

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION**

IN THE MATTER OF:

New Hampshire Interlocal Trust (NHIT);
Albert C. Jones Employee Benefits, Inc.
(ACJEB) and the following individual:
Albert Jones

ORDER TO CEASE AND DESIST;
and NOTICE OF RIGHT TO HEARING

NOTICE OF ORDER

This Order commences an adjudicative proceeding under the provisions of RSA 5-B:4-a.

LEGAL AUTHORITY AND JURISDICTION

Pursuant to RSA 5-B:VI, whenever it appears to the Secretary of State that any person has engaged or is about to engage in any act or practice constituting a violation of RSA 5-B or any rule or order under RSA 5-B, the Secretary of State shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of RSA 5-B. The order shall be calculated to give reasonable notice of the rights of the person to request a hearing on the order and shall state the reasons for the entry of the order. All hearings shall be conducted in accordance with RSA 5-B:4-a and RSA-421-B:6-613.

Pursuant to RSA 5-B:4-a, VI, the Secretary of State has the authority to issue and cause to be served an order requiring any person appearing to him to be engaged or about to be engaged in any act or practice constituting a violation of RSA 5-B or any rule or order thereunder, to cease and desist from violations of RSA 5-B.

Pursuant to RSA 5-B:4-a, VII(a), the Secretary of State has the authority to impose administrative fines of up to \$2,500.00 for each violation of RSA 5-B.

Pursuant to RSA 5-B:4-a, VII(b), the Secretary of State has the authority to enter an order requiring any person who has violated RSA 5-B to make rescission, restitution, or disgorgement in addition to any other penalty provided for under RSA 5-B.

Pursuant to RSA 5-B:4-a, V the Secretary of State has the authority to recover the costs of the investigation, and any related proceedings, including reasonable attorney's fees, in addition to any other penalties provided for under RSA 5-B.

APPOINTMENT OF PRESIDING OFFICER

Pursuant to RSA 5-B:4-a, III, the secretary of state does hereby appoint Barbara J. Griffin of Goffstown, New Hampshire as Presiding Officer over this matter.

NOTICE OF RIGHT TO REQUEST A HEARING

The above-named Respondents have the right to request a hearing on this order to cease and desist, as well as the right to be represented by counsel. Any such request for a hearing shall be in writing, shall be signed by the Respondents, or by the duly authorized agent of the above-named Respondents, and shall be delivered either by hand, or certified mail return receipt requested, to the Bureau of Securities Regulation, Department of State, 25 Capitol Street, Concord, New Hampshire 03301.

Within 15 days after receipt of a request in a record from the Respondents, the matter will be scheduled for a hearing. If the Respondents subject to the order do not request a hearing and none is ordered by the Secretary of State within 30 days after the date of service of the order, the

order becomes final. If a hearing is requested or Ordered, the Secretary of State, after notice of and opportunity for hearing to the Respondents subject to the Order, may modify or vacate the Order or extend it until final determination. If the Respondent to whom this cease and desist order is issued fails to appear at the hearing after being duly notified, such Respondent shall be deemed in default, and the proceeding may be determined against that Respondent upon consideration of the cease and desist order, the allegations of which may be deemed to be true.

STATEMENT OF ALLEGATIONS

The allegations contained in the Staff Petition for Relief dated February 12, 2024 (a copy of which is attached hereto) are incorporated by reference hereto.

ORDER

WHEREAS, finding it necessary and appropriate and in the public interest, and for the protection of political subdivisions and investors and consistent with the intent and purposes of RSA 5-B, and

WHEREAS, finding that the allegations in the Staff Petition, if proved true and correct, form the legal basis of the relief requested

It is hereby **ORDERED**, that:

ON AN IMMEDIATE AND PRELIMINARY BASIS

1. The Respondents are hereby ordered to immediately cease and desist from violating RSA 5-B as described in the Petition, specifically including, without limitation, from establishing, and demanding payment of rates of contribution of member political subdivisions in any way that is not based

on the actual experience of such members and an actuarial evaluation of the adequacy of such rate.


2. The Respondent NHIT, and Respondents ACJEB and Jones to the extent they continue to administer or be involved in the administration of NHIT's pooled risk management program, are hereby ordered to continue operation of the pooled risk management program in the ordinary course and to use contributions paid to NHIT by participating member political subdivisions to operate the pooled risk management program in the ordinary course, in compliance with RSA 5-B and to immediately cease and desist from the acts and failures to act as described in the Petition with respect to such operation that are alleged to violate RSA 5-B and the fiduciary duties of the Respondents.
3. The Respondents ACJEB and Jones are hereby ordered to immediately deposit, pending further order of the Presiding Officer, subsequent to service of this Order, any further commission payments received on account of their provision of insurance brokerage services to NHIT into an escrow account in the name of an independent escrow agent on terms to be determined by the Presiding Officer.
4. On a temporary basis, such other and further relief as considered by the Presiding Officer as necessary and appropriate for the protection and benefit of New Hampshire political subdivisions and the enforcement of RSA 5-B; and

AFTER HEARING ON A PERMANENT BASIS

5. The Respondents are found to have violated RSA 5-B and their fiduciary duties, as alleged in the Petition, and in favor of the Bureau with regard to Counts I - V of the Petition.
6. The preliminary orders previously made by the Presiding Office are made permanent.
7. The Respondent NHIT shall rescind the Administrator Service Agreement between NHIT and ACJEB.
8. The Respondents ACJEB and Jones shall disgorge or make restitution of sums paid to them by Respondent NHIT or by any third-party as a result of their activities for NHIT in excess of those sums that would have been reasonable and proportionate to the value of any services they provided to NHIT.
9. All Respondents shall make restitution, jointly and severally, to NHIT's member political subdivision of any and all sums which should have been returned annually to such members as surplus pursuant to RSA 5-B-5, I(c).
10. All Respondents, jointly and severally, shall pay administrative fines and penalties in accordance with RSA 5:B-4-a, VII(a).
11. All Respondents, jointly and severally, shall reimburse the Bureau for all costs, including but not limited to, reasonable attorney's fees, associated with its investigation and with bringing and prosecuting this action in accordance with RSA 5-B:4-a, V; and

12. Any such other and further relief as considered by the Presiding Officer as necessary and appropriate for the protection and benefit of New Hampshire political subdivisions and the enforcement of RSA 5-B.

Dated: June 17, 2024


DAVID SCANLAN
SECRETARY OF STATE

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION

INV-2021-000036

IN THE MATTER OF:

NEW HAMPSHIRE INTERLOCAL TRUST,
ALBERT C. JONES EMPLOYEE BENEFITS, INC.,
and
ALBERT C. JONES

STAFF PETITION FOR PRELIMINARY, PERMANENT, AND OTHER RELIEF

The Bureau of Securities Regulation (the "Bureau"), pursuant to the authority and jurisdiction under RSA 5-B:4-a delegated to the Bureau by David M. Scanlan, New Hampshire Secretary of State (the "Secretary of State"), hereby complains against New Hampshire Interlocal Trust ("NHIT"), Albert C. Jones Employee Benefits, Inc. ("ACJEB"), and Albert C. Jones ("Jones") as follows:

INTRODUCTION

1. The Bureau, by and through Deputy Secretary Eric Forcier, respectfully submits to the Secretary of State the within Petition alleging claims against the above-named Respondents, NHIT, ACJEB, and Jones, and requesting certain relief be ordered against the Respondents, consistent with the allegations, claims, and prayers for relief as set forth below.

