THE STATE OF NEW HAMPSHIRE

DEPARTMENT OF STATE

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

<u>Order On Property Liability Trust, Inc.'s Petition to Obtain Permission to Issue New and Renewal Coverages, Binders, and Similar Contractual Obligations</u>

PROCEDURAL BACKGROUND

Property Liability Trust, Inc. ("PLT") and the Bureau of Securities Regulation ("BSR") are parties to the Consent Decree ("Agreement") dated July 25, 2014, which was incorporated into the omnibus order dated August 4, 2014. Pursuant to the terms of their agreement, on March 30, 2015, PLT filed a petition to obtain permission to offer new and renewal coverages, to which the BSR filed its objection dated April 2, 2015. On April 15, 2015, PLT moved to withdraw its petition dated March 30, 2015. Accordingly, PLT's petition was dismissed without prejudice by the presiding officer. On June 30, 2015, PLT filed a similar petition, although not identical to the one dated March 30, 2015, pursuant to the terms of the parties' Consent Decree. On July 29, 2015 the BSR filed its response and objection to PLT's petition. Several preliminary and procedural motions were filed and ruled upon by the presiding officer. One such motion, filed by PLT, sought to prevent public distribution of certain financial information and remained under consideration by the presiding officer through the hearing on the merits of PLT's petition dated June 30, 2015. A decision on that motion is included as part of the following decision and order. Before the hearing on the merits took place, another party to the Consent Decree, HealthTrust Inc., was excused from actively participating in these proceeding. After a period of formal discovery between the parties, an administrative hearing on the merits of the PLT petition was scheduled.

On October 6th, 7th, and 9th of 2015, the final evidentiary hearing on the merits of PLT's petition was conducted by the undersigned presiding officer in Concord. During the hearing, both the petitioner and the BSR were present and were represented by counsel. Each party had the opportunity to present witnesses, undertake cross-examination of witnesses, and submit exhibits. Further, the parties submitted exhibits consisting of 1754 pages of text and diagrammatic representations of data. The hearing produced 740 pages of transcribed testimony and other statements. Each party submitted pre-hearing and post-hearing memoranda in support of their respective positions. Upon request of PLT, the parties were granted leave until October 26, 2015 to submit their post hearing memoranda, at which point the record was closed. After reviewing the evidence presented, considering the credibility of each witness and qualifications of those offered as expert witnesses, assigning appropriate weight to the evidence submitted, and considering the legal arguments made by each party's counsel, I find the facts appearing in the following discussion to be true and legally sufficient to support the decision and accompanying order.

JURISDICTION

The secretary of state is responsible for and is granted the authority to conduct adjudicatory proceedings and hearings related to violations of RSA ch. 5-B (2013 & Supp. 2014) ("Pooled Risk Management Programs") and RSA ch. 421-B (2006 & Supp. 2014) ("Uniform Securities Act"). The secretary of state may delegate to a presiding officer the exclusive authority and jurisdiction to conduct such proceedings. *See* RSA 5-B:4-a, I; RSA 421-B:26-a, I. The presiding officer has the authority to: regulate and control the course of the administrative proceedings (RSA 421-B:26-a, XIV(h)); dispose of procedural requests (RSA 421-B:26-a, XIV(j)); interview and examine witnesses and parties as the case may require (RSA 421-B:26-a, XIV(k)); and rule upon a motion when made or defer a decision until a later point in the hearing, or after the conclusion of the hearing (RSA 421-B:26-a, XIX). The provisions of RSA ch. 541-A (2007 & Supp. 2014) do not apply to these proceedings. RSA 421-B:26-a, I.

In addition, by the terms of their agreement, the parties stipulated that the "Presiding Officer shall retain jurisdiction over this Consent Decree and have the authority to enforce the provisions of this Consent Decree for so long as this Consent Decree remains in full force and effect."

DECISION SUMMARY

An earlier administrative proceeding, involving these two parties, was resolved with the execution of the Consent Decree dated July 25, 2014. The parties agreed that: (1) PLT would not offer any new insurance policies or renew any existing policies; (2) PLT could bring a petition before the presiding officer to seek permission to issue new and renewal policies; and (3) at hearing, PLT would have to prove that it "has sufficient financial viability to allow it to issue and honor said policies or renewals without subsidization by . . . any other entity."

