STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE

IN THE MATTER OF:	)	
Local Government Center, Inc.;	)	
Local Government Center Real Estate, Inc.;	)	
Local Government Center Health Trust, LLC;	)	
Local Government Center Property-Liability Trust, LLC;	)	
HealthTrust, Inc.;	)	
New Hampshire Municipal Association, LLC	)	
New Hampshire Municipal Association Property-Liability Trust, Inc.;	)	Case No: C-2011000036
LGC – HT, LLC;	)	
LGC-PLT, LLC;	)	
Local Government Center Workers' Compensation Trust, LLC;	)	
And the following individuals:	)	
Maura Carroll; Keith R. Burke; Paul G. Beecher;	)	
Peter J. Curro; April D. Whittaker; Timothy J. Ruehr;	)	
Julia A. Griffin; and John Andrews	)	
RESPONDENTS	)	

BUREAU OF SECURITIES REGULATION
AMENDED PETITION

NOW COMES Petitioner, the New Hampshire Bureau of Securities Regulation, through counsel and submits the following amended Petition pursuant to the Presiding Officer's December 30, 2011 Revised Scheduling Order.

Introduction

1. This is an enforcement action by the New Hampshire Bureau of Securities Regulation ("BSR" or the "Bureau") against individuals and certain entities (collectively referred to as the "LGC") in which the Bureau alleges that the LGC illegally operates pooled risk management programs similar to self-insurance programs by failing to return tens of millions of dollars in excess capital (*i.e.*, surplus) to municipal members and by using profits generated by

health coverage premiums to subsidize a holding company that, in turn, subsidizes a workers compensation program that is failing financially. LGC's conduct is in violation of statutory and fiduciary duties owed to member municipalities that participate in the health coverage programs, but who do not participate in the workers compensation program. LGC's conduct is also in breach of statutory and fiduciary duties owed to retired and active public employees who contribute all or part of the premium costs of health coverage only to have a portion of their premium payments diverted to support the holding company and the workers compensation program. The Bureau further alleges that by accumulating excess capital or surplus that is invested on behalf of members, the LGC, its executive directors and board members violate prohibitions against selling unregistered securities by unlicensed brokers, dealers and agents. Finally, the Bureau asserts that RSA 5-B, which governs pooled risk programs, must be interpreted in conformity with municipal budget laws, in particular RSA 32 and RSA 35 and, as such, LGC's operations facilitate the circumvention of municipal budget laws by member municipalities.

Parties

2. The New Hampshire Bureau of Securities Regulation is a unit of the Department of State, Corporations Division, a state agency charged with regulation of Pooled Risk Management Programs and the sale of securities in New Hampshire.

3. Local Government Center, Inc. ("LGC Parent") is a New Hampshire nonprofit corporation with a principal place of business at 25 Triangle Park Drive in Concord, New Hampshire. LGC Parent was formerly known as New Hampshire Municipal Association, Inc.

4. Local Government Center Real Estate, Inc. ("LGC Real Estate") is a New Hampshire nonprofit corporation with a principal place of business at 25 Triangle Park Drive in

Concord, New Hampshire. LGC Real Estate was formerly known as The Local Government Center, Inc.

5. HealthTrust, Inc. ("HealthTrust") is a New Hampshire nonprofit corporation with a principal place of business at 25 Triangle Park Drive in Concord, New Hampshire. HealthTrust was formerly known as New Hampshire Municipal Association Health Insurance Trust, Inc.

6. New Hampshire Municipal Association Property-Liability Trust, Inc. ("NHMA Prop. Liab. Trust") is a New Hampshire nonprofit corporation with a principal place of business at 25 Triangle Park Drive in Concord, New Hampshire. NHMA Prop. Liab. Trust was formerly known as New Hampshire Municipal Association Property Liability Insurance Trust, Inc.

7. LGC-HT, LLC is a former Delaware limited liability company with a registered office in the State of Delaware at Corporation Trust Center, 1209 Orange Street in Wilmington, Delaware.

