## STATE OF NEW HAMPSHIRE DEPARTMENT OF STATE

IN THE MATTER OF:	) )
Local Government Center, Inc.; 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 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	) ) ) ) ) ) Case No: C2011000036 ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) )
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## MOTION TO DETERMINE STATUS OF COUNSEL

Petitioner, Bureau of Securities Regulation, a part of the Corporations Division within the Department of State, and submits this Motion to Determine Status of Counsel, stating in support thereof as follows:

## Legal Capacity to Retain Counsel on Behalf of Certain Named Respondents

- 1. On September 2, 2011, the New Hampshire Bureau of Securities Regulation (the Bureau) filed a Staff Petition for Relief with the New Hampshire Secretary of State's Office, accusing Respondents of violating N.H. RSA § 5-B and N.H. RSA § 421-B.
- 2. On September 2, 2011, the Secretary of State, William M. Gardner, issued an order to Cease and Desist, an Order to Show Cause, and a Hearing Order in response to the Staff Petition.

- 3. On September 14, 2001, Brian M. Quirk of Preti Flaherty, PLLP, filed a Notice of Appearance on behalf of Local Government Center, Inc.; Local Government Center Real Estate, Inc.; 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; Local Government Center Workers' Compensation Trust, LLC; and Maura Carroll (Executive Director of LGC, Inc. and manager of both LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC).
- 4. HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. were first incorporated as New Hampshire nonprofit corporation (under the umbrella of LGC, Inc.) pursuant to N.H. RSA § 292 on February 11, 1985 and June 3, 1986, respectively, ultimately functioning as pooled risk management programs in the state of New Hampshire, under N.H. RSA § 5-B.
- 5. In 2003, a plan was proposed to the respective boards of trustees of HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. to house the nonprofits in limited liability companies ("LLCs") with an umbrella corporation (LGC, Inc.) overseeing them. To effectuate this plan, a series of transfers were attempted. HealthTrust, Inc. attempted to merge with LGC-HT, LLC, a Delaware LLC and NHMA Property-Liability Trust, Inc. attempted to merge with LGC-PLT, LLC, another Delaware LLC. Then, LGC-HT, LLC was merged with LGC HealthTrust, LLC, a New Hampshire LLC, and LGC-PLT, LLC was merged with LGC Property-Liability Trust, LLC, another New Hampshire LLC.
- 6. As noted in the Bureau's October 3, 2001 Motion to Amend Petition to Add Count 4, numerous errors in corporate and LLC formation and governance were found that raise "substantial questions" regarding what individuals or entities had or have management authority of the entities that purportedly house these N.H. RSA § 5-B pooled risk management programs.
- 7. As LGC noted, when LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC were formed, Certificates of Formation were properly filed with the New Hampshire Secretary of State's Office pursuant to N.H. RSA § 304-C:12. Pursuant to N.H. RSA § 304-C:12, II(e), as part of each Certificate of Formation, it was stated that management authority of each LLC was not vested in managers, and thus, by statutory default, vested in members. Each certificate was signed by each entity's only *member*, John B. Andrews.