To determine whether PLT has sufficient financial viability, in essence, to continue to operate as a pooled risk management program, RSA ch. 5-B requires an examination of its current financial position. PLT's substitution of a multi-year plan to hopefully improve its financial strength, extending to fiscal year 2021, is misplaced. PLT's ability to meet the financial standard of which it agreed is a condition precedent before permission is granted to issue and renew insurance policies, not a future aspiration.

This order focuses on PLT's current considerations of its operation as an insurance type of enterprise. The findings incorporated into the order concern matters deemed relevant to its recent financial trending and its current income, its liabilities and its business operation expenses. The decision focuses on evidence relevant to the amount of reserves needed by PLT and, critically, the level of confidence that is attached to its optimistic conclusion—the amount of its reserves is sufficient to meet all of its financial obligations to the members who are relying on their coverage as promised by PLT.

This order highlights the following critical weaknesses of PLT's evidence used in, what it believes was, satisfaction of its burden. PLT's staff has used information and financial data to reach unrealistic subjective judgments, affecting PLT's financial viability. PLT has also provided financial data and other information for actuarial analysis that it knew or should have known was stale or inaccurate. There is insufficient credible evidence to establish the reliability of PLT's operating expenses. Further, there is insufficient credible evidence presented to prove that participation in its lease and its services agreement does not constitute subsidization by HealthTrust, Inc. or any other party.

As a pooled risk management company governed by RSA ch. 5-B and as required by the Consent Decree, the relevant evidence presented at the hearing does not demonstrate that PLT has sufficient financial viability without subsidy to permit it to issue new and renewal coverages, binders, and similar contractual obligations. Therefore, PLT's petition is denied.

DISCUSSION

PLT is an insurance type enterprise, which offers three types of insurance coverage referred to in this proceeding as property liability (PL), including multiple property and casualty lines, workers' compensation (WC), and unemployment compensation (UC). It operates as a public pooled risk management program under the provisions of RSA ch. 5-B. Its policyholders are public entities, including municipalities, counties, schools and school districts, and other special districts. Certain aspects of PLT's operation of WC are also regulated by New Hampshire's Department of Labor. Other operational aspects have been subjected to regulation by the department of state, specifically, the Bureau of Securities Regulation since 2010.[1] Under the provisions of RSA 5-B:6, PLT is exempt from taxation and exempt from regulation by the insurance commission, with the exception of the above-referenced state regulation of workers' compensation under RSA ch. 281-A (2010 & Supp. 2014). For purposes of this instant matter, the parties have treated PLT like an insurance enterprise and directed their respective financial analyses of it as an insurance enterprise.

[1] RSA 5-B:4-a (2013 & Supp. 2014) (effective June 14, 2010)

PLT and the BSR entered into a Consent Decree dated July 25, 2014. This mutual agreement provided, among other things, that PLT would neither offer new insurance policies nor renew any existing policies unless it filed a petition requesting to do so on, or before, June 30, 2015. PLT further agreed that in the event it filed such a petition, it would bear the burden of proving the statement that it "has sufficient financial viability to allow it to issue and honor said policies or renewals without subsidization by . . . any other entity." In assigning this burden of proof, the parties agreed that PLT would have to establish it meets that standard by a preponderance of the evidence. *Id.*; *see also Appeal of Kelly*, 129 N.H. 462, 466-67 (1987) (citing the "degree of proof to establish a case is the same in an administrative as in a civil judicial proceeding, that being a preponderance of the evidence"). On June 30, 2015, PLT filed the petition that is addressed by this order, and thereby assumes the burden of proving the standard before its request to issue new and renewal insurance policies can be granted.

In the parties' executed agreement, they did not specifically define the term "sufficient financial viability"—nor is it defined in any New Hampshire statute or rule. Their agreement does not either reference any specific numeric metric or reference any specific numeric ratio of financial values utilized within the insurance industry. Further, the agreement does not reference any specific level of confidence that should be incorporated into PLT's certainty of its prediction of sufficient financial viability. These criteria are common to financial analyses of insurance enterprises like PLT, but these measurements were omitted from the parties' agreement. Such analytical criteria are absent from the primary governing statute, RSA ch. 5-B, and still, administrative rules do not exist, governing the financial viability of public pooled risk management programs.

