

**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

**SUPPLEMENTAL ANSWER OF RESPONDENT PETER J. CURRO
TO BSR'S AMENDED STAFF PETITION**

NOW COMES Respondent Peter J. Curro, by and through counsel, Howard & Ruoff, PLLC, and submits the following Supplemental Answer to the New Hampshire Bureau of Securities Regulation's (BSR) Amended Staff Petition:¹

Respondent Peter J. Curro's Introductory Statement

Mr. Curro is one of several individual respondents named in the BSR's original Staff Petition, which was filed on or about September 2, 2011, and again in its Amended Petition, filed on or about February 17, 2012. The BSR generally accuses Mr. Curro of engaging in violations of the Pooled Risk Management Programs statute, RSA Chapter 5-B (including an alleged violation that, according to the BSR, results in the illegal use of municipal funds contrary to RSA

¹ Mr. Curro incorporates his previous response to the BSR's original Staff Petition for Relief, (see Answer of Respondents Beecher, et al. to BSR's Staff Petition), filed on or about January 6, 2012.

Chapters 32 and 35), and the New Hampshire Securities statute, RSA Chapter 421-B. As well, it specifically accuses Mr. Curro of conspiring with other individual Respondents to commit the aforementioned violations.

The BSR's claims against Mr. Curro should all be dismissed. With regard to the core activities alleged in the BSR's Petition, Mr. Curro, as a sitting member of the LGC Board of Directors, solicited and received advice from outside counsel and other consultants. Mr. Curro 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. Despite the addition of a conspiracy claim in the BSR's amended petition, the BSR has still failed to state with particularity any agreements made or acts committed by Mr. Curro with respect to the alleged violations of RSA 5-B and concomitant illegal use of municipal funds in violation of RSA Chapters 32 and 35. Moreover, Mr. Curro joins Respondent John Andrews' answer as to the BSR's 5-B counts with respect to the BSR's lack of enforcement authority prior to June 14, 2010 and its attempt to retroactively apply the statute granting it such authority in violation of both the State and Federal Constitutions. Finally, all claims against Mr. Curro relating to alleged violations of RSA Chapter 421-B should be dismissed because none of the interests relied on by the BSR in advancing those claims are securities.

Petition Introduction

¶ 1: Paragraph 1 of the Petition is introductory and requires no response.

The Parties

¶¶ 2-21: Paragraphs 2 through 21 identify the Respondents in this matter. Mr. Curro does not object to the description of him set forth in paragraph 17.

Regulatory Authority

¶¶ 22-23: Paragraphs 22 and 23 contain the BSR’s account of legislative changes to RSA 5-B and the procedural history of this matter and do not mention Mr. Curro. Therefore no response is required.

Facts Common to All Claims

¶¶ 24-31: Paragraphs 24 through 31 set forth the BSR’s account of the history of LGC’s corporate structure and the enactment of RSA 5-B. These paragraphs do not mention Mr. Curro and therefore no response is required.

The Creation of a Holding Company to Facilitate Inter-Company Transfers

¶¶ 32-38: Paragraphs 32 through 38 contain assertions by the BSR as to why LGC undertook a corporate reorganization and allegations regarding financial transactions among LGC’s pooled risk management programs. These paragraphs do not mention Mr. Curro and therefore no response is required.

The Failed Corporate Restructuring of LGC Entities

¶¶ 39-45: Paragraphs 39 through 45 contain assertions and allegations by the BSR regarding LGC’s corporate restructuring and do not mention Mr. Curro. Therefore no response is required.

Calculation of LGC’s Reserve Fund and Maintenance of an Illegal Capital Surplus

¶¶ 46-57: In paragraphs 46 through 57 the BSR makes statements, allegations and legal conclusions regarding LGC’s reserve fund and “surplus.” These paragraphs do not mention Mr. Curro and therefore no response is required.

LGC Return of Earnings and Surplus

¶¶ 58-65: Paragraphs 58 through 65 contain the BSR’s interpretation of LGC’s Bylaws and practices regarding the return of earnings and surplus. These paragraphs do not mention Mr. Curro and therefore no response is required.

LGC’s *Post Hoc* Corporate Restructuring

¶¶ 66-68: In paragraphs 66 through 68 the BSR sets forth its understanding of LGC’s 2011 corporate restructuring. These paragraphs do not mention Mr. Curro and therefore no response is required.

The Conduct of the LGC Circumvents New Hampshire’s Municipal Budget Laws

¶¶ 69-72: Paragraphs 69 through 72 contain statements of law regarding RSA Chapters 32 and 35, and do not mention Mr. Curro. Therefore, no response is required.

CAUSES OF ACTION

COUNT I

Operation of a Pooled Risk Management Program in Violation of RSA 5-B:5 - Improper Corporate Structure -

¶¶ 73-80: In paragraphs 73-80 the BSR sets forth its interpretation of the requirements of RSA 5-B regarding the structure of pooled risk management programs, and does not make any allegations about specific conduct by Mr. Curro. Therefore, no response is required.

¶¶ 81: Paragraph 81 states: “Each time the LGC Board members, including the individual Respondents named in this action, voted to transfer funds from a 5-B Pool to a non-entity (e.g. LGC Parent), the Board members were likely violating their fiduciary duties as directors of member funds.” While this portion of paragraph 81 could be construed as mentioning Mr. Curro, it contains a legal conclusion and therefore no response is

required. The remainder of the paragraph cannot be construed as referring to Mr. Curro, and contains further legal conclusions of the BSR, and therefore no response is required.

