains a description of the BSR and its claimed statutory authorities to which no response is required.

¶ 5: Paragraph 5 purports to identify the various respondents. The Beecher Respondents deny that they were board members of entities “offering products and services governed by RSA 5-B and RSA 421-B . . .” as alleged. The Beecher Respondents admit that they were Board members of one or more of the entities listed in Paragraph 5, but deny the allegation in Paragraph 5(1). The Beecher respondents specifically deny that the entities of which they were Board members were engaged in the business of offering or selling securities under RSA 421-B.

Statement of Facts

¶¶ 6-7: Paragraphs 6-7 contain statements of law to which no response is required. Moreover, the allegations merely describe in conclusory fashion the BSR’s view of the history of its investigation, related litigation, and statutory amendments, none of which requires a response from the Beecher Respondents.

Count 1 – Corporate Governance

A. Attempted Merger of Prior Nonprofit Corporations with LLCs

¶ 8: The Beecher Respondents admit the factual allegations set forth in Paragraph 8.

¶ 9: The Beecher Respondents admit that a merger plan was developed in 2003. The remainder of Paragraph 9 asserts legal conclusions to which no response is required.

¶¶ 10-14: Paragraphs 10-14 assert legal conclusions to which no response is required.

¶ 15: The Beecher Respondents (except Respondent Curro) were no longer members of the Board of Directors of any of the respondent entities and therefore are without sufficient knowledge to admit or deny the allegations in Paragraph 15.

B. Pooled Risk Management Program Statutory Requirements

¶16-20: Paragraphs 16-20 assert legal conclusions and statements of law that do not require a response.

Count 2 – Financial Mismanagement

A. Requirement to Return Surplus

¶¶ 21-22: Paragraphs 21-22 contains the BSR’s interpretation of RSA 5-B:5,I(c) and otherwise contains conclusions of law to which no response is required.

¶ ¶ 23-27: Paragraphs 23-27 appear to be the BSR’s interpretation or characterization of historical financial concepts and data. No particular allegation is made against any individual Beecher Respondent and therefore no answer is required. Moreover, to the extent these paragraphs relate to facts occurring in or after 2005, Respondents Beecher, Berry, Griffin, and Whittaker were no longer members of any LGC-related Board and therefore are without knowledge to answer. To the extent these paragraphs allege facts occurring in or after 2007, Respondent Burke was no longer a member of any LGC-related Board and therefore is without knowledge to answer. To the extent these paragraphs allege facts occurring in or after 2008, Respondent Ruehr was no longer a member of any LGC-related Board and therefore is without knowledge to answer.

¶ ¶ 28-38: Paragraphs 28-38 appear to contain the BSR’s interpretation or characterization of financial data, legal conclusions, and summaries of its consultant’s methodology and opinions. No factual allegation is made against any individual Beecher Respondent and

therefore no answer is required. In addition, to the extent these paragraphs relate to facts occurring in or after 2005, Respondents Beecher, Berry, Griffin, and Whittaker were no longer members of any LGC-related Board and therefore are without knowledge to answer. To the extent these paragraphs allege facts occurring in or after 2007, Respondent Burke was no longer a member of any LGC-related Board and therefore is without knowledge to answer. To the extent these paragraphs allege facts occurring in or after 2008, Respondent Ruehr was no longer a member of any LGC-related Board and therefore is without knowledge to answer.

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

¶¶ 39-43: Paragraphs 39-43, by their express terms, relate only to Respondent LGC, Inc., and therefore no answer is required.

C. Other Improper Spending

¶¶ 44: Paragraph 44, by its express terms, relates only to Respondent LGC, Inc., and therefore no answer is required. In addition, to the extent this paragraph relates to facts occurring in or after 2005, Respondents Beecher, Berry, Griffin, and Whittaker were no longer members of any LGC-related Board and therefore are without knowledge to answer. To the extent these paragraphs allege facts occurring in or after 2007, Respondent Burke was no longer a member of any LGC-related Board and therefore is without knowledge to answer. To the extent these paragraphs allege facts occurring in or after 2008, Respondent Ruehr was no longer a member of any LGC-related Board and therefore is without knowledge to answer.

¶¶ 45-46: Paragraphs 45-46 relate to resolutions of the LGC, Inc., Board of Directors on June 2, 2011. The Beecher Respondents (except Respondent Curro) were not members

of the Board at that time and therefore no answer is required from them. Respondent Curro admits that the Board passed resolutions on that day. He denies the BSR's attempt to characterize the actions of the Board as admissions of impropriety or any wrongdoing of any kind. Moreover, these paragraphs are merely argument by the BSR and not allegations of fact against Respondent Curro to which an answer is required.

