

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

**IN THE MATTER OF:** )

Local Government Center, Inc.; et al. )

Case No.: C-2011000036 )

**RESPONDENT MAURA CARROLL’S MOTION FOR SUMMARY JUDGMENT AS TO  
COUNTS I, II, AND VI, AND PARTIAL SUMMARY JUDGMENT AS TO COUNTS III,  
IV, AND V**

**INTRODUCTION**

Respondent Maura Carroll brings this motion for summary judgment on claims brought against her by the Bureau of Securities Regulation (BSR or “Bureau”) in its Amended Petition. This motion addresses both claims against Ms. Carroll resulting from conduct allegedly undertaken before September 4, 2009, when she became interim Executive Director, as well as claims resulting from conduct starting on that date through the present.

In the first instance, summary judgment in Ms. Carroll’s favor should be granted with regard to that portion of each Count resulting from conduct undertaken before September 4, 2009, when she became interim Executive Director. Prior to that date, Ms. Carroll was not an executive of the organization and had no decision-making authority over the restructuring of the corporate entity, the setting of reserve levels, or the alleged failure to return surplus funds to Members that the BSR challenges in its Amended Petition. Nor, until she became Interim Executive Director on September 4, 2009, did she have a role in administering LGC or any of the risk pools. Ms. Carroll is therefore entitled to summary judgment on the Petition to the extent it challenges actions, events, and behaviors that took place prior to September 4, 2009, events in which Ms. Carroll played no role.

Summary judgment should also be granted in Ms. Carroll's favor with regard to that portion of Counts I, II, and VI resulting from conduct undertaken beginning on September 4, 2009. Since becoming Interim Executive Director, and then Executive Director, Ms. Carroll has at all times acted at the direction of the LGC Board. Her sole duty under the LGC bylaws is to implement the decisions of the LGC Board, and there is no allegation that she has breached these duties. Consequently, Ms. Carroll cannot be held liable for actions she may have taken on behalf of LGC and affiliated entities after she became interim Executive Director and then Executive Director. Ms. Carroll is therefore entitled to summary judgment on Counts I, II, and VI of the Petition to the extent that those counts challenge actions, events, and behaviors that took place after she became interim Executive Director in September 2009.

Summary judgment should therefore be granted as to Counts I, II, and VI of the Amended Petition, and partial summary judgment as to Counts III, IV, and V with regard to conduct occurring prior to September 4, 2009.

### **FACTUAL BACKGROUND**

On September 2, 2011, the Bureau issued, and on October 3, 2011, amended, a Staff petition that alleges that Local Government Center, Inc. ("LGC"), various LGC affiliates, and various individuals, including Maura Carroll, broke various laws. On February 17, 2012, the Bureau issued a new Amended Petition. This comprehensive Amended Petition (hereinafter "Petition") has superseded the prior petition and amendment.

The Petition correctly identifies Ms. Carroll as interim Executive Director of LGC, Inc. from September 4, 2009 until June 10, 2010, and as Executive Director of LGC, Inc. after that date. Am. Pet. ¶ 13. However, the Petition also identifies Ms. Carroll as General Counsel for HealthTrust, NHMA Prop. Liab. Trust, and LGC Parent, prior to September 4, 2009, with the

implication that she advised LGC and the risk pools on legal matters. *Id.* In fact, Ms. Carroll was employed to provide legal advice to member municipalities and to advocate on their behalf. Affidavit of Maura Carroll (hereinafter “Carroll Aff.”) ¶¶ 3-5, attached hereto as Exhibit 1. At no time in occupying this role did Ms. Carroll provide legal advice to the risk pools or LGC parent. *Id.* ¶¶ 3-5, 9. She was not involved in risk pool operations and did not participate in Board discussions prior to 2009 regarding the amount of reserves to be retained, rates to be charged member municipalities, or the means of returning surplus. *Id.* Indeed, while serving as “General Counsel,” she was not present at the vast majority of Board meetings at which decisions to undertake those actions that form the basis of the allegations in the Amended Petition were made. *See* Affidavit of Jillian Ripley ¶ 3 (hereinafter “Ripley Aff.”), attached hereto as Exhibit 2. Prior to her appointment as interim Executive Director, her attendance at Board meetings as a staff member was largely limited to reporting about matters within her purview as an attorney and advocate for member municipalities. *See id.* ¶ 4; *see, e.g.*, Minutes of Meeting of LGC Board of Directors, October 17, 2007, attached as Exhibit B to Exhibit 2 (Ripley Aff.); Minutes of Meeting of LGC Board of Directors, December 13, 2007, attached as Exhibit C to Exhibit 2 (Ripley Aff.).