No evidence was presented at the hearing that indicated "sufficient financial viability" was a specific term of science or art within the insurance industry. The parties' respective expert witnesses are qualified actuaries with the capability to conduct financial analysis of insurance enterprises and render opinions as to the financial condition of PLT. In fact, during the hearing and in testimony and reports offered as exhibits, the expert witnesses, Stazinski, who was called by PLT, and Burgess, who was called by the BSR, and PLT witnesses Parker and Coutu[2] more commonly referred to the term "financial viability" only when discussing that

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[2] Michael Coutu was the individual who was designated by the parties to fulfill the role of the BSR liaison under the terms of the Agreement. His performance was further defined under the terms of a personal services contract with the BSR. In the preliminary phase of this petition hearing, the parties parried about his conduct during his tenure, ending in May 2015 after his resignation from the position as liaison. The presiding officer, upon motion of PLT, issued a subpoena on Coutu so that PLT could call him as a witness. After Coutu failed to prevail on his motion to the superior court to quash the subpoena, PLT listed and called Coutu as a witness. Both counsel understood that due to issues of attorney client privilege, arising from his initial relationship with and employment by the BSR, there would be stringent oversight of his testimonial examination. Despite all of the preliminary drama, the most telling feature of his testimony was his apparent departure from his role as a liaison also to which he adopted the role of a self-characterized "unpaid consultant" for PLT—acting as spokesperson for PLT and accepting inquiries from Senator Forrester. Further illustrating his compromised position was his direct offer to PLT to manage its pooled risk management program for at least a year if it received permission to issue new and renewal policies. The actions Coutu chose to undertake from August 2014 to May 2015, while his only official duty was to act as the BSR liaison, result in the presiding officer assigning little weight to his testimony.

element of the standard established by the parties in their agreement. The word "viability," as used in the context of business, means "capable of existence and development as a relatively independent . . . economic unit. . . ." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2548 (unabridged ed. 2002). From the evidence presented at hearing, the term "financial viability" means that an insurance enterprise, PLT, has enough assets to cover all of the financial obligations it owes to its members, *i.e.*, policyholders. The financial obligations—referred to as liabilities—include: loss claims, the costs of managing those claims, losses that have been incurred by its members but not yet reported to PLT, the cost of reinsurance, and PLT's operating expenses beyond claims management.

The liabilities, or costs, continue into the future because in the insurance industry member contributions are paid before it actually needs the financial benefit of the policy to cover the member's claim. Indeed, the total costs of PLT's members' loss claims may remain unknown well into the future, *e.g.*, final medical costs of a work-related injury or a legal settlement or verdict in a police misconduct case. It is the requirement to look into the future, that is, to predict future property losses, future casualty losses, future injury losses, and the expenses associated with those losses, that places a premium on the reliability of those predictions.

Therefore, in order to make a determination of the financial viability of a RSA ch. 5-B entity, such as PLT, requires consideration of: (1) the amount of its assets, including member contributions, rate setting, investment income, and how each are calculated; (2) the amount of its liabilities, for both its PL component and its WC component, including reserve funds to cover loss claims and costs of managing those claims, other restricted funds, and operational expenses; and (3) the level of confidence, *i.e.*, to what statistical probability can PLT rely on the fund amounts it currently holds and the financial data it has to create projections.

More specifically, this decision requires an analysis of PLT's present financial status, not some future status. The parties set a temporal condition on their standard when they agreed that PLT could issue new and renewal insurance products when PLT could prove it "has sufficient financial viability without subsidy. . . ." The agreement did not provide that PLT could be permitted to offer new and renewal insurance products, now, upon a showing that it may achieve sufficient financial viability at some point in the future. A multi-year plan that may culminate in some improved financial condition does not meet PLT's present burden.

In the fall of 2014, the PLT developed a document that it entitled its "Strategic Plan." While this document is dated December 9, 2014, the financial data relied upon by PLT for most of its conclusions used June 30, 2014 data. The document was developed as a result of the request of the Department of Labor.