¶¶ 47-51: Paragraphs 47-51, by their express terms, relate only to Respondent LGC, Inc., and therefore no answer is required.

¶ 52: Paragraph 52 makes a vague and ambiguous reference to "the board" without any specification as to a timeframe or specific board action. Further, this paragraph does not make any allegation against any individual Beecher Respondent. Nevertheless, the Beecher Respondents deny any wrongdoing that may be alleged in this paragraph and assert that the minutes and resolutions of the Board speak for themselves.

¶¶ 53-56: Paragraphs 53-56, by their express terms, related to the LGC entity respondents and do not require an answer from the Beecher Respondents.

¶ 57: Paragraph 57 relates to actions taken in 2007, by which time Respondents Beecher, Berry, Griffin and Whittaker were no longer members of the any LGC related Board and therefore no answer is required from them. Respondents Burke, Curro and Ruehr admit that the Board in 2007 created a defined benefit retirement program. They deny that the action was improper, unlawful, or a violation of RSA Chapter 5-B. Further, they assert that they reasonably relied in good faith on the advice and opinions of outside expert consultants.

D. Improper Tying Arrangement

¶¶ 58-61: Paragraphs 58-61 contain no allegations against any individual Beecher Respondent and therefore no answer is required. Moreover, to the extent that the paragraphs contain factual allegations occurring in 2010, the Beecher Respondents (except Respondent Curro) were no longer members of any LGC related Board.

Count 3 – Violations of the New Hampshire Securities Act

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

¶¶ 62-108: In general, Paragraphs 62-108 allege various violations of RSA Chapter 421-B, the New Hampshire Securities Act. The Beecher Respondents generally answer that the underlying premise common to all of the allegations in paragraphs 62-108 is denied; that is, the products and services offered by the Respondent business entities to their members are investment contracts and securities regulated by RSA Chapter 421-B. None of the products or services offered by the Respondent business entities are investment contracts and securities within the ambit of RSA Chapter 421-B. Consequently, there were no securities within the ambit of RSA Chapter 421-B offered or sold by the Beecher Respondents. In addition, as set forth below, the BSR informed the Beecher Respondents on December 2, 2011, that any and all claims, allegations and requests for relief under RSA 421-B:3(b) and (c), and RSA 421-B:26,III-a do not apply to the individual Beecher Respondents. No answer is therefore required with respect to those claims, allegations or requests for relief.

¶¶ 62-108: Paragraphs 62-79 make statements and conclusions of law, and otherwise make no factual allegations against the Beecher Respondents, and therefore no answer is required.

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

¶¶ 80-85 Paragraphs 80-85 relate to the LGC entity respondents and do not relate to individual Beecher Respondents and therefore no further answer is required.

II. Employees of LGC, Inc. Are “Agents”

¶¶ 86-88: Paragraphs 86-88 relate to employees of the LGC entity respondents and do not relate to individual Beecher Respondents and therefore no further answer is required.

¶89: To the extent Paragraph 89 asserts a violation of RSA 421-B:26, III-a by the Beecher Respondents, no answer is required because the BSR, by correspondence dated December 2, 2011, informed the Beecher Respondents that claims, allegations and requests for relief under RSA 421-B:26, III-a do not apply to them.

¶90: Paragraph 90 does not apply to individual Beecher Respondents and therefore no answer is required.

¶¶91-93: While Paragraphs 91-93 assert violations of RSA 421-B:26, III-a against the individual Beecher Respondents, the BSR informed the Beecher Respondents by correspondence dated December 2, 2011, that claims, allegations and requests for relief under RSA 421-B:26, III-a do not apply to them. Accordingly, no further answer is required. Nevertheless, the Beecher Respondents deny the allegations set forth in Paragraphs 91-93. Moreover, to the extent these paragraphs relate to facts or events occurring in or after 2005, Respondents Beecher, Berry, Griffin, and Whittaker were no longer members of any LGC-related Board and therefore are without knowledge to answer. To the extent these paragraphs allege facts occurring in or after 2007,

Respondent Burke was no longer a member of any LGC-related Board and therefore is without knowledge to answer. To the extent these paragraphs allege facts occurring in or after 2008, Respondent Ruehr was no longer a member of any LGC-related Board and therefore is without knowledge to answer.

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 or Purchase of Securities and Engaging Conduct Which Operates or Would Operate a Fraud or Deceit.