2. Further, the Bureau respectfully petitions the Secretary of State to assign the Bureau's staff and its counsel, as the Bureau determines, as his designee in this matter under RSA 5-B:4-a to present and prosecute on behalf of the Secretary of State, among other actions, the following allegations and claims against Respondents NHIT, ACJEB, and Jones regarding violations of RSA 5-B.

PARTIES

3. David M. Scanlan is an individual serving in the capacity of the Secretary of State, with offices located at State House Room 204, Concord, New Hampshire, 03301. The Secretary of State administers RSA 5-B, and under RSA 5-B:4-a, has the exclusive authority and jurisdiction to “bring administrative actions to enforce [RSA 5-B]” and to “investigate and impose penalties for violations of [RSA 5-B], including but not limited to: (1) Fines; (2) Rescission, restitution, or disgorgement”, and has “all powers specifically granted or reasonably implied in order to perform the substantive responsibilities imposed by [RSA 5-B]” as to the regulation of pooled risk management programs established for the benefit of political subdivisions in New Hampshire.

4. Under RSA 5-B:4-a, VI, “whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of [RSA 5-B] or any rule or order under [RSA 5-B] the secretary of state shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of [RSA 5-B].”

5. The Bureau is a part of the Corporations Division within the State of New Hampshire Department of State (the “Corporations Division”), which has responsibility for, among other areas, overseeing the regulation of pooled risk management programs under RSA 5-B. The Secretary of State has delegated to the Bureau responsibility for the administration and enforcement of RSA 5-B and exclusive authority and jurisdiction under RSA 5-B:4-a.

6. At all times relevant hereto, NHIT has held itself out to be a trust duly established under New Hampshire law with a principal place of business at 5 Sheep Davis Road, Suite E, Pembroke, New Hampshire 03275.

7. At all times relevant hereto, NHIT has purported to operate a pooled risk management program under and governed by RSA 5-B that provides health and dental insurance benefits and ancillary benefits for political subdivisions' public employees, their dependents, and retired public employees, and to which member political subdivisions contribute on an annual basis millions of dollars of public funds from taxpayers for such benefits.

8. ACJEB is a New Hampshire corporation with a principal place of business at 5 Sheep Davis Road, Suite E, Pembroke, New Hampshire 03275. ACJEB operates an insurance brokerage and consulting business. According to documents filed with the Corporations Division, as of the date hereof, Jones is a Vice President of ACJEB. Prior to 2020 and going back to NHIT's inception in 2012, Jones was the President, Treasurer, and Secretary of ACJEB, as well as the sole owner of ACJEB.

9. Since 2012, and at all times relevant hereto, ACJEB has contracted with NHIT to provide to NHIT certain administrative and other services, and primarily through Jones has served as the Administrator of NHIT handling day-to-day operations of NHIT's pooled risk management program.

10. Jones is an individual residing at 59 Long Bay Drive, Laconia, New Hampshire 03246.

11. At all times relevant hereto, Jones and ACJEB have treated themselves as interchangeable, at times referring to Jones as the Administrator of NHIT and at times referring to ACJEB as the Administrator. ACJEB and Jones have been indistinguishable from one another and have been alter egos of one another.

STATEMENT OF RELEVANT FACTS

The Beginnings of NHIT

12. Beginning in 2004, Primex³, a New Hampshire trust that operates a pooled risk management program under and governed by RSA 5-B, offered health insurance benefits to its members through Harvard Pilgrim Health Care ("Harvard Pilgrim"), its third-party administrator. On April 7, 2011, the Board of Trustees of Primex³ decided to discontinue offering health insurance benefits. After this decision was made, Primex³ ceased its health insurance coverage line on June 30, 2012.

13. In 2011, two other pooled risk management programs under RSA 5-B offered health insurance benefits to political subdivisions in New Hampshire. These three pooled risk management programs collectively received over \$580 million annually in contributions paid by political subdivisions for health insurance benefits, of which approximately \$70 million was received by Primex³.

14. Around that time, after learning of Primex³'s Board of Trustees' decision, Vincent Capozzi ("Capozzi"), an executive from Harvard Pilgrim, contacted Jones, who had previously been involved in the creation and operation of Primex³'s health insurance coverage line, and with whom Capozzi and Harvard Pilgrim were already familiar as a result, about Primex³ discontinuing its health insurance coverage line.

15. In the discussion that ensued between Capozzi and Jones, Capozzi proposed that Harvard Pilgrim and Jones partner with each other to create a new pooled risk management program in New Hampshire to offer health insurance benefits through Harvard Pilgrim, acting again as the third-party administrator. Harvard Pilgrim initially proposed that the new program would be treated as a single employer, with Harvard Pilgrim as the administrator and Jones as the

insurance broker for the program. Jones informed Harvard Pilgrim that such an arrangement was not what he had in mind, and Jones suggested that, instead, they create a trust entity like the New Hampshire Municipal Association to house the new program, which Jones would then operate, administer, and service as its insurance broker.

16. Jones asked Harvard Pilgrim to provide a \$10 million line of credit as “financial assurance” for the new program, and after negotiations, Harvard Pilgrim agreed to provide a \$2 million line of credit, with no fees. Harvard Pilgrim also agreed to provide \$150,000 in temporary funding to the proposed new pooled risk management program.

17. As part of this new arrangement, Jones assented to Harvard Pilgrim holding in its possession \$653,846 in funds contributed to the new pooled risk management program by member political subdivisions to cover the float on the medical claims Harvard Pilgrim paid before the program reimbursed Harvard Pilgrim for such claims.

18. Harvard Pilgrim’s holding of such funds to cover the float on medical claims has persisted year after year since 2012, and Harvard Pilgrim continues to hold this same amount in funds, without interest, and without refund back to NHIT and its members, despite the fact that NHIT has never failed to make its reimbursement payments to Harvard Pilgrim for the paid medical claims.

19. With this agreement between Jones and Harvard Pilgrim in place, Jones began working with Harvard Pilgrim in the months that followed to create a new pooled risk management program that Jones would later name New Hampshire Interlocal Trust, Inc.

20. A public-facing website, www.nhitrust.org, created for New Hampshire Interlocal Trust, Inc. was launched on February 6, 2012 and described “the NHIT” as “a partnership

between Albert C. Jones Employee Health Benefits, Inc. (ACJEB) and Harvard Pilgrim Health Care.” Jones has repeatedly described himself, however, as the creator of NHIT.

21. The focus of Harvard Pilgrim and Jones in 2011 and early 2012 was to “transition”¹ Primex³’s members, whose health insurance benefits through Harvard Pilgrim were being discontinued, and to maintain Harvard Pilgrim’s substantial presence in and share of the public employee health benefits market of New Hampshire.