As interim Executive Director and Executive Director, pursuant to the LGC Bylaws, Ms. Carroll is not a member of the Board of Directors and has no vote at Board meetings. LGC Bylaws ¶¶ 6.1-6.2, 6.12, 7.1, 8.1-8.4 (hereinafter “Bylaws”), attached hereto as Exhibit 3. Her role is to carry out the policies and direction set by the Directors, and she has no authority to deviate from them. *See id.*

In submitting this memorandum, Ms. Carroll wishes to emphasize that nothing in her argument should be construed as even implying that the LGC or its Board engaged in improper

conduct. To the contrary, it remains her firm belief that LGC acted all times in compliance with New Hampshire law, including RSA 5-B and RSA 421-B.

### LEGAL STANDARD

“A moving party is entitled to summary judgment ‘if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits filed, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.’” *Waterfield v. Meredith Corp.*, 161 N.H. 707, 709 (2011) (quoting RSA 491:8-a, III (2010)).

### ARGUMENT

**I. Summary Judgment is Warranted On All Counts As to Conduct That Predated September 4, 2009, Because Prior to Becoming Interim Executive Director, Ms. Carroll Had No Responsibility For Any Alleged Misconduct, and Therefore Cannot Be Held Liable For It.**

Summary judgment in Ms. Carroll’s favor should be granted with regard to that portion of each Count resulting from conduct undertaken before September 4, 2009. Quite simply, Ms. Carroll did not administer or have responsibility for LGC or its risk pools prior to becoming Interim Executive Director on September 4, 2009. Exhibit 1 (Carroll Aff.) ¶¶ 9-10. Under the LGC bylaws, authority to set policy, oversee, and administer LGC and the risk pools, including setting the level of reserves, setting rates, declaring dividends and assuring compliance with the requirements of NH RSA 5-B, resides in the Board of Directors. Exhibit 3 (Bylaws) ¶¶ 6.1, 8.1-8.2. Only Directors have the authority to vote on LGC decisions. *Id.* ¶ 6.12. Although Ms. Carroll provided status reports to the Board and participated in discussions of certain Committees in her staff role as counsel for NHMA, she never served as a director of LGC, and was not a decision-maker regarding the creation of the corporate governance structures in 2003, determination of the amount of reserves to be retained, rates to be charged member

municipalities, or in the alleged failure in subsequent years to return surplus funds to Members. Exhibit 1 (Carroll Aff.) ¶ 9.<sup>1</sup> Summary judgment is therefore appropriate. *See, e.g., Kiman v. N.H. Dep't of Corrections*, 451 F.3d 274, 290 (1st Cir. 2006) (“If an individual was not involved in one or more of those claims, the district court must grant his or her motion for summary judgment to that extent (or, if a defendant was not involved in any of the claims, totally).”).

The BSR seizes on Ms. Carroll’s former job title as “General Counsel,” implying that she provided legal advice to or assisted in the governance of LGC and/or the risk pools. Am. Pet. ¶ 13. In reality, as the evidence demonstrates, Ms. Carroll was not a legal adviser to LGC. Until September 4, 2009, she worked in the department of NHMA that provided legal advice to member municipalities and advocated on their behalf before state and federal officials and legislators. Exhibit 1 (Carroll Aff.) ¶¶ 3-4. At no time in occupying this role did she provide legal advice to or exercise any control over LGC, including the risk pools. *Id.* LGC and the risk pools were represented by outside legal counsel. *Id.* ¶ 5.