- 8. According to the 2004 "Notes to Financial Statements" provided as part of both LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC's annual N.H. RSA § 5-B information filing, "[o]n July 1, 2003, pursuant to a planned reorganization, the assets, liabilities, member's balance, and business" of the HealthTrust, Inc. and Property-Liability Trust, Inc. were merged into LGC HealthTrust, LLC and Property-Liability Trust, LLC, respectively.
- 9. As a result of this purported 2003 merger, neither HealthTrust, Inc. nor NHMA Property-Liability Trust, Inc. filed its 5-year renewal of registration in 2005 as required by N.H. RSA § 292:25, thus subjecting each nonprofit corporation to administrative dissolution pursuant to N.H. RSA § 292:25, I.
- 10. In 2004 (and for every subsequent year), pursuant to N.H. RSA § 304-C:31. II, LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC filed their annual report. Each 2004 annual report listed only *managers* but not a single *member*. Each 2004 annual report was signed by each entity's only *manager*, John B. Andrews. This means, at the time of their creation, each entity (each housing a N.H. RSA § 5-B pooled risk management programs) was owned and operated by a single individual, in direct violation of N.H. RSA § 5-B:5.
- 11. Under N.H. RSA § 304-C:13, an LLC's Certificate of Formation may be amended in order to change the individuals or entities in whom LLC management authority is vested. This is accomplished by "filing a certificate of amendment with the secretary of state." All that is required as part of this Certificate of Amendment is the name of the entity and the amendment. At no time since its inception has LGC HealthTrust, LLC or LGC Property-Liability Trust, LLC filed such a certificate. Thus, management authority has remained vested only in each entity's *members*.
- 12. As every annual report of LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC was signed by an LLC *manager*, from 2004 to the present, neither LGC HealthTrust, LLC nor LGC Property-Liability Trust, LLC ever filed a duly authorized annual report, let alone a report listing a member with management authority.
- 13. Under N.H. RSA § 304-C:31, I, "[a] limited liability company agreement may provide for the management, in whole or in part, of a limited liability company by a manager or managers, who shall be chosen by the members in the manner provided in the limited liability company agreement." The statute further states, "[a] manager shall hold the offices and have the

responsibilities accorded to him by the members and set forth in a limited liability company agreement. A manager shall cease to be a manager as provided in a limited liability company agreement." Neither LGC HealthTrust, LLC nor LGC Property-Liability Trust, LLC have ever executed an LLC agreement let alone one that outlines some contractual deviation from the letter of New Hampshire law. Thus, since each entity's inception, management authority of LGC HealthTrust, LLC and Property-Liability Trust, LLC has remained vested in each entity's members.

- 14. Since LGC, Inc., HealthTrust, Inc., and NHMA Property-Liability Trust, Inc. are not and have never been lawfully admitted as *members* or *managers* of LGC HealthTrust, LLC or LGC Property-Liability Trust, LLC, none of these entities and not a single *member* of their respective boards of directors have ever had management authority over either LLC. Because of this, LGC, Inc., HealthTrust, Inc. (or its successor LGC HealthTrust, Inc.), and NHMA Property-Liability Trust, Inc. have never had title to or authority over any of the assets transferred to LGC HealthTrust, LLC or LGC Property-Liability Trust, LLC as part of the purported 2003 merger. In addition, because neither LGC HealthTrust, LLC nor LGC Property-Liability Trust, LLC currently have a single member (the only group with management authority over the assets of each LLC), and no LLC agreement to the contrary, no individual or entity, let alone LGC, Inc. or its affiliates, may currently manage the assets of either LGC HealthTrust, LLC or LGC Property-Liability Trust, LLC.
- 15. As of the 2010 annual report of LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC, Maura Carroll is the only *manager* listed for each entity. Thus, neither entity lists a single *member* in its 2010 annual report, thus neither entity has anyone with management authority to make decisions unrelated to each entity's assets.
- 16. Because neither LLC lists any *member* in its annual report, there is no way for either entity to exercise management authority over, for example, hiring counsel to defend against any direct action.
- 17. In addition, all documentary evidence supports that Maura Carroll was admitted only as a manager of LGC HealthTrust, LLC and LGC Property-Liability, LLC and never as a member of either entity. Because, according to LGC, no LLC agreements exists for either LGC HealthTrust, LLC or LGC Property-Liability Trust, LLC, there exists no mechanism to

- appoint *managers* of either entity and thus no way for Maura Carroll to be represented in her capacity as *manager* of either entity.
- 18. The repeated filing errors on behalf of LGC HealthTrust, LLC and Property-Liability Trust, LLC make it impossible to determine who managed or is currently managing either entity. In order to inform the investing public of who or what was managing the N.H. RSA § 5-B pooled risk management programs purportedly housed within LGC HealthTrust, LLC or LGC Property-Liability Trust, LLC, New Hampshire law requires at least one *member* be listed on each entity's annual report. The fact that no *member* was listed on either entity's 2004, 2006, 2007, 2008, 2009, and 2010 annual reports, shows a lack of lawful membership and thus a lack of lawful management authority during those years considering these entities functioned as *single-member* LLCs since their inception, according to Maura Carroll. Thus, the fact that no member is listed on the 2004, 2006, 2007, 2008, 2009, and 2010 annual reports of both LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC indicates dysfunction or at least serious confusion on the part of these entities and their management regarding what individuals or entities were and are permitted to exercise management authority.

