STATE OF NEW HAMPSHIRE DEPARTMENT OF STATE

IN THE MATTER OF:))
Local Government Center Real Estate, 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; Paula Adriance; John P. Bohenko; and John Andrews	Case No: C2011000036))))))))))))))))))
RESPONDENTS))

MOTION TO AMEND PETITION TO ADD COUNT 4

NOW COMES Petitioner, the Bureau of Securities Regulation, a part of the Corporations Division within the Department of State, and, pursuant to the power reserved by Petitioner in its September 2, 2001 petition, submits this Motion to Amend its petition as follows:

COUNT 4 – ADDITIONAL ISSUES REGARDING LIMITED LIABILITY COMPANY FORMATION AND MANAGEMENT

A. Failure to Properly Form Limited Liability Companies

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 was 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.
- 110. When LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC were formed, Certificates of Formation were properly filed on behalf of each entity 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 sole *member*, John B. Andrews.
- 111. According to the 2004 "Notes to Financial Statements" provided as part of 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 LGC Property-Liability Trust, LLC, respectively.
- of the purported merger, *single-member* LLCs, managed solely by John B. Andrews. In fact, according to Maura Carroll, the Executive Director of LGC, Inc., both entities have remained *single-member* LLCs since their inception. This transfer shifted all "assets, liabilities, member's balance, and business" of both HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. to two unaffiliated entities. There was no legal justification for this transfer and LGC, Inc. has recently admitted the purported merger (and thus the above-mentioned transfer) was "not completed appropriately."

Letter to LGC, Inc. members dated November 15, 2010: "Because of the breadth and complexity of the NHMA services and the HealthTrust and Property-Liability Trust pooled risk management program, the boards approved a system structure with a nonprofit parent corporation (Local Government Center) and *single-member limited liability companies*." (emphasis added)

- 113. This "inappropriate" merger sparked the revival of the administratively dissolved nonprofits, LGC HealthTrust, Inc. and NHMA Property-Liability Trust, Inc.
- 114. Further, the transfer of all "assets, liabilities, member's balance, and business" to two unaffiliated entities raises a substantial legal question as to what individual or entity is entitled to those assets and how those assets have been managed since 2004. Further, confusion over what individual or entities have exercised management authority over LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC raises a substantial question about unlawful management and distribution of the assets transferred as part of the purported 2003 merger.

B. Failure to Establish Proper Mechanisms for Management of LGC HealthTrust, LLC and Property-Liability Trust, LLC

- 115. Under N.H. RSA § 304-C:1, VI, defines a limited liability company agreement as "a written agreement of the members or a document adopted by the sole member as to the affairs of a limited liability company and the conduct of its business." However, according to representatives of LGC, Inc. no LLC agreements were ever created or adopted for LGC HealthTrust, LLC or LGC Property-Liability Trust, LLC.²
- 116. 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." (emphasis added) 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." (emphasis added)
- 117. However, representative for LGC, Inc. have admitted that 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

² Question: "Provide copies of the NHMA Operating Agreement, the HealthTrust Operating Agreement, the PLT Operating Agreement, and any rules and other agreements pursuant or incident to the operative documents as defined in the LGC bylaws." Answer: "The following documents exist: LGC Bylaws and an NHMA Operating Agreement. These are provided."

- 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*.
- 118. N.H. RSA § 304-C:30 does provide "[a] person may be named or designated as a manager of the limited liability company as provided in RSA 304-C:1, IX." (emphasis added) However, N.H. RSA § 304-C:1, IX states that "'[m]anager' means a person who is named as a manager of a limited liability company in or designated as a manager of a limited liability company agreement or similar instrument under which the limited liability company is formed." (emphasis added) Thus, appointment of an LLC manager may only be accomplished through mechanisms established pursuant to an LLC agreement.
- In its bylaws, Article XIII, Section 8.1, LGC, Inc. claims that "[t]he Directors shall set policy, oversee and administer LGC, NHMA, HealthTrust, PLT, and LGC Real Estate." However, there are several problems with this assertion.
- 120. N.H. RSA § 304-C:78 states that "[i]t is the policy of this chapter to give the maximum effect to principle of freedom of contract and to the enforceability of limited liability company agreements." The statute goes on to explain that LLCs may expand or restrict a *member* or *manager's* duties and liabilities through relevant provisions of an LLC agreement.
- 121. Nowhere in the statute does it state that the bylaws of a corporate parent or, as is the case here, the bylaws of an entirely separate and independent corporation have any effect on the rights, duties, or liabilities of a New Hampshire LLC or its *members* or *managers*. In addition, as mentioned above, LGC, Inc. itself has noted that neither LGC HealthTrust, LLC nor LGC Property-Liability Trust, LLC have LLC agreements let alone LLC agreements that incorporate the LGC, Inc. bylaws or that outline any contractual deviation from the letter of New Hampshire law.
- 122. The language in Article VIII, Section 8.1 of the LGC, Inc. Bylaws attempts to give management authority over LGC HealthTrust, LLC and Property-Liability Trust, LLC to LGC, Inc. The language does not attempt to position the LGC, Inc. Bylaws as any type of LLC agreement let alone one that outlines the affairs of LGC HealthTrust, LLC and Property-Liability Trust, LLC or the conduct of their business.

- 123. The allegedly pertinent language of Article VIII, Section 8.1 of the LGC, Inc. Bylaws has also been in place since before the LLCs that currently house the N.H. RSA § 5-B pooled risk management programs were formed. Thus, the language cannot have been intended to function as an LLC agreement for either entity considering LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC did not have affairs or business at the time Article VIII, Section 8.1 of the LGC, Inc. Bylaws was first drafted.
- 124. Because neither LGC HealthTrust, LLC nor LGC Property-Liability Trust, LLC had LLC agreements, there existed no mechanism to lawfully appoint *managers* or to vest management authority in any individual or entity other than *members* of LGC HealthTrust, LLC or LGC Property-Liability Trust, LLC.