For ethical reasons, a strict separation was maintained between Ms. Carroll’s role in providing legal advice to municipalities and the LGC’s administration of the risk pools. In 1995, in response to a request by Ms. Carroll’s predecessor, the Ethics Committee of the New Hampshire Bar Association issued an Advisory Opinion. Exhibit 1 (Carroll Aff.) ¶ 7; Ethics Committee Advisory Opinion # 1994-95/6 (hereinafter “Ethics Comm. Op.”), attached as Exhibit B to Exhibit 1 (Carroll Aff.). In this Opinion, the Committee suggested that NHMA and the NHMA attorney(s) providing legal advice to member municipalities should formally agree that NHMA (including the risk pools) should not be a client of the attorney, and that the job description should be amended accordingly. Exhibit 1 (Carroll Aff.) ¶ 7; Exhibit 1-B (Ethics

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<sup>1</sup> For example, at the April 7, 2003 All Boards Meeting where the restructuring was voted upon, Ms. Carroll is described as NHMA Legal Counsel and the minutes reflect that she spoke not a word. Minutes of All Boards Meeting, April 7, 2003, attached to Exhibit 2 (Ripley Aff.) as Exhibit D.

Comm. Op.). NHMA acted in response to the Opinion by amending the job description and continuing to maintain the strict separation between Ms. Carroll's position and risk pool administration. Exhibit 1 (Carroll Aff.) ¶¶ 3-9.

Consistent with her role, Ms. Carroll attended some meetings of the LGC Board and Committees, but did not participate in Board discussions regarding LGC's risk pools, the amount of reserves to be retained, rates to be charged member political subdivisions, or the means of returning surplus. *Id.* ¶ 9; *see, e.g.*, Exhibit 2 (Ripley Aff.) ¶ 4. She was not present at the vast majority of the Board Meetings, including meetings at which decisions allegedly in violation of RSA 5-B or the securities laws were made. *Id.* Nor, as discussed above, did she have a vote on such issues. Exhibit 3 (Bylaws) ¶ 6.12.

Her lack of authority and non-presence at the meetings dooms the BSR's efforts to hold her liable for conduct occurring before September 4, 2009. In particular, she cannot be held liable on Counts I and II because, even if they adequately alleged violations of RSA Ch. 5-B, she was not a decision-maker regarding the creation of the corporate governance structures in 2003, determination of the amount of reserves to be retained, rates to be charged member municipalities, or in the alleged failure in subsequent years to return surplus funds to Members. Exhibit 1 (Carroll Aff.) ¶ 9.

Nor, because these same actions form the basis of the alleged civil conspiracies charged in Count VI, can she be held liable on that Count. Ms. Carroll was neither a board member nor Executive Director at the time that the Individual Respondents allegedly conspired (1) to place the risk pools under control of a single board, Am. Pet. ¶ 130, (2) to establish an allegedly "inappropriately large fund of retained earnings and surplus" and to retain such funds and invest them illegally, Am. Pet. ¶ 131, (3) to improperly transfer funds, Am. Pet. ¶ 132, or (4) to further

these acts and disguise them from the public and members, Am. Pet. ¶ 133. Indeed, the minutes of Board meetings reflect that there were numerous outside consultants, lawyers, accountants, actuaries, and other professionals who participated with a much more vocal and active voice than Ms. Carroll, yet none of these are alleged to have been co-conspirators. In the absence of evidence that Ms. Carroll engaged in decision-making regarding the alleged wrongful acts, summary judgment must be granted as to Count VI with regard to conduct occurring before September 4, 2009.

For similar reasons, Ms. Carroll cannot be held liable on the securities counts for any activities taking place before September 4, 2009. She cannot be held liable on Count III because as the attorney providing legal advice to member municipalities, who was strictly separated from the administration of the risk pools, she was not an “agent” involved in the offering or selling of “risk pool contracts.” *See* RSA 421-B:2, II. She cannot be held liable on Count IV because as the attorney providing legal advice to member municipalities, she was not a “principal executive officer or director” of LGC or the risk pools. *See* 421-B:26, III-a. Nor, for the same reasons, can she be held liable on Count V, because as the attorney providing legal advice to member municipalities, she was not at all involved in the offer or sale of “risk pool contracts.” *See* RSA 421-B:3, I.

