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February 7, 2014

VIA EMAIL


Donald Mitchell, Esq., Presiding Officer  
Office of the Secretary of State  
107 North Main Street  
State House, Room 204  
Concord, NH 033301

In the Matter of: Local Government Center, Inc., et al.  
Case No. C-2011000036

Dear Hearing Officer Mitchell,

Enclosed, please find the Petitioner's Motion for Entry of Default Order. Should you have any questions, please don't hesitate to contact this office at 603-623-8700.

Sincerely,



Roy W. Tilsley, Jr., Esq.

RWT/kmm

CC: William Saturley, Esq. (via PDF/email)  
Brian Quirk, Esq. (via PDF/email)  
Michael Ramsdell, Esq. (via PDF/email)  
David Frydman, Esq. (via PDF/email)  
Patrick Closson, Esq. (via PDF/email)  
Peter Baylor, Esq. (via PDF/email)  
J. David Leslie, Esq. (via PDF/email)

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF STATE

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IN THE MATTER OF: )

Local Government Center, Inc., et al. )

RESPONDENTS )

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C-2011000036

**MOTION FOR ENTRY OF DEFAULT ORDER**

NOW COMES Petitioner, the New Hampshire Bureau of Securities Regulation (the “Bureau”), a part of the Corporations Division within the Department of State, and submits this Motion for Default against Respondents<sup>1</sup> stating in support:

1. On September 2, 2011, the Bureau filed a Staff Petition for Relief with the New Hampshire Secretary of State’s Office, asserting Respondents were violating N.H. RSA § 5-B and 421-B, which was subsequently amended (the “Petition”). Also on September 2, 2011, the Secretary of State, William M. Gardner, issued an Order to Cease and Desist, an Order to Show Cause, and a Hearing Order in response to the Staff Petition.
2. Following a ten-day hearing on the Petition, a final administrative order (the “Final Administrative Order”) was issued on August 16, 2012 in which Respondents were found in violation of certain aspects of N.H. RSA § 5-B. Respondents sought reconsideration and rehearing and then timely appealed the Final Administrative Order to the New Hampshire Supreme Court pursuant to N.H. RSA § 5-B:4-a.
3. On January 10, 2014, the New Hampshire Supreme Court issued a decision in Respondents’ appeal of the above matter, upholding substantially all of the Final Administrative Order with the exception of those portions that concerned prospective setting of reserve levels and the

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<sup>1</sup> As of the issuance of the January 10, 2014 Supreme Court decision in this matter, named Respondents included the Local Government Center, Inc., Local Government Center Real Estate, Inc., Local Government Center HealthTrust, LLC, Local Government Center Property-Liability Trust, LLC, HealthTrust, Inc., New Hampshire Municipal Association Property-Liability Trust, Inc., LGC-HT, LLC, and Local Government Center Workers’ Compensation Trust, LLC.

prospective purchase of reinsurance. The Court remanded the matter to the Hearings Officer for the purpose of re-determining the payment of Petitioner's fees by Respondent.

### **Provisions of the Final Administrative Order**

4. The Final Administrative Order required that “[n]o 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.” Final Order at 73, ¶ 1.
5. Paragraph 2 of the Final Administrative Order further states that:

[f]ailing timely reorganization as ordered in §1, the LGC, 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 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 ¶ 2
6. Although Paragraphs 1 and 2 of the Final Administrative Order and the relief outlined therein were included within Respondents' Notice of Appeal, Respondents ultimately withdrew these issues from their appeal and confirmed their intentional decision not to appeal these issues during the oral argument conducted on November 14, 2013. The Supreme Court simply adopted the governance related provisions of the Final Administrative Appeal as part of its decision in this matter. *Appeal of the Local Government Center*, Docket No. 2012-0729, slip op. at 6 (Decided January 10, 2014). See also, *id.* at 14 (“RSA 5-B:3 does not sanction what the presiding officer found occurred here. Here, three pooled risk management programs shared a single board of directors, even though RSA 5-B:5, I(b) requires each program to have its own board.”).
7. Paragraph 13 of the Final Administrative Order states the following:

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.

Final Administrative Order at 78, ¶ 13.

8. Respondents challenged the aspect of the Final Administrative Order that required repayment of the \$17.1 million unlawful subsidy, but the Court denied this portion of Respondents' appeal. *Appeal of the Local Government Center*, slip op. at 14-15 (“[F]unds that otherwise would have been returned to some political subdivision members were instead used to subsidize a pooled risk management program that benefitted other political subdivisions. Under those circumstances, we cannot conclude that the presiding officer’s finding that the post-2003 transfers from HealthTrust and P-L Trust to Worker’s Compensation Trust violated RSA chapter 5-B was unlawful, unjust, or unreasonable.”)

9. Paragraph 14 of the Final Administrative Order states the following:

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).

Final Administrative Order at 79, ¶ 14.

10. This portion of the Final Administrative Order concerning repayment of the unlawful subsidy was also challenged on appeal, but the challenge was denied. Slip op. at 14-15.

### **The Initial Reorganization**

11. Respondents took the following actions in an effort to comply with Paragraph 1 of the Final Administrative Order:
  - a. Initially, in November 2012, Local Government Center HealthTrust, LLC (“LGCHT”) and Local Government Center Property-Liability Trust, LLC (“LGCPLT”) adopted separate Bylaws and appointed a separate Board of Managers. The member of both of these LLCs remained the Local Government Center, Inc.
  - b. Subsequently on September 1, 2013, LGCHT transferred all of its assets and liabilities to HealthTrust, Inc. (“HT”). HT had been revived in 2011 and was the original New Hampshire non-profit voluntary corporation that had originally operated the Health Trust business prior to the attempted merger which was challenged in the original Petition. HT had its own set of by-laws and its own Board of Directors.