At the outset, the financial data that lies at the base of all of PLT's propositions begins with calculations produced by PLT staff. Data was presented in various formats, entitled: “Statements of Financial Position” and “Statements of Revenues, Expenses and Change in Net Position.” At the time the documents were prepared as evidence presented in this hearing, the executive director and the chief financial officer of PLT were also employed by a sister enterprise, Health Trust Inc. Each “shared” their time between the two organizations. These two people were responsible for generating the financial data that was incorporated into statements of PLT’s financial position and constituted the basis for all of the financial data used in the so-called “*pro forma*” reports. PLT’s financial and actuarial consultant, Towers Watson, who has prepared PLT’s critical financial documents for over twenty years, produced the pro forma reports. This relationship is noteworthy not only because of the length of the institutional relationship, but also because Towers Watson’s senior consultant, Stazinski, has worked on PLT’s account for over 20 years—nearly twelve of which included the combined effort of PLT’s executive director, Parker. Further, the relationship of independent actuary to business enterprise has become less defined between these two entities that a complete, totally objective, actuarial process has become virtually subordinate to the subjective dictates of PLT.

Towers Watson produces financial pro forma reports ostensibly for consideration by, and the direction of, PLT. However, except for the two assumptions about losses, *i.e.*, unpaid liabilities and loss ratios, all other assumptions that are included in their final reports were provided to Towers Watson by PLT. The major assumptions PLT required in the pro forma reports of

December 2014, March 2015 and June 2015, and materially accepted and relied upon, but not independently determined, verified or tested by Towers Watson, include the: (1) rate of return on investments; (2) amount of contributions; (3) amount of increases for members' rates; and, (4) amount of operating expenses. Errors in accepting these assumptions become evident as this decision continues.

PLT obtains its revenue primarily from what is referred to as "member contributions," which are the premiums paid for insurance policies by public entities, including municipalities, counties, schools and other special districts as provided for under RSA ch. 5-B. This portion of PLT's revenue is directly dependent upon the combination of the number of members per line and the rates charged for the premiums of the line purchased by each member. PLT reports its financial data separately between its PL line of coverages and its WC line; the latter includes its UC. It should be noted, the presiding officer finds that UC has a minimal effect on both the asset side and the liability side of the PLT's overall financial condition.[3]

The revenue from contributions received by PLT is represented in Figure 1, below:

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[3] *This decision is limited to the application of the financial standard created by the parties in their previous Consent Decree as raised in the PLT petition and the presiding officer does not make any determination as to whether RSA ch. 5-B allows a single entity to operate more than a single pooled risk management program where the composition of the memberships are not identical. The parties had been asked by the presiding officer at an earlier point in the preparation of this hearing to submit memoranda on this issue, but by the conclusion of the evidence, the issue had not been adequately joined to the issue presented by the PLT petition, nor was sufficient evidence produced to allow any further determination.*

Figure 1

Fiscal year	PL	WC	Combined
2014	$10,497,000	$7,383,000	$17,880,000
2015	$7,120,000	$5,654,000	$12,774,000
2016	$7,122,000	$5,540,000	$12,662,000

The revenue of annual contributions, *i.e.*, premiums, received by PLT is represented in Figure 2, below:

Figure 2

Fiscal year	PL	WC	Combined
2014	$10,497,000	$7,383,000	$17,880,000
2015	$7,120,000	$5,654,000	$12,774,000
2016	$7,122,000	$5,540,000	$12,662,000

It is important to note that the FY16 Combined amount of contributions actually received was previously predicted by PLT to be in the amount of $13,470,000.00. Aside from the immediate impact to PLT's present financial position, this short fall is also significant because it demonstrates the difficulty of making financial predictions when such projections are tied to a low confidence level. The difficulty is amplified when, as here, the confidence level utilized for the initial prediction of FY16 was in the range of approximately 64%. The drop in the level of contributions further diminishes the reliance on a key financial assumption held by PLT that the level of exposures, *i.e.*, members, would remain constant for FY16 and beyond.

Upon examination of the membership lists of PLT, unity of members does not exist, *i.e.*, some members receive the PL line, some members receive the WC line, some members receive the UC line, and others members receive two or all three lines. Thus, membership is not uniform throughout PLT. PLT maintains that, as a single pooled risk management program under RSA ch. 5-B, it can combine and apply membership funds, as it desires between its PL and WC lines. While at the same time, PLT recognizes that it is comprised of members who are contributing tax funds from their respective public jurisdictions for different lines of insurance.[4] Without clear legal direction, PLT has and will be transferring funds from the WC line to the PL line.

