STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE

IN THE MATTER OF:	)	
Local Government Center, Inc., et al.	)	C-2011000036
RESPONDENTS	)	

HEALTHTRUST'S OBJECTION TO BSR'S MOTION TO ESTABLISH STANDING AND DEFINE ISSUES ON REMAND

HealthTrust, Inc. ("HealthTrust") objects to the New Hampshire Bureau of Securities Regulation's ("BSR") Motion to Establish Standing and Define Issues on Remand as follows:

INTRODUCTION

It has been almost five years since the BSR commenced this administrative proceeding with its September 2011 Staff Petition. During that time, the BSR had multiple opportunities to litigate the issue of former HealthTrust members sharing in the distribution of the $17.1 million that Property-Liability Trust, Inc. ("PLT") was ordered to repay to HealthTrust as an unlawful subsidy. The opportunity was present during the original administrative proceeding, the respondents' appeal, the first remanded proceeding, and the eight municipalities' appeal that resulted in the instant remanded proceeding.[1] The BSR did not merely neglect the issue; rather, the issue was squarely presented during each step of the history of this matter and the BSR affirmatively elected not to pursue the issue while contemporaneously resolving the issues that it chose to vigorously pursue. Having had a full and fair opportunity to litigate the issue and

[1] The eight former HealthTrust member municipalities that intervened in the first remanded proceeding solely for the purpose of seeking their alleged proportional shares of the $17.1 million distribution are Salem, Concord, Bennington, Meredith, Northfield, Peterborough, Plainfield, Temple, and Auburn. These same eight municipalities appealed the adverse decision to the New Hampshire Supreme Court. The municipalities and HealthTrust have reached an agreement that HealthTrust will pay them the amount of $132,239 (fifty percent of their full claim less $7,099 already paid to two of the municipalities), provided that the Presiding Officer approves the settlement as resolution of this remanded matter.

eschewing pursuit of the issue while accepting a final resolution of the matter, the BSR's motion must be denied as untimely.[2]

There are two additional reasons why the BSR's motion should be denied. First, the Presiding Officer did not make an error or law because record demonstrates that he understood that a violation of RSA 5-B:5, I(c) could be penalized by ordering payment to former members as disgorgement or restitution pursuant to RSA 5-B:4-a. Therefore, the BSR's motion should be denied as moot.

Additionally, but no less importantly, it would be unfair and unreasonable to order HealthTrust to make additional distributions to entities that never raised a claim and on whose behalf the BSR never pursued a claim because HealthTrust sought the guidance of the Presiding Officer and the BSR prior to distributing the $17.1 million in order to avoid future litigation. The BSR took no position on the proposed distribution, and thereafter, HealthTrust distributed the entire $17.1 million consistent with the terms of the August 16, 2012 Final Order ("August 16 Order").

I. The BSR's Motion Should Be Denied as Moot Because the Presiding Officer Did Not Commit an Error of Law.

The sole reason that the matter was remanded to the Presiding Officer is because "to the extent the presiding officer concluded that he lacked the authority to penalize a violation of RSA 5-B:5, I(c) by ordering payment to former members of a pooled risk pool management program as either restitution or disgorgement, he committed an error of law." *Appeal of Town of Salem*, 133 A.3d 595, 602 (N.H. February 18, 2016). The Court remanded the case for further

[2] The BSR's motion appears to conflate "standing" as a party and the ability to raise issues during this particular stage of the proceeding. The BSR has standing to be heard on the resolution of the municipalities' claim as the regulatory agency involved in this proceeding. However, for the reasons explained in this objection, the BSR is precluded from raising issues beyond the municipalities' claim because the BSR previously settled or elected not to pursue such claims on behalf of other municipalities.

proceedings solely because of the potential error of law. The Court noted that its decision "merely clarifies the scope of the secretary's authority under RSA 5-B:4-a; [the Court] express[es] no opinion as to what penalty should be ordered in the case." *Id.*

The record demonstrates that the Presiding Officer understood that he could penalize a violation of RSA 5-B:5, I(c) by ordering payment to former members as disgorgement or restitution. The Supreme Court correctly found that the August 16 Order:

> directed the Bureau and the administrative respondents to enter into an 'agreed-upon plan' to distribute excess funds to members that had participated in the program at any time after June 10, 2010; however, if those parties failed to reach an agreement, the order required distribution only to Health Trust's and Property Liability Trust's current members.

