

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE

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

STIPULATED FACTS

The New Hampshire Bureau of Securities Regulation (“BSR”), HealthTrust, Inc. (“HealthTrust”), and Property-Liability Trust, Inc. (“PLT”), stipulate to the following facts for the purpose of the hearing on the merits of the BSR’s Motion for Entry of Default Order (“Motion”):

1. The New Hampshire Secretary of State (“Secretary”), through the BSR, issued an Order of Notice on September 2, 2011 that alleged statutory violations that “generally relate[d] to the formation, organization and operation of several related entities, referenced generally as the Local Government Center, Inc. (“LGC”) and certain of its affiliated and LGC controlled organizations, and originally of two individuals who have held the position of executive director of the LGC, and several of its board members in connection with the structure and operation of pooled risk management programs.” Final Order dated August 16, 2012 (“Final Order”) at 2.

2. A hearing was held in April and May of 2012 at which the LGC contested the allegations contained within the Order of Notice, as amended, and the Presiding Officer issued a Final Order in the matter that generally upheld the Order of Notice with respect to the allegations that the LGC violated RSA 5-B. The Presiding Officer denied the portions of the Order of Notice that alleged securities violations pursuant to RSA 421-B and denied the portions of the

Order of Notice that alleged misconduct against the remaining individuals in the matter. See Final Order.

3. The Presiding Officer found:

The organizational violations of RSA 5-B:5, I (b) and (e) result from its failure to meet and maintain standards required by this statute to operate each pooled risk management program at all times consistent with a governing board and governing by-laws of a legal entity organized under New Hampshire law. These violations result from structuring the institutional relationship among the LGC and its several entities in a manner that establishes a hierarchy of interests which serves to diminish the priority interest and benefits each pooled risk management program was intended, by the statute, to receive through its own governance. The organizational relationship also results in a conglomerate imbued with conflicts of interest adverse to the required standards for operation of each pooled risk management program.

Final Order at 6.

4. The Presiding Officer also found:

At the time of the legislature's consideration of the provisions of RSA 5-B in 1987, each pooled program and the NHMA, Inc. was a New Hampshire legal entity, *i.e.* not-for-profit corporations, each governed by a board and governed by written bylaws. Three legal entities, three separate governing boards, three sets of written by-laws.

Id. at 11.

5. In the Final Order, the Presiding Officer ordered the following:

No later than 90 days from the date of this Order, the Local Government Center shall organize its two pooled management programs into a form that provides each program with an independent board and its own set of written bylaws.

Id. at 73, ¶ 1.

6. Although the LGC included a challenge to ¶ 1 of the Final Order in its Notice of Appeal to the New Hampshire Supreme Court, it ultimately did not pursue the issue. Accordingly, ¶ 1 of the Final Order became final and binding on the parties.

7. The Presiding Officer further ordered:

Failing timely re-organization as ordered above in § 1, the LGC, Inc. is deemed to continue in violation of RSA 5-B, and this order, including the order to cease and desist, and shall, pursuant to the authority extended in RSA 5-B:4-a, I and II, be penalized by forfeiture of the statutory exemption from the State's insurance laws and of the exemption from state taxation granted pursuant to RSA 5-B:6 as it, nor any existing insurance program as presently operated by LGC, Inc. shall be deemed to be a "pooled risk management program" as defined by RSA 5-B.

Id. at 73, ¶ 2.

8. Although the LGC included a challenge to ¶ 2 of the Final Order in its Notice of Appeal to the New Hampshire Supreme Court, it ultimately did not pursue the issue.

Accordingly, ¶ 2 of the Final Order became final and binding on the parties.

9. In the Final Order, the Presiding Officer also ordered:

13. The Local Government Center Property Liability Trust, LLC, however it may be organized in the future, shall re-pay the \$17.1 million subsidy to the Local Government Center Health Trust risk pool management program, however it may be organized, no later than December 1, 2013. Said payment shall terminate and shall satisfy any obligation contained in a note of similar amount executed on June 2, 2011. The funds to make this re-payment may be borrowed from an independent entity at commercially reasonable terms in consultation with the Bureau of Securities Regulation in the exercise of its supervisory powers which shall be exercised in good faith.

14. Funds received by the Local Government Center Health Trust in re-payment of the subsidy, to the extent they constitute amounts in excess of the earnings and surplus of the Local Government Center Health Trust risk pool management program as reasonably determined and expressed above in § 9, shall be returned to members consistent with RSA 5-B:5, I (c). [and]

15. Within 90 days of the date of this order, the Local Government Center, Inc. shall cause Local Government Center Real Estate, Inc. ["LGCRE"] to convey to the Local Government Center Health Trust risk pool management program and the Local Government Center Property Liability pooled risk management program shares in the ownership of the real estate corporation in proportion to their initial in kind contributions and subsequent cash contributions. To the extent the parties agree to consider a decision by the Local Government Center Property Liability pooled

risk management program to forego ownership of its proportionate shares in deference to the repayment of the subsidy, *see* § 13 above, they may do so by agreement. The realty corporation, in proportionate share, will then be managed by the respective boards of directors of the risk pool management programs for the benefit of those programs.