22. In 2011, Jones and Harvard Pilgrim began courting those Primex³ members to induce them to join the new pooled risk management program that they were creating. For example, on September 15, 2011, a workshop was held at Primex³ to explain the transition to the new pooled risk management program. Jones and Harvard Pilgrim knew that they would have an advantage in bringing existing Primex³ members to the new pooled risk management program because the members desired continuity, and they offered members the simplicity of maintaining the same benefits and sending payments to the same administrator at a different address.

23. These were important considerations for Jones in deciding to create the new pooled risk management program that would become NHIT, as they gave Jones confidence that this would be a successful venture and create a direct benefit to him. The new program was made even more attractive to Jones by the prospect of serving not only as its administrator but as its reinsurance broker, permitting him and/or entities he owned to draw separate remuneration for serving in each role.

24. On October 20, 2011, a New Hampshire law firm filed an Application with the Corporations Division, pursuant to RSA 293-A:4.02, to reserve the corporate name “New

¹ “Transition” is a term used in the Minutes of the October 26, 2011 Regular Meeting of the Town of Grantham Board of Selectmen.

Hampshire Interlocal Trust Inc.” for 120 days.² The Application did not indicate on whose behalf it was filed.

25. In September or October of 2011, Constance Jones, a Selectman for the Town of Grantham who became one of NHIT’s first Board members and its first Treasurer, learned of NHIT when Jones approached her and told her that he was working with Harvard Pilgrim to start what would become NHIT and asked her to join the NHIT Board.

26. On October 26, 2011, at a meeting of the Town of Grantham Board of Selectmen, the Town Administrator informed the Board of a “new health trust . . . called NH Interlocal Trust and recommended the Town accept membership in it.” The Board voted to become a member of this “new health trust,” due in large part to its history with Harvard Pilgrim as a member of Primex^{3,3}.

27. At a meeting of the Hillsborough County Board of Commissioners on November 2, 2011, County Administrator Gregory Wenger (“Wenger”) brought before the Board of Commissioners an opportunity to become one of the “founding sponsors” of “NH Interlocal Trust, . . . a newly formed exclusive partnership between Harvard Pilgrim Health Care and Albert C. Jones Employees [sic] Benefits, Inc” Wenger told the Board that “NH Interlocal Trust [was] expected to provide the County with a ‘not-to-exceed’ rate by mid to late November.” Wenger further advised the Commissioners that NH Interlocal Trust would need “a Board of Trustees of two to twelve members,” but noted that “this would not commit the Board to purchase anything from the trust, but it could remain as a founding member.” Upon Wenger’s

² At no point, however, was a corporation actually formed in New Hampshire by the name of New Hampshire Interlocal Trust, Inc.

³ Quotations in this paragraph are from the Minutes of the Regular Meeting of the Town of Grantham Board of Selectmen on October 26, 2011.

recommendation, the Board of Commissioners voted to “accept membership in the NH Interlocal Trust.”⁴

28. On November 15, 2011, to incentivize the existing Primex³ members participating in the health insurance coverage line to move to the new pooled risk management program, Jones offered to all such members guaranteed “not-to-exceed” rates for the first coverage year, starting on July 1, 2012, as established by Jones and Harvard Pilgrim. The guaranteed “not-to-exceed” rates quoted were commitments that Jones made to transitioning members of the new program to provide health insurance benefits through Harvard Pilgrim at or below such rates. Upon information and belief, the promised rates were based on recommendations by Harvard Pilgrim and offered without first performing any actuarial analysis to determine the adequacy of member contributions based on such rates to fund the pooled risk management program. At the time Jones provided these “not-to-exceed” rates, NHIT had not yet been established.

29. In addition to recruiting members for the new pooled risk management program, Jones began putting together administrative, governing, and operational components of the new program with the goal of it being operational as of July 1, 2012, the day immediately following the last day of Primex³’s health insurance program.

30. At the suggestion of an existing Primex³ member, Jones recruited and hired Primex³’s Assistant Manager of Benefits who worked with Harvard Pilgrim as Primex³’s third-party administrator of the health insurance coverage line. This individual was also the point of contact at Primex³ with respect to members’ health insurance benefits. After speaking with

⁴ Quotations in this paragraph are from the Minutes of the Regular Meeting of the Hillsborough County Board of Commissioners on November 2, 2011.

Jones, this Primex³ employee accepted employment through ACJEB to serve as the member services manager for the new pooled risk management program.

31. The former Primex³ Assistant Manager of Benefits left her employment at Primex³ and on February 6, 2012 began working for Jones at ACJEB with respect to the new pooled risk management program. She was the first employee of ACJEB and worked with Jones to create the new program. Her role as the member services manager for the new program included hiring and training additional staff for the new program, setting up the operational components of the new program, developing and implementing processes with vendors for enrollment and billing of members, and establishing wellness programs and member services. ACJEB's new member services manager also worked with Jones to recruit members to the new program, specifically including Primex³ members with health insurance benefits administered by Harvard Pilgrim that Primex³ was discontinuing.

32. Jones also personally recruited seven individuals to serve as the first Board of Trustees for the new pooled risk management program.

33. On February 21, 2012, Jones, as President of an unidentified entity, filed a second Application with the Corporations Division, pursuant to RSA 293-A:4.02, to reserve "New Hampshire Interlocal Trust, Inc." as the name for a proposed for-profit entity.

34. On March 9, 2012, an "organizational Board meeting" was held at ACJEB's office, with the seven recruited Board members, Jones, representatives from ACJEB, representatives from Harvard Pilgrim, and others, in attendance. During this meeting, a proposed Trust Agreement for NHIT was discussed and then signed, along with proposed Bylaws for NHIT.

The NHIT Trust Agreement and Bylaws

35. The Trust Agreement purported to establish NHIT as a trust to provide pooled risk management programs for the benefit of certain political subdivisions of the State of New Hampshire. It was signed by and in the name of each of the seven individuals as the new Trustees of NHIT. All of the new Trustees signed the Trust Agreement in their individual capacities, and not as agents of their respective political subdivisions, and there is no indication that any political subdivision was deemed to be, and acted as, a settlor of the trust.

36. Despite Jones describing the Town of Grantham and Hillsborough County as “the first two public entities to vote to sponsor the Trust,” neither the Town of Grantham nor Hillsborough County, which were previously members of Primex³’s health insurance coverage line, signed any document indicating such sponsorship. In addition, no individual from either political subdivision signed the Trust Agreement on its behalf or had any involvement in NHIT’s start-up or its formation as a trust.⁵

37. No discussions, meetings, votes to authorize the trust’s creation through any annual or special meeting, or coordination or collaboration between the Town of Grantham and Hillsborough County with respect to establishing NHIT occurred, either before March 9, 2012 or at any time thereafter.