Id. at 598.

Because the August 16 Order issued on August 16, **2012** and allowed the BSR and HealthTrust to agree on a plan that permitted "members that had participated in the program at any time after June 10, **2010**" to share in the ordered distribution, it is plain that the Presiding Officer was aware that he had the authority to order the return of excess surplus in a manner that included former risk pool program members (*i.e.*, members that participated in the program after June 10, 2010 and left the program before August 16, 2012). Otherwise, the Presiding Officer would have been directing the parties to violate RSA 5-B, which plainly was not the case.

Additionally, the Presiding Officer stated in the August 16 Order that "[t]o the extent that this order requires the return of funds or property in the alternative, this order requires compliance with these provisions as restitution or disgorgement pursuant to RSA 5-B:4-a, VII(b)." August 16 Order, p. 79 (¶17). The Presiding Officer's express invocation of disgorgement or restitution pursuant to RSA 5-B:4-a when he directed the parties to reach an agreed-to plan that allowed former members to participate in the distribution of excess surplus

demonstrates that the Presiding Officer was aware that he could penalize a violation of RSA 5-B:5, I(c) by ordering payment to former members of a pooled risk pool management program as either restitution or disgorgement.

Because the Presiding Officer knew he had the authority pursuant to RSA 5-B:4-a to penalize a violation of RSA 5-B:5, I(c) by ordering payments to former members as restitution or disgorgement and he exercised that authority in the August 16 Order (pp. 75-76 (¶8), p. 79 (¶17)), the Presiding Officer did not commit an error of law. Accordingly, the Presiding Officer should find that he did not make an error of law and deny the BSR's motion as moot.

II. The BSR's Motion Should Be Denied Because the Agency Had Multiple Opportunities to Litigate the Issue Stated in Its Instant Motion and Affirmatively Elected Not to Pursue the Issue, Thereby Precluding the BSR's Current Motion as Untimely.

A. A party cannot later litigate issues that it elected not to pursue when presented an opportunity to litigate the issues or to appeal a ruling that resolved the issues.

More than fifty years ago, the New Hampshire Supreme Court declared it was already "well settled that a retrial for the correction of errors should be limited to the part of the case which might have been affected if the issues as to which no error occurred can be separated therefrom." *Lampesis v. Comolli*, 102 N.H. 306, 308 (1959). The Supreme Court explained that it is unnecessary to relitigate issues during a remanded proceeding if the party "has already had a full and fair opportunity to prove his case on these matters at the first trial." *Id.* Moreover, the Supreme Court also recognized that it already was "equally well established" that a party that fails to timely appeal rulings to which it has excepted "during the trial of a case shall be deemed to have waived them." *Id.*

Those bedrock legal principles are regularly enforced today. In *In re C.M.*, 166 N.H. 764 (2014), two parents appealed a circuit court order terminating their parental rights over their children. *Id.* at 766. One parent, Larry, argued that it was error for the court to deny him

appointed counsel: (1) after he had attained a vested right to counsel when an attorney had been appointed to represent him in a related neglect case; and (2) because the particular circumstances of the case required the appointment of counsel. *Id.* at 781. The Supreme Court rejected the arguments because "neither of these issues [was] properly subject to review in this proceeding." *Id.* The Supreme Court explained that the parent's failure to challenge the superior court's order on the issues rendered the order final and precluded its consideration on appeal, as follows:

> Larry did not raise his "vested right" argument before us in the *C.M.* appeal, and even if the interlocutory nature of our ruling would not present a res judicata bar to his presenting the issue to the superior court after our remand, *but cf. State v. Presler,* 731 A.2d 699, 702–04 (R.I.1999), the record before us contains no indication that he ever did so. More importantly, with respect to both the vested rights issue and the claim that the particular circumstances of his case required the appointment of counsel, Larry did not appeal the superior court's dispositional order, which therefore became final and binding as to all issues raised and which could have been raised in that proceeding, including Larry's right to have court-appointed counsel in that case. *See Gray v. Kelly,* 161 N.H. 160, 164, 13 A.3d 848 (2010) ("Res judicata ... bars the relitigation of any issue that was, or might have been, raised in respect to the subject matter of the prior litigation." (quotation omitted)); *cf. Michael E.,* 162 N.H. at 523–24, 34 A.3d 632 (collateral estoppel barred parent in termination of rights case from relitigating final order of neglect entered against her in RSA chapter 169-C case).