Id. at 78-79, ¶ 13, ¶ 14 and ¶ 15.

10. The LGC appealed the portions of the Final Order represented by paragraphs 13–15. This portion of the Final Order was upheld by the New Hampshire Supreme Court in its decision dated January 10, 2014. The ordered return of \$17.1 million and the re-distribution of the funds to members, to the extent the funds constitute amounts in excess of the earnings and surplus of the Local Government Center Health Trust risk pool management program, are thus binding on the LGC.

11. In November 2012, the stock in LGCRE was conveyed to the Local Government Center HealthTrust risk pool management program, the Local Government Center Property Liability Trust pooled risk management program, and the New Hampshire Municipal Association, LLC (“NHMA”). The intent of the conveyance was compliance with the portion of paragraph 15 of the Final Order that required a return of the real estate in proportion to the respective entities initial in kind contributions and subsequent cash contributions. As a result of the conveyance, the HealthTrust risk pool management program owned about 77%, the Property-Liability Trust pooled risk management program owned about 22% and NHMA owned 1%.

12. In November 2012, Local Government Center HealthTrust, LLC (“LGCHT”) and Local Government Property-Liability Trust LLC (“LGCPLT”), the two then-existing LLCs, adopted separate bylaws and appointed separate boards of managers. The entities continued to share certain staff, services, and expenses through service agreements.

13. In the late summer and early fall of 2013, a joint legislative study committee held hearings regarding the August 16, 2012 Order in this matter and HT and PLT's compliance with it. Representatives from the Bureau of Securities Regulation, HT, and PLT testified in the various hearings held by the committee. The transcripts of those hearings speak for themselves.

14. On September 1, 2013, as part of a re-organization, LGCHT and LGCPLT assigned their respective assets and liabilities to HealthTrust and PLT. Each entity had its own set of bylaws. Each entity had its own board of directors

15. From September 1, 2013 to January 10, 2014, HealthTrust and PLT each had operative bylaws and boards with no overlap of membership. The PLT Board presently consists of six individuals, all of whom were elected or re-elected at the PLT annual meeting in December 2013.

16. By letter dated April 4, 2013, PLT requested BSR approval of a 90% confidence level. The BSR did not respond to PLT's letter.

17. The December 31, 2010 PLT financial statements reported total net assets (assets net of liabilities) of \$10,401,808. That \$10.4 million figure did not account for either the \$3.1 million distribution to PLT members or the \$17.1 million repayment obligation to HealthTrust required by the Final Order.

18. PLT's audited December 31, 2011 financial statements reported total net assets of \$11,566,563. This figure did not account for either the \$3.1 million or the \$17.1 million directed to be paid in the Final Order.

19. The Final Order allowed PLT to borrow the money to pay HealthTrust. PLT attempted to secure such a loan. By letter dated May 10, 2013, RBS Citizens, N.A., denied PLT's request for a credit facility as part of a plan to repay the \$17.1 million to HealthTrust.

PLT also approached TD Bank about a loan for the \$17.1 million, which TD Bank declined. *See* Affidavit of George Bald. PLT did not submit a formal loan application to either bank.

20. When the BSR inquired of PLT regarding what efforts, if any, had been made to secure financing, PLT produced the letter dated May 10, 2013 from RBS Citizens, N.A., denying PLT's request for a credit facility as part of a plan to repay the \$17.1 million to HealthTrust.

21. PLT's June 30, 2013 unaudited financial statements reported total net assets of \$12,150,050. This figure did not account for either the \$3.1 million or the \$17.1 million directed to be paid in the Final Order.

22. During the summer of 2013, HealthTrust and PLT discussed matters with the BSR, including payments required by the Final Order. The discussions did not resolve the parties' dispute. In August 2013, the BSR provided HealthTrust and PLT with a proposed Memorandum of Understanding ("MOU"). The HealthTrust and PLT boards took no action regarding the MOU.

23. In the summer of 2013, HealthTrust demanded that PLT not make the \$3.1 million distribution to members unless it first made adequate provision to repay the \$17.1 million. When PLT declined, HealthTrust asked the Secretary to cause PLT to delay the distribution of the \$3.1 million. The BSR refused by letter dated August 30, 2013, and that same day, PLT distributed the \$3.1 million to members.

24. PLT's August 31, 2013 unaudited financial statements – which reflected PLT's payment of the \$3.1 million to PLT members but did not include the \$17.1 million obligation that was on appeal – reported total net assets of \$12,205,163.