38. Under the NHIT Trust Agreement and the Bylaws, the Trustees are to govern and administer NHIT, including, but not limited to, holding, managing, and administering all contributions made by political subdivision members of NHIT, and all other money or property received by the Trustees in trust for the benefit of the members, with full and complete authority

⁵ Constance Jones and Gregory Wenger each eventually signed the Trust Agreement as a Board member individually but not on behalf of the Town of Grantham, Hillsborough County, or any other political subdivision.

and control over NHIT. Under the terms of the governing documents, the Trustees are required to operate NHIT and administer the assets and property of NHIT in trust for the exclusive benefit of the member political subdivisions, and they owe fiduciary duties, such as the duty of care, the duty of loyalty, and the duty of impartiality, to such members.

39. According to the Trust Agreement, the purpose of NHIT is “to develop and administer a risk management program . . . to reduce the risk of Members; safety engineering; distributing, sharing, and pooling risks; acquiring insurance, excess loss insurance, or reinsurance; and processing, paying, and defending claims against Members.” Under the Trust Agreement, NHIT could engage in other business activities, so long as such business activities did not disqualify NHIT as a pooled risk management program under RSA 5-B or make NHIT ineligible for an exemption from federal income taxation under Section 115 of the Internal Revenue Code of 1986 (the “IRC”), as amended⁶.

40. The Trust Agreement also provided that NHIT “shall comply with all laws that are applicable to [NHIT] and the Member’s obligations related to statutorily required coverages” and that “[a]ny act or omission in contravention of any such statutes shall be null and void *ab initio*.”

41. NHIT’s Bylaws specified the duties and responsibilities of NHIT’s Board of Trustees in overseeing and administering NHIT, including:

⁶ With respect to NHIT’s qualification as a tax exempt entity under Section 115 of the IRC, although it was anticipated that NHIT would so qualify, it does not appear that NHIT ever obtained a determination from the Internal Revenue Service (“IRS”) of such a status, despite Jones representing to NHIT’s auditors for years that NHIT had requested this determination from the IRS and was waiting to receive it, and that by December 2019, NHIT had received the determination from the IRS that it was tax exempt under Section 115 of the IRC. During the Bureau’s investigation, the Bureau learned for the first time that contrary to Jones’s representations, no such determination was ever formally sought from the IRS, let alone received from the IRS.

- “ensur[ing] that [NHIT] exists as a legal entity organized under New Hampshire law, as required by RSA 5-B:5, I(a)”;
- “return[ing] all earnings and surplus in excess of any amounts required for administration, claims, reserves, and purchase of excess insurance to the participating political subdivisions, as required by RSA 5-B:5, I(c)”;
- “provid[ing] for an independent actuarial evaluation of [NHIT] at least once per year in accordance with the requirements of RSA 5-B:5, I(f)”.

42. The Board of Trustees was authorized by the governing documents to adopt rules and regulations for the conduct of its meetings and the management of NHIT not inconsistent with the Bylaws, the Trust Agreement, or New Hampshire law. Under the Bylaws, however, the Board was required to maintain minutes of all of its meetings.

43. In addition, under the Bylaws, an independent contractor Administrator appointed by the Board of Trustees was to conduct the day-to-day business and affairs of NHIT.

44. Already as of the March 9, 2012 “organizational Board meeting,” and prior to the Trust Agreement being signed and the Bylaws being approved, Jones, through ACJEB, was identified as the anticipated Administrator and as responsible not only for day-to-day administration, but also underwriting, maintaining eligibility files, billing and collection of member groups’ contributions, member group services, and vendor oversight and relationships.

45. During the NHIT Board of Trustees’ meeting that directly followed, on March 30, 2012, Jones reviewed the “not-to-exceed” rates that he had quoted in November 2011, months prior to NHIT’s creation, to Primex³ members who participated in the health insurance coverage line, and requested that the Board “ratify” those rates and other proposals for new business that

Jones had made prior to NHIT's creation. The Board voted to "ratify" Jones's actions undertaken prior to NHIT's creation.

46. The minutes of this March 30, 2012 meeting do not reflect that the "not-to-exceed" rates issued in November 2011 were developed as a result of actuarial analysis or reviewed and recommended by the Board's Underwriting Committee. The ratification of these rates and other proposals occurred in the absence of any written contractual agreement with Jones or ACJEB regarding administrative services to NHIT, including, but not limited to, underwriting.

The Administrator Service Agreement

47. On June 7, 2012, during a NHIT Board of Trustees' meeting, the Board accepted an Administrator Service Agreement (the "Agreement") between the Trustees of NHIT and ACJEB, under which ACJEB was engaged to serve as both the Administrator of NHIT and its "sole and exclusive insurance broker for placing reinsurance" The Agreement was for a term of five years, but was automatically renewable for consecutive three-year terms unless terminated by either party.

48. The Board did not employ any competitive bidding process or search process in selecting ACJEB as the Administrator of NHIT, despite using a Request for Proposals (RFP) process for one or more of its other vendors. In addition, the Board selected ACJEB as NHIT's Administrator and exclusive reinsurance broker without conducting any due diligence into whether ACJEB was qualified to provide such services or whether the remuneration to be paid to ACJEB under the Agreement represented reasonable and fair market value for the services to be rendered by ACJEB. Further, there is no indication that Jones disclosed, or the Board considered, the unavoidable conflict of interest inherent in ACJEB serving in a role (the

Administrator) that called for it to minimize and control expenses for the benefit of participating political subdivisions, while at the same time serving in another role (the reinsurance broker) that incentivized ACJEB to earn the greatest commissions possible through the placement of reinsurance for NHIT, especially considering that all remuneration to ACJEB and/or Jones was to be derived from, and paid out of, contributions paid by NHIT's participating member political subdivisions.

49. The Agreement has been continually renewed from year to year since 2012, without the Board of Trustees ever searching for, or considering, any other candidate(s) to serve as NHIT's Administrator or reconsidering the remuneration to be paid to ACJEB under the Agreement.⁷

50. Among the services ACJEB was to provide to NHIT as Administrator, in addition to day-to-day administration of NHIT's activities and being principally responsible for the operation of the medical benefit program maintained by NHIT, were marketing, billing, budget development, providing staff, equipment, and supplies, staff supervision, providing assistance with program design and development, negotiating with insurers, providing NHIT with the assistance of actuaries (retained by NHIT) and underwriters (retained by ACJEB) for rate-setting and underwriting advice, overseeing all other contractors and consultants performing services for NHIT, and acting as custodian of minutes, books, files, and records.

⁷ The minutes of NHIT's Board of Trustees' meetings from March 9, 2012 to date are scant and without much detail – with no minutes whatsoever of several non-public sessions from 2012 which included discussion of the Agreement – and do not reference any discussion amongst the Trustees as to these points. The minutes do reflect the Board's habit since NHIT's creation of spending substantial portions of its meetings in non-public session “pursuant to RSA 91-A:5, IV to discuss confidential, commercial and financial information”.

51. Of the types of services listed in the Agreement that ACJEB was to provide, Jones, as opposed to other ACJEB employees, personally performed and/or directed the majority of them, including, but not limited to, procuring and maintaining the insurance deemed necessary to facilitate the program, marketing NHIT and its programs and services, recruiting potential members of NHIT, program design and development (including development of new coverages), negotiating with insurers and other program providers, retaining and overseeing underwriters and engaging with actuaries⁸, making recommendations for rate-setting, preparing budgets, managing vendor contracts, managing audits, and directly engaging with the Board. In this way, Jones ensured that he maintained personal control over all aspects of the administration of NHIT. Jones holds himself out to NHIT members and to the public as the Trust Administrator of NHIT, and he is referred to as such in numerous documents.