- c. Similarly, on September 1, 2013, LGCPLT transferred all of its assets and liabilities to Property-Liability Trust, Inc. ("PLT"). PLT had been revived in 2011 and was the original New Hampshire non-profit voluntary corporation that had originally operated the Property Liability Trust business prior to the attempted merger which was challenged in the original Petition. PLT had its own by-laws and its own Board of Directors, with some limited overlap between the PLT Board and HT Board.

### The Settlement Agreement

12. Unbeknownst to the Bureau, respondents HealthTrust, Inc ("HT") and Property-Liability Trust, Inc. ("PLT") entered into a confidential settlement agreement ("Confidential Settlement Agreement") whereby, in the event the Supreme Court ruled against Respondents, the terms of the agreement would become operative. (See Attached Exhibit A.) Pursuant to the Confidential Settlement Agreement, all of PLT's assets, liabilities, staff, and operations were transferred to HT in full satisfaction of the \$17.1 million debt owed to HT by PLT pursuant to the Final Administrative Order in this matter.
13. The Confidential Settlement Agreement became effective upon the issuance of a final Supreme Court decision adverse to PLT. This agreement was not made public until January 10, 2014, the date the Supreme Court's decision in this matter and the date the HT and PLT boards decided to forgo any effort at reconsideration. The Confidential Settlement Agreement was executed by Peter Curro for HT on October 28, 2013 and by Dennis Pavlicek for PLT on October 29, 2013, after telephonic board meetings.
14. As a result of the Confidential Settlement Agreement, HT, under the guidance of HT's Executive Director and HT's Board, now runs the property-liability and workers compensation lines of coverage, formerly run and managed by PLT's board and management.
15. HT appears to not have completed any independent due diligence regarding the value of the assets and the extent of the liabilities it acquired prior to the execution of the Confidential Settlement Agreement or at any time since. Instead, according to statements made by J. David Leslie, counsel for HT, the HT board simply relied upon the representations made by the PLT board, managers, actuaries, and auditors. (Mr. Leslie's comments were made during a meeting with the Bureau that occurred on February 4, 2014).

16. At the time the Confidential Settlement Agreement was executed, PLT determined that repayment of the \$17.1 million subsidy to HT would leave it insolvent. HT claims that it acquired the assets and liabilities of PLT in order to maximize the portion of the \$17.1 million that it could obtain from PLT. HT has represented that it is merely running off the property-liability and workers compensation lines, but HT has not taken any steps to reduce staff or preserve value as would be expected in a typical run off. At the February 4th meeting with the Bureau, HT represented that it anticipated, based on reports provided by PLT, an approximate short-fall of \$5 million on the \$17.1 million obligation once the property-liability and workers compensation lines are run out. Mr. Leslie and counsel for PLT, Patrick Closson, also represented to the Bureau during the same meeting that, although PLT continues to exist as a corporation, it is a shell with all of its former operations now fully and completely under the control of the HT board and management.

17. Implicit in the Confidential Settlement Agreement is the fact that PLT's \$17.1 million obligation will not be repaid in full. Also the return of any of the repaid monies to HT members, as required by Paragraph 14 of the Final Administrative Order, will be significantly delayed by the run off of the property-liability and workers compensation lines. By this agreement, HT waived any further legal effort to pursue a deficiency in repaying the unlawful subsidy. As stated in the Confidential Settlement Agreement:

HealthTrust accepts the assignment of all PLT assets and liabilities in full and complete satisfaction of PLT's obligations to it pursuant to the FINAL order, including without limitation, the Ordered Re-Payment or a Similar Order, and PLT shall have no further obligation to HealthTrust under the terms of the Final Order or Similar Order.

18. The \$17.1 million debt owed by PLT to HT, is not a debt incurred in the ordinary course of business, but rather results from the BSR's enforcement efforts and the Final Administrative Order entered by the Hearings Officer. A primary purpose of this enforcement action and the Final Administrative Order was to protect the rights of member political subdivisions to their portion of pool surplus. As such, any compromise or forgiveness of the \$17.1 million debt cannot be accomplished simply by agreement between HT and PLT; but rather is subject to the jurisdiction of the Bureau and oversight by the Hearings Officer to assure that any compromise or forgiveness complies with the Final Administrative Order and adequately protects the interest of HT members to their portion of the \$17.1 million. Despite this

obligation, no notice of the proposed transaction was provided to the Bureau. The Bureau only learned of the transfer after it had been fully effectuated.

