THE STATE OF NEW HAMPSHIRE

DEPARTMENT OF STATE

IN THE MATTER OF:	)	
	)	Case No.: C-2011000036
Local Government Center, Inc. et al	)	

MOTION FOR RECONSIDERATION

NOW COME the intervenors, by and through counsel, and respectfully submit this motion for reconsideration, and in support thereof state as follows:

This motion for reconsideration is filed pursuant to RSA 421-B:26, XXVI. Pursuant to subsection XXVI(1) of that law, a motion for reconsideration shall, "identify each error of law, error of reasoning, or erroneous conclusion contained in the final order which the moving party wishes the secretary of state to reconsider." Accordingly, this pleading is being provided to both the presiding officer and to Secretary of State.

The particular language of this provision is relevant for two reasons. First, on its face, the statute appears to require motions for reconsideration to be addressed directly to the Secretary of State. That has been done. Second, the extent to which the Secretary of State, as opposed to the presiding officer, is the proper party to address the issues raised in this motion relates to one aspect of the order for which the intervenors seek reconsideration. That issue will be addressed first.

In denying the requested relief, the presiding officer emphasized that the intervenors are only eight municipalities. He then stated that "[w]hile the claim of groups employees, former employees and retirees were referenced b counsel, no argument to achieve legal standing for

such individuals was advanced by counsel and no standing of any other intervenors can be considered by the presiding officer." Omnibus Order dated August 4, 2014. (Emphasis added). This narrow reading of the issues that may be considered by the presiding officer is error. The role of the presiding officer, as the designee of the Secretary of State, is not merely to weigh the limited interests and arguments of the parties filing appearances in the forum, but additionally, on behalf of Secretary of State, to weigh the interests of all potentially effected parties, whether appearing in the tribunal or not.

The hearings examiner stands in the shoes of the Secretary of State for the purpose of resolving the disputed issues and as a constitutional officer, the authority of the Secretary of State is not as limited as order suggests. Elected through a democratic process, the Secretary of State has the authority, and indeed the duty, at all times to consider not only the interests of the parties appearing before him, but also of the State as a whole, including the interests of all political subdivisions and individual citizens.

The presiding officer indicated during these proceedings that he understood his broad responsibilities to the State, as the Secretary of State's designee. For instance, at one point the presiding officer requested that the parties be prepared to argue what the effect on various municipalities and the municipal risk sharing and insurance market would be if he decertified HealthTrust's tax free, non-profit status. This was a legitimate concern and appropriately considered by the presiding officer, despite the fact that it was outside the scope of the matters strictly before him. In the same manner, the presiding officer should have felt free to issue an order on the return of excess premium that took into consideration the interests not only of the parties before the tribunal, but also of the political subdivisions and individuals who paid into HealthTrust to establish the excess surplus in the first place.

Further, the Secretary's authority to order disgorgement of funds from HealthTrust also should be construed to include within it the authority to order disgorgement to the proper interested parties. The first order required HealthTrust to disgorge excess surplus to municipalities who were members on the date of the order. No law identified in the order prevented the presiding officer from ordering disgorgement to political subdivisions who were members at the time the excess surplus began accumulating.

The second error in the Omnibus Order stems from the presiding officer's finding that RSA 5-B:5, I(c) authorizes LGC to return the surplus attributable to one year to the members from an entirely different pool of risk-sharing communities forming the risk pool from a different year. HealthTrust has indicated its intent to return "re-payment" funds only to current members, without regard to which political subdivisions contributed to this excess surplus constituting these "re-payment" funds. The original Final Order, and the Supreme Court opinion, both state that, starting in 2003, LGC retained funds that should have been returned to members. Appeal of Local Government Center, slip op. at 12-13; Final Order dated August 16, 2012 at 75. Implicit in this ruling is that the excess surplus should have been returned in that year, rather than allowing the excess surplus to continue to accumulate. Indeed, both the administrative order and the Supreme Court decision state the surplus began developing in 2003 and continued thereafter. Appeal of Local Government Center, slip op. at 9-10.