25. In 2013, the PLT Board of Directors determined to offer the PLT coverage lines (property-liability, workers' compensation, and unemployment compensation) to PLT members

for the two-year period commencing on July 1, 2014. The PLT Board set the rates applicable to those coverage lines, consistent with offers being made on terms set forth in PLT's coverage documents. The PLT Board made the decisions concerning how to offer the coverage lines to PLT members and the structure of those coverage lines.

26. PLT's independent consulting actuaries, the national actuarial consulting firm Towers Watson, performed rate level and experience modifier analyses concerning PLT's 2013/2014 property-liability, workers' compensation and unemployment compensation coverages. Based on the Towers Watson indications at that time, the rates and experience modifiers included in PLT offers made in the fall of 2013 were, according to PLT, priced at "break-even."

27. The PLT Board of Directors did not inform PLT members that received offers of coverage that in the event it lost a portion of the appeal, PLT would be insolvent, and therefore, it had agreed, in the event the appeal was lost, to transfer all of its assets and liabilities to HT, which would run off the existing obligations. The offers of PLT coverage were made at times after October 29, 2013.

28. In the early fall of 2013, HealthTrust and its outside counsel negotiated a Settlement Agreement ("Agreement") with PLT. The Agreement was expressly conditional, and it was only to become operational if the Supreme Court affirmed the repayment provision or a modified obligation that remained in excess of PLT's ability to repay HealthTrust without precluding PLT from paying coverage obligations in full and both the HT and PLT boards affirmatively voted not to move for reconsideration of the Supreme Court's decision. The negotiation and the Agreement were not disclosed to the BSR or the Supreme Court during the

course of the appeal, or to HealthTrust or PLT members until the day of the Supreme Court's decision, January 10, 2014.

29. On October 28, 2013, the HealthTrust Board of Directors approved the Agreement at a telephonic Board meeting that was characterized as an "emergency" and which was held in non-public session at an office in the Londonderry School System with only board member Curro and Executive Director Peter Bragdon physically in attendance. The minutes of this non-public session were sealed by the Board and not released until after the agreement became operative on January 10, 2014. .

30. On October 29, 2013, the PLT Board approved the Agreement at its Board meeting.

31. By its terms, the Agreement became operational when the Supreme Court affirmed the \$17.1 million repayment obligation on January 10, 2014, subject to a reconsideration motion or the decision not to pursue reconsideration. HealthTrust provided the BSR with the Agreement and offered to discuss it on January 10, 2014. The BSR was unable to meet until February 4, 2014.

32. When representatives of HealthTrust and PLT (including the Chair of PLT's Boards of Directors) and HealthTrust's and PLT's respective counsel arrived to meet with the BSR on February 4, 2014, they found third parties present who recorded the meeting. The record of the meeting, which the parties stipulate to its admission as an exhibit, speaks for itself.

33. The parties had no communication between February 4 and February 7, 2014. On February 7, 2014, the BSR filed the Motion for Entry of Default.

34. On February 11, 2014, the BSR requested additional information from HealthTrust and PLT by letter. On February 28, 2014, HealthTrust and PLT responded to the BSR's February 11, 2014 information request by letter with documentation.

35. By letter dated February 14, 2014, HealthTrust reiterated its willingness to work with the BSR to address any concerns and requested suggestions about the Agreement and the runoff. The February 28, 2014 letter sent by HealthTrust and PLT to the BSR's February 11, 2014 information request concluded by requesting a meeting with the BSR.

36. On February 19, 2014, PLT wrote to the BSR and the New Hampshire Department of Labor ("DOL") requesting to meet with the agencies to obtain their guidance. On February 27, 2014, the DOL sent a letter to the BSR suggesting a meeting involving the regulators. The BSR responded by stating that a meeting would be premature.

37. The claims reserves reported in the PLT August 31, 2013 preliminary, unaudited financial statements are based on Towers Watson's analyses of the reserves for workers' compensation, property-liability and unemployment coverages as of December 31, 2012. Towers Watson prepared updated reserve analyses of PLT's workers' compensation, property-liability and unemployment coverages as of August 31, 2013 for PLT. The reports reduced the selected incurred loss, loss adjustment, and workers compensation assessment estimates by a total of \$3.3 million from the estimates as of December 31, 2012.

38. In January 2014, HealthTrust asked Towers Watson to update its estimates of the incurred obligations for the PLT workers' compensation, property-liability, and unemployment coverage lines as of January 10, 2014, the date the Agreement became operational. Towers Watson produced revised estimates dated February 20, February 26, and February 28. The

updated reserve analyses reduced Towers Watson's actuarial central estimates by a total of \$1.4 million from the total of the central estimates as of August 31, 2013.