19. The Confidential Settlement Agreement was entered into between HT and PLT at the end of October 2013, and was contingent upon, and took effect upon, the Supreme Court affirming that portion of the Final Administrative Order requiring the property-liability pool to repay the \$17.1 million subsidy to the health trust pool. No notice was provided to any third party, including but not limited to, the Supreme Court, the Bureau, the Hearings Officer in this matter, and participating political subdivisions of the proposed transfer in the Confidential Settlement Agreement until after the transfer had closed. During the time that the Confidential Settlement Agreement was pending, PLT sold new or renewed business to approximately 140 members without disclosing the pending agreement to transfer this PLT business to the HT pool; thereby extending the period necessary to conduct the run off of the property-liability and workers compensation lines and further delaying the return of the \$17.1 million subsidy to members as required by the Final Administrative Order.
20. The HT and PLT boards did not provide any notice to their respective members prior to the Confidential Settlement Agreement becoming operative on January 10, 2014 that the members in each of the pools would have very different assets, liabilities and lines of coverage in their risk pool. HT members were not informed they would be responsible for the assets, liabilities and operations of property, casualty and workers compensation lines and PLT members were not informed they would be responsible for the assets, liabilities and operations of healthcare insurance lines. No member of HT or PLT was asked to approve the adoption of the Confidential Settlement Agreement and none have been asked to ratify it. No political subdivision now required to be a member of the HT risk pool, as currently configured, adopted a resolution seeking to join and form same. *See* RSA 5-B:3, I. *See also*, letters attached as Exhibits B and C, respectively from the boards of selectman of North Hampton and Stratham.
21. The Confidential Settlement Agreement and the transfers undertaken thereunder implicate both the Pooled Risk Management Program statute, RSA ch. 5-B, and several aspects of the Final Administrative Order, as affirmed on appeal. PLT and HT violated the Final Order and RSA ch. 5-B by their conduct.

22. The enabling statute for pooled risk management groups, N.H. RSA 5-B:1, allows for the pooling of risks by political subdivisions, as “insurance and risk management is essential to the proper functioning of political subdivisions . . . .” N.H. RSA 5-B:3, I allows for this pooling, but requires that operative agreements be entered into by “[a] political subdivision, by resolution of its governing body . . . .” N.H. RSA 5-B:3, I further states that “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 . . . .”
23. The Confidential Settlement Agreement between HT and PLT was not disclosed to any political subdivision until after the property-liability and workers compensation lines had been transferred to HT. As such, political subdivisions who had agreed to pool money for workers compensation and/or property liability coverage with money from other political subdivisions for the same coverages, now find their monies pooled in the HT risk pool which consists mostly of monies to provide employee health benefits. Similarly, HT risk pool members were not provided with notice or given an opportunity to approve the acquisition of PLT’s lines of coverage and associated risks. Since political subdivisions were not provided with notice of this change, they were unable to provide the necessary resolution or consents required under RSA 5-B:3. Apart from the statutory requirement, the Confidential Settlement Agreement, and the transfers made thereunder, are in direct violation of Paragraph 1 of the Final Administrative Order as, once again, both the property-liability lines and the health trust lines are now subject to a single conflicted board of directors and a single set of bylaws.
24. Further, the purpose of the Confidential Settlement Agreement, to extinguish the \$17.1 million debt owed by PLT to HT, violates the requirements of Paragraphs 13 and 14 of the Final Administrative Order requiring the return of the \$17.1 million unlawful subsidy.
25. The initial Staff Petition for Relief in this matter sought an order requiring Respondents to cease and desist their actions that violated N.H. RSA 5-B. The Final Administrative Order required Respondents to take certain actions in order to comply with RSA 5-B. Respondents are in default of the requirements of the Final Administrative Order, and in particular those portions that required Respondents to re-organize with separate boards and bylaws and to repay \$17.1 million in unlawful subsidy payments and, therefore, should be



ordered to cease and desist violating the Final Administrative Order and N.H. RSA 5-B. Pursuant to the authority extended in RSA 5-B:4-a, I and II, as a result of these defaults, the Final Administrative Order should be directly enforced and if Respondents are found not to be in compliance Respondents should be deemed not entitled to the statutory exemptions from the state's insurance laws and from state taxation granted pursuant to RSA 5-B:6. After complying with the statutory and contractual obligations required of HT upon the conclusion of its business as a risk pool pursuant to RSA 5-B, HT may re-organize, if it so chooses, as a fully regulated New Hampshire domiciled insurer.

WHEREFORE, Petitioner respectfully requests that the Hearings Officer:

- A. Issue an order finding Respondents in violation of the August 16, 2012 Order and N.H. RSA § 5-B;
- B. Issue an order finding that Respondents shall cease and desist operating in violation of the August 16, 2012 Order and N.H. RSA § 5-B or be deemed not entitled to operate as RSA 5-B pools, and to claim the protections of N.H. RSA 5-B:6 due to Respondents' failures to comply with the August 16, 2012 Order and N.H. RSA § 5-B;
- C. Grant such other and further procedural and substantive relief as may be just and proper; and
- D. Award the Bureau its fees and costs in this matter.

Respectfully submitted,  
The Bureau of Securities Regulations  
State of New Hampshire  
By its attorneys,  
Bernstein, Shur, Sawyer &  
Nelson, P.A.

Dated this 7th day of February, 2014

/s/ Andru H. Volinsky  
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/s/ Earle Wingate  
The Bureau of Securities Regulation  
Earle F. Wingate, III No. 2763  
Adrian S. LaRochelle No. 20350

Certificate of Service

I hereby certify that I have served a copy of this motion upon counsel for the LGC successor entities by U.S. Mail and electronically this 7<sup>th</sup> day of February, 2014, those counsel being William Saturley, Brian Quirk, Michael Ramsdell, David Frydman, Patrick Closson, Peter Baylor, and J. David Leslie.

/s/ Andru H. Volinsky

## SETTLEMENT AGREEMENT

### Preamble

This Settlement Agreement ("Agreement") is entered into as of the Effective Date (defined below at ¶ C.1) by and between Property-Liability Trust, Inc. ("PLT") as assignee of the Local Government Center Property-Liability Trust, LLC, and Health Trust, Inc. ("HealthTrust"), as assignee of the Local Government Center Health Trust, LLC, to satisfy the obligations of PLT to HealthTrust, if any, under the August 16, 2012 final order of a presiding officer of the New Hampshire Department of State ("Final Order") in a manner that provides for the orderly fulfillment of all existing coverage obligations to PLT Members. HealthTrust and PLT, each independently, is a "Party" hereunder and together, they are the "Parties".

