

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE

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

**HEALTHTRUST’S MOTION FOR PARTIAL RECONSIDERATION OF ORDER
DENYING MOTIONS FOR SUMMARY JUDGMENT**

HealthTrust, Inc. (“HealthTrust”) moves for partial reconsideration of the Order Denying Motions for Summary Judgment (“Order”) as follows:

1. By the Order, the Presiding Officer denied both HealthTrust’s and the New Hampshire Bureau of Securities Regulation’s (“BSR”) motions for summary judgment. In denying the motions, the Presiding Officer found that there are two disputed material issues of fact, namely: (a) whether the agreement between HealthTrust and Property-Liability Trust, Inc. (“PLT”) that became operative on January 10, 2014 and was terminated on June 6, 2014 “effectively eliminated PLT’s board of directors;” and (b) whether HealthTrust “has properly been repaid the \$17.1 million by PLT.” Order, p. 2.

2. The Order correctly identifies that a party is entitled to summary judgment if there are no genuine issues of material fact and also aptly states that a fact is material if it may influence the outcome of the litigation. While the question of whether PLT’s board of directors was effectively eliminated between January 10 and June 6, 2014 may be a material issue in the case, there are no material facts in dispute. Because all of the evidence presented with the motions for summary judgment demonstrates that PLT’s board continued to exist and monitor HealthTrust’s runoff of the PLT lines of coverage, the Presiding Officer should reconsider that

portion of the Order that denied HealthTrust's motion for summary judgment related to the PLT board's existence and grant HealthTrust summary judgment on that single issue.

3. RSA 491:8-a, II provides as follows:

Any party seeking summary judgment shall accompany his motion with an affidavit based upon personal knowledge of admissible facts as to which it appears affirmatively that the affiants will be competent to testify. The facts stated in the accompanying affidavits shall be taken to be admitted for the purpose of the motion, unless within 30 days contradictory affidavits based on personal knowledge are filed or the opposing party files an affidavit showing specifically and clearly reasonable grounds for believing that contradictory evidence can be presented at a trial but cannot be furnished by affidavits.

RSA 491:8-a, III states as follows:

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits filed, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone, although there is a genuine issue as to the amount of damages.

RSA 491:8-a, IV provides as follows:

If affidavits are not filed by the party opposing the summary judgment within 30 days, judgment shall be entered on the next judgment day in accordance with the facts. When a motion for summary judgment is made and supported as provided in this section, the adverse party may not rest upon mere allegations or denials of his pleadings, but his response, by affidavits or by reference to depositions, answers to interrogatories, or admissions, must set forth specific facts showing that there is a genuine issue for trial.

4. Regarding the issue of the conduct of PLT's board of directors during the effective period of the October Agreement, HealthTrust submitted the following evidence:

- a. PLT's board consists of six individuals, all of whom were elected or re-elected by the PLT Members at the PLT annual meeting in December 2013. The PLT Board monitored HealthTrust's compliance with the October Agreement, and met to discuss the status of the runoff on March 4 and May 30, 2014. Statement ¶¶ 33-34; Additional Statement ¶ 1; Second Affidavit of Dennis Pavlicek ("Second Pavlicek Aff.") ¶ 2.

- b. The Chair of PLT's Board and PLT's counsel were among those who met with the BSR on February 4, 2014. Additional Statement ¶ 6. PLT sought a meeting with the New Hampshire Department of Labor by letter dated February 19, 2014. Additional Statement ¶ 8. By letter dated April 23, 2014, PLT requested quarterly updates from HealthTrust regarding the runoff of its coverage lines pursuant to HealthTrust's obligations under the Settlement Agreement. HealthTrust has provided the PLT Board with reports and information about the PLT runoff regularly, including on March 4 and May 22, 2014. Second Pavlicek Aff. ¶ 3, Ex. 6.
5. During the hearing, PLT's counsel described the PLT board's active involvement

as follows:

At no point did PLT or its Board affirmatively terminate or withdraw its status as a 5-B risk pool and at no point has it received notice that its status has changed. Furthermore, at no point did the PLT Board ever surrender its obligations to oversee and monitor and protect the rights of its members. As the settlement agreement has gone into effect the PLT Board has continued to oversee and monitor and communicate with HealthTrust. In the April 23rd letter you'll see a formal request for reporting from HealthTrust knowing at the time that that relationship in terms of running the program off would continue for some period of time and requesting that there be quarterly reporting provided so that the PLT Board could continue to oversee and monitor those obligations that are set forth in the settlement agreement. At no point has the PLT Board surrendered its right to enforce the settlement agreement should the PLT Board have decided at that time that HealthTrust was in violation of the settlement agreement. There have been regular reportings from counsel to the PLT Board with regard to these proceedings and other proceedings that the PLT is involved in as well as dealing with the PLT Board in responding to requests that have been made by HealthTrust including the request to terminate the settlement agreement back in February. Attorney Ramsdell has commented that at the time in March the PLT Board discussed and considered the request that was made by HealthTrust, received information regarding the financial condition of the organization and decided at that time that it was not appropriate and was not in the best interest of its members to terminate the settlement agreement. . . .

So what preceded the March 3rd discussion with the PLT Board was additional information that was received as a result of the February actuarial reports. . . .

So with that information that prompted a discussion of the PLT Board to take place. So following the March meeting and subsequent developments there were further updates that were being provided to the PLT Board which then resulted in a meeting with counsel in May followed by a meeting of the Board that took place at the end of May, on May 30th. At that May 30th meeting the Board considered again terminating the settlement agreement at that time given the changed

circumstances, took up that motion and approved the termination or the entering into of a termination agreement which you have before you. So from the PLT Board's perspective, the PLT has continued to oversee and protect the interests of its members both in October of 2010 when it entered into the settlement agreement, on January 10th when the settlement agreement went into effect, in March and on May 30th when it decided to enter into the termination agreement and today the Board continues to oversee and monitor and protect its members' interests and will continue to do so. If the termination agreement goes into effect, we will continue to operate at this point the Property-Liability program.

Hearing Transcript, pp. 33-36. In response to a question posed by the Presiding Officer, PLT's counsel added the following:

So at the time, you know, up until, let's say, May 30th, the PLT Board was continuing to oversee and monitor if there were any deviations from the settlement agreement. Remember, the PLT Board is made up of municipal members, so they were in the process of transitioning and working through the transition of these assets to HealthTrust making sure that it was being handled properly. At the time there was renewal that was happening and they were making sure that that renewal process was going forward effectively, and then there's a number of litigated and administrative proceedings and they're receiving updates with regard to that. There are changes, actuarial issues that came up that the Board was assessing to determine what was the best course of action for its members, so it was continuing to get information about those operational and administrative matters.

Hearing Transcript, pp. 45-46.

6. The BSR did not offer any competent evidence “by affidavits or by reference to depositions, answers to interrogatories, or admissions,” *see* RSA 491:8-a, IV, to rebut the evidence submitted by HealthTrust and PLT. The exhibits submitted by the BSR with its motion for summary judgment and its objection to HealthTrust’s motion for summary judgment do not include evidence related to the PLT’s board conduct from January 10 to June 6, 2014. Instead, the BSR only argued that PLT “was a shell corporation with no activities, no employees, [and] no operations” Hearing Transcript, p. 11. The BSR’s mere conclusory allegations and denials of the evidence submitted by HealthTrust and PLT are insufficient to create a material issue of fact. *See id.*

7. Consequently, there is no material issue of fact regarding whether the agreement between HealthTrust and PLT that became operative on January 10, 2014 and was terminated on June 6, 2014 “effectively eliminated PLT’s board of directors.” Rather, the only competent evidence submitted to the Presiding Officer is that submitted by HealthTrust and PLT, and that evidence demonstrates that PLT’s board of directors remained intact, active, and protective of its members between January 10 and June 6, 2014.

WHEREFORE, HealthTrust requests that the Presiding Officer partially reconsider the Order on the motions for summary judgment and grant summary judgment in favor of HealthTrust on the single issue of whether the PLT board of directors remained in existence and performed responsibilities between January 10 and June 6, 2014.

Respectfully submitted,

HEALTHTRUST, INC.

By Its Attorneys,

Dated: June 25, 2014

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CERTIFICATE OF SERVICE

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

/s/ Michael D. Ramsdell
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