39. In late February 2014, HealthTrust prepared a pro forma financial statement of assets and liabilities for the runoff of PLT's coverage lines as of January 31, 2014 using the Towers Watson updated estimates. The pro forma statement showed total net assets of \$18,119,988. The pro forma indicated that there could be a positive net amount of \$1,019,988 ($\$18,119,988 - \$17,100,000 = \$1,019,988$) to HealthTrust after the runoff of the PLT coverage obligations and payment of the full \$17.1 million obligation.

40. PLT historically reflected a 90% confidence level margin in its net assets as reported in its financial statements. The \$1,019,988 in potential ultimate net assets is significantly less than the 90% confidence level margin of \$4,402,000 calculated by Towers Watson as of January 10, 2014. The \$1,019,988 net position corresponds to a confidence level margin of 68% as calculated by Towers Watson.

41. At its meeting on April 1, 2014, the HealthTrust Board voted to approve a distribution of \$13.9 million by HealthTrust from the assets transferred by PLT as soon as possible after June 30, 2014, proportionally to the then existing HealthTrust members with medical and dental coverage, based on their share of contributions made to each of the medical and dental lines during the current fiscal year, subject to the approval or express non-objection of the Secretary.

42. On April 8, 2014, HealthTrust requested the Secretary's consent or express non-objection to the \$13.9 million distribution to HealthTrust members. HealthTrust provided Towers Watson's updated reserve analysis with the request. To date, the Secretary has declined to consent or not object to the proposed distribution.

43. The proposed \$13.9 million payment was derived from the actuarial report prepared by Towers Watson. The Towers Watson report is the same report described in paragraph 41 above, which described that PLT lacked sufficient funds to meet all of its financial obligations under the August 16, 2012 Order without negatively affecting claims payments in runoff if the 90% confidence level was used, but had sufficient funds at a 68% confidence level to meet all of its claims liability.

44. By letter dated April 23, 2014, PLT requested quarterly updates from HealthTrust regarding the runoff of its coverage lines pursuant to HealthTrust's obligations under the Agreement. HealthTrust provided the PLT Board with reports and information about the PLT runoff, including on May 22, 2014.

45. On April 29, 2014, the DOL issued an Administrative Order concerning PLT and HealthTrust. This Order was issued subsequent to HT's application for certification with the DOL to run off self-funded workers' compensation program. The DOL Order, which the parties stipulate to its admission as an exhibit, speaks for itself.

46. On May 30, 2014, the PLT Board voted to enter a Termination Agreement proposed by HealthTrust, and on June 3, 2014, the HealthTrust Board voted to enter and execute the Termination Agreement. The Termination Agreement was fully executed on June 3, 2014.

47. By its terms, the Termination Agreement became effective as of June 6, 2014 at 5:00 p.m., and was implemented on that date and time.

48. On June 6, 2014, PLT paid HealthTrust \$17.1 million, of which approximately \$15.4 million was cash and approximately \$1.7 million was in real estate stock. The parties dispute whether the Final Order required that a real estate transfer intended to satisfy a financial

obligation under the Final Order required the assent of the BSR. The BSR did not and does not assent to this transfer of real estate.

49. On June 3, 2014, the HealthTrust Board passed a motion to declare a \$17.1 million surplus to be distributed on September 8, 2014, as a check or contribution holiday to the member groups ordered by the BSR or the Presiding Officer to receive such distribution, or if no such order is issued, to HealthTrust's Medical and Dental Members proportionally to contributions received during Fiscal Year 2014 (September 1, 2013 – June 30, 2014) as provided for in the HealthTrust, Inc. Bylaws.

50. PLT did not seek or receive resolutions from the governing bodies of member political subdivisions authorizing it to enter into either the Settlement Agreement or the Termination Agreement. The parties dispute whether such resolutions are required by RSA 5-B.

51. The parties agree that the following documents are admissible and the terms of the documents speak for themselves:

- a. All documents referenced in this Stipulated Facts, including the Settlement Agreement and the Termination Agreement;
- b. PLT's bylaws;
- c. HealthTrust's bylaws;
- d. HealthTrust's administrative services agreement with Anthem;
- e. HealthTrust's administrative services with Caremark;
- f. HealthTrust's administrative services agreement with Delta Dental;
- g. a representative PLT participation agreement;
- h. a representative HealthTrust participation agreement;
- i. PLT's Board meeting minutes and notices of meetings from September 1, 2013 to present; and

j. HealthTrust's Board meeting minutes and notices of meetings from September 1, 2013 to present.

Respectfully submitted,

HEALTHTRUST, INC.

By Its Attorneys,

Dated: July 7, 2014

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PROPERTY-LIABILITY TRUST, INC.

By Its Attorneys,

Dated: July 7, 2014

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NEW HAMPSHIRE BUREAU OF
SECURITIES REGULATION

Dated: July 7, 2014

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CERTIFICATE OF SERVICE

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

/s/ Michael D. Ramsdell
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