### A. Recitals

1. HealthTrust is a New Hampshire voluntary corporation organized under RSA 292 and operating as a pooled risk management program under RSA 5-B. The mission of HealthTrust is to provide high quality, cost-effective employee benefit products and services for public employers and employees in New Hampshire in order to reduce costs through pooling strategies with a commitment to education, health promotion, and disease prevention.

2. PLT is a New Hampshire voluntary corporation organized under RSA 292 and operating as a pooled risk management program under RSA 5-B. The mission of PLT is to provide high quality, affordable property liability, workers compensation and unemployment coverages to public employers in New Hampshire by pooling their risk and stabilizing costs through a commitment to loss prevention and risk management training.

3. From the 1980s through the entry of the Final Order, the predecessors in interest of HealthTrust and PLT operated as related entities, shared offices and staff, from July 1, 2003 shared a board of directors, and presented themselves in the marketplace as offering complementary products and services. Market participants may therefore view the Parties as a consolidated entity and may not distinguish between the financial health of one corporation and the financial health of the other corporation.

4. HealthTrust and PLT were among the respondents named in a staff petition submitted to the New Hampshire Secretary of State ("Secretary") by the Bureau of Securities Regulation ("BSR") alleging, among other things, violations of RSA 5-B. The Secretary issued an order on September 2, 2011, granting the BSR petition. HealthTrust and PLT requested a hearing which ultimately resulted in the issuance of the Final Order. The Final Order imposes both monetary and non-monetary obligations on the Parties.

5. Among the non-monetary obligations contained in the Final Order and applicable to either or both of the Parties are requirements that the Parties reorganize the structure of the pooled management programs to provide each program with an independent board and its own set of bylaws (Final Order at 73), amend their membership requirements (*Id.* at 74), purchase reinsurance (*Id.* at 75), reduce the level of capital retained (*Id.* at 74-76, 77-78), and abide by rigid limitations going forward (*Id.* at 76-77, 78). The Final Order charges the BSR, rather than

the HealthTrust Board of Directors, with determining the proper level of earnings and surplus to be retained and the proper amount to be distributed to HealthTrust members. (Id. at 75, 76).

6. Among the monetary obligations contained in the Final Order are requirements that HealthTrust disburse \$33.2 million in cash to its members (Id. at 74-76), that PLT disburse \$3.1 million in cash to its members (Id. at 77-78), and that PLT re-pay \$17.1 million to HealthTrust on or before December 1, 2013 (“Ordered Re-Payment”) (Id. at 78).<sup>1</sup> The Final Order authorizes PLT to borrow funds from “an independent entity at commercially reasonable terms in consultation with the [BSR]” to make the Ordered Re-Payment. Id. Following receipt of the Ordered Re-Payment, the Final Order requires that any amounts found to exceed the level of earnings and surplus permitted to be maintained by HealthTrust shall be distributed to HealthTrust members. Id. at 76-77, 79.

7. The Parties do not believe that the Final Order is lawful and are presently pursuing appeal before the New Hampshire Supreme Court in the matter of Appeal of Local Government Center Inc., et. al., Case No. 2012-729 (“Supreme Court Appeal”). The Parties have been advised by their attorneys that it is unlikely that an opinion will be issued in the Supreme Court Appeal prior to December 1, 2013, when the Final Order mandates that the Ordered Re-Payment occur.

8. Excluding consideration of the Ordered Re-Payment, as of August 31, 2013, the liabilities of PLT are \$37.7 million with assets of \$49.9 million resulting in net assets of \$12.2 million.

9. After consulting with PLT’s financial and operational staff as well as legal counsel, it is the business judgment of the PLT Board of Directors that:

- a. The present net (of liabilities) unrestricted assets of PLT are sufficient (in the absence of the Ordered Re-Payment) to responsibly operate PLT as a going concern and that such operation is in the interests of PLT and its members;
- b. There is no reasonable likelihood that the unrestricted net assets of the PLT will exceed \$17.1 million on or before December 1, 2013;
- c. If PLT were required to report the Ordered Re-Payment on its financial statements as a current liability, PLT’s current liabilities would substantially

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<sup>1</sup> The Final Order relied on the December 31, 2010 PLT financial statements. PLT’s reported “total net assets” (net of liabilities) were \$10,401,808. The Final Order directed the distribution of \$3.1 million of “excess surplus” to PLT members and Ordered Re-Payment of \$17.1 million to HealthTrust. Neither of those items was included as a liability in the December 31, 2010 financial statements. The financial effect of the Final Order, based on the PLT 2010 net asset numbers relied upon by the Presiding Officer, was therefore as follows: \$10,401,808 - \$3,100,000 - \$17,100,000 = (\$9,798,192).

exceed its assets. The Ordered Re-Payment therefore presents a solvency problem for PLT rather than a problem of liquidity;<sup>2</sup>

- d. PLT's net unrestricted assets at August 31, 2013 were \$ 12.2 million, an amount \$4.9 million less than the \$17.1 million Ordered Re-Payment. Continuing to operate PLT without a definitive and agreed upon strategy that addresses the risk associated with the Ordered Re-Payment becoming payable would be difficult and imprudent and therefore not in the best interest of PLT or its members;
- e. If the \$17.1 million Ordered Re-Payment is affirmed, bankruptcy or similar receivership proceedings would result in the payment of only part of PLT's coverage obligations, thereby causing severe hardship to PLT members and claimants; and,
- f. It is in the best interest of PLT's members and claimants for PLT to reach agreement in advance with Health Trust on how the \$17.1 million Ordered Re-Payment obligation is to be satisfied in the event it (or some modified amount greater than PLT's ability to pay) is affirmed or ordered as a result of the Supreme Court Appeal.