Permitting HealthTrust to distribute the excess surplus to current members, rather than to those members whose contributions created that excess surplus, effectively enables HealthTrust's violation of RSA 5-B:5, I(c) to stand, is contrary to the statute, and allows HealthTrust to benefit from its own violation of the statute. As is clearly established in both the Final Order and the Supreme Court decision, the statute permits only four uses of risk pool

funds. Those uses are set forth in the statute as, "administration, claims, reserves, and purchase of excess insurance." RSA 5-B:5, I(c).

HealthTrust's member agreements contain a provision that expressly denies refunds to members who leave its fold to manage risk with another company. By tying the availability of a refund from past years to current membership in the present year, HealthTrust obviously uses its accumulated surplus to create a financial incentive for political subdivisions to remain with HealthTrust. But this is an improper use of excess surplus that violates RSA 5-B. Those funds should be returned to the political subdivisions that contributed to the surplus in the year that the excess surplus was created, not used to incentivize continued membership in HealthTrust of LGC risk-sharing arrangements in future years by denying them their statutory due.

If HealthTrust is in possession of excess surplus in any year, it is obligated to return that surplus in that year, and not retain that surplus and use it to create financial incentives to retain members. Failure to require excess surplus funds to be distributed in this manner is error. Stated otherwise, if the Omnibus Order and HealthTrusts' proposed distribution are permitted to stand, HealthTrust will have the Secretary of State's implicit permission to use excess surplus for a purpose - member retention through financial incentive - not authorized by RSA 5-B:5.

Finally, the presiding officer's reference to work John Andrews may or may not have done drafting the language of RSA 5-B represents a novel interpretation of the role played by lobbyists and other interested parties in the legislative process. The undersigned is aware of no instance in which the New Hampshire Supreme Court has suggested that the financial interests of lobbyists or other non-legislators involved in the legislative process has been used as a beacon to guide statutory interpretation.

The New Hampshire Supreme Court has stated the law of statutory construction as follows:

> "It is well established that the words in the statute itself are the touchstone of the legislature's intention." Greenhalge v. Town of Dunbarton, 122 N.H. 1038, 1040, (1982). It follows that "[e]ven if the [defendants] could show that some legislators had an intent that ran counter to the statutory language actually enacted, this would not create the uncertainty of statutory meaning that is necessary to justify an inquiry beyond the words of the statute itself." State Employees' Assoc. v. State, 127 N.H. 565, 568 (1986)(Emphasis added). To be sure, in any case involving the interpretation of a statute, we do not look to legislative history to modify the meaning of statutory language that is plain on its face. Appeal of Cremin, 131 N.H. 480, 483, 554 A.2d 1298, 1300 (1989).

Chroniak v. Golden Inv. Corp., 133 N.H. 346, 350-51 (1990). Thus, even direct statements of intent from legislators, elected by the public to make laws, do not overcome the plain language of a statute. If the statements of legislators are insufficient to overcome the plain language of a statute, then certainly the financial interest of a non-legislator should not be used to provide evidence that the language is to be construed in a manner inconsistent with the plain meaning of the words used in the statute. The hearings officer's reliance on John Andrews is error.

CONCLUSION

The Secretary of State has the power and authority to enforce the plain language of the statute over any HealthTrust form contract containing contrary provisions and has power over its proposed distribution of excess surplus. The intervenors request that the Secretary require the surplus to be returned to the political subdivisions that contributed to it.

RESPECTFULLY SUBMITTED,
The Towns of Auburn, Bennington,
Meredith, Northfield, Peterborough,
Plainfield, Salem and Temple
By their attorneys,
DOUGLAS, LEONARD & GARVEY, P.C.

Dated: September 3, 2014

/s/ Richard J. Lehmann
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CERTIFICATION

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

Dated: September 3, 2014

/s/ Richard J. Lehmann
Richard J. Lehmann