Id. at 781-82.

The Supreme Court similarly rejected an attempt to expand the scope of a remanded matter in *In re Nyhan*, 151 N.H. 739 (2005). The Supreme Court did not allow a party to litigate issues during a remanded proceeding that had not been raised on appeal as follows:

> The respondent maintains that the trial court erred as a matter of law in refusing to consider whether he was entitled to an offset credit for alimony and healthcare payments he made under the temporary order, and for half of the expenses he incurred for the care, education and extracurricular activities of his children during the pendency of his first appeal and subsequent remand proceedings. We disagree. Our instructions in *Nyhan* were for the trial court, on remand, to address the narrow issue of whether interest in this case was warranted and, if so, to determine what rate of interest would result in an equitable distribution of the marital assets. *Id.* We did not, as the respondent argues, instruct, or intend for, the trial court to determine, on remand, whether the equities required a redistribution of the marital assets.

> Moreover, the respondent in his initial appeal did not challenge the trial court's distribution of the marital assets. Rather, he argued only that the trial court erred in setting a valuation date for certain IRA and 401(k) accounts, awarding the petitioner interest and ruling on the petitioner's untimely post-divorce decree motions. *Id.* at 769, 802 A.2d 1183. Thus, the trial court's initial distribution of the parties' marital assets was not challenged and any attempted contest now is untimely.

Id. at 743.

When a proceeding is remanded for further proceedings, "[t]he scope of the remand is limited by the nature of the error or issue identified." *Kalil v. Town of Dummer ZBA*, 155 N.H. 307, 312 (2007). "[T]he trial court cannot adjudicate a right not within the scope of the remand even though it may be one that the appellate court might have directed." *Williams v. Babcock*, 121 N.H. 185, 194 (1981). Limiting the scope of a remanded matter applies equally to administrative proceedings. *See Scarborough v. R.T.P. Enterprises, Inc.*, 120 N.H. 707, 709 (1980). In *Scarborough*, the Supreme Court found that the New Hampshire Commission on Human Rights exceeded the scope of a remand by examining the amount of a damage award when the matter had been remanded for findings on the basis for the damage award. *Id.* ("Th[e] remand related only to the basis for the damage award, and this court is unanimous that it was not intended to reopen the issue of the amount of damages.").

Here, as explained below, the BSR was presented with multiple opportunities to litigate the issue of whether other former HealthTrust members could receive funds distributed from the $17.1 million either as a remedy pursuant to RSA 5-B:5, I(c) or as a penalty pursuant to RSA 5-B:4-a. The BSR affirmatively elected not to pursue the issue. Moreover, the municipalities that intervened in the administrative proceeding and appealed the adverse ruling to the Supreme Court advanced only their own interests. Consequently, the BSR's attempt to expand the remand on behalf of former HealthTrust members who were not parties to the administrative proceeding or the municipalities' appeal should be denied.

B. The BSR had a full and fair opportunity to litigate the issue of other former risk pool members sharing in distributions of excess surplus during the original administrative proceeding, the respondents' appeal, the first remanded proceeding, and the municipalities' appeal. Rather than pursuing such a claim, the BSR entered into a Consent Decree and accepted a Final Order that resolved all of the issues raised in its Amended Petition.

1. The BSR entered into a Consent Decree that resolved all issues in the enforcement proceeding (other than attorney fees), waived its appeal rights, and accepted a Final Order on Remand that unequivocally ordered "No further action by any party to these administrative proceedings shall be pursued as to all issues contained within the initial amended BSR petition dated September 2, 2011."

The BSR did not litigate the subject of its instant motion during the remand of the respondents' appeal. The BSR's Motion for Default ("Default Motion") did not seek disgorgement or restitution on behalf of other former HealthTrust members as a matter of right or a penalty.[3] Instead, the BSR sought a different penalty.[4]

On July 25, 2014, the BSR, HealthTrust and PLT entered into a Consent Decree regarding the Default Motion. On August 4, 2014, the Presiding Officer issued an Omnibus Order that incorporated and approved the Consent Decree. All issues presented in the BSR's Default Motion were resolved by the Consent Decree and the Omnibus Order. Omnibus Order, p. 4. The BSR and HealthTrust also waived all appeals from the enforcement proceeding. Consent Decree, p. 5. The only issue that remained pending after the Consent Decree and the Omnibus Motion was the amount of legal fees and costs to be paid the BSR pursuant to RSA 5-B:4(a), which subsequently was resolved.

On November 17, 2014, the Presiding Officer issued the Final Order on Remand, the final paragraph of which states:

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[3] The Default Motion alleged that HealthTrust and PLT were not in compliance with the August 16, 2012 Order because of a contingent settlement agreement between HealthTrust and PLT which became effective on January 10, 2014 ("Settlement Agreement").

[4] The Bureau sought a declaration that HealthTrust would no longer be entitled to operate as a RSA 5-B risk pool.

> All pending motions and objections of the parties are deemed withdrawn and the above captioned matter deemed concluded and no further proceedings are required subject to the provisions of the Omnibus Order dated August 4, 2014, that incorporated an agreement between the parties which, by its terms, shall continue in effect until July 24, 2015. **No further action by any party to these administrative proceedings shall be pursued as to all issues contained within the initial amended BSR petition dated September 2, 2011.**

Final Order on Remand, p. 2 (emphasis added).

The BSR never challenged or appealed the Presiding Officers' rulings in the Final Order on Remand. Thus, the BSR is bound by the terms of that Order, including the prohibition on pursuing any issues contained in the Amended Petition. Count II of the BSR's Amended Petition specifically alleges the improper subsidization of PLT's workers compensation pool. Moreover, the BSR's prayer for relief in the Amended Petition seeks an order for "the Respondents to pay restitution to current and past members of the 5-B Pools in the amount of all earnings and surplus funds and property interests illegally transferred by Respondents to LGC Parent and/or for subsidies improperly paid to the Workers Comp Pool." Amended Petition at p. 36.

Based on Count II and the BSR's prayer for relief, it is beyond dispute that the issue the BSR seeks to pursue via its current motion was included in the Amended Petition. Because the Final Order on Remand prohibits any party from further pursuit of any issue contained in the Amended Petition, the BSR is precluded from raising the issue in its pending motion. For that reason, the BSR's motion should be denied.

2. The BSR elected not to pursue claims or potential penalties on behalf of other former risk pool members when the municipalities intervened during the initial remand of the administrative proceeding and during the municipalities' appeal therefrom.

On June 3, 2014, while the Default Motion remained pending, HealthTrust filed a Notice of Termination Terminating Settlement Agreement ("Termination Notice") which informed the Presiding Officer and the BSR that HealthTrust and PLT had terminated the Settlement

Agreement that was the basis for the Default Motion. The Termination Notice also provided that PLT would repay HealthTrust the $17.1 million on June 6, 2014, and that:

> Subject to the Presiding Officer's and the BSR's approval, HealthTrust will distribute the $17.1 million to its current members or another identified combination of current and former Health Trust members. Assuming the Presiding Officer's and the BSR's approval, HealthTrust will complete the distribution as soon as practicable.

Termination Notice, Section 5.

Before making the distribution of the $17.1 million that it received from PLT, HealthTrust sought specific guidance from the BSR and the Presiding Officer about which members should share in the distribution. During a hearing on June 9, 2014, HealthTrust explained that it was seeking guidance from the Presiding Officer and the BSR because it desired to avoid a dispute with the BSR and additional litigation:

> HealthTrust has pled affirmatively to you that it wants to distribute the $17.1 million dollars to its members or some other identifiable group, and the reason we put it that way quite frankly is because the final order with respect to the $33.3 million dollar payment disbursement to a group of members had a group identified. We followed the order. We then got sued and that suit still remains by ten municipalities who claim that it shouldn't have been ordered that way, that it should have been distributed to members, former members, who contributed to that surplus, and quite frankly HealthTrust at this point has no desire to engage in a fight with the Bureau. It certainly doesn't want to do anything that the Presiding Officer is not in favor of regarding disbursement of that $17.1 million and frankly would like to do its best to either avoid another lawsuit or an amendment to the ongoing lawsuit simply over the issue of where does the $17.1 million get distributed.

Transcript of Hearing on Pending Motions ("Tr."), p. 27–28.

On June 6, 2014, the municipalities filed their Motion to Intervene for Limited Purpose of Being Heard on Question of Repayment of Funds. The sole purpose for which the municipalities were allowed to intervene was to assert their claim that they, as former HealthTrust members that contributed to the $17.1 million that was deemed to be an unlawful subsidy, were entitled to participate in HealthTrust's distribution of the funds following its receipt of the funds from PLT.