10. The HealthTrust Board of Directors is concerned that the insolvency of PLT (and resulting hardship for PLT members) would cause serious reputational harm to HealthTrust due to the two entities' long association in the marketplace. In addition, because the \$17.1 million obligation to HealthTrust would be the cause of PLT's insolvency, the HealthTrust Board of Directors is also concerned that HealthTrust may wrongfully be viewed as being responsible for hardships imposed on PLT members and claimants. Where the municipalities, school districts, and other entities injured by any PLT default are either present or potential HealthTrust customers, the HealthTrust Board of Directors is concerned that such a misapprehension may substantially erode HealthTrust's goodwill, harm its business prospects, and cause dangerous operational destabilization.

11. After consulting with HealthTrust's financial and operational staff as well as legal counsel, it is the business judgment of the HealthTrust Board of Directors that:

- a. The continuing, stable operation of PLT as a going concern, pending a decision on the Supreme Court Appeal, is in the financial interest of HealthTrust and its members;
- b. Default by PLT in payment of its coverage obligations is not in the financial interests of HealthTrust or its members;

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<sup>2</sup> As suggested by the Final Order (see, supra, ¶ A.6), representatives of PLT have reached out to potential lenders regarding the extension of a loan to provide cash with which to make the Ordered Re-Payment. No lenders have indicated a willingness to do so.

- c. Based on review of PLT financial records provided, it is reasonably likely that any attempt to execute on the Ordered Re-Payment on or after December 1, 2013, could force PLT to seek the protections of bankruptcy or similar receivership proceedings;
- d. Forcing PLT to default on its coverage obligations, to file for bankruptcy, or to seek the protection of receivership proceedings is not in the financial interests of HealthTrust or its members because of the uncertainty, potential added administration cost and delay in realizing on PLT's available assets attendant to such proceedings;
- e. If the Final Order is affirmed, it is in the financial interests of HealthTrust and its members to recover as much of the Ordered Re-Payment as possible consistent with the orderly run-off of PLT business; and,
- f. It is most likely that HealthTrust could successfully run-off PLT's book of business and that, following such run-off, significant assets would remain to satisfy a portion of PLT's Ordered Re-Payment obligations to HealthTrust.

12. Despite their belief that the Order is unlawful and causes them irreparable harm, the Parties have complied with all aspects of the Final Order (including those elements listed above in ¶¶ A.5 and A.6) aside from the Ordered Re-Payment which exceeds PLT's ability to pay without precluding it from paying its coverage obligations in full.

13. PLT does not have the right to assess its members in order to fund the payment of property/liability-related obligations. PLT does have a limited right to assess its workers' compensation participating groups for funds needed to pay workers' compensation claims.

14. For the reasons stated above, the Parties desire either that PLT continue as a going concern or, if that result proves impossible, that HealthTrust recover as much of the Ordered Re-Payment as possible without causing PLT to default on its coverage obligations. To that end, the Parties therefore agree as follows:

**B. Location of Definitions** ("Defined Term".....paragraph at pg. \_\_)

"Agreement" .....Preamble at 1	"Party" .....Preamble at 1
"Business Court" .....G.2 at 9	"PLT" .....Preamble at 1
"BSR" .....A.4 at 1	"PLT Employees" ..... E.1 at 6
"Effective Date" ..... C.1 at 4	"Secretary" .....A.4 at 1
"Final Order" .....Preamble at 1	"Similar Order" ..... C.3.c at 5
"HealthTrust" .....Preamble at 1	"Supreme Court Appeal" .....A.7 at 2
"Ordered Re-Payment" .....A.6 at 2	

**C. Effectiveness and Operation**

1. This Agreement is effective upon signature by the Parties' duly authorized representatives ("Effective Date").

2. The Parties agree that if the New Hampshire Supreme Court does not affirm the Ordered Re-Payment or modifies it in a manner such that it does not exceed PLT's ability to pay without precluding it from paying its coverage obligations in full (and a final order on remand does not impose such other requirement that inhibits PLT's ability to pay the Ordered Re-Payment or meet its coverage obligations in full) (as described in ¶ C.4), this Agreement shall be null, void, and of no effect.

3. This Agreement will become operational -- subject to the decision periods set forth in ¶ C.5, below -- if any of the following conditions occur:

- a. The Ordered Re-Payment is affirmed as a result of the Supreme Court Appeal;
- b. The Ordered Re-Payment is modified by the New Hampshire Supreme Court but the modified Ordered Re-Payment remains in excess of PLT's ability to pay without precluding it from paying its coverage obligations in full; or
- c. The New Hampshire Supreme Court remands the matter for proceedings affecting the Ordered Re-Payment and an order not subject to further appeal is issued that requires PLT to make payments to HealthTrust that exceed PLT's ability to pay without precluding it from paying its coverage obligations in full or imposes such other requirement that inhibits PLT's ability to pay the Ordered Re-Payment or meet its coverage obligations in full ("Similar Order").

4. If the Ordered Re-Payment is modified by the New Hampshire Supreme Court or PLT become obligated or subject to other requirements under a Similar Order, the questions whether (a) the amount of the payment exceeds PLT's ability to pay without precluding it from paying its coverage obligations in full, and (b) any requirement imposed upon PLT inhibits PLT's ability to meet its coverage obligations in full will be decided by the PLT Board of Directors in its sole discretion.