Ms. Carroll is therefore entitled to summary judgment on the Petition to the extent it challenges actions, events, and behaviors that took place prior to September 4, 2009, events in which Ms. Carroll did not play a decision-making role. *Kimman*, 451 F.3d at 290.

**II. Summary Judgment Should Be Granted in Ms. Carroll’s Favor On Counts I, II, and VI with Regard to Conduct Beginning September 4, 2009, Because as Executive Director, She Acted Under the Direction of the LGC Board and Did Not Breach Any Duties.**

Summary judgment should also be granted in Respondent's favor with regard to the portion of Counts I, II, and VI that stem from conduct undertaken beginning on September 4, 2009, when Ms. Carroll became interim Executive Director.

**A. Ms. Carroll Has No Authority To Set Policy or To Deviate From Board Decisions.**

Since becoming Interim Executive Director, and then Executive Director, Ms. Carroll's duties have been to carry out the policies determined by the LGC Board and to oversee the affairs of LGC under the Board's direction and supervision. Exhibit 1 (Carroll Aff.) ¶ 11; Exhibit 3 (Bylaws) ¶¶ 8.3-8.4. Ms. Carroll has no vote on the Board or independent decision-making authority. Exhibit 1 (Carroll Aff.) ¶ 11; Exhibit 3 (Bylaws) ¶¶ 6.12, 8.3-8.4. The LGC Board has sole authority to make determinations regarding issues such as corporate structure, the setting of rates and reserve levels, and the means of returning surplus, and Ms. Carroll has no discretion or authority to deviate from Board determinations on these matters. Exhibit 1 (Carroll Aff.) ¶ 12; Exhibit 3 (Bylaws) ¶¶ 6.12, 8.1-8.4.

Ms. Carroll may make recommendations to the Board, but she has no ability to demand that her recommendations be adopted. For example, acting *at the suggestion of members*, Ms. Carroll recommended to the Board of Directors that funds be transferred from Workers Compensation to HealthTrust "in recognition of the support it offered to the Workers' Compensation Program." Minutes of Meeting of LGC Board, June 2, 2011 (hereinafter "June 2, 2011 Minutes"), attached as Exhibit E to Exhibit 2 (Ripley Aff.). Ms. Carroll recommended that the transfer take place over time and include the payment of interest. *See id.* The Board undertook a lengthy discussion over the issue, which included considerations of whether to require payment of interest and whether to create a formal loan between the entities. *See id.* Ultimately, the Board decided, in contrast to Ms. Carroll's original recommendation, to execute a

note evidencing a loan between the programs that did *not* include payment of interest. *See id.* Consistent with her duties and obligations, Ms. Carroll carried out the Board’s direction, even though it was contrary to her original recommendation, a suggestion that she offered on behalf of the members and not on her own personal behalf or that of LGC. *See id.*<sup>2</sup>

As the decision-making process over the worker’s compensation note illustrates, and the Bylaws make clear, Ms. Carroll does not have decision-making authority over LGC or the ability to set policy for the organization. She can make recommendations, but it is entirely at the Board’s discretion whether to carry them out, and the Board may decide not to do so. *See id.*; Exhibit 3 (Bylaws) ¶¶ 8.1-8.4. If the BSR seeks to hold Ms. Carroll liable under Counts I, II, and VI as a decision-maker, that effort must fail because she had no authority to deviate from the Board’s direction.

Ms. Carroll has complied with her duties at all times, running LGC in compliance with the direction of its Board, which has responsibility for assuring compliance with RSA Ch. 5-B. Exhibit 3 (Bylaws) ¶ 8.1(i). The Petition improperly seeks to hold her liable for certain alleged actions taken by the Board of LGC and the risk pools over which she had no policy-making authority, and summary judgment is therefore appropriate.