52. The provision of such services to NHIT by Jones in particular, through his company, ACJEB, was an integral part of the Agreement, as demonstrated by the Agreement defining "cause" for termination, in part, as Jones's cessation of providing services to NHIT on behalf of ACJEB.

53. Under the Agreement, NHIT was to compensate ACJEB for its administrative services to NHIT through a variable fee structure that is based on the number of public employees covered under a Harvard Pilgrim medical plan from month to month. ACJEB's fee was to range from \$3.50 per employee to \$1.00 per employee, and the higher the total number of employees per month, the lower the per-employee fee. The fee to be paid to ACJEB by NHIT

⁸ Under the Agreement, ACJEB retains the underwriter for NHIT, while NHIT retains the actuary; although throughout his relationship with NHIT, Jones would make recommendations to the Board of Trustees about which vendor(s) to hire and the Board would follow Jones's recommendations.

under this structure was to be paid regardless of the particular services that ACJEB actually provided to NHIT on a monthly basis.

54. In addition, NHIT was required to reimburse ACJEB for all overhead costs attributable to ACJEB's performance of its responsibilities for NHIT, including, but not limited to, costs of ACJEB's employees, rental costs for ACJEB's offices, and costs for ACJEB equipment. NHIT does not have any employees of its own. All of NHIT's staff are employees of ACJEB, who hold themselves out to members and to the public as NHIT staff.

55. On top of the fee paid to ACJEB and the reimbursement of its overhead costs, the Agreement called for NHIT's reimbursement to ACJEB of all reasonable and ordinary expenses that ACJEB incurred prior to June 7, 2012 "attributable to the promotion and/or establishment of the pooled risk management program for which [NHIT] was established." On his own, and without any oversight or prior approval by any settlor or political subdivision "sponsor," Jones incurred "start-up expenses" in connection with his creation of the new pooled risk management program, starting in September 2011, well in advance of NHIT's creation on March 9, 2012 and of the June 7, 2012 Agreement. From September 2011 through June 2012, these "start-up expenses" totaled \$85,909.65.

56. Under the Agreement, in addition to ACJEB's fee for administrative services, reimbursement of its overhead costs, and reimbursement of expenses incurred prior to June 7, 2012, ACJEB also was to be paid commissions for acting as NHIT's exclusive insurance broker and placing reinsurance for NHIT. ACJEB's commission rate was to be "competitive with rates charged by other brokers providing similar brokerage services," but in no event was it to "exceed ten percent (10%) of the premium charge for such placed insurance." There is no indication that NHIT's Board of Trustees ever looked into what rates were charged by brokers providing similar

services and whether ACJEB's commission rates were in line with the rates charged by other brokers.

57. In reality, though, Jones, who holds an insurance producer license in New Hampshire, has been NHIT's exclusive insurance broker instead of ACJEB and has placed NHIT's reinsurance coverage every year since NHIT's creation in 2012.

58. There is no Board policy directing the level of reinsurance to be procured for NHIT, or how often NHIT will consider a new or different reinsurer and/or a new or different reinsurance policy. Instead, Jones asks a reinsurer to price a certain level of reinsurance, selected by Jones, and then Jones recommends to the Board the reinsurance to be purchased for NHIT, which the Board has approved year after year. Jones also directs the Board only to consider a new or different reinsurer and/or a new or different reinsurance policy every 2-3 years at the earliest, purportedly because the reinsurers who would work with public entity pooled risk management programs were limited and it was important that an account was not "burned out" by being put out to bid more frequently.

59. Since 2012, Jones has earned millions of dollars in commissions serving as NHIT's exclusive insurance broker for reinsurance. Jones's commission rate has ranged from 6% to 10% each year as follows:

2012 – 2013: 8%
2013 – 2014: 6%
2014 – 2015: 6%
2015 – 2016: 7.5%
2016 – 2017: 10%
2017 – 2018: 10%
2018 – 2019: 10%
2019 – 2020: 10%
2020 – 2021: 8%
2021 – 2022: 10%
2022 – 2023: 7%

The average estimated amount of premiums paid each month for the reinsurance coverage Jones has placed for NHIT has ranged from \$700,000 - \$800,000 per month. At the lowest commission rate, 6%, which occurred just two out of the last 11 years, Jones would have earned between \$42,000 - \$48,000 *per month* and at the highest commission rate, 10%, which occurred five out of the last 11 years, Jones would have earned \$70,000 - \$80,000 *per month*.

60. The commissions paid to Jones for serving as NHIT's exclusive insurance broker and placing NHIT's reinsurance have never been communicated to the Board of Trustees or to NHIT's members, despite the fact that commissions paid are factored into the rates of contributions charged to the participating member political subdivisions and are paid out of the public funds contributed by such members to NHIT. Further, this sole-source exclusive broker arrangement placed Jones on all sides of the transaction, where Jones could influence what to buy, where to buy it, and how much to buy and then provide the Board with limited, selective information with which to make informed decisions, leaving Jones to reap lofty commissions.

Sale of ACJEB

61. This revenue stream to Jones, realized through the fee and commission payments and expense reimbursement made under the Agreement and funneled to Jones through ACJEB, was, and still is, such a valuable asset to Jones and ACJEB that in 2019, Jones was able to sell his entire ownership interest in ACJEB to Davis & Towle Group, Inc. ("Davis & Towle") based on ACJEB's continual contractual relationship with NHIT and the revenue that ACJEB has realized, and would continue to realize, from NHIT. At the time of this sale, NHIT was ACJEB's only customer. In exchange for all of the outstanding shares of capital stock in ACJEB, which Jones held, Davis & Towle pays Jones certain earn-out payments that are a portion of ACJEB's gross receipts (ranging from 30%-35%) in fiscal years 2020-2025 and other compensation and

benefits for Jones's continued provision of services and post-closing employment with ACJEB. Davis & Towle also agreed to pay to Jones the funds ACJEB received from NHIT in September 2019 for reimbursement of expenses incurred by ACJEB on NHIT's behalf and for the administration fee paid to ACJEB by NHIT for September 2019.

62. Under the terms of the sale, Davis & Towle also agreed that in the event ACJEB determines that it will charge NHIT less than a 10% commission for stop loss insurance procured on behalf of NHIT, Davis & Towle will not allow any such reduction in commission of over 3% without first obtaining Jones's written consent.

63. Jones notified NHIT's Board of Trustees of the change in ACJEB's ownership only after the transaction was completed, and then, only in the most general terms. At no point did Jones inform the Board of the terms of the transaction, including Jones's post-closing contractual right to influence, and constrain significant reduction in, ACJEB's rate of commission for placement of NHIT's reinsurance. ACJEB's inability to reduce the commission rate by more than 3%, that is, to charge a commission rate below 7%, without Jones's prior written consent allows Jones to control and maximize the revenue stream realized through such commission payments, from which he benefits substantially through earn-out payments.

