

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE

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

**PROPERTY-LIABILITY TRUST, INC.'S PETITION TO OBTAIN PERMISSION TO
ISSUE NEW AND RENEWAL COVERAGES, BINDERS, AND SIMILAR
CONTRACTUAL OBLIGATIONS**

NOW COMES Respondent Property-Liability Trust, Inc. ("PLT"), by and through its attorneys, McLane, Graf, Raulerson & Middleton, Professional Association, and respectfully submits to the Presiding Officer this Petition to Obtain Expedited Permission to Issue New and Renewal Coverages, Binders, and Similar Contractual Obligations. In support of this Petition, PLT states as follows:

I. Introduction

1. This Petition is filed seeking permission for Property-Liability Trust, Inc. ("PLT") to issue new and renewal workers' compensation, property liability and unemployment compensation coverages as a result of the strong continued financial viability of PLT and a demonstrated need in the market for PLT to offer these coverages at competitive rates. On April 15, 2015, PLT filed a withdrawal of a prior petition, which was granted by the Presiding Officer, without prejudice. In the period since withdrawal, PLT has experienced a strong outpouring of support from its members and other stakeholders expressing concern over the adverse impacts the loss of PLT in the market will have on New Hampshire cities, towns, and schools that rely on PLT for coverage.

2. PLT's continued financial strength, and support of its members, underscores the viability of PLT's plan to continue to provide coverage. PLT has worked to carefully assess and examine the concerns raised by the New Hampshire Secretary of State Bureau of Securities Regulation ("BSR") in connection with the petition filed on March 31, 2015. In each case, the concerns have been assessed and PLT is confident that its proposal to continue to provide coverage is consistent with New Hampshire law, is based upon sound actuarial and accounting principles, and that in every respect PLT's proposed offering of coverage will rest on a platform of sufficient financial viability to meet the burden of proof set out in the Consent Decree, and serve the public interest. Moreover, the BSR's liaison, Michael Coutu, has expressed his personal support for the PLT plan during a work session before the Finance Committee of the New Hampshire State Senate on June 9, 2015.

3. Specifically, this Petition addresses and demonstrates the following:

- a. PLT's current and projected financial condition supports a finding that it is able to issue and honor all coverages that it would be permitted to write;
- b. PLT has developed a plan that will allow it to rebuild its financial position over a reasonable period while at all times being able to fully and timely pay all claims;
- c. As part of its updated Continuing Operations Scenario (described below), PLT has adopted a plan to allocate, over time, \$17.1 million from the workers' compensation coverage line to the property liability coverage line in order to address concerns raised by the BSR; and
- d. PLT has the support of its members (New Hampshire cities, towns and schools) to continue to write workers' compensation, property liability and unemployment compensation coverages.

II. Facts

4. On February 7, 2014, the New Hampshire Secretary of State BSR filed a Motion for Entry of Default to enforce the August 16, 2012 Final Order issued by Presiding Officer Donald Mitchell.

5. On April 29, 2014, the New Hampshire Department of Labor (“DOL”) issued an Administrative Order concerning Property-Liability Trust, Inc. and HealthTrust, Inc. that suspended PLT’s ability to write new workers’ compensation coverage until such time as PLT receives the approval of the Commissioner of the New Hampshire Department of Labor (the “Commissioner”) (a copy of the Administrative Order is attached at Exhibit A).

6. On June 6, 2014, PLT paid \$17.1 million to HealthTrust, Inc. in the form of cash and the transfer of ownership of stock in Center at Triangle Park, Inc. (a real estate holding company).

7. On July 25, 2014, PLT entered into a Consent Decree with the BSR and HealthTrust, Inc. (a copy of the Consent Decree is attached at Exhibit B) that included among other conditions that PLT may not issue any new coverages, binders, or similar contractual obligations unless authorized by the Presiding Officer. (Consent Decree, ¶ 6).

8. With regard to the authorization to issue new coverages, the Consent Decree specifically provides that:

On or before June 30, 2015, PLT may petition the Presiding Officer seeking permission to issue new and renewal policies of insurance, binders, and similar contractual obligations for those lines of coverage in which PLT currently operates. In order for any such Petition to be granted, PLT shall bear the burden of proof to show that PLT has sufficient financial viability to allow it to issue and honor said policies or renewals without subsidization by HT or any other entity. The BSR shall have the right to object to any such Petition filed with the Presiding Officer. If PLT fails to carry its burden of proof, PLT shall not issue new or renewal policies of insurance, binders, or similar obligations and shall run-off its then outstanding obligations. (Consent Decree, ¶ 7).

9. On March 31, 2015, PLT filed with the Presiding Officer the Property-Liability Trust, Inc.'s Petition to Obtain Expedited Permission to Issue New and Renewal Coverages, Binders, and Similar Contractual Obligations (the "March Petition") seeking permission from the Presiding Officer to issue new and renewal coverages, binders, and similar contractual obligations for the workers' compensation, property and liability, and unemployment compensation coverages.

10. Based on events that transpired following the filing of the March Petition, on April 15, 2015, PLT filed with the Presiding Officer a Withdrawal of Property-Liability Trust, Inc.'s Petition to Obtain Expedited Permission to Issue New and Renewal Coverages, Binders, and Similar Contractual Obligations.

11. On April 15, 2015, PLT filed with the DOL a Withdrawal of Request for Authorization to Enter into New Contractual Obligations and Renewed Request for Release of Secured Funds.

12. On April 15, 2015, the Presiding Officer ordered the dismissal of PLT's March Petition without prejudice.

13. Following the withdrawal of the March Petition, PLT notified its members that it would be remaining in runoff (a copy of the Letter to Members dated April 15, 2015 is attached at Exhibit C). Following this notification, PLT received a significant outpouring of support from its members and other stakeholders expressing concern regarding the impact that the loss of PLT would have on New Hampshire cities, towns, and schools that rely on PLT for property liability, worker's compensation and unemployment compensation coverage. Representatives of cities, towns, and schools that are PLT members, and representatives of municipalities that are not members of

PLT, expressed to PLT and in public, including at a work session held by the Finance Committee of the New Hampshire Senate held on June 9, 2015, concerns about the loss of competition in the risk pool market, the ability of PLT's competitors to adequately absorb PLT's members, and whether adequate levels of risk management and coverage alternatives will continue to be available to New Hampshire's municipalities. The support that PLT received is evidenced, in part, by the letters from representatives from 75 towns, cities and schools (copies of these letters are attached to this Petition at Exhibit D). Additional letters of support are expected to be received from other members and will be provided by way of supplement.

14. PLT has reviewed its financial position and has concluded that if it were authorized to write new coverages, the release of the excess funds held by the DOL pursuant to the Security Deposit account between PLT and the DOL dated December 5, 2013, is not essential to successfully implement its plan to continue its operations. Although PLT continues to believe that these funds should be released, the ability for PLT to implement the continuing operations plan is not contingent on the release of these funds.

15. It should also be noted that the plan developed by PLT to continue its operations has been supported publically by the BSR Liaison, Michael Coutu. During the work session with the New Hampshire Senate Finance Committee on June 9, 2015, Mr. Coutu was specifically asked by a member of the Senate Committee whether he supports the PLT plan to continue to provide coverage. Mr. Coutu indicated his strong support for the PLT plan. PLT recognizes that Mr. Coutu does not speak for the BSR, however, his

expertise and familiarity with the details of PLT's financial condition and operational status should be an important independent confirmation of the viability of PLT.

II. PLT's Current Financial Condition

16. PLT currently provides workers' compensation coverage to 149 members, property liability coverage to 279 members, and unemployment compensation coverage to 59 members (the total number of separate members is 291). Since April 15, 2015, PLT has had 7 members from the workers' compensation coverage line opt not to renew their coverage with PLT, 15 members from the property liability coverage line opted not to renew their coverage with PLT, and 2 members from the unemployment compensation coverage line opted not to renew their coverage with PLT (because some members held multiple coverages, the total number of separate members that opted not to renew their coverage with PLT since April 15, 2015 was 16). The reasons given for terminating their coverage with PLT included receiving lower rates from other providers, concerns about the uncertainty surrounding PLT, in light of the regulatory issues that it is facing, and the desire to move its coverage to the competitor prior to June 30, 2016 when most of PLT's existing members will need to transition coverage to an alternative provider.

17. PLT's management has reviewed the impact of the reduction to its membership on its Continuing Operations Scenario (described below) and has concluded that this reduction is an expected consequence of the current uncertainty, of PLT's continuation and does not have a materially adverse impact on PLT's proposed plan or ability to successfully implement its plan. Despite the loss of members described above, PLT's programs, operations and management continue to be strong, its financial condition continues to be stable and its plan to continue operations continues to be viable.

18. The PLT Audited Financial Statements for the ten months ended June 30, 2014 (attached at Exhibit E) show PLT having net operating revenues (on a combined

basis) of \$12,879,251. Total expenses during the same period were \$11,073,609. PLT's net position was \$1,349,814.

19. PLT's audited June 30, 2014 financials also show that PLT's total gross revenues (on a combined basis) for the seven month period ending January 31, 2015 totaled \$7,910,740. PLT's gross expenses for this same period were \$7,941,333, resulting in a net loss of \$30,593. The principal cause of the loss was the payment of the \$519,000 settlement negotiated with the BSR as part of the Consent Decree entered into on July 25, 2014 and the loss of investment income from the \$17.1 million payment paid to HealthTrust, Inc. in fiscal year 2014.

20. The most recent management prepared, unaudited, balance sheet, dated May 31, 2015 (attached at Exhibit F), shows PLT having total assets of \$19,596,563, total liabilities of \$18,435,572, and a total combined net position of \$1,160,991.

21. PLT continues to have a positive net position and is able to satisfy all claim obligations.

IV. Strategic Plan and Addendums

22. On December 9, 2014, PLT delivered to the Commissioner of the New Hampshire Department of Labor a detailed Strategic Plan ("Strategic Plan") that included a description of PLT's financial condition, a plan for PLT's continued operation (the "Continuing Operations Scenario"), and a plan that addresses a runoff of PLT's current coverage obligations (the "Runoff Scenario"). (A copy of the Strategic Plan is attached at Exhibit G).

23. On March 12, 2015, PLT delivered to the Commissioner of the New Hampshire Department of Labor an Addendum to Strategic Plan ("Addendum") that

updated the information included in the Strategic Plan. (A copy of the Addendum to Strategic Plan is attached at Exhibit H).

24. On June 30, 2015, PLT delivered to the Commissioner of the New Hampshire Department of Labor a Second Addendum to Strategic Plan (“Second Addendum”) that included updated information regarding PLT’s Continuing Operations Scenario including a plan to address concerns raised regarding the allocation of funds between coverage lines (discussed below). (A copy of the Second Addendum to Strategic Plan is attached at Exhibit I.)

25. The Strategic Plan, Addendum, and Second Addendum conclude that PLT is, and will continue to be, financially viable throughout the review period, which includes the seven years from June 30, 2015 through June 30, 2021 (the “Review Period”). This conclusion is based on the analysis included in the Continuing Operations Financial Projections for the period from June 30, 2015 through June 30, 2021 included as part of the Addendum.

26. The detailed projections prepared by PLT’s actuaries and management, and included as part of the Strategic Plan, Addendum, and Second Addendum (subject to the conditions and assumptions set forth therein), support the conclusion that throughout the Review Period PLT will be able to fully and timely pay all of its claims.

27. The pro forma balance sheets and income statements included in Towers Watson’s report dated March 9, 2015, for fiscal years 2015-2021 (attached at Exhibit J) show gross earned contributions on a combined basis climbing from \$12,773,000 to \$16,780,000. If contributions, estimated losses, and expenses develop as set forth in the

March 9, 2015 pro formas, then the net position for the same period is expected to rise from \$664,000 to \$3,859,000.