The current membership figures indicate there are 149 members with WC. Of those 149 WC members, only 11 do not have PL, meaning 138 WC members also have PL. There are 279 PL members, 141 of which do not have WC. As mentioned, PLT is and will continue to transfer WC funds to the PL line in order to keep PL from completely operating in the red. Specifically, the following conclusions can be drawn from these figures. 138 WC members may be receiving

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[4] That RSA ch. 5-B does or does not permit such combining of funds within a single enterprise is not at issue in this petition action. However, under the law established prior to this proceeding in the Final Administrative Order of August 14, 2012 and the *Appeal of Local Gov't Ctr.*, 165 N.H. 790 (2014) the contractual "Member Agreement" that PLT has its members sign and the practice of PLT combining contributions for certain purposes, notwithstanding the independent authority of the Department of Labor over the workers compensation aspect of PLT's operation, may have to be addressed in the future by the legislature.

reduced excess surplus from WC contributions so that 141 PL members who do not have WC coverage, can receive that the benefit of PLT's PL coverage.

Another function of actuarial analysis normally results in a determination of premium rates. The rates that appear in Towers Watson's reports were not independently arrived at; rather, the rates were dictated by an amount of money PLT wanted to collect in premiums. In fact, PLT chose an amount that would result in excess in reserves allowed by the provisions of RSA ch. 5-B. . In an appropriate vernacular the premiums and the amount of rate increase was "backed into" by PLT's decision makers. The WC line does not even need the rate increases its members have been charged and are scheduled to pay in the future. Specifically, Towers Watson's actuary states in an email "We don't 'need' rate in WC we are just taking it to help out PL which needs more than a 5 percent rate change." PLT is increasing its rates to levels that are in excess of any rate increase "required for administration, claims, reserves, and purchase of excess insurance. . . ." RSA 5-B: 5. It is choosing to do so out of the hope to improve the level of confidence it can attach to its future predictions. The significance of Towers Watson's acceptance of PLT's subjective decision of rate increases is that the amount of contribution/ premium payments its members are scheduled to make is artificially skewed. The Towers Watson pro forma reports simply reflect PLT's wish to substantially increase rates over this fiscal year and the next five projection years. According to its own actuary, Towers Watson could have performed a rate survey if PLT had requested one, but instead, the rate level changes were provided by management. The rate increases were not determined through actuarial analysis. Indeed, Towers Watson's own report containing these rates increases states that "these rate level assumptions are not meant to be conveyed as feasible or reasonable." The rates increases have been employed to attempt to strengthen PLT's financial viability at some point in the future, despite evidence of dwindling membership. That is, more will be obtained from the few. PLT's rates plan reveals that members of the PL coverage not only paid an increase of 8% for the present fiscal year, but also must pay a rate that, at a minimum, must increase 5% each year for the next five years. Similarly, the WC line members have already seen their rates increase by 2% in the present fiscal year and will see, at a minimum, an increase of their rates by 5% in each of FY 17 and FY18, and then additional increase of 3% in FY19, FY20 and FY21. PLT intends to implement this plan despite evidence that recent membership cancellations were due to PLT's non-competitive pricing. One of PLT's departing members from the WC line of coverage testified that it did so because it obtained a better rate from a competitor, although it presently remains a member of the PL line—it is in its second of a two-year purchase of coverage from PLT. The rate increases on the WC line members is all the more surprising in the face of credible evidence that indicates the WC premium rate changes available to public employers in this state have generally decreased year after year.

Both parties addressed an insurance concept that can negatively affect the financial strength of a risk pool, which is known as "adverse selection." Adverse selection arises when members can more easily accept lower rates by a competitor, in part because the members have low loss claims histories, while the members who remain are those who are unable to obtain better rates from a competitor because of higher loss claims histories or higher than average loss propensities. PLT, who bears the burden of proof presented insufficient evidence that it was not being beset by this phenomenon and thereby leaves open the probability that adverse selection will occur, again particularly with PLT's current and future rate increases.

Another significant source of revenue for PLT is income from investments. Figure 3 shows the latest amounts investment income, contributing to PLT's present financial position.