8. LGC-PLT, LLC is a former Delaware limited liability company with a registered office in the State of Delaware at Corporation Trust Center, 1209 Orange Street in Wilmington, Delaware.

9. New Hampshire Municipal Association, LLC ("NHMA, LLC") is a New Hampshire limited liability company with a principal place of business at 25 Triangle Park Drive in Concord, New Hampshire.

10. Local Government Center HealthTrust, LLC ("HealthTrust, LLC") is a New Hampshire limited liability company with a principal place of business at 25 Triangle Park Drive in Concord, New Hampshire.

11. Local Government Center Property-Liability Trust, LLC ("Prop. Liab. Trust, LLC") is a New Hampshire limited liability company with a principal place of business at 25 Triangle Park Drive in Concord, New Hampshire.

12. Local Government Center Workers' Compensation Trust, LLC ("Workers' Comp Trust, LLC") is a former New Hampshire limited liability company that was merged with LGC Prop. Liab. Trust, LLC.

13. Maura Carroll is a New Hampshire citizen. Ms. Carroll was interim Executive Director of LGC Parent from September 5, 2009, until June 10, 2010, at which time she was appointed as Executive Director of LGC Parent. Prior to her appointment as interim Executive Director, she held the title of General Counsel with respect to HealthTrust, NHMA Prop. Liab. Trust, and, subsequently, LGC Parent.

14. John Andrews is a New Hampshire citizen. Mr. Andrews was, at all relevant times up to September 4, 2009, the Executive Director of LGC Parent and its predecessor entities HealthTrust and NHMA Prop. Liab. Trust. Mr. Andrews continues to be retained as a consultant to LGC.

15. Paul G. Beecher is a New Hampshire citizen. Mr. Beecher was a member of the board of directors of LGC Parent and one or more of its predecessor entities.

16. Keith R. Burke is a New Hampshire citizen. Mr. Burke was a member of the board of directors of LGC Parent and one or more of its predecessor entities.

17. Peter J. Curro is a New Hampshire citizen. Mr. Curro is a current member of the board of directors of LGC Parent and was a member of the board of trustees of one or more of LGC Parent's predecessor entities.

18. Julia A. Griffin is a New Hampshire citizen. Ms. Griffin was a member of the board of directors of LGC Parent and one or more of its predecessor entities.

19. Timothy J. Ruehr is a New Hampshire citizen. Mr. Ruehr was a member of the board of directors of LGC Parent and one or more of its predecessor entities.

20. April D. Whittaker is a New Hampshire citizen. Ms. Whittaker was a member of the board of directors of LGC Parent and one or more of its predecessor entities.

21. Individual respondents Robert A. Berry, Roderick MacDonald, and Stephen A. Moltenbrey were dismissed from this action by voluntary non-suit entered on January 12, 2012, by order of Presiding Officer Mitchell.

Regulatory Authority

22. Effective June 29, 2009, the General Court amended R.S.A. 5-B:4 to expressly grant the Bureau regulatory and enforcement powers over pooled risk management programs. Effective June 14, 2010, the General Court added R.S.A. 5-B:4-a, which expressly granted the Secretary of State the power to investigate pooled risk management programs, issue cease and desist orders, initiate adjudicatory proceedings, impose administrative fines, and order rescission, restitution, or disgorgement.

23. Upon petition by the Bureau, the Secretary of State issued a Cease and Desist Order, dated September 2, 2011, which Order noticed an adjudicatory hearing, appointed Donald E. Mitchell, Esq. as Presiding Officer, and designated the Bureau to represent the Secretary of State in this hearing to determine whether the Cease and Desist Order should be made permanent.

Facts Common to All Claims

24. On March 1, 1941, LGC Parent was incorporated as a New Hampshire nonprofit corporation under the name of New Hampshire Municipal Association, Inc., in order to "promote good municipal government and thereby promote the growth and prosperity of cities, towns and villages."