See Order Granting Limited Intervenor Status dated June 25, 2014; Motion to Intervene for Limited Purpose of Being Heard on Question of Repayment of Funds.

On July 17, 2014, the municipalities filed a motion proposing a manner in which to distribute the $17.1 million ("Distribution Motion"). The municipalities argued that HealthTrust's distribution of the funds should include former, not just current, HealthTrust members. The Distribution Motion explained its belief that they, as former members, were entitled to share in the distribution. It also explained that they had obtained records from HealthTrust that allowed them to calculate the total member contributions to PLT for the years 2003-2010, and therefore, the manner in which to calculate each former member's proportional share of the $17.1 million distribution. Distribution Motion, ¶¶15-18. The Distribution Motion identified the aggregate amount of the distribution sought by the eight municipalities, $278,587, and the portion to be distributed to each municipality. *Id.*, ¶19.

During the hearing on the Distribution Motion, the Presiding Officer confirmed with the municipalities' counsel that the only relief sought in the municipalities' Distribution Motion was the intervenors' $278,587 claim. Tr., p. 29; *see also* Omnibus Order, 5 ("The intervenors do not represent any parties other than those eight municipalities named in their motion as amended."). Despite its knowledge that the municipalities were seeking relief only for themselves and were not seeking relief on behalf of other former HealthTrust members, the BSR elected to take no position on the municipalities' motion or the ability of former HealthTrust members to share in the distribution of the $17.1 million. Thus, claims on behalf of other former HealthTrust members were not advanced in the administrative proceeding.

On July 21, 2014, the Presiding Officer heard oral argument on the Distribution Motion. Omnibus Order dated August 4, 2014, p. 3; Tr., pp. 7-33. HealthTrust objected to the motion.

Omnibus Order, p. 3, 5. The BSR affirmatively took no position on the municipalities' request for former members to share in the distribution. Omnibus Order, p. 3 ("The BSR took no position."); *Id.* at 5 ("The BSR takes no position on the issue raised by the intervenors."); Tr., p. 12.

On September 3, 2014, the municipalities moved for reconsideration of the Omnibus Order. HealthTrust objected to the municipalities' motion. The BSR did not respond to the Motion for Reconsideration, which was denied by Order dated September 8, 2014. On October 8, 2014, the municipalities filed a Notice of Appeal with the Supreme Court. The BSR did not file a motion or a brief asserting claims on behalf of other former HealthTrust members or joining in the relief sought by the municipalities on behalf of other former HealthTrust members. The BSR did not participate in oral argument during the appeal.

Having settled all of the issues raised in its Default Motion, electing not to pursue the issue of former members participating in the distribution of the $17.1 million during the administrative proceeding, and refraining from asserting claims on behalf of other former HealthTrust members during the municipalities' appeal, the BSR now seeks the Presiding Officer's authority to present evidence on the very same issue – the extent to which, other former members could have shared in the $17.1 million distribution. The BSR's motion is untimely and beyond the scope of the remand. *See Lampesis*, 102 N.H. at 308; *In re C.M.*, 166 N.H. at 781-82; *Scarborough,* 120 N.H. at 709. Consequently, the BSR's motion should be denied.

3. The BSR successfully objected to municipalities intervening in the respondents' appeal for the purpose of raising the issue of former members' entitlement to sharing in ordered distributions.

When HealthTrust and the other administrative respondents appealed the August 16 Order, four towns that were former HealthTrust members (Durham, Northfield, Peterborough,

and Salem, collectively "towns") unsuccessfully petitioned to intervene in the appeal. The towns argued that the Presiding Officer failed to fashion a remedy that allowed refunds in proportion to their contributions. The BSR objected to the towns' intervention and argued that:

> The Bureau believes that granting intervention and adding questions for review will unnecessarily complicate the proceedings, potentially necessitate a remand for the development of additional facts not currently in the record, and will substantially delay final resolution of the issues on appeal at additional substantial cost to the existing parties.

BSR Obj. to Petition to Intervene and Add Questions for Review, ¶13. The BSR also argued that the towns' "attempt to raise new issues at this juncture is also untimely. Where they failed to seek reconsideration of the administrative order, they have failed to preserve their objections for appeal." *Id.* at 11 (citations omitted).

These concerns are equally applicable to the BSR's pending motion. The BSR's motion will result in the further delay of resolution this matter and substantial additional costs that the BSR warned of when the towns, all former risk pool program members, attempted to intervene to raise these same issues in the Supreme Court. Additionally, the BSR, having not appealed the August 16 Order and having objected to the towns intervening to pursue the issue of including former members in the ordered distributions, is similarly barred from raising the claim now.