5. Should the New Hampshire Supreme Court modify the Ordered Re-Payment or should PLT be obligated or subject to other requirements under a Similar Order, PLT shall provide notice to HealthTrust within two business days of the later of expiration of the applicable period for appeal or reconsideration or the Court's order on same, whether the modified amount exceeds its ability to pay without precluding it from paying its coverage obligations in full or imposes such other requirement that inhibits PLT's ability to pay the Ordered Re-Payment or meet its coverage obligations in full.

#### **D. Contingent Transfer of Assets and Liabilities and Runoff of Coverage Obligations**

The terms and conditions set forth in this section D are not operational upon the Effective Date but, instead, only become operational as described in ¶¶ C.2 and C.3 above. If and when the Agreement becomes operational:

1. PLT hereby transfers all of its assets and liabilities to HealthTrust.

2. HealthTrust accepts the assignment of all PLT assets and liabilities in full and complete satisfaction of PLT's obligations to it pursuant to the Final Order, including without limitation, the Ordered Re-Payment or a Similar Order, and PLT shall have no further obligation to HealthTrust under the terms of the Final Order or Similar Order.

3. HealthTrust will manage the runoff of PLT's coverage obligations, as provided in Section E of this Agreement, using the assets transferred from PLT and the existing administrative structure. The administrative expenses of that runoff will be paid from the transferred assets. To the extent of such transferred assets, HealthTrust will give priority to the payment of PLT's coverage obligations to claimants and otherwise covered persons.

4. PLT's transfer of its rights to HealthTrust pursuant to this Agreement includes its limited right to assess members respecting their workers' compensation coverage in order to address any shortfall in the transferred assets with respect to payment of workers' compensation coverage obligations. Consistent with the assignment of those limited rights to assess workers compensation members, HealthTrust hereby confirms for the purposes of clarity that it will not attempt to assess such PLT workers' compensation members with respect to any shortfall relating to the Ordered Re-Payment or Similar Order.

5. Any transferred assets remaining after the satisfaction of PLT's coverage obligations shall be the sole property of HealthTrust received in full satisfaction of PLT's obligations under the Final Order or Similar Order.

6. Each Party agrees that as of the date this Agreement becomes operational each will take such actions and to execute all such documents as may be reasonably requested in order to effectuate the transfer of the assets and liabilities from PLT to HealthTrust.

**E. HealthTrust's Operations and Governance After this Agreement Becomes Operational**

1. In order to facilitate the economical and efficient administration of the transferred PLT assets and liabilities and the continuity of operations and service to the PLT members, HealthTrust agrees that as of the date this Agreement becomes operational it will initially hire each employee of PLT (the "PLT Employees") until it determines the best staffing option for on-going operations. HealthTrust, further agrees that as of the date this Agreement becomes operational it will (i) provide the PLT Employees with at least the same level of base salary that was provided to each PLT Employee prior to the date this Agreement becomes operational, and (ii) provide the PLT Employees with employee benefits that are no less favorable in the aggregate to those benefits provided to each such PLT Employee prior to the date this Agreement becomes operational, except that HealthTrust will not fund severance benefits, if any, agreed by PLT or otherwise provide severance benefits. To the extent HealthTrust deems appropriate, the PLT Employees shall receive credit (including, for purposes of eligibility to participate, vesting, benefit accrual and eligibility to receive benefits), under any employee benefit plan, program or arrangement established or maintained by HealthTrust under which each PLT Employee may be eligible to participate on or after the date this Agreement becomes operational to the same extent recognized by PLT under comparable benefit plans immediately



prior to the date this Agreement becomes operational, except to the extent such credit would result in the duplication of benefits for the same period of service. Such plan, program or arrangement shall credit each PLT Employee for service accrued on or prior to the date this Agreement becomes operational as an employee of the PLT, where such service was properly credited under a comparable plan of PLT prior to the date this Agreement becomes operational. In addition, HealthTrust agrees to recognize and honor all Family and Medical Leave Act entitlements of the PLT Employees to the same extent such entitlements would be recognized by PLT if the transaction contemplated by this Agreement did not occur. Nothing contained in this Agreement shall restrict the ability of HealthTrust to adjust compensation or benefits in the future or terminate the employment of any PLT Employee for any reason at any time after the date this Agreement becomes operational.

2. HealthTrust will cause the operating and financial results for its health coverages and the PLT "runoff" to be tracked and reported (within its financial statements) separately. As determined by the Supreme Court Appeal and unless otherwise modified by law, the provisions of the Final Order shall apply separately to the "health coverage pool" and the PLT "runoff" and claim payments for the PLT "runoff" will not be included in any calculations of surplus to be retained by HealthTrust. In fulfilling its responsibilities under this Agreement, HealthTrust will fully comply with any and all corporate governance requirements imposed by law.

**F. Representations and Warranties**

1. PLT represents and warrants that:
  - a. As of the date of this Agreement it is duly organized and validly existing and subsisting under the laws of the State of New Hampshire, it is in good standing, and neither the execution, delivery, nor performance of this Agreement will violate any law binding on PLT;
  - b. PLT has the full right and power to enter into this Agreement and to perform all obligations hereunder;
  - c. The financial records that PLT has provided to HealthTrust for review are a complete and accurate reflection of the state of its business as of September 30, 2013.
  - d. The PLT Board of Directors has reviewed the Agreement, sought such advice and information as it believed necessary, and voted in favor of adopting the Agreement;
  - e. The individual signing this Agreement on behalf of PLT is duly authorized to do so;
  - f. PLT will not make distributions to members, otherwise dissipate its net unrestricted assets, or substantially change its business operations, including coverage pricing and terms, after the Effective Date without the advance approval of HealthTrust which will not be unreasonably withheld.

