

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION

In the Matter of: Local Government Center, Inc. et al.

Case No. C-2011000036

**OBJECTION OF PROPERTY-LIABILITY TRUST, INC. TO
PETITIONER'S MOTION FOR ENTRY OF DEFAULT ORDER**

Respondent Property-Liability Trust, Inc. ("PLT"), by and through its attorneys, McLane, Graf, Raulerson & Middleton, Professional Association, hereby files this Objection to the Motion for Entry of Default Order ("Motion") of Petitioner New Hampshire Bureau of Securities Regulation ("BSR"). For the reasons set forth below, as well as in the Objection to the Motion filed by Respondent HealthTrust, Inc. ("HealthTrust"), the Presiding Officer should dismiss the Motion for lack of jurisdiction and as procedurally improper or, in the event the Presiding Officer considers the merits, deny the Motion in its entirety and with prejudice.

1. PLT agrees with the facts and legal positions set forth in HealthTrust's Objection as they relate to PLT and are relevant to the Motion, and thus, rather than restating those facts and legal positions, PLT incorporates them for the purposes of this Objection as if fully set forth herein.

2. Without limiting the foregoing in Paragraph 1, the Presiding Officer should dismiss the Motion because: (a) the Presiding Officer does not have jurisdiction over the BSR's Motion and claim that the Settlement Agreement ("Agreement") does not comply with RSA ch. 5-B or the Final Order dated August 16, 2012 ("Final Order") because the BSR is presenting new allegations and claims that must be heard in a new administrative proceeding; and (b) even if the Presiding Officer decides to consider the merits of the BSR's claims, its Motion should be denied

because the Agreement is in the best interests of PLT members and claimants and does not otherwise violate the Final Order or RSA ch. 5-B.

A. The BSR's Motion Should Be Dismissed for Lack of Jurisdiction and as Procedurally Flawed

3. The BSR is presenting new allegations and claims that relate to a contingent Agreement between PLT and HealthTrust that became effective on January 10, 2014, only after the New Hampshire Supreme Court (“Supreme Court”) rendered its decision to affirm the provision of the Final Order, requiring PLT to repay \$17.1 million to HealthTrust. *Appeal of Local Gov't Ctr., Inc. et al.*, No. 2012-729, slip op. at 18–19 (N.H. Jan. 10, 2014). The only remaining issue that the Supreme Court remanded in the underlying and concluded administrative proceeding related to attorney’s fees. *Id.* at 21–22.

4. By contrast, the Agreement was not part of the underlying administrative proceeding, and thus, it was not part of or contemplated in the Final Order. The parties entered into the Agreement as of October 29, 2013, a full 14 months after the issuance of the Final Order, and the Agreement became operational only after the Supreme Court’s January 10, 2014 decision. There is nothing in RSA ch. 5-B, and in particular RSA 5-B:4-a, or in RSA ch. 421-B, or in particular RSA 421-B:26-a, which grants the Presiding Officer jurisdiction to reopen a proceeding to hear the BSR’s new allegations and claims that are based on conduct that occurred only after the underlying proceeding has concluded and was remanded solely to address the issue of attorney’s fees.

5. Moreover, the BSR does not dispute the fact that PLT and HealthTrust took steps to comply with Paragraph 1 of the Final Order, initially by having the limited liability companies establish separate governing boards and adopt separate bylaws, and then by transferring their respective assets and liabilities to revived voluntary corporations, PLT and HealthTrust, each of

which had its own board of directors and set of bylaws. (Pet'r Mot. ¶ 11.) In addition, there can be no dispute that PLT has taken steps, consistent with its financial position, to address the \$17.1 million repayment obligation to HealthTrust, which was affirmed by the Supreme Court. Thus, PLT and HealthTrust cannot be in "default" of the Final Order.

6. Accordingly, the Presiding Officer should dismiss the Motion for lack of jurisdiction and as procedurally improper because it presents new allegations and claims that must be the subject of a new proceeding commenced by a petition or a cease and desist order. *See* RSA 5-B:4-a, I(a), VI.

B. The BSR's Motion Should Be Denied Because the Agreement Is in the Best Interests of PLT Members and Claimants

7. Even if the Presiding Officer considers the merits of the BSR's claims, the Motion should be denied because the Agreement is in the best interests of the PLT members and claimants and most effectively carries out the Final Order's requirement that PLT repay HealthTrust \$17.1 million. First, however, it is critical for the Presiding Officer to understand the context in which PLT negotiated and entered into the Agreement.