28. The conclusions set forth in the Strategic Plan, Addendum and Second Addendum are conditioned upon (a) PLT maintaining membership strength during the Review Period; (b) PLT receiving authority to write new coverages; (c) PLT successfully implementing rate increases during the Review Period; and (d) PLT managing its expenses.

29. PLT has made favorable progress on each of the conditions listed in paragraph 28:

a. PLT's current membership is as set forth in paragraph 13 of this Petition which represents a retention rate of greater than 95%. PLT does not anticipate any significant changes to its members through June 30, 2016;

b. PLT refiled its request to write new coverages from the DOL on June 30, 2015. This request is currently pending with the DOL;

c. PLT's Board of Directors, which is comprised of member organization administrators or elected officials, expressed at the December 4, 2014 Board of Directors meeting that the rate increases included in the projections in the Strategic Plan were reasonable. There has been no development that suggests that this conclusion has changed; and

d. PLT continues to operate within its expense budget and does not anticipate any material change to its actual expenses.

30. All of these factors demonstrate that PLT is financially viable and that financial viability will continue in the future as PLT continues to follow and implement its plan.

V. Allocation of Funds Between Coverage Lines

31. PLT operates the property liability, workers' compensation, and unemployment compensation coverage lines within one risk pool, within a single entity, PLT. Although the assets and liabilities of each coverage line are assets and liabilities of the single entity, concerns have been raised regarding the allocation of funds within one pool between coverage lines.

32. There is no law, regulation or rule that prohibits or limits the allocation of funds within one pool among its coverage lines. Within New Hampshire, it is PLT's understanding that other risk pools allocate assets and resources among various coverage lines within one pool. This allocation is at the essence of pooling, which allows for a broad allocation of risk among members and coverage lines.

33. The Final Order dated August 16, 2012 that required the re-payment of \$17.1 million from Local Government Center Property Liability Trust, LLC to Local Government Center Health Trust, LLC did not contemplate nor designate that this payment come from a particular coverage line, but rather expressed the re-payment obligation as an obligation of the entity. This obligation was affirmed by The New Hampshire Supreme Court.

34. Concerns have been raised by the BSR that suggest that a single pool should be operated in a manner that segregates funds among separate coverage lines. PLT and its actuaries do not believe this is required nor is it beneficial to the entity or its

members. However, if that approach was to be applied, it could be argued that the \$17.1 million payment made by PLT to HealthTrust, Inc. came from the property liability coverage line, and that the workers' compensation coverage line, although part of the same pool, should allocate funds equal to \$17.1 million to the property liability coverage line.

35. PLT would like to eliminate regulator concerns wherever possible. In order to address the concern regarding the allocation between coverage lines associated with the payment of the \$17.1 million, PLT has updated its Strategic Plan and Addendum to provide that PLT will to the extent the workers' compensation coverage line's net position exceeds an allocated 90% confidence level allocate any excess amount to the property liability coverage line until such time as the workers' compensation coverage line has allocated a total of \$17.1 million to the property liability coverage line. PLT will not make any distribution of net position in excess of 90% to workers' compensation members until \$17.1 million has been allocated from the workers' compensation coverage line to the property liability coverage line.

36. PLT believes that the workers' compensation coverage line will be able to allocate approximately \$2,633,000 to the property liability coverage line in Fiscal Year 2015. For the period from Fiscal Year 2016 through Fiscal Year 2021, based on the updated information included in the Second Addendum, PLT anticipates that it will be able to allocate another \$3,647,000 from the property liability coverage line to the workers' compensation coverage line.

VI. Concerns Raised by the BSR

37. In its Expanded Objection to Petition to Obtain Permission to Issue New and Renewal Coverages filed with the Presiding Officer in response to PLT's earlier petition the BSR raised three primary objections.

38. The BSR's first objection is that when evaluated on a coverage line by coverage line basis, rather than on a consolidated basis, without allowing for an allocation of funds between coverage lines, the property liability coverage line would operate at a loss.

39. Although PLT does not agree that a coverage line by coverage line evaluation is appropriate, as discussed in paragraph 35 above, it has adopted a plan to allow for the allocation of funds from the workers' compensation coverage line to the property liability coverage line in a fiscally responsible manner.

40. It should be noted that the BSR asserted in its objection that the workers' compensation coverage line requires continuing subsidy. The financial information attached to this Petition and PLT's earlier petition demonstrates that this assertion is in error.

41. The BSR's second objection is that PLT's membership is falling. While PLT's membership has declined, it has continued to maintain a substantial majority of its members, despite being faced with an ongoing, difficult, and public series of regulatory challenges. As PLT's membership has declined, it has taken steps to reduce its costs and expenses in order to remain in a financially sound position. PLT has also benefited from favorable loss reserve adjustment over the past several years which has allowed it to continue to be financially stable.

42. Although the BSR has raised PLT's membership levels as a reason to object to PLT's ability to move forward, as it has done in the past, PLT will continue to adjust the size of its workforce, its expenditures and its operating plan to coincide with the number of members it serves and their needs.

43. The BSR's third objection is that PLT must obtain the permission of the Commissioner of the DOL and the Presiding Officer to write new coverages. PLT has renewed its request for authority to write new coverages with the DOL on June 30, 2015. With regard to the need for the release of funds to support the Continuing Operations Scenario, PLT has reviewed this issue and has concluded that under the Continuing Operations Scenario these funds are not required in order to successfully implement this plan.

VII. Benefit of Multiple Pooled Risk Management Programs Offering Workers' Compensation and Property Liability Coverages

44. PLT's ability to issue new and renewal coverages, binders, and similar contractual obligations for its workers' compensation and property liability coverage lines is in the best interests of PLT's current members and the New Hampshire public entity workers' compensation, property, and liability marketplace in general, as it will ensure alternative coverage options are available to public sector entities.

45. Having multiple public sector risk pools in New Hampshire ensures (a) a competitive market offering workers' compensation coverages and property and liability coverages at competitive rates¹, (b) sufficient underwriting capacity for public entities, (c) a market that provides public entities with alternative coverage options to better meet the specific

¹ Historically, commercial insurers for workers' compensation and property and liability insurance do not offer adequate coverage for public sector entities, and when commercial insurers do offer this coverage, it is usually at significantly higher rates than those offered by the New Hampshire pooled risk management programs.

needs of public sector entities, and (d) a greater number of loss prevention and risk management services for public sector entities that are designed to identify potential hazards and avoid or mitigate losses.

46. As noted above, attached to this Petition at Exhibit D, are letters from New Hampshire cities, towns, and schools, including members and former members of PLT, supporting PLT's ability to continue to offer coverages. These letters recognize the need for competition in the marketplace to ensure costs remain stable. They also cite the need for organizations that will provide the cities, towns, and schools with coverage in situations where the commercial providers are unwilling to provide coverage because of the unique risk associated with these organizations. In addition, the letters cite the array and quality of the risk management services offered by PLT as another example of its importance to New Hampshire cities, towns, and schools.

WHEREFORE, Property-Liability Trust, Inc. requests the Presiding Officer:

A. Find that PLT has sufficient financial viability to allow it to issue and honor said policies or renewals without subsidization by HealthTrust, Inc. or any other entity;

B. Authorize PLT to (1) issue any new coverages, binders, or similar contractual obligations; (2) renew or extend the term of any existing policy, binder, or existing contractual obligations; or (3) take any other action that it deems necessary with regard to any existing contract; and

C. Order such other and further relief as deemed just and proper.

Respectfully submitted,

PROPERTY-LIABILITY TRUST, INC.

By its attorneys,

MCLANE, GRAF, RAULERSON & MIDDLETON
PROFESSIONAL ASSOCIATION

Dated: June 30, 2015

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Certificate of Service

I hereby certify that on June 30, 2015 I forwarded a copy of this Petition to counsel of record via electronic mail.

/s/ Bruce W. Felmly
Bruce W. Felmly, NH Bar #787