**B. As Executive Director, Ms. Carroll Is Not an Officer or Director of LGC and Therefore Her Sole Duties Are to the LGC Board.**

Significantly, as discussed above, all of the corporate decisions that give rise to the Amended Petition occurred prior to September 4, 2009, when Ms. Carroll became Executive Director. Thus, the essence of the BSR’s Amended Petition is that Ms. Carroll is liable by failing to reverse or refuse to implement Board policies and decisions that had been previously

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<sup>2</sup> Apparently, the BSR is alleging that Ms. Carroll’s “suggestion”—the only concrete allegation in the entire Amended Petition that specifically involves Ms. Carroll—was a conspiratorial act. The minutes belie this mischaracterization as the “suggestion” was at the prompting of “some of the members.” *See* Exhibit 2-E (June 2, 2011 Minutes).

enacted by a duly constituted Board. As Executive Director, Ms. Carroll's sole duties were to the LGC Board. Had Ms. Carroll chosen the path suggested by the BSR, she would have violated the LGC bylaws and breached the duties she owed as an employee to LGC and its Board, which would likely have resulted in her termination.

It is undisputed that Ms. Carroll has not served on the Board of LGC, and has served as the Executive Director since September 4, 2009. New Hampshire law looks to an organization's bylaws to determine the identity of directors and officers and their responsibilities as directors and officers. *See, e.g.*, RSA 293-A:8.40(a) ("A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws."); 293-A:8.41 ("Each officer has the authority and shall perform the duties set forth in the bylaws . . . ."); RSA 293-A:8.03(a) ("A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.").

Under the LGC bylaws, the Executive Director is neither a director nor an officer of LGC. *See* Exhibit 3 (Bylaws) ¶¶ 6.1-6.2 (providing that Directors shall consist of a certain number of Municipal Public Officials, School Public Officials, Employee Officials, and a County Public Official); *id.* ¶ 6.12 (specifying voting powers of Directors and conveying no voting authority on the Executive Director); *id.* ¶ 7.1 (providing that the Officers shall consist of a Chair and Vice Chair elected by the Directors from among the Directors); *id.* ¶¶ 8.1-8.2 (specifying the duties and power of the Directors); *id.* ¶¶ 8.3-8.4 (specifying the duties and power of the Executive Director).

New Hampshire law imposes fiduciary duties to act in good faith, with the care of an ordinarily prudent person, and in the best interests of the corporation *only on directors and officers*. *See* RSA 293-A:8.30 (imposing, on directors, fiduciary duties to act in good faith, with

the care of an ordinarily prudent person, and in the corporation's best interests); RSA 293-A:8.42 (imposing similar duties on officers).<sup>3</sup> As a non-voting executive director, Ms. Carroll has the same duties of service and obedience, and loyalty, to LGC and the risk pools as any agent, that is, to competently carry out her assigned duties at the board's direction and to act loyally for the benefit of the entity. *See generally* Restatement (2d) of Agency §§ 377-398.

Because she is neither a director nor officer and does not have independent policy-making authority over LGC, Ms. Carroll does not have an officer's or director's fiduciary duty of care to the corporation. *Compare* Exhibit 3 (Bylaws) ¶¶ 8.1-8.2 (specifying the duties and power of the Directors), *with id.* ¶¶ 8.3-8.4 (specifying the duties and power of the Executive Director). The decisions that form the basis of the allegations at issue were duly made by the Board of Directors of LGC. Ms. Carroll owes duties only to LGC and its Board: specifically, to carry out the policies duly enacted by the Board. *See id.* Because she does not occupy a policy-making role, Ms. Carroll cannot be held liable for any breaches of duty stemming from the enactment of policies allegedly in violation of RSA Chapter 5-B.

**C. Even if the Executive Director Could Be Held Liable for LGC's Actions, the Alleged Unlawful Actions Giving Rise to the Amended Petition Took Place Prior to When Ms. Carroll Became Executive Director, and Ms. Carroll Therefore Cannot Be Held Liable For Them**

The BSR alleges that LGC made certain decisions that directly violated or facilitated violations of RSA Chapter 5-B. Even if the then-serving Executive Director could be held responsible for these violations, the corporate decisions that the BSR alleges to have violated RSA Chapter 5-B took place before Ms. Carroll became interim Executive Director. For example, the Petition alleges that in 2003, LGC and the risk pools undertook a "failed" corporate re-organization "for the purpose of consolidating control" and "to facilitate the transfer of