64. With regard to the standards of operation for a pooled risk management program established under RSA 5-B, RSA 5-B:5, I(c) and I(f) relate to the determination of contributions required to fund the pooled risk management program and the earnings and surplus that a program may retain before returning excess earnings and surplus to its participating member political subdivisions on an annual basis.

65. Under RSA 5-B:5, I(c), the earnings and surplus that a pooled risk management program may retain before returning excess earnings and surplus to its participating member

political subdivisions is expressly limited to reasonable amounts required for administration, claims, reserves, and purchase of excess insurance.

66. RSA 5-B:5, I(f) requires the adequacy of contributions required to fund the pooled risk management program and the reserves necessary to be maintained “to meet expenses of all incurred and incurred but not reported claims and other projected needs of the program” to be actuarially assessed on an annual basis.

67. Among other activities, NHIT’s Board of Trustees, in consultation with its actuary who performs certain actuarial analyses on NHIT’s behalf, sets reserves each fiscal year. While the Board also approves the contribution rates that will be applied to participating member political subdivisions each year, it substantially relies on Jones’s recommendation as to what those rates should be and approves Jones’s recommendation year after year without significant independent review or analysis, including by an actuary.

68. If a participating member political subdivision has questions or concerns about changes to its rates for an upcoming renewal period, it typically communicates those questions or concerns to Jones, as opposed to the Board of Trustees, which is not involved in the process. Jones, without any involvement of the Board, makes any decisions as to changes to proposed contribution rates in response to any member’s questions or concerns regarding rates or benefit plans.

69. Jones’s practice with respect to a member political subdivision which complains or expresses concern about an increase in its proposed rates for an upcoming renewal is to adjust downward the proposed rates, without any changes in benefits obtained through payment of contributions, in order to maintain the business from that member.

70. As one example, in 2022, the Town of Amherst, an NHIT member at that time, received a proposed rate offer from NHIT that was 14% higher than the prior fiscal year's rate. However, "after working with [NHIT]," the Town was "able to work the proposed rate increase down to 8.5% instead of the original 14%" with no changes to the plan except for the price. The Town pointed to its consideration of other options for health insurance benefits as potentially causing NHIT to "consider reducing its rates."⁹

71. As another example, in 2018, the Board of Selectmen for the Town of Jackson, an NHIT member at that time, negotiated with NHIT a match by NHIT of a lower price for health insurance offered by another pooled risk management program, to the tune of a 9-11% reduction in cost for fiscal year 2019. The Board of Selectmen commented that NHIT matched that lower price offered by another program so that the Town of Jackson would remain an NHIT member.

CLAIMS

COUNT I

VIOLATION OF RSA 5-B:3, I

(Against NHIT, ACJEB, and Jones)

72. The Bureau restates and incorporates each of the preceding paragraphs in this Petition.

73. The primary purpose of pooled risk management programs under RSA 5-B is to provide New Hampshire's political subdivisions with an alternative to traditional insurance on favorable terms, entailing the pooling of resources among political subdivision members, and then returning surplus funds of each program to such members for the public benefit. See RSA

⁹ Quotations in this paragraph are from the Minutes of the Regular Meeting of the Town of Amherst Board of Selectmen on January 24, 2022.

5-B:1 (stating that “the purpose of [RSA 5-B] is to provide for the establishment of pooled risk management programs and to affirm the status of such programs established for the benefit of political subdivisions of the state.”); In the Matter of Local Gov’t Ctr, Inc. et al., Case No. 2011000036, Aug. 16, 2012 Final Order at 18; see also RSA 5-B:3, I (providing that “[a] political subdivision, by resolution of its governing body, may establish and enter into agreements for obtaining or implementing insurance by self-insurance; for obtaining insurance from any insurer authorized to transact business in this state as an admitted or surplus lines carrier; or for obtaining insurance secured in accordance with any method provided by law; or for obtaining insurance by any combination . . .”, and that any such agreements “may provide for pooling of self-insurance reserves, risks, claims and losses, and of administrative services and expenses associated with them among political subdivisions.”). In enacting RSA 5-B, the New Hampshire legislature found and determined in part that:

. . . insurance and risk management is essential to the proper functioning of political subdivisions; that risk management can be achieved through purchase of traditional insurance or by participation in pooled risk management programs established for the benefit of political subdivisions; that pooled risk management is an essential governmental function by providing focused public sector loss prevention programs, accrual of interest and dividend earnings which may be returned to the public benefit and establishment of costs predicated solely on the actual experience of political subdivisions within the state

RSA 5-B:1 (emphasis added).

74. Under RSA 5-B:2, III, a political subdivision is defined as “any city, town, county, school district, chartered public school, village district, school administrative unit, or any district or entity created for a special purpose administered or funded by any of the above-named governmental units.”

75. Regarding the manner of establishing a pooled risk management program, RSA 5-B:3, I provides, in part:

A political subdivision, by resolution of its governing body, may establish and enter into agreements for obtaining or implementing insurance by self-insurance; . . . 2 or more political subdivisions may form an association under the laws of this state or affirm an existing association so formed to develop and administer a risk management program having as its purposes reducing the risk of its members; safety engineering; distributing, sharing, and pooling risks; acquiring insurance, excess loss insurance, or reinsurance; and processing, paying and defending claims against the members of such association.

76. Contrary to RSA 5-B:3, I, Respondent NHIT was not formed by an association of two or more political subdivisions of the State of New Hampshire for the purposes authorized by the statute. Rather, the new pooled risk management program that became NHIT was created by Respondent Jones primarily for his, and Harvard Pilgrim's, own business gain instead of for the benefit of New Hampshire political subdivisions. Specifically, Harvard Pilgrim stood to retain its share of the lucrative public entity health benefits market after Primex³ had discontinued its health benefits coverage line and program; and Jones stood to gain from a long-term administrator service contract with the program under which he and ACJEB would serve not only as the administrator of the new program but also as the exclusive insurance broker for the program, promising millions of dollars in remuneration each year. These anticipated returns to Respondent Jones, Respondent ACJEB, and Harvard Pilgrim became realities through Respondent Jones's creation of NHIT.

77. Respondent NHIT, through its Board of Trustees, explicitly endorsed and ratified NHIT's improper establishment in violation of the statutory requirements for formation under RSA 5-B, and since 2012, has continued to operate its pooled risk management program in the absence of valid establishment to the detriment of NHIT's member political subdivisions.

78. Through their own deliberate acts and failures to act as set forth above, including, but not limited to, on the part of Respondent Jones, improperly creating NHIT to further his financial interests and business gain and the financial interests and business gain of Harvard

Pilgrim, and on the part of Respondent ACJEB, in conjunction with Respondent Jones, facilitating NHIT's violation of RSA 5-B:3, I and continuing to operate NHIT's pooled risk management program in the absence of valid establishment, all to the detriment of NHIT's member political subdivisions, Respondents Jones and ACJEB have also violated RSA 5-B:3, I.