¶¶94-97: Paragraphs 94-97 assert violations of RSA 421-B:3,I(b) against LGC entity respondents and not against the individual Beecher Respondents and therefore no further answer is required. Moreover, the BSR informed the Beecher Respondents by correspondence dated December 2, 2011, that claims, allegations and requests for relief under RSA 421-B:3, I(b) do not apply to them. Accordingly, no further answer is required.

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

¶¶98-99: Paragraphs 98-99 assert violations of RSA 421-B:3,I(c) against LGC entity respondents and others and not against the individual Beecher Respondents and therefore no further answer is required. Moreover, the BSR informed the Beecher Respondents by correspondence dated December 2, 2011, that claims, allegations and requests for relief under RSA 421-B:3, I(c) do not apply to them. Accordingly, no further answer is required.

E. Untrue Statements of Material Fact and Omissions of Material Fact in Connection with the Offer and/or Sale

¶¶100-103: Paragraphs 100-103 assert violations of RSA 421-B:3,I(b) against LGC entity respondents and others and not against the individual Beecher Respondents and therefore no further answer is required. Moreover, the BSR informed the Beecher Respondents by correspondence dated December 2, 2011, that claims, allegations and requests for relief under RSA 421-B:3, I(b) do not apply to them. Accordingly, no further answer is required.

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

¶¶ 104-108: Paragraphs 104-108 assert violations of RSA 421-B:3,I(c) against LGC entity respondents and others and not against the individual Beecher Respondents and therefore no further answer is required. Moreover, the BSR informed the Beecher Respondents by correspondence dated December 2, 2011, that claims, allegations and requests for relief under RSA 421-B:3, I(b) do not apply to them. Accordingly, no further answer is required.

Count 4 – Additional Issues Regarding Limited Liability Company Formation and Management

¶¶ 109-141: Count 4 contains allegations regarding the formation and management of limited liability companies under the control of the LGC. None of the statutes identified by the BSR in the grid of statutes it provided in response to Respondent Andrews' motion for a more definite statement or for clarification of the Staff Petition appears in Count 4. Moreover, the only relief requested for Count 4 appears to be judicial dissolution of Respondents LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC.

Consequently, no response is required to Count 4, paragraphs 109-141. By way of further answer, the Beecher Respondents assert that to the extent limited relief of judicial dissolution is available in this administrative proceeding under RSA Chapter 304-C, none of the individual Beecher Respondents can accomplish such relief, even if ordered. Except for Respondent Curro, none of the individual Beecher Respondents are any longer members of any LGC related Board and are powerless to act in their individual capacity. Respondent Curro has no power in his individual capacity to dissolve any entity.

Statement of Law

Count 1 – RSA 292

¶¶ 1-11: Count 1 does not allege any specific conduct by the Beecher Respondents.

Additionally, none of the statutes identified by the BSR in the grid of statutes it provided in response to Mr. Andrews' motion for a more definite statement or for clarification of the Staff Petition appears in Count 1. Consequently, no response is required to Count 1, paragraphs 1-11.

Count 2 – RSA Chapter 5-B

¶ 12: Paragraph 12 appears to correctly states the purpose of RSA Chapter 5-B:1.

¶¶ 13-14: “Political subdivision” and “risk management” are defined in RSA 5-B:2, III and RSA 5-B:2, IV, respectively. Paragraphs 13-14 contain statements that are too broad or vague to be deemed correct in all instances.

¶ 15: Paragraph 15 correctly quotes RSA 5-B:3, I. The Beecher Respondents deny that that the conduct alleged by the BSR violated RSA 5-B:3, I, and specifically, that they violated the statute. Moreover, paragraph 15 does not identify any conduct on behalf of the Beecher Respondent that the BSR alleges violated the statute.

- ¶ 16: Paragraph 16 contains allegations related only to certain business entity Respondents, and therefore, no response is required to paragraph 16.
- ¶ 17: Paragraph 17 contains allegations related only to certain business entity Respondents, and therefore, no response is required to paragraph 17.
- ¶ 18: The first sentence of paragraph 18 restates RSA 5-B:5, I(c). The second sentence of paragraph 18 states an incorrect legal conclusion. None of the Beecher Respondents' conduct violated RSA 5-B:5, I(c). Moreover, paragraph 18 does not identify any conduct on behalf by the Beecher Respondents that the BSR alleges violated the statute.
- ¶¶ 19-25: Paragraphs 19-25 correctly state provisions of RSA 5-B:4-a. The refrain, "Respondents are subject to this provision[,]" that appears in paragraphs 19-22 and 24-25 is insufficiently definite for a response. The Beecher Respondents deny that their conduct violated RSA Chapter 5-B. Moreover, paragraphs 19-25 do not identify any conduct by the Beecher Respondents that the BSR alleges violated RSA Chapter 5-B.