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<sup>3</sup> "In the case of a non-profit organization, the directors' fiduciary duty is to further the causes for which the entity was chartered . . ." *Rendell-Baker v. Kohn*, 641 F.2d 14, 25 (1st Cir. 1981).

revenues from the HealthTrust Pool to an uneconomic workers' compensation program.” Am. Pet. ¶¶ 32, 40. The Petition also alleges that soon thereafter, LGC also adopted a new means of calculating reserves using risk-based capital, and that calculating reserves in this fashion enabled LGC to increase its reserves beyond what was appropriate. Am. Pet. ¶ 53-57. These decisions to restructure and to transfer funds form the foundation of Counts I and II of the Amended Petition. Quite simply, it is undisputed that they were not made while Ms. Carroll served as Executive Director. Ms. Carroll therefore cannot be held liable for them.

**D. Because LGC Has Taken Steps to Remedy “Flaws” Since Ms. Carroll Became the Executive Director, Liability on a Ratification Theory is Also Unwarranted**

If the BSR seeks to hold Ms. Carroll liable on the theory that she somehow ratified these past decisions of the organization by serving as Executive Director, that effort must also fail. Ms. Carroll, as discussed above, had no authority to deviate from the Board's directives, including decisions undertaken by prior boards, unless and until they were contradicted by new board decisions.

If the BSR's theory of liability is that her recommendations ratified past decisions of the organization, that theory would also fail. Since Ms. Carroll became interim Executive Director, LGC has taken steps to remedy various “flaws” that the BSR has identified. For example, the BSR identifies the alleged subsidization of Workers Compensation by HealthTrust as a principal concern. Since Ms. Carroll became Executive Director, any subsidization has ceased. Indeed, as discussed above, Ms. Carroll recommended to the Board of Directors that funds be transferred *back* from Workers Compensation to HealthTrust. *See* Exhibit 2-E (June 2, 2011 Minutes). In doing so, she was acting at the request of members, so this act can hardly form evidence that she is acting contrary to their interests. *See id.*

As another example, the BSR identifies the 2003 corporate restructuring as flawed, in part, because it was never completed. *See, e.g.*, Am. Pet. ¶¶ 39-45. Following the identification of technical flaws in the corporate restructuring undertaken in 2003, Ms. Carroll solicited legal advice on how to remedy the technical flaws created by that structure, and had that legal advice delivered to the Board. Am. Pet. ¶¶ 66-67. The Board then undertook efforts to correct the technical flaws in the restructuring.

Finally, the BSR has identified the level of reserves in HealthTrust as a concern. Since Ms. Carroll became Executive Director, HealthTrust's reserves have been reduced significantly, as the Amended Petition acknowledges. *See* Am. Pet. ¶ 57. None of these facts are disputed. Therefore, any attempt to hold Ms. Carroll liable on a theory that she somehow ratified the actions of her predecessors, or continued their actions in contradiction to the members' interests, must fail.

Because there is no evidence that Ms. Carroll violated the Board's direction, breached a duty, or personally engaged in any violations of RSA Chapter 5-B, she is entitled to summary judgment on Counts I, II, and VI of the Petition to the extent that they challenge actions, events, and behaviors that took place after she became interim Executive Director in September 2009.

### **CONCLUSION**

For the foregoing reasons, summary judgment should be granted as to Counts I, II, and VI of the Amended Petition, and partial summary judgment as to Counts III, IV, and V with regard to conduct occurring prior to September 4, 2009.

Respectfully submitted,

MAURA CARROLL

By Her Attorneys:  
SHAHEEN & GORDON, P.A.

Dated: March 12, 2012

/s/ Steven M. Gordon  
Steven M. Gordon (NH Bar #964)  
Benjamin T. Siracusa Hillman (*pro hac vice*)  
107 Storrs Street, PO Box 2703  
Concord, NH 03302-2703  
Telephone: (603) 225-7262  
Facsimile: (603) 225-5112

**CERTIFICATE OF SERVICE**

I hereby certify that I have, this 12th day of March 2012, forwarded copies of this pleading *via* E-mail to counsel of record.

/s/ Steven M. Gordon