COUNT II

VIOLATION OF RSA 5-B:5, I(a)

(Against NHIT, ACJEB, and Jones)

79. The Bureau restates and incorporates each of the preceding paragraphs in this Petition.

80. Among other standards of organization and operation, RSA 5-B:5, I(a) requires any pooled risk management program to "exist as a legal entity organized under New Hampshire law."

81. Since its inception, NHIT has held itself out as a trust formed under New Hampshire law. However, on March 9, 2012, the date the "trust" was purportedly established, the trust was not formed in compliance with the statutory requirements for establishing trust funds by political subdivisions. See, e.g., RSA 31:19-a (providing that a town may only create a trust funded by public money by way of taxpayers' vote to do so at an annual or special meeting); RSA 34:1-a and 34:2 (regarding the establishment of non-capital reserve funds by a city); RSA 35:1-c (pertaining to the establishment of non-capital reserve funds by a town, school district, county, or village district) and RSA 35:3 (providing that such reserve funds may only be created by way of taxpayers' vote to do so at an annual or special meeting); RSA 198:20-c (providing that a school district may only create a trust fund by way of annual or special meeting).

82. By virtue of its formation contrary to applicable law and for an improper purpose, NHIT is not, and never has been, a valid legal entity organized under New Hampshire law.

83. Accordingly, Respondent NHIT is in violation of RSA 5-B:5, I(a).

84. By virtue of their participation in and facilitation of the invalid formation of NHIT, Respondents Jones and ACJEB are in violation of RSA 5-B:5, I(a).

COUNT III

VIOLATION OF RSA 5-B:5, I(c)

(Against NHIT, ACJEB, and Jones)

85. The Bureau restates and incorporates each of the preceding paragraphs in this Petition.

86. Under RSA 5-B:5, I(c), the earnings and surplus that a pooled risk management program may retain annually are expressly limited by the mandate that the program shall “return all earnings and surplus in excess of any amount required for administration, claims, reserves, and purchase of excess insurance to the participating political subdivisions.” See In the Matter of Local Gov’t Ctr., Inc. et al., Case No. 2011000036, Aug. 16, 2012 Final Order at 24-25, 28, 30, 45, and 55; see also Appeal of the Local Gov’t Ctr., Inc. et al., 165 N.H. 790, 805-06, 808-09 (2014) (affirming this limitation as a statutory mandate).

87. Respondent NHIT is subject to, and required to comply with, RSA 5-B:5, I(c) and to operate its pooled risk management program for the benefit of its member political subdivisions and for other purposes as set out in RSA 5-B:1.

88. Respondent NHIT has violated RSA 5-B:5, I(c) and its fiduciary duty to its members by improperly spending assets of the pooled risk management program, derived from public funds contributed to the program by participating member political subdivisions, for

purposes beyond those permitted under RSA 5-B:5, I(c), and by conferring disproportionate private benefits on ACJEB and Jones. Jones, who created NHIT and has served as NHIT's Administrator since its creation, and accordingly, has significant control over the operations of NHIT, has caused NHIT to reward him for his self-interest by paying him and/or ACJEB remuneration which is unreasonable and out of proportion to the value of the services he and ACJEB have provided to NHIT under the Agreement.

89. Under the Agreement, which has been in place for over ten years to date, NHIT's Board of Trustees has, in fact, ceded so much influence and control to Jones that NHIT has become dependent on one for-profit private company, ACJEB, for NHIT's operations. ACJEB and Jones benefit substantially from NHIT's operations in return, by realizing a guaranteed, significant source of cash flow from NHIT under that long-term, auto-renewable Agreement, in the form of per-member fees not dependent on ACJEB's performance of any services to NHIT, payment of all of ACJEB's expenses and costs, and an exclusive insurance broker relationship that generates millions of dollars in commissions.

90. Through such misuse of public funds contributed by participating member political subdivisions and the resulting substantial private benefit to ACJEB and Jones, Respondent NHIT has subordinated participating members' interests and compromised the return(s) of surplus to which they are entitled under RSA 5-B:5, I(c), in frustration of, and antithetical to, the purposes of RSA 5-B.

91. By virtue of their participation in and facilitation of NHIT's violation of RSA 5-B:5, I(c) and its fiduciary duty to members, Respondents Jones and ACJEB are in violation of RSA 5-B:5, I(c).

COUNT IV

VIOLATION OF RSA 5-B:5, I(f)

(Against NHIT, ACJEB, and Jones)

92. The Bureau restates and incorporates each of the preceding paragraphs in this Petition.

93. Under RSA 5-B:1, the contributions paid by participating member political subdivisions are to be based “solely on the actual experience” of such political subdivisions.

94. Under RSA 5-B:5, I(f), pooled risk management programs are required to provide for “an annual actuarial evaluation” of the program. This annual actuarial evaluation must “assess the adequacy of contributions required to fund any such program and the reserves necessary to be maintained to meet expenses of all incurred and incurred but not reported claims and other projected needs of the plan.” RSA 5-B:5, I(f).

95. Accordingly, the contributions paid by participating member political subdivisions must be based solely on actual experience as determined by an annual actuarial evaluation.

96. Respondent NHIT has violated RSA 5-B:5, I(f) by manipulating proposed rates of contributions, through providing “not to exceed” rates to members to acquire new business or maintain existing business, instead of determining rates of contributions based “solely on the actual experience” of the participating member political subdivisions and an actuarial evaluation of what is reasonably required to “fund any such program and the reserves necessary to be maintained to meet expenses of all incurred and incurred but not reported claims and other projected needs of the plan”.

97. By virtue of their participation in and facilitation of NHIT's violation of RSA 5-B:5, I(f), Respondents Jones and ACJEB are in violation of RSA 5-B:5, I(f).

98. The Respondents' practice impermissibly results in disparate treatment of participating members and creates "winners and losers" among such participating members. Appeal of the Local Gov't Ctr., 165 N.H. at 808-09. In fact, setting the rates of contributions of individual members in this fashion contravenes the very purpose of pooled risk management programs under RSA 5-B.

99. As a consequence of these rate-setting practices, particular members of NHIT have been harmed to the extent that they have been required to make contributions in excess of those made by other members based on rates not determined solely on the basis of their actual experience and not actuarially assessed.

COUNT V

BREACH OF FIDUCIARY DUTY

(Against NHIT, ACJEB, and Jones)

100. The Bureau restates and incorporates each of the preceding paragraphs in this Petition.

101. Respondents NHIT, ACJEB, and Jones owe a fiduciary duty to NHIT and its member political subdivisions to meet the requirements of RSA 5-B and to operate NHIT's pooled risk management program for the benefit of its member political subdivisions and for other purposes as set out in RSA 5-B.

102. Respondents NHIT, ACJEB, and Jones also owe fiduciary duties to the beneficiaries of the trust, which in this case are the member political subdivisions, including, but not limited to, the most fundamental duty owed, the duty of loyalty to administer the trust solely

in the interests of the beneficiaries, and the duty to act impartially in administering, investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests". See, e.g., RSA 564-B:8-801 - 804; Hodges v. Johnson, 170 N.H. 470, 481 (2017).

103. Respondents NHIT, ACJEB, and Jones have violated their fiduciary duties to the member political subdivisions by:

a. failing to properly and prudently manage trust assets solely for the benefit of the political subdivisions and with attention to the assets' "special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries."

RSA 564-B:9-902(c). In the context of RSA 5-B, the special relationship of the trust assets, or the special value of the trust assets, to the political subdivision beneficiaries is to return surplus to those political subdivisions under RSA 5-B:5, I(c);

b. on the part of Respondents Jones, improperly creating NHIT to further his financial interests and the financial interests of Harvard Pilgrim in violation of the statutory requirements for formation under RSA 5-B:3, I and RSA 5-B:5, I(a), and on the part of Respondent NHIT, ratifying Jones's improper creation of NHIT, and in conjunction with Respondents ACJEB and Jones, continuing to operate NHIT's pooled risk management program in violation of the statutory requirements for formation under RSA 5-B:3, I and RSA 5-B:5, I(a) to the detriment of NHIT's member political subdivisions;

c. improperly spending assets of the pooled risk management program, derived from public funds contributed to the program by member political subdivisions, for purposes beyond those permitted under RSA 5-B:5, I(c), to confer substantial private benefit on Respondents ACJEB and Jones, in subordination of participating members'

interests, in compromise of return(s) of surplus to which they are entitled under RSA 5-B:5, I(c), and in frustration of, and antithesis to, the purposes of RSA 5-B;

d. manipulating, or authorizing, permitting, or otherwise facilitating manipulation of, rates of contributions to be paid by participating member political subdivisions to buy new business or maintain existing business, resulting in “winners and losers” in violation of RSA 5-B:5, I(c) and (f) and in contravention of the purposes of RSA 5-B; and

e. failing to obtain from the IRS a determination of NHIT’s tax exempt status under Section 115 of the IRCC, frustrating the purposes of a pooled risk management program under RSA 5-B and placing NHIT and its member political subdivisions at risk, without benefit of the exemption, of being liable for federal income taxes.

BUREAU’S RESERVATION OF ITS RIGHT TO AMEND PETITION

The Bureau respectfully reserves its right to amend this Petition, and its prayers for relief contained herein, as this matter progresses and to take additional administrative and/or enforcement action as necessary and required under RSA 5-B. Nothing herein shall preclude the Bureau from bringing additional administrative and/or enforcement action under RSA 5-B.

RELIEF REQUESTED

Temporary Ex Parte Relief

A. The Bureau respectfully requests that, on an expedited basis and without prior notice to the Respondents, the Secretary of State:

1. Pursuant to RSA 421-B:6-613(a), appoint a Presiding Officer to preside over this matter and to conduct all hearings and proceedings as may be deemed necessary or appropriate;

2. Direct the Presiding Officer, upon such appointment, to schedule a hearing for a date as soon as practicable on the Bureau's claims against the Respondents and requests for permanent relief set forth below; and

3. Direct the Presiding Officer to issue a notice of such hearing to be served upon the Respondents with the within Petition.

Preliminary Relief Pending Hearing on Merits

B. The Bureau respectfully requests that, upon such appointment, the Presiding Officer make and issue the following orders to remain in place until such time as a hearing on the merits of the claims stated in this Petition is held:

1. An order requiring each of the Respondents to cease and desist forthwith from violating RSA 5-B as described in this Petition, specifically including, without limitation, from establishing, and demanding payment of, rates of contribution of member political subdivisions in any way that is not based on the actual experience of such members and an actuarial evaluation of the adequacy of such rates;

2. An order requiring Respondent NHIT, and Respondents ACJEB and Jones to the extent they continue to administer or be involved in the administration of NHIT's pooled risk management program, to continue operation of the pooled risk management program in the ordinary course and to use contributions paid to NHIT by participating member political subdivisions to operate the pooled risk management program in the ordinary course, in compliance with RSA 5-B and to preliminarily cease and desist from the acts and failures to act as described in this Petition with respect to such operation that are alleged to violate RSA 5-B and the Respondents' fiduciary duties;

3. An order requiring Respondents ACJEB and Jones to deposit, pending further order of the Presiding Officer, any further commission payments received by them on account of their provision of insurance brokerage services to NHIT into an escrow account in the name of an independent escrow agent on terms to be determined by the Presiding Officer; and

4. An order for such other and further preliminary relief as the Presiding Officer considers necessary and appropriate for the protection and benefit of New Hampshire political subdivisions and the enforcement of RSA 5-B.

Permanent Relief After Hearing on Merits

C. The Bureau respectfully requests that, upon a hearing on the merits of the claims stated in this Petition, the Presiding Officer make and issue the following permanent orders:

1. An order finding that the Respondents have violated RSA 5-B and their fiduciary duties, as alleged in the Petition, and finding in the Bureau's favor with regard to Counts I – V of the Petition and the Bureau's prayers for relief;

2. An order making permanent the preliminary orders previously made by the Presiding Officer;

3. An order that Respondent NHIT shall rescind the Administrator Service Agreement between NHIT and ACJEB;

4. An order requiring Respondents ACJEB and Jones to disgorge or make restitution of sums paid to them by Respondent NHIT or by any third-party as a result of their activities for NHIT in excess of those sums that would have been reasonable and proportionate to the value of any services they provided to NHIT;

5. An order requiring all Respondents to make restitution, jointly and severally, to NHIT's member political subdivisions of any and all sums which should have been returned annually to such members as surplus pursuant to RSA 5-B:5, 1(c);

6. An order requiring all Respondents, jointly and severally, to pay administrative fines and penalties in accordance with RSA 5-B:4-a, VII(a);

7. An order requiring all Respondents, jointly and severally, to reimburse the Bureau for all costs, including, but not limited to, reasonable attorney's fees, associated with its investigation and with bringing and prosecuting this action in accordance with RSA 5-B:4-a, V; and

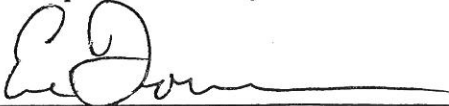
8. An order for such other and further relief as the Presiding Officer considers necessary and appropriate for the protection and benefit of New Hampshire political subdivisions and the enforcement of RSA 5-B.

Respectfully submitted,

Bureau of Securities Regulation,

as Designee of David M. Scanlan,
New Hampshire Secretary of State

Date: February 12, 2024

By: 
Eric Forcier, Deputy Secretary
N.H. Bureau of Securities Regulation
State House Rm 204
Concord, NH 03301
(603) 271-1463
eric.forcier@sos.nh.gov

BERNSTEIN, SHUR, SAWYER & NELSON, P.A.

Date: February 12, 2024

By: 
Christina A. Fexari, Esquire
N.H. Bar No. 19836

Richard C. Gagliuso, Esquire
N.H. Bar No. 874
Matthew Miller, Esquire
N.H. Bar No. 271594
670 N. Commercial Street, Suite 108
P.O. Box 1120
Manchester, NH 03105
(603) 623-8700
cferrari@bernsteinshur.com
rgagliuso@bernsteinshur.com
mmiller@bernsteinshur.com