- g. PLT represents that PLT will be offering its members property-liability coverages, unemployment compensation coverages, and workers' compensation coverages for fiscal years 2015 and 2016. While PLT normally goes to market with a three year rate structure, it plans to go to market only with a two year rate structure for the upcoming rating period. PLT warrants that the planned rate structures for fiscal years 2015 and 2016 are actuarially sound as determined by a qualified actuary and will make such actuarial support available to Health Trust on request.

2. HealthTrust represents and warrants that:

- a. As of the date of this Agreement it is duly organized and validly existing and subsisting under the laws of the State of New Hampshire, it is in good standing, and neither the execution, delivery, nor performance of this Agreement will violate any law binding on HealthTrust;
- b. PLT has provided sufficient financial records for review reflecting the state of its business as of September 30, 2013.
- c. HealthTrust has the full right and power to enter into this Agreement and to perform all obligations hereunder;
- d. The HealthTrust Board of Directors has reviewed the Agreement, sought such advice and information as it believed necessary, and voted in favor of adopting the Agreement;
- e. The individual signing this Agreement on behalf of HealthTrust is duly authorized to do so.
- f. HealthTrust acknowledges that PLT will be offering its members property-liability coverages, unemployment compensation coverages, and workers' compensation coverages for fiscal years 2015 and 2016 based on planned rate structures that are actuarially sound as determined by a qualified actuary. In the event that this Agreement becomes operational, HealthTrust agrees to honor the rate structures offered by PLT for business so written or renewed prior to that date for fiscal years 2015 and 2016.

## **G. Miscellaneous**

1. *Notice.* All communications under this Agreement, including notice, approval or any waiver, extension or other communication required to be reduced to writing, shall be delivered (either in hardcopy or by electronic means) as follows:

If to HealthTrust: Peter Bragdon, Executive Director  
Health Trust, Inc.  
PO Box 617  
Concord, NH 03302-0617  
pbragdon@healthtrustnh.org

If to PLT: Wendy Lee Parker, Executive Director  
Property-Liability Trust, Inc.  
PO Box 2008  
Concord, NH 03302-2008  
wparker@pltnh.org

2. *Choice of Law and Venue.* This Agreement, any disputes which may arise in connection with the interpretation or enforcement of this Agreement, and the rights and obligations of the Parties shall be governed by the laws of the State of New Hampshire without regard or reference to choice or conflict of law rules. The Parties consent to the exclusive jurisdiction of the Business Court Docket of the New Hampshire Superior Court ("Business Court") for the resolution (subject to a Party's right of appeal) of any disputes pursuant to this Agreement. If for any reason the matter is not accepted by the Business Court then the Parties consent to the exclusive jurisdiction of the Superior Court for Merrimack County.

3. *Interpretation.* The section headings herein are intended for reference and shall not by themselves determine the construction or interpretation of this Agreement. Unless the context of this Agreement clearly requires otherwise: (a) references to the plural include the singular, the singular the plural, and the part the whole; (b) references to one gender include all genders; (c) "or" has the inclusive meaning frequently identified with the phrase "and/or", (d) "including" has the inclusive meaning frequently associated with the phrases "but not limited to" or "without limitation"; (e) references to "hereunder", "herein", or "hereof" relate to this Agreement as a whole; (f) the terms dollars and "\$" refer to United States dollars. Any reference herein to any statute, rule, regulation, or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation, or agreement as it may be modified, varied, amended, or supplemented from time to time.

4. *Preamble and Recitals.* The Preamble and Recitals to this Agreement are a part of this Agreement as if set forth in full herein.

5. *Waiver.* Any agreement on the part of any Party hereto to any extension or waiver shall be valid only if in writing signed by the Party granting such waiver or extension and shall be a one-time waiver or extension only, and any such waiver or extension or any other failure to insist on strict compliance with any duty or obligation hereunder shall not operate as a

waiver or extension of, or estoppel with respect to, any continuing, subsequent, or other failure to comply with this Agreement;

6. *Rights and Remedies.* Except as otherwise provided in this Agreement, the rights, powers, remedies, and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies, and privileges provided by applicable law.

7. *Entire Understanding; Modification.* This Agreement represents the entire understanding between the Parties with respect to the subject matter hereof and supersedes any and all prior understandings, agreements, plans, and negotiations, whether written or oral, with respect to the subject matter hereof. All modifications of this Agreement must be in writing and signed by each of the Parties hereto.

8. *Time of the Essence.* The Parties hereto hereby agree that time shall be of the essence with respect to the performance of this Agreement.

9. *Third Party Beneficiaries.* This Agreement does not and is not intended to confer any rights or remedies upon any person other than the Parties.

10. *Execution in Counterparts.* This Agreement may be executed in one or more counterparts, any of which shall be deemed an original and all of which taken together shall constitute one and the same Agreement. Execution and delivery of this Agreement may be evidenced by facsimile or electronic transmission.