Figure 3

Fiscal Year	PLT	WC	Combined
2014	$2,093,246	$154,316	$2,247,562
2015	$121,173	$208,310	$331,484
2016	$93,000	$170,000	$263,000

Accordingly, it becomes no surprise that gross revenue figures, as reported, reflect the path of reduction that leads to PLT's present financial condition. The examination of the most significant revenue sources on the asset side of PLT's operation is shown below in Figure 4:

Figure 4

Fiscal Year	PL	WC	Combined
2014	$10,709,165	$6,308,672	$17,017,837
2015	$7,518,417	$6,362,178	$13,880,595
2016	$5,419,000	$5,875,000	$11,294,000

An examination of the liability side of a RSA ch. 5-B pooled risk management program involves the following sources of financial data: (1) reserves, (2) loss claims, (3) losses incurred but not yet reported (IBNR), (4) costs of administering such loss claims, (5) costs of reinsurance, and (6) operation costs. Of those sources, reserves are the dominant figure. The determination of the amount of reserves PLT needs to designate to meet the obligations for its loss claims made by its members and the costs of administering those claims over the claims' expected life should require an actuarial calculation. Indeed the actuarial reports, previously referred to as Towers Watson's pro formas, contain calculations related to PLT's predicted losses. Again, the most significant being the amount of losses the actuary predicts PLT will incur on behalf of its members. It is important to remember that a loss claim is administered, *i.e.*, managed, over a period of time, often multiple years. It is also important to remember that the amount of reserves set aside for each individual loss can vary over the claim's maturity. The length of time for the maturation of the insurance claim is referred to as its "tail." These adjustments over time create an additional degree of uncertainty regarding the amount of total reserves PLT must have to meet the financial obligations of all of its members who have already paid their contributions, *i.e.*, premiums.

Here, Towers Watson admits that in performing its actuarial calculations and issuing its reports it has relied on PLT data and presumptions for all aspects of its pro forma reports, except the calculations related to loss. When Towers Watson makes its most recent pro forma report of June 29, 2015, including its prediction regarding losses, it combines all of the financial data and its assumptions regarding assets and liabilities and expresses a net asset position for PLT.

At the same time, Towers Watson reports a "confidence level"—expressed as a percentage—as a measure of reliance one can impute to the accuracy of the pro forma's reported predictions, including the corresponding amount of reserves to be maintained. For instance, if an insurance enterprise is informed to maintain a reserve level of $4 million, it is also informed that it has a 50%—5 out of 10 chance—or a 90%—9 out of 10 chance—that its $4 million in reserve will be enough to cover it's financial obligations. The certainty of the actuarial prediction, including the reserve amount, has little significance without the application of its confidence level. Without characterizing a specific confidence level as being a fixed industry standard, there was sufficient evidence to indicate that a confidence level of 90% is a level that actuaries provide as a recommendation to pooled risk management programs. It appears that while experts may differ as to the significance indicated by other levels of confidence, all agree that a 90% level is an indication of financial strength, *i.e.*, a level at which there is "comfort" and a level that is to be sought and maintained. Indeed, so common is the acknowledgement of the significance of the 90% level that PLT's board of directors has embraced that level as its goal.

At the present time PLT, on a combined basis, operates at approximately 64% according to its own expert. When the lines are looked at separately, predictions that the PL line could meet financial obligations of its members without using funds from the WC line presently carries a 50%-55% confidence level. Further, a rough calculation indicates that any line of coverage that would find itself with a negative net position would have less than a 50-50 chance of meeting its financial obligations to its members. While the determination of whether one line can use funds to support to another line of coverage pursuant to RSA ch. 5-B is left for another day, it is interesting to note that the PL line maintained by PLT presently has a negative net position of approximately $1,000,000.

Figure 5 below shows the net position of PLT's PL line, WC line and combined lines for the years indicated.

Figure 5

Fiscal Year	PL	WC	Combined
2014	($2,059,000)	$3,409,000	$1,350,000
2015	($1,145,000)	$1,810,000	$664,000
2016	($1,304,000)	$1,623,000	$318,000

Figure 6 below compares three crucial pieces of financial data, including the amount of loss fund reserves, the net position, and the confidence level for the years shown.

Figure 6

Fiscal Year	Combined Loss Fund Reserve	Combined Net Position	Confidence Level
2014	$19,506,244	$1,350,000	70%
2015	$16,763,447	$664,000[5]	64%
2016	$14,659,654	$318,000	60%

Still, another noteworthy table of financial figures reveals what has been referred to at hearing as the "combined ratio." This calculation helps PLT understand for every dollar it receives in contributions, minus the costs of required reinsurance, the amount it pays for loss claims and costs of administering those claims. Figure 7 shows the combined ratio for PLT for the years shown.[6]

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[5] This figure, taken from the Towers Watson pro forma differs significantly from a document entered into evidence by the PLT as its June 30, 2015 Statement of Financial Position dated June 30, 2015 that carries $1,130,159 as the combined net position. However, the PLT document of June 30, 2015 reports a value in its loss fund reserves category that appears to be understated by $500,000.00.