¶¶ 82-87: Paragraphs 82 through 87 contain the BSR's interpretation of the requirements of RSA 5-B as to the structure of pooled risk management programs, and do not mention Mr. Curro. Therefore no response is required.

By way of further reply, Mr. Curro denies all assertions, legal conclusions and arguments set forth by the BSR in Count I for the reasons stated in LGC's various motions to dismiss this count, which Mr. Curro joined by way of notice filed on or about March 22, 2012.

COUNT II

Operation of a Pooled Risk Management Program in Violation of RSA 5-B:5 - Failure to Return Surplus Funds to Members -

¶¶ 88-104: Paragraphs 88 through 104 contain legal conclusions and argument by the BSR regarding RSA 5-B, the method of calculating reserves, the method of returning surplus to Members and the interplay between these issues and New Hampshire's Municipal Budget Laws. Mr. Curro is not specifically mentioned in these paragraphs and therefore no response is required.

By way of further reply, Mr. Curro denies all assertions, legal conclusions and arguments set forth by the BSR in Count II for the reasons stated in LGC's various motions to dismiss this count, which Mr. Curro joined by way of notice filed on or about March 22, 2012.

COUNT III

**Sale of Unregistered Securities by Unlicensed Broker-Dealers, Issuer-Dealers, and Agents
in Violation of RSA 421-B:6 and 11**

COUNT IV

**Knowing or Negligent Aid in the Sale of Unregistered Securities
by Unlicensed Broker-Dealers, Issuer-Dealers, and Agents
by the Individual Respondents in Violation of RSA 421-B:26, III-a**

COUNT V

**Fraud, Deceit and Material Omissions in Connection with
the Offer or Sale of Securities in Violation of RSA 421-B:3**

¶¶ 105-128: All of the above counts and related paragraphs, 105 through 128, are premised on the BSR's legal conclusion that membership interests in NHMA and risk pool contracts are "investment contracts," and therefore securities, which are subject to New Hampshire's Securities Act, RSA 421-B. Mr. Curro denies this underlying premise, for all of the reasons set forth in his Motion to Dismiss Count IV, as well as in the motions to dismiss those counts filed by Respondents John Andrews, Maura Carroll and LGC, which Mr. Curro joined by way of notice filed on or about March 22, 2012. By way of further reply Mr. Curro notes that he is not mentioned in either Count III (paragraphs 105 through 117) or Count V (paragraphs 123 through 128) and therefore no response is required.

¶¶ 120-122: In paragraphs 120-122, the BSR makes specific allegations of violations of New Hampshire's Securities Act by "each member of the LGC Board named in this action." Mr. Curro denies these allegations. For all of the reasons set forth in his Motion to Dismiss Count IV, Mr. Curro asserts that the underlying premise of these allegations – that interests in NHMA and risk pool contracts are "investment contracts" – is incorrect

as a matter of law. Accordingly the New Hampshire Securities Act is not applicable to this case and he cannot be said to have engaged in any violations of it.

COUNT VI

Civil Conspiracy

¶¶ 129-135: Paragraphs 129 through 135 contain allegations that Mr. Curro and the other individual respondents named in this matter conspired together to cause the actions complained of in the petition. The BSR asserts the alleged conspiracies “are ongoing and are the proximate cause of the current violations of RSA 5-B and RSA 421-B alleged against LGC and its subsidiaries in this Petition.” Mr. Curro denies the underlying premise of this count for the reasons stated in his Motion to Dismiss Count VI (the Department lacks subject matter jurisdiction over this claim; as a member of LGC’s Board of Directors Mr. Curro was incapable, as a matter of law, of forming a conspiracy with the other individual respondents named in this action; and the BSR has failed to specify any agreement that Mr. Curro entered into with any of the other individual respondents named in this action), as well as in the motion to dismiss this count filed by Respondent John Andrews, which Mr. Curro joined by way of notice filed on or about March 22, 2012. Mr. Curro further denies the actions attributed to him in these paragraphs.

BRIEF STATEMENT OF DEFENSES

Mr. Curro intends to rely on the following defenses to some or all of the allegations, claims and requested relief in the BSR’s Amended Petition:

A. The Petition fails to state a cause of action upon which relief can be granted..

- B. To the extent the Petition makes claims for relief against Mr. Curro individually, such relief cannot be obtained from him.
- C. The Petition fails to allege specific instances of conduct against Mr. Curro 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 Mr. Curro, the Petition fails to allege any such fraud with sufficient particularity.
- E. At all times pertinent to the allegations in the Petition, Mr. Curro 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, Mr. Curro acted reasonably and in 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.
- J. Mr. Curro re-asserts as if set forth in full herein all the defenses raised in his dispositive motions.
- K. Mr. Curro joins the defenses raised by the other Respondents in this matter.
- L. Discovery in this matter is ongoing, and therefore Mr. Curro reserves the right to assert additional or other defenses should further information pertaining to the same come to his attention.

Requested Relief

Mr. Curro respectfully requests dismissal of the BSR's Amended Petition as against him or, in the alternative, denial of the BSR's allegations, claims and requests for relief.

Respectfully Submitted,
Peter J. Curro,

By His Attorneys,
HOWARD & RUOFF, PLLC

Dated: March 23, 2012

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

I hereby certify that I have this 23rd day of March 2012, forwarded copies of the within Answer of Peter J. Curro to the BSR's Amended Petition via electronic transmission to all counsel of record.

Dated: March 23, 2012

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