**Property-Liability Trust, Inc.**

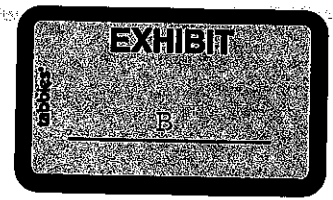
By: 

Dennis J. Pavlicek  
Chairman of the Board  
October 27, 2013

**Health Trust, Inc.**

By: 

Peter J. Curto  
Chairman of the Board  
October 28, 2013



Jim Maggiore, Chair  
Phil Wilson, Vice Chair  
Larry Miller, Member



Municipal Offices  
233 Atlantic Avenue  
North Hampton, NH 03862

Tel: (603) 964-8087  
Fax: (603) 964-1514

TOWN OF NORTH HAMPTON, NEW HAMPSHIRE  
THE SELECT BOARD

January 24, 2014

RECEIVED

JAN 27 2014  
NEW HAMPSHIRE  
DEPARTMENT OF STATE

The Honorable William M. Gardner  
New Hampshire Secretary of State  
State House, Room 204  
107 North Main Street  
Concord, New Hampshire 03301

RE: Health Trust/Property and Liability Trust Settlement Agreement

Dear Secretary Gardner:

We strongly oppose implementation of the "Settlement Agreement" ("Agreement") between Health Trust, Inc. ("HT") and Property and Liability Trust, Inc. ("PLT") that was disclosed shortly after the New Hampshire Supreme Court issued its decision in the dispute between the BSR and the LGC.

We urge you and the Bureau of Securities Regulation, as the regulatory authorities that oversee HT and PLT, to take whatever steps are available to you to ensure that this Agreement is rigorously scrutinized and implemented -- if and only if -- it is deemed fully lawful and, in fact, in the interests of members of HT.

This Agreement runs counter to interests of members of HT and especially to interests of members of HT who do not also participate in PLT. Its implementation transfers problems of a failed and failing workers' compensation program from PLT to HT. It thus continues to burden HT and its members with LGC's ill-advised and unlawful management decisions and their detrimental financial consequences with respect to the workers' compensation program that the Hearing Officer's Order ("Order") aimed to remedy. The Order aimed to effect repayment of \$17.1 million to HT, not to transfer that obligation to the very entity that was to benefit from repayment of improperly lent funds.

In fact, this contingent Agreement, executed in late October 2013 without notice to HT members or the public, exemplifies precisely the kind of bad management practices, some of which were found to be unlawful, that brought the LGC to this point in what has been a long and difficult saga. It appears that the leadership of HT, PLT and LGC have learned little from their experiences in recent years, the Order, or most recently the Supreme Court's decision.

We are grateful for your efforts "to set the LGC ship on its proper course," and we urge you to continue those efforts until the leadership of HT and PLT understand that their role is to provide effective, economical risk management products to their members fully within the dictates of statutes and regulations under which they are constituted.

Sincerely,

THE NORTH HAMPTON SELECT BOARD

BY:

  
James Maggiore, Chair

Cc:	The Honorable Maggie Hassan	The Honorable James W. Craig
	Governor	Commissioner
	Office of the Governor	New Hampshire Department of Labor
	State House	95 Pleasant Street
	Concord, New Hampshire 03301	Concord, New Hampshire 03301



# TOWN OF STRATHAM

INCORPORATED 1716

10 BUNKER HILL AVENUE • STRATHAM, NH 03885

TOWN CLERK/TAX COLLECTOR 603-772-4741

SELECTMAN'S OFFICE/ADMINISTRATION/ASSESSING 603-772-7391

CODE ENFORCEMENT/BUILDING INSPECTION/PLANNING 603-772-7391

FAX (ALL OFFICES) 603-775-0517

January 21, 2014

The Honorable William M. Gardner  
New Hampshire Secretary of State  
State House, Room 204  
107 North Main Street  
Concord, New Hampshire 03301

Dear Secretary Gardner,

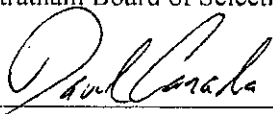
We join the North Hampton Board of Selectmen in asking you to carefully scrutinize the details of the recently announced "Settlement Agreement" ("Agreement") between Health Trust, Inc. and Property and Liability Trust, Inc.

While we acknowledge the benefits these organizations, along with their associated predecessor organizations NHMA (LGC), provide for towns, cities and other New Hampshire governmental entities, we feel they have lost perspective and have consistently failed to exercise good judgment in these matters. After having three separate leaders spend two million dollars of public money over a number of years to defend a position that has been found clearly wrong, they continue to deny their errors using tortured logic and interpretations.

We do not intuitively agree with their assertions as to the need for bankruptcy, the costs associated with related organizations' diminished reputation in the event of bankruptcy, or their inability to assess current and past subscribers for needed capital to satisfy ordered remedial action. We have now lost confidence in their ability to forge and judge a resolution to this issue and are not willing to take their unilateral say so that the Agreement best serves the communities of New Hampshire. We look to you to be the objective evaluator and take what action you feel is appropriate if you find the Agreement does not maximize satisfaction of those communities who were shortchanged by their prior actions.

Sincerely,

Stratham Board of Selectmen:

  
\_\_\_\_\_  
David Canada

  
\_\_\_\_\_  
Timothy Copeland

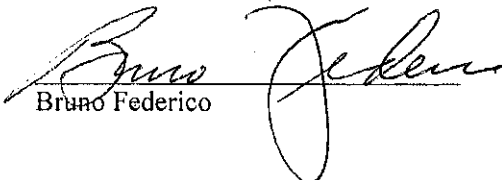
  
\_\_\_\_\_  
Bruno Federico

EXHIBIT  
RECEIVED  
JAN 29 2014  
NEW HAMPSHIRE  
DEPARTMENT OF STATE