[6] It is interesting to note, though not relied upon for this decision that before evidence fully developed that Coutu was expanding his role beyond that of BSR liaison his opinion was that a financially viable operation required that two things be established: (1) the confidence level had to be rebuilt to something approaching a confidence level of 90%, and (2) the PLT needed to reduce its combined ratio to something around a hundred percent of less. If those two criteria were not established then its going forward business would not be viable. As the tables show, PLT has not presently established either

Figure 7

Fiscal Year	Contribution dollar received	Corresponding dollar paid out
2014	$1.00	$1.07
2015	$1.00	$1.07
2016	$1.00	$1.05

In the same document that produced the numbers in Figure 6, shown above, to predict improvement in future years, those future predictions do not reflect PLT's present "combined ratio." Towers Watson's senior consultant's testimony on this issue does little to add strength to PLT's present financial condition when she expresses that she wants the combined ratio to be "around" or "somewhere in the range of" a one for one ratio or break even point. A combined ratio as shown above, does not favor a finding that PLT has sufficient financial viability.

As to operational expenses, first, the testimony offered by PLT regarding changes contemplated for implementation in the future was accorded substantially less weight. This conclusion is made in light of the fact that two years have transpired since the parties' agreement and during which it had the opportunity to implement changes.

As previously mentioned in this order, Towers Watson relied on data provided by PLT's management as a basis for its crucial pro forma reports. Crucial, not only because of the actuarial calculations and predictions contained therein, but also because of the way in which these formal reports were put to use by PLT's management with its board at the forefront of the decision making process. In making a decision related to the financial viability of PLT, the ability of its management to accurately predict its level of expenses is important. A review of the most recent fiscal year's performance of this ability does not reflect well on its ability to do so. PLT appears to have predicted its operating expense for FY 2015 as anticipated to be $3,047,000. Its reported operating expense at the close of that fiscal year was $3,473,000, as of June 30, 2015. Even after allowing for a generous set off of $100,000 alleged to be attributable to the UC line of coverage, the projected budget was underestimated by approximately $326,000. This miscalculation of expenses by PLT's management is magnified due to the fact that the projection was made with only six months remaining in this last fiscal year, not a full twelve months as is usually required of businesses. In fact, PLT's director alleged that much of the budgetary work was being undertaken in the early months of 2015 when Towers Watson was modifying its original pro forma report; however, opportunities to modify its operating expense budget were never incorporated. Still, more troubling is the extent to which PLT's board of directors were made aware of the expense overage, as crucial financial decisions were being made. The miscalculations in operational expenses coupled with the previous reference in this order to an overestimate in revenue from member contributions for FY 2015, demonstrate that PLT inflated its financial position by approximately $1,500,000. Similarly, it is unclear the extent to which, and when, PLT's board of directors were made aware of the amount of the reduction of contributions for that same period.

A portion of PLT's operational expenses involve two agreements that it has executed with other entities with which it has had previous relationships. One of these is a lease agreement, providing for PLT's office space at Triangle Park in Concord. PLT bears the burden of proving it has sufficient financial viability without subsidization by any other entity. PLT was formally a shareholder in its landlord's enterprise. During FY15, PLT's landlord substantially reduced its lease amount by approximately 45%, *i.e.*, approximately $2,000 per month, as PLT was attempting to adjust its expenses for the fiscal year in which it planned and filed the instant petition. PLT provided insufficient evidence to demonstrate a credible explanation for this reduction in occupancy rental cost, which results in a below market value rate for comparable office space. Without sufficient evidence explaining the substantial reduction in its rental cost, subsidization by its landlord is a reasonable conclusion.

Another portion of PLT's operational expenses relates to a services agreement that PLT has with a co-tenant in the Triangle Park property, HealthTrust, Inc. In relation to PLT's operation components or departments, HealthTrust: (1) acts as its finance department, provides its information technology services, (2) provides its human resource services, provides its marketing and communications services, (3) provides its risk control services, and (4) provides

PLT's member relation services. As there has been little, if any, accounting by PLT for how any of the personnel involved in these various services tracked the application of their time to either entity, it is impossible to determine from the evidence whether this arrangement represented an arms length, fair value agreement. The combined services are substantial and critical to PLT's operation; but beyond a line item indicating that the service agreement budget allocation was just over $500,000 for the past two fiscal years, no evidence was put forward by PLT to show that this agreement did not constitute a subsidization by a third party.