25. HealthTrust and NHMA Prop. Liab. Trust (collectively the "Trusts") were incorporated as New Hampshire nonprofit corporations on February 11, 1985 and June 3, 1986, respectively, in order to offer health and liability coverage for municipal employees through combined risk pools.

26. In 1987, the General Court enacted R.S.A. 5-B to clarify the authority of political subdivisions of the State to participate in pooled risk management programs (hereafter "5-B Pools") and to establish the standards and requirements for the formation and operation of such pooled risk management programs. Pooled risk management programs in compliance with the statute are exempt from regulation by the Insurance Department. Pursuant to R.S.A. 5-B, HealthTrust and NHMA Prop. Liab. Trust were recognized as 5-B Pools. The management of the New Hampshire Municipal Association, Inc. participated in the drafting of RSA 5-B which LGC Parent currently asserts was created to approve the then existing operations of the pooled risk management programs.

27. On February 5, 1988, LGC Real Estate was incorporated as a New Hampshire non-profit corporation under the name The Local Government Center, Inc. for the purpose of holding real property to be leased to entities including LGC Parent, HealthTrust and NHMA Prop. Liab. Trust. HealthTrust owned a 70% interest in the LGC land and building, with NHMA Prop. Liab. Trust owning the remaining 30% interest.

28. At the time of their creation and in 1987 when RSA 5-B was enacted, HealthTrust and NHMA Prop. Liab. Trust were governed by independent boards of directors (or trustees) pursuant to separate written by-laws. As required by R.S.A. 5-B, the Trusts in 1987 returned "all earnings and surplus in excess of any amounts required for administration, claims, reserves, and purchase of excess insurance" as dividends to their members. These dividends were sometimes referred to as "Member Balances" and were returned to the municipal members annually by check.

29. HealthTrust and NHMA Prop. Liab. Trust returned earnings and surplus in the form of a direct reimbursement to Members. Pursuant to the Bylaws of HealthTrust and the Bylaws of the NHMA Prop. Liab. Trust, earnings and surplus were returned to Members in proportion to the amounts paid by each Member in each fund year. In order to return earnings and surplus, Respondents necessarily computed each Member's *pro rata* share of annual earnings and surplus.

30. At least as early as 1999, HealthTrust and NHMA Prop. Liab. Trust began to retain Members' *pro rata* shares of annual earnings and surplus and, rather than returning a check to the Members, credited the Member Balance against the Members' following year's contributions to the 5-B Pools unless Members requested direct reimbursement of earnings and surplus. If Members requested direct reimbursement, HealthTrust and NHMA Prop. Liab. Trust issued a check to the Member.

31. Separate and distinct from the 5-B Pools, LGC Parent (then known as NHMA, Inc.) offered a variety of non-risk pool services to its members (local and municipal political subdivisions of the State), including legal support, legislative advocacy/lobbying, and training programs. LGC Parent's operations were funded by Member dues.

The Creation of a Holding Company to Facilitate Inter-Company Transfers

32. In 2003, the then existing Trusts undertook a corporate re-organization intending to create a parent and subsidiaries model for the purpose of consolidating control of the pooled risk management programs and facilitating inter-pool transfers for the purpose of subsidizing weak pools with surplus funds from the stronger pools. While the use of a common parent or holding company may at times be useful to consolidate and thereby reduce common operating expenses, the primary reason for the restructuring of the 5-B Pools into subsidiaries of an LGC parent was to facilitate the transfer of revenues from the HealthTrust Pool to an uneconomic workers' compensation program (the "Workers' Comp Pool") launched to compete with LGC's competitor, Primex. In addition, the re-organization facilitated transfers of funds from the 5-B Pools to LGC Parent without close board oversight, and resulted in the filing of consolidated financial returns that made it difficult to discern inter-program transfers and other so-called administrative expenses. Related to the adoption of the holding company model, the re-formed enterprise also adopted a "strategic plan," which served to partially disguise the HealthTrust Pool's subsidization of the Workers Comp Pool.

33. The inter-Pool transfers to support the Workers' Comp Pool, