THE STATE OF NEW HAMPSHIRE

DEPARTMENT OF STATE

IN THE MATTER OF: Local Government Center, Inc. et al	Case No.: C-2011000036

INTERVENOR'S MOTION PROPOSING MANNER OF DISTRIBUTING FUNDS TO FORMER MEMBERS OF HEALTHTRUST

1. On June 3, 2014, Healthtrust submitted a "Notice of Termination Agreement Terminating Settlement Agreement." Within that notice, Healthtrust stated as follows: "...subject to the Presiding Officer's and the BSR's approval, HealthTrust will distribute $17.1 million to its current members or another identified combination of current and former HealthTrust members."

2. HealthTrust's proposal to distribute funds to current members is flawed, inconsistent with the underlying rationale of the order, and contrary to RSA 5-B. The intervenors request that the distribution to "current members" be rejected and that the "combination of current and former Healthtrust members" identified in this pleading be Ordered.

3. This tribunal found that HealthTrust and the other respondents retained excess surplus and ordered the return of the excess amounts.

4. At the time of the hearing, nobody present represented the interests or presented arguments advancing the position that former members were entitled to a portion of the refunds. Former members of HealthTrust contributed to the build up the excess surplus, but for their own various reasons terminated their relationship with the LGC entities. As a result, former members

of HealthTrust who made contributions to the excess that should have been returned annually were deprived of their rightful refund. These funds that should have been returned to former members were then distributed to existing members, some of whom received a windfall.

5. In addition to the actual member communities, the interests of active and retired employees of the members could suffer as well. Employees who contributed to the excess paid by their employers, as well as retirees who purchased health coverage and contributed as former employees, should enjoy the fruits of the return of excess surplus.

6. Upon information and belief, HealthTrust is likely to assert that its bylaws do not permit excess surplus to be distributed to former members who have chosen to obtain insurance coverage elsewhere. This contention should be rejected.

7. HealthTrust is a voluntary corporation organized under RSA 292. Pursuant to RSA 292:6, the bylaws of a corporation organized under RSA 292, "may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with the laws of the state or the articles of agreement…."

8. The intervenors ask the presiding officer to find that, at least as to the cumulatively retained surplus identified in the Final Order, any such provision in HealthTrust's bylaws is inconsistent with RSA 5-B and is therefore unenforceable.

9. In its decision affirming most of the Final Order, the New Hampshire Supreme Court rejected Healthtrust's contention that RSA 5-B:5, I(c) authorized it to return surplus "over multiple years via rate reduction."

10. In this tribunal, and in the Supreme Court appeal, LGC argued that "[a] rate credit … is ... analogous to a rebate for future participating years…. Consequently, when employing the rate crediting process, surplus is not created just for the following year, but over multiple

years into the future for those political subdivisions that choose to acquire insurance through LGC, Inc. for that period of time." Appeal of Local Government Center, slip op at 15.

11. The Supreme Court, like this tribunal before it, flatly rejected that argument. The Court held that RSA 5-B:5, I(c) commands a pooled risk management program to, "[r]eturn all earnings and surplus in excess of any amounts required for administration, claims, reserves, and purchase of excess insurance to the participating political subdivisions. In this context, [e]arnings are the balance of revenue for a specific period that remains after deducting related costs and expenses incurred." Id. (internal quotations omitted).

12. Further, the Supreme Court approvingly quoted then-Senator Maggie Hassan's testimony at a hearing conducted by the Senate Committee on Commerce, Labor and Consumer Protection on May 4, 2010, in which she stated:

> The issue is not whether [rate reduction] is a good way to run an insurance pool or not.... The issue is the plain language of the statute says that, if you have a surplus, it is supposed to go back to the political subdivisions. It doesn't say you can reduce rates over time, and some members win and some members lose, or some subdivisions win and some subdivisions lose....

Id. at 16.

13. Implicit in the Supreme Court's ruling is the understanding that RSA 5-B, I(c) requires excess surplus to be returned to the contributing member communities who contributed to the surplus, and on an annual basis. Over time, the membership of a risk pool will change. Some members will leave and at the same time other new members will join. Only by calculating excess surplus on an annual basis can a risk pool avoid the problem of some members losing while others enjoy a windfall.

14. The presiding officer determined that between 2003 and 2010, PLT accumulated $17.1 million in excess surplus that should have been returned to members. That did not occur.

However, any remedy should seek to return funds as nearly as possible to those members and former-members who would have received such funds if they had been returned annually. Accordingly, the intervenors propose that a mechanism be adopted that recognizes the following principles: (1) that the members responsible making excess contribution during each year should receive a refund for that year; (2) that the refund of excess contribution for each year should be proportional each municipalities' contribution to total contributions made by all members.

15. Pursuant to these principles, the intervenors propose the following method to determine the distribution of the $17.1 million in excess surplus identified in the Final Order. Total member contributions to PLT for the years 2003-2010 are obtained from HealthTrust's annual financial reports. Contributions from each member were obtained from records produced by the respondents. To the extent that these figures are disputed, it is a relatively simple matter to recalculate the data.

16. Total member contributions were adjusted for interest that would have been earned over time, according to the statutory interest table. See Exhibit 1. While interest earned does not affect the amount of money to be distributed, the interest calculation recognizes that the present value of $1.00 contributed in 2003 is greater than the present value of $1.00 contributed in 2010. The interest calculation affects the manner in which the $17.1 million is distributed, but not the amount actually to be distributed.

17. Once the interest calculation is made, the percentage of the total member contributions (adjusted for interest) is identified. See Exhibit 2. For example, in the year 2003, member contributions were $223,814,397. Adjusted for interest that amount came to $303,460,336. That figure, $303,460,336 came to 10.42% of the amount of total accumulated contributions, adjusted for interest, of $2,913,334,028. Thus, of the $17.1 million to be

distributed, the intervenors request that 10.42%, or $1,951,294, be distributed proportionally to members who made contributions in 2003.

18. Once the amount to be distributed for each year is established, it simple matter to determine the proportion of that amount that should be distributed to each member. The amount returnable to each member for each year should be that member's percentage of the total member contributions for the year. Taking Auburn as an example, the Town's contribution was $95,104, or 0.04% of the total contributions for 2003. Taking 0.04% of the return amount for 2003, $1,951,295, yields a return amount for Auburn of $829 for 2003. See Exhibit 2.

19. Applying these calculations to each intervenor's contribution for each of the years 2003-2010, the intervenors share of the $17.1 million recovery would be as follows:

Auburn	$ 5,156
Bennington	$ 5,139
Meredith	$ 44,713
Northfield	$ 15,088
Peterborough	$ 29,619
Plainfield	$ 5,271
Salem	$169,018
Temple	$ 4,483
Total	$278,587

WHEREFORE, the intervenors request that the Hearing Officer enter an order requiring HealthTrust to distribute the $17.1 million in the manner set forth in this motion and reflected on the attached spreadsheets.

RESPECTFULLY SUBMITTED
The Towns of Auburn, Bennington, Meredith, Peterborough, Plainfield, Salem and Temple
By their attorneys,
DOUGLAS, LEONARD & GARVEY, P.C.

July 17, 2014

Richard J. Lehmann
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CERTIFICATION

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

July 17, 2014

Richard J. Lehmann

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Table 1

	Annual Total Contributions	Statutory Annual Interest Rate	2003	2004	2005	2006	2007	2008	2009	2010	Percent of excess surplus attributable to each year	Percent of excess surplus attributable to each year / $17,000,000
				1.03	1.04	1.057	1.068	1.06	1.035	1.022		
2003	$223,814,397		$223,814,397	$230,528,829	$239,749,982	$253,415,731	$270,648,001	$286,886,881	$296,927,922	$303,460,336	0.10	$1,781,180
2004	$264,257,955	3%		$264,257,955	$274,828,273	$285,821,404	$302,113,224	$322,656,923	$342,016,339	$353,986,911	0.12	$2,077,749
2005	$293,340,385	4%			$293,340,385	$310,060,787	$331,144,920	$351,013,616	$363,299,092	$371,291,672	0.13	$2,179,320
2006	$316,402,602	5.7%				$316,402,602	$337,917,979	$358,193,058	$370,729,815	$378,885,871	0.13	$2,223,895
2007	$329,446,994	6.8%					$329,446,994	$349,213,814	$361,436,297	$369,387,896	0.13	$2,168,146
2008	$345,080,975	6%						$345,080,975	$357,158,809	$365,016,303	0.13	$2,142,486
2009	$369,080,204	3.5%							$369,080,204	$377,199,968	0.13	$2,213,999
2010	$394,105,071	2.2%								$394,105,071	0.14	$2,313,225
	$394											
										$2,913,334,028		
										$17,100,000		$17,100,000

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Table 1

	Annual Member Contributions	Annual Member Contributions Adjusted for Interest	Percentage of amount to be returned, adjusted for Interest	$ Amount of Return Attributed to Each Year	Auburn Contribution	Auburn Contribution as Percentage of Annual Revenue	Auburn Return Amount = Percentage of return amount x $17,100,000	Bennington Contribution	Bennington Contribution as Percentage of Annual Revenue	Bennington Return Amount = Percentage of return amount x $17,100,000	Meredith Contribution	Meredith Contribution as Percentage of Annual Revenue	Meredith Return Amount = Percentage of return amount x $17,100,000	Northfield Contribution	Northfield contribution as percentage of annual revenue	Northfield Return Amount = Percentage of return amount x $17,100,000
2003	$223,814,397	$303,460,336	10.42%	$1,951,295	$95,104	0.04%	$829	$78,444	0.04%	$684	$617,408	0.28%	$5,383	$276,305	0.12%	$2,409
2004	$264,257,955	$353,986,911	12.15%	$1,982,144	$121,938	0.05%	$915	$88,572	0.03%	$684	$759,741	0.29%	$5,699	$262,989	0.10%	$1,973
2005	$293,340,385	$371,291,672	12.74%	$1,923,009	$148,478	0.05%	$973	$84,782	0.03%	$556	$849,499	0.29%	$5,569	$299,817	0.10%	$1,965
2006	$316,402,602	$378,885,871	13.01%	$2,043,661	$162,612	0.05%	$1050	$92,890	0.03%	$600	$894,281	0.28%	$5,776	$326,106	0.10%	$2,106
2007	$329,446,994	$369,387,896	12.68%	$2,142,219	$144,383	0.04%	$939	$96,696	0.03%	$629	$903,667	0.27%	$5,876	$309,777	0.09%	$2,014
2008	$345,080,975	$365,016,303	12.53%	$2,377,310	$21,160	0.01%	$146	$88,396	0.03%	$609	$940,002	0.27%	$6,476	$335,785	0.10%	$2,313
2009	$369,080,204	$377,199,958	12.95%	$2,306,724	$23,166	0.01%	$145	$106,496	0.03%	$666	$1,024,793	0.28%	$6,405	$312,336	0.08%	$1,952
2010	$394,105,071	$394,105,071	13.53%	$2,373,618	$26,432	0.01%	$159	$121,433	0.03%	$731	$586,061	0.15%	$3,530	$58,994	0.01%	$355
Total	$2,535,528,583	$2,913,334,028	100.00%	$17,100,000			$5,156			$5,139			$44,713			$15,088

	Peterborough Contribution	Peterborough Contribution as Percentage of Annual Revenue	Peterborough Return Amount = Percentage of return amount x $17,100,000	Plainfield Contribution	Plainfield Contribution as Percentage of Annual Revenue	Plainfield Return Amount = Percentage of return amount x $17,100,000	Salem Contribution	Salem Contribution as Percentage of Annual Revenue	Salem Return Amount = Percentage of return amount x $17,100,000	Temple Contribution	Temple Contribution as Percentage of Annual Revenue	Temple Return Amount = Percentage of return amount x $17,100,000	
2003	$414,310	0.19%	$3,612	$46,958	0.02%	$429	$2,063,546	0.92%	$18,843	$70,274	0.03%	$613	
2004	$441,279	0.17%	$3,310	$53,714	0.02%	$435	$2,723,790	1.03%	$22,081	$96,016	0.04%	$720	
2005	$451,561	0.15%	$2,960	$78,843	0.03%	$639	$2,851,462	0.97%	$23,109	$95,507	0.03%	$626	
2006	$533,643	0.17%	$3,447	$87,378	0.03%	$637	$3,086,348	0.98%	$22,501	$91,859	0.03%	$593	
2007	$616,667	0.19%	$4,011	$95,731	0.03%	$690	$3,187,639	0.97%	$22,966	$97,124	0.03%	$632	
2008	$640,247	0.19%	$4,411	$122,514	0.04%	$844	$2,949,036	0.85%	$20,316	$87,838	0.03%	$605	
2009	$613,600	0.17%	$3,835	$112,477	0.03%	$703	$2,933,864	0.79%	$18,336	$67,141	0.02%	$420	
2010	$669,694	0.17%	$4,033	$148,392	0.04%	$894	$3,464,431	0.88%	$20,666	$62,137	0.02%	$374	
Total			$29,619			$5,271			$169,018			$4,583	$278,587