C. Failure to Properly File Annual Reports

- 125. Under N.H. RSA § 304-C:80, "[e]ach domestic limited liability company and each foreign limited liability company registered to do business in this state, except limited liability companies making returns to the insurance commissioner, shall deliver to the secretary of state for filing an annual report."
- 126. Each annual report consists of one page of information including: 1) the name of the limited liability company and the state or country under whose law it is formed; 2) the address of its registered office and the name of its registered agent at that office in this state; 3) the address of its principal office; 4) the names and business addresses of its *managers* or, if there are no *managers*, at least one *member*; and 5) a brief description of the nature of its business.
- 127. Because LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC are member-managed (according to each entity's Certificate of Formation), each entity is required, as part of its annual report, to list at least one *member*. This requirement is intended to put the investing public, including state and municipal employees, on notice of who is managing the assets of both entities and the risk management pools they purported to operate.
- 128. As required, LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC delivered an annual report to the Secretary of State in 2004. Both reports listed the required information, but instead of listing a *member* (a requirement considering both

- entities were *member*-managed) each entity listed a single *manager*, John B. Andrews. Each annual report was then signed by John B. Andrews as "*manager*," a role that carries with it no management authority or agency power considering the lack of an LLC agreement vesting such power in *managers*.
- 129. In 2005, LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC filed annual reports. This time, each entity listed a single *member*, LGC, Inc. and two *managers*, John B. Andrews and LGC, Inc. However, each annual report was then signed by John B. Andrews as "*manager*," a role that carries with it no management authority or agency power.
- 130. In 2006 and 2007, LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC filed annual reports. This time each entity repeated the mistake made in 2004 and listed a single *manager*, John B. Andrews, but not a single *member*. Each annual report was then signed by John B. Andrews as "*manager*," a role that again carries with it no management authority or agency power.
- 131. In 2008 and 2009, LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC filed annual reports. Once again, each entity repeated the mistake made in 2004 and listed a single *manager*, John B. Andrews, but not a single *member*. However, the 2008 annual report of both entities was signed by Sandal R. Keefe as "authorized party."
- 132. In 2010, LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC filed annual reports. This year, each entity repeated the error made in 2004 and listed a single *manager*, Maura Carroll, but not a single *member*. However this annual report was then signed by Maura Carroll as "*manager*," a role that again carries with it no management authority or agency power.
- 133. It must be noted that N.H. RSA § 304-C:23 provides:

 After the formation of a limited liability company, a person acquiring a limited

After the formation of a limited hability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company:

(a) In the case of a person acquiring a limited liability company interest directly from the limited liability company, at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, upon the consent of all members and when the person's admission is reflected in the records of the limited liability company;

- (c) In the case of an assignee of a single-member limited liability company interest, upon such assignee's succeeding to the assignor's limited liability company interest under RSA 304-C:48, I(c), without further action.
- As no records have been produced by LGC, Inc. or its affiliates regarding the admission of Maura Carroll as a *member* of LGC HealthTrust, LLC or LGC Property-Liability Trust, LLC, it is unclear whether she ever obtained a membership interest in either entity. Further, if Maura Carroll was admitted as a *member* of LGC HealthTrust, LLC or LGC Property-Liability Trust, LLC, it is unclear how she obtained this membership interest, whether from John B. Andrews or from the LLCs directly.
- Nonetheless, as mentioned above, 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.

D. Judicial Dissolution of an LLC is Permitted For Fraudulent or Illegal Actions and for Actions Contrary to Public Policy

- N.H. RSA § 304-C:51 permits judicial dissolution of an LLC. N.H. RSA § 304-C:51, IV states that "[c]arrying on, conducting, or transacting its business in a persistently fraudulent or illegal manner" is grounds for judicial dissolution. The statute also states that "[a]buse of [an LLC's] power contrary to the public policy of the state" is further grounds for judicial dissolution.
- 137. From 2004 until 2010, both LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC failed to file complete and duly authorized annual report as required by New Hampshire law.
- 138. Failure to so file, while unlawful, was also contrary to public policy as LLC annual filings are public documents intended to give notice to the investing public of important LLC information including identification of those individuals or entities with LLC management authority.

- 139. These annual reports also listed LLC *managers* that could not have been lawfully admitted as *managers* of LGC HealthTrust, LLC or Property-Liability Trust, LLC pursuant to N.H. RSA § 304-C:1, IX.
- 140. Further, neither LGC HealthTrust, LLC nor LGC Property-Liability Trust, LLC have LLC agreements outlining procedures for the management of either entity. The only "operative document" allegedly applicable outlines not a single mechanism pertaining to LLC management.
- 141. LGC HealthTrust, LLC and Property-Liability Trust, LLC were responsible for managing hundreds of millions of dollars of taxpayer money and tens of thousands of state and municipal insurance contracts. While the above-mentioned failures may seem to be technical in nature, they amount to substantial failures on the part of LGC HealthTrust, LLC, LGC Property-Liability Trust, LLC, and those individuals or entities that lawfully or unlawfully "managed" them. This, in turn, raises additional concerns regarding the potential for unlawful management and distribution of N.H. RSA § 5-B pooled risk management program assets.

Respectfully submitted,

October 3, 2011

Joseph C. Long, Director

N.H. Bureau of Securities Regulation