In the area of expense reduction, PLT also indicates it has future plans to discontinue member relation services of communication services under the services agreement. However, its executive director's testimony proceeds to express that they would also "hire our own staff [to provide that function] so they would be a hundred percent dedicated to PLT and be PLT employees." Without a current financial statement or budget document proving such budget expense changes, little weight can be assigned in making a determination of PLT's present financial condition.

It also appears that HealthTrust has paid 50% of PLT's executive director's, Parker's, compensation at least through the time of its petition dated June 30, 2015. Notwithstanding testimony offered at the October hearing, that "on the ongoing pro forma it is not contemplated that I will continue splitting my time between PLT and HealthTrust"—despite being more than one third into the present fiscal year at the time of the hearing—no documentary evidence was provided that indicates that Parker's compensation arrangement has in fact changed.

Much of the testimony regarding the services agreement and other financial documents put into evidence by PLT, relating to its actual operation, is reflected in the following testimonial exchange that occurred during executive director Parker's testimony, concerning the most recent Towers Watson pro forma report dated June 29, 2015:

> PRESIDING OFFICER: Ms. Parker, do you think it's going to be helpful to me in following your testimony with respect to how particular categories are projected to be changed?
> MS. PARKER: I don't think this is going to demonstrate that for you.
> PRESIDING OFFICER: Your testimony is there's no exhibit that's going to exhibit what you're about to say?
> MS. PARKER: Not that's here, no.
> PRESIDING OFFICER: Is there something else?
> MS. PARKER: We have a draft budget that would support the new numbers going forth in the pro forma, but that draft pro forma has not been completed, so I don't have copies of that yet.

As previously referenced several times, this decision requires a present determination of its financial viability. Despite the petitioner's, PLT's, position to the contrary, the agreement that it entered into with the BSR does contain a temporal element. That temporal element is the present tense of the verb "to have," and that present tense use appears as "has" in the agreement immediately preceding "sufficient financial viability." From the purpose for the agreement and the context in which it appears, the more reasonable interpretation must be that the parties intended PLT to have sufficient financial viability before it attempts to add additional liabilities to its net position through the issuance of new or renewal policies to public entities.

In addition to the substantive determination of this order, as previously discussed, there remains a final procedural matter to resolve. During the pendency of this hearing, a decision was reserved on "Property-Liability Trust, Inc.'s Motion to Redact Confidential, Commercial and Financial Information Pursuant to RSA 91-A:5." RSA 5-B:7 states "information of any pooled risk management program formed or affirmed under this chapter pertaining to claims analysis or claims management shall be privileged and confidential and not subject to disclosure to any third party." This prohibition has not been interpreted to mean anything further. *See Prof'l Firefighters v. HealthTrust, Inc.*, 151 N.H. 501, 505-06 (2004) (concluding RSA ch. 5-B does not completely remove a risk pooled management company from disclosure requirements of RSA ch. 91-A (2013 & Supp. 2014)). In this matter, the evidence did not concern "claims analysis or claims management." Rather, it dealt with, among other things, information contained within its "informational filing" of RSA 5-B:2, II, and such information is not exempt. *See id*. The presiding officer determines that PLT did not satisfy its burden, and thus, the benefits of disclosure to the public outweigh the benefits of non-disclosure to PLT. Therefore, under RSA ch. 91-A and RSA ch. 5-B, no part of this file is exempt from public disclosure.

ORDER

The presiding officer determines that based upon the findings included in this decision relating to PLT's current condition, instead of a future condition that may come to pass, PLT has not shown by a preponderance of the evidence that it "has sufficient financial viability to allow it to issue and honor said policies or renewals without subsidization by . . . any other entity." The presiding officer also determines that the file of this matter is not exempt from public disclosure under RSA ch. 91-A and RSA ch. 5-B.

The PLT petition is denied.

So Ordered, this 21st day of November 2015.

Donald E. Mitchell, Esq., NH Bar#1773
Presiding Officer

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