III. It Would Be Unfair and Unreasonable to Order HealthTrust to Make Additional Distributions in Excess of the $17.1 million Because HealthTrust Distributed the Funds After Seeking Guidance from the BSR and the Presiding Officer, and Only Then Made the Distributions Consistent with the August 16 Order.

HealthTrust distributed the entire $17.1 million repayment from PLT to HealthTrust's members in September 2014. Consistent with the terms of the August 16, 2012 Order, HealthTrust distributed the PLT repayment as surplus to its current members at the time that the repayment was received. Moreover, HealthTrust did not make the distributions without first

presenting its plan to the Presiding Officer and without providing the BSR an opportunity to demand, or at least request, that former members be included in the distribution.

After receiving the repayment from PLT, but prior to making the distributions, HealthTrust notified the BSR and the Presiding Officer that it would make such payments to its then current members or to some other combination of current and former members as approved by the Presiding Officer and the BSR. Tr., pp. 27-28; Notice of Termination Agreement, Sec. 5. HealthTrust explained that it was seeking guidance from the BSR and the Presiding Officer in an attempt to avoid future litigation or a dispute with the BSR. Tr., pp. 27-28.

The municipalities objected to HealthTrust's plan and set forth a specific proposal regarding the distribution. The BSR took no position on the motion regarding the proposed distribution plan filed by the municipalities. The Presiding Officer denied the municipalities' proposed plan for distribution. Following the municipalities' appeal of the Presiding Officer's decision, neither the BSR nor the municipalities attempted to stay, pending appeal, HealthTrust's distribution of the $17.1 million to its then-current members. Thus, HealthTrust complied with the August 16, 2012 Order and made the required distributions to its members consistent with that Order, as well as the denial of the municipalities' motion and proposal.

The Supreme Court decision does not state or suggest that HealthTrust should or even could have been required to pay more than the entire $17.1 million as disgorgement or restitution. Rather, the Supreme Court stated that it was not expressing an opinion on the appropriate penalty in the case and that its decision "merely clarifies the scope of the secretary's authority under RSA 5-B:4-a." *Appeal of Town of Salem*, 133 A.3d at 602. Where the distributions have already been made pursuant to and consistent with orders issued by the Presiding Officer and without objection from the BSR, it would be unfair and unreasonable to

allow the BSR to now challenge those distributions. It would be especially unfair and unreasonable to order HealthTrust to make additional distributions, in excess of the $17.1 million already made, to entities that never raised a claim before and on whose behalf the BSR never pursued a claim until now, because HealthTrust affirmatively sought the guidance of the Presiding Officer and the BSR prior to distributing the $17.1 million in order to avoid future litigation.

CONCLUSION

HealthTrust believes that the record supports a finding that the Presiding Officer did not make an error of law. Nonetheless, in an effort to end this nearly five-year long proceeding and to avoid additional litigation costs, HealthTrust is willing to make a substantial payment to the eight municipalities, $132,329, if approved by the Presiding Officer as the final resolution of this remanded proceeding.

For the foregoing reasons, the Presiding Officer should find that he did not commit an error of law because he understood that a violation of RSA 5-B:5, I(c) could be penalized by ordering payment to former members as disgorgement or restitution pursuant to RSA 5-B:4-a, and therefore, the BSR's motion is moot. Alternatively, the BSR's motion should be denied because: (1) the agency had a full and fair opportunity to litigate whether other HealthTrust members were entitled to share in the $17.1 million distribution, affirmatively elected not to litigate the issue and it is now barred from doing so; (2) it exceeds the scope of the Supreme Court's remand because the appeal involved only the municipalities' claim; and (3) it would be unfair and unreasonable to order HealthTrust to make additional distributions, in excess of the $17.1 million already returned, to other former members under these circumstances.

Accordingly, the Presiding Officer should deny the BSR's motion, approve the agreement between the municipalities and HealthTrust, and declare this remanded proceeding

closed upon HealthTrust's payment of $132,239 to the municipalities within 10 days of the Order.

Respectfully submitted,

HEALTHTRUST, INC.

By Its Attorneys,

Dated: May 25, 2016

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CERTIFICATE OF SERVICE

I certify that I have forwarded copies of this pleading to counsel of record via email.

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