Count 3 – RSA 421-B

- ¶¶ 26-41: Paragraphs 26-41 contain various allegations and statements of law regarding alleged violations of RSA 421-B, the New Hampshire Securities Act. The underlying premise common to all of the allegations in paragraphs 26-41 is denied; that is, the products and services offered by the Respondent business entities to their members are investment contracts and securities regulated by RSA 421-B. None of the products or services offered by the Respondent business entities are investment contracts and securities within the ambit of RSA 421-B. Consequently, there were no securities within the ambit of RSA 421-B offered or sold by the Respondents. In addition, claims,

allegations and requests for relief under RSA 421-B:3(b) and (c) and 26,III-a do not apply to the Beecher Respondents.

Beecher Respondents Statement of Defenses

The Beecher Respondents intend to rely on the following defenses to some or all of the allegations, claims and requested relief in the BSR Petition:

- A. The Petition fails to state a cause of action against the individual Beecher Respondents upon which relief can be granted against them.
- B. To the extent the Petition makes claims for relief against the individual Beecher Respondents, such relief cannot be obtained from them.
- C. The Petition fails to allege specific instances of conduct against any individual Beecher Respondent and therefore fails to give adequate notice and an opportunity to be heard under the State and Federal constitutional guarantees of due process of law.
- D. To the extent the Petition purports to allege fraud against the Beecher Respondents, the Petition fails to allege any such fraud with sufficient particularity.
- E. At all times pertinent to the allegations in the Petition, the Beecher Respondents acted reasonably and in good faith, and therefore did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which liability is alleged to exist. RSA 5-B:4-a, VII(a); RSA 421-B:26, III-a.
- F. At all times pertinent to the allegations in the Petition, the Beecher Respondents acted reasonably and good faith upon the advice of legal counsel and other professionals retained by the Board of Directors or the LGC entities, and therefore did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which liability is alleged to exist. RSA 5-B:4-a, VII(a); RSA 421-B:26, III-a.

G. Allegations of violations of RSA 5-B based on conduct prior to June 14, 2010, the effective date of RSA 5-B:4-a, should be dismissed because the retrospective application of RSA 5-B:4-a to conduct that occurred before the statute's effective date violates Article 1, Section 10 of the United States Constitution and Part 1, Article 23 of the New Hampshire Constitution.

H. Allegations based on conduct alleged to have occurred prior to September 2, 2005, should be dismissed on statute of limitations grounds.

I. Allegations related to the formation of various business entities in 2003 should be dismissed based on the equitable doctrine of laches.

Beecher Respondents Requested Relief

1. Dismiss the BSR's Petition as against the Beecher Respondents.
2. Deny the allegations, claim and requested relief in the BSR's Petition.
3. Deny the BSR's request, to the extent such request is made against the Beecher Respondents, for a cease and desist order under RSA Chapter 5-B.
4. Deny the BSR's request, to the extent such request is made against the Beecher Respondents, for a cease and desist order under RSA Chapter 421-B.
5. Deny the BSR's request, to the extent such request is made against the Beecher Respondents, for administrative fines under RSA Chapters 5-B and 421-B.
6. Deny the BSR's request, to the extent such request is made against the Beecher Respondents, for the cost of investigation, including reasonable attorney's fees, under RSA Chapters 5-B and 421-B.

7. Deny the BSR's request, to the extent such request is made against the Beecher Respondents, to pay restitution to the member political subdivisions of the Pooled Risk Management Programs under RSA Chapter 5-B.

Reservation of Right to Amend Answer

The Beecher Respondents reserve the right to amend their Answer and to request additional relief.

Respectfully Submitted,
Paul G. Beecher, Keith R. Burke,
Robert A. Berry, Peter J. Curro,
Julia N. Griffin, April D. Whittaker
and Timothy J. Ruehr

By Their Attorneys,
HOWARD & RUOFF, PLLC

Dated: January 6, 2012

By: /s/ Mark E. Howard
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Certificate of Service

I hereby certify that I have this 6th day of January 2012, forwarded copies of the within Answer of Respondents Beecher, et al. to BSR's Staff Petition via electronic transmission to all counsel of record.

Dated: January 6, 2012

/s/ Mark E. Howard
Mark E. Howard (NH Bar #4077)