## Joint Representation of Respondents Is Prohibited Due to a Concurrent Conflict of Interest

- 19. On August 31, 2011, LGC, Inc. admitted that the purported 2003 merger of HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. with Delaware LLCs (and thus the resulting New Hampshire LLCs) "was not completed appropriately." Subsequently, the former boards of both HealthTrust, Inc. and NHMA Property Liability Trust, Inc. purportedly voted to revive these defunct nonprofit corporations in an attempt to continue operating N.H. RSA § 5-B pooled risk management programs under the umbrella of these two entities.
- 20. As alluded to above, the assets of both LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC are necessary for the continued operation of LGC, Inc.'s N.H. RSA § 5-B pooled risk management programs formerly operated by the newly revived LGC HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. Thus, for LGC HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. to operate N.H. RSA § 5-B pooled risk management programs, they must reacquire these assets. Thus, there is a significant risk that the representation of

- one or more respondent will be materially limited by the Preti Flaherty, PLLP's responsibility to another named respondent.
- 21. In addition, because LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC unlawfully acquired the assets of LGC, Inc. and its subsidiaries, and because Maura Carroll was formerly corporate counsel of LGC, Inc. and currently sits as the corporation's Executive Director, there is a significant risk that the representation of one or more respondent will be materially limited by the Preti Flaherty, PLLP's responsibility to another named respondent.
- 22. According to N.H. Rules of Professional Conduct, Rule 1.7(a), "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest." The rule further states that, "[a] concurrent conflict of interest exists if: 1) the representation of one client will be directly adverse to another client; or 2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer." Considering HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. need the assets of LGC HealthTrust, LLC and NHMA Property-Liability Trust, LLC for the continued operation of their N.H. RSA § 5-B pooled risk management programs, and because it is unclear whether LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC have members with management authority over those assets, there is a significant risk that the representation of each entity will be materially limited by joint representation.
- 23. N.H. Rules of Professional Conduct, Rule 1.7(b) does state that "[n]otwithstanding the existence of a concurrent conflict of interest . . . a lawyer may represent a client" under certain circumstances. The rule further states that a lawyer may represent a client regardless of a concurrent conflict if:
  - 1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; 2) the representation is not prohibited by law; 3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and 4) each affected client gives informed consent, confirmed in writing.

However, because it is unclear whether LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC have a single member with management authority, it is unclear whether either entity has a member from whom a lawyer wishing to represent either entity may obtain informed consent in writing.

WHEREFORE, the Petitioner respectfully requests that the Hearings Officer:

- A. Grant Petitioner's Motion to Determine Status of Counsel and order that, for the aforementioned reasons, Preti Flaherty, PLLP be prevented from jointly representing corporate and company Respondents due to the presence of a concurrent conflict of interest and the inability of certain corporate and company y Respondents to waive the conflict;
- B. Order that, for the aforementioned reasons, Preti Flaherty, PLLP be prevented from representing Maura Carroll in her capacity as manager or LGC HealthTrust, LLC and Property-Liability Trust, LLC due to the fact that Maura Carroll has never been a member or either entity and was unlawfully admitted as a manager of both; and
- C. Grant such other and further relief, as may be deemed proper and just.

Dated this 11th day of October, 2011

Earle F. Wingate, III

Staff Attorney

N.H. Bureau of Securities Regulation

cc: Adrian S. LaRochelle, Esq. William C. Saturley, Esq. Brian M. Quirk, Esq. Glenn R. Milner, Esq. Peter J. Perroni, Esq. Michael D. Ramsdell, Esq. Joshua M. Pantesco, Esq. Mark E. Howard, Esq. Jaye L. Rancourt, Esq.