8. As set forth at Paragraph A.9 of the Agreement, the PLT Board of Directors, after consulting with PLT's financial and operational staff, as well as legal counsel, made the business judgment decision that if PLT had to repay the full \$17.1 million, it would render PLT insolvent. That unfortunate outcome could lead to bankruptcy or similar receivership proceedings, which would result in the payment of only part of PLT's coverage obligations, thus causing severe hardship to PLT members and claimants.

9. The PLT Board has a fiduciary obligation to its members. The PLT Board, therefore, using its business judgment, determined that it was in the best interests of PLT members and claimants to take precautionary and preliminary measures and reach an agreement

in advance with HealthTrust as to how PLT would satisfy the \$17.1 million repayment obligation (or a modified amount but still in excess of PLT's ability to pay).

10. PLT and HealthTrust, each governed by separate boards and bylaws, negotiated the terms of the Agreement to take into account PLT's potential insolvency issue and expressly provided at Paragraph C.3 of the Agreement that it would become operational only if the Supreme Court: (a) affirmed PLT's obligation to repay \$17.1 million to HealthTrust; (b) modified the repayment obligation but the repayment remained in excess of PLT's ability to pay without precluding it from paying its coverage obligations in full; or (c) remanded the matter for proceedings affecting the \$17.1 million repayment, which was not subject to further appeal, and requiring PLT to make payments to HealthTrust that exceed PLT's ability to pay without precluding it from paying its coverage obligations in full or imposing such other requirements that inhibit PLT's ability to pay the \$17.1 million or meet its coverage obligations in full.

11. PLT, of course, was hopeful that the Agreement would never become operational, but it has, as a result of the Supreme Court's decision to uphold the full repayment to HealthTrust. PLT, however, can and did pay to HealthTrust only what PLT has, which was everything, to satisfy its repayment obligation. This was accomplished, as provided at Paragraph D of the Agreement, by a complete transfer of all PLT's assets (subject to its liabilities) and runoff obligations to HealthTrust.

12. More importantly, as provided at Paragraph D.3 of the Agreement, PLT took proactive steps to protect its members and claimants by including in the Agreement a requirement that HealthTrust "give priority to the payment of PLT's coverage obligations to claimants and otherwise covered persons." These assurances provide the PLT members and claimants with certainty and stability in knowing that their claims will be covered, in contrast with the uncertainty created by any potential bankruptcy or receivership proceeding.

13. In addition, as set forth at Paragraph F.2.f of the Agreement, PLT took proactive steps to ensure that for any policies written or renewed prior to the date the Agreement became operational that “HealthTrust agree[d] to honor the rate structures offered by PLT for business so written or renewed . . . for fiscal years 2015 and 2016.” Once again, this provides PLT members and claimants with assurances that HealthTrust will honor the rates that were offered to the PLT members and allow for an orderly runoff.

14. Finally, for the reasons set forth in HealthTrust’s Objection, which as noted above is incorporated herein by reference, the Agreement does not violate the Final Order or RSA ch. 5-B, and in particular RSA 5-B:3. Briefly stated, the Agreement honors, to the greatest extent possible, PLT’s obligation to repay HealthTrust as required by the Final Order. The BSR cannot require PLT to pay more than everything it has to satisfy its obligation to HealthTrust. The BSR also cannot identify any language in RSA 5-B:3 that requires advanced notice to PLT members or PLT member approval (by consent, resolution, or otherwise) of an agreement regarding the payment of a debt, which is the purpose of the Agreement from PLT’s perspective. The Final Order also is silent on this issue.

15. Moreover, as explained above, PLT made the Agreement public as soon as the Supreme Court issued its decision. Prior to that time, the Agreement was conditional because it was determined by the PLT Board, using its business judgment, to be in the best interests of its members and claimants to take precautionary and preliminary steps to protect them in the event that the Supreme Court upheld any portion of the repayment obligation that would render PLT insolvent.

WHEREFORE, for the reasons set forth above and in HealthTrust’s Objection, Respondent PLT respectfully requests the Presiding Officer to issue an Order:

A. Dismissing Petitioner's Motion for Entry of Default for lack of jurisdiction and as procedurally improper;

B. In the alternative, and if the merits are reached, denying Petitioner's Motion for Entry of Default in its entirety and with prejudice; and

C. Granting any other relief deemed necessary or just.

Respectfully submitted,

PROPERTY-LIABILITY TRUST, INC.

By its attorneys,

MCLANE, GRAF, RAULERSON & MIDDLETON
PROFESSIONAL ASSOCIATION

Dated: February 18, 2014

By: /s/ Bruce W. Felmly

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Certificate of Service

I hereby certify that on February 18, 2014, I forwarded a copy of this Objection to counsel of record via electronic mail.

/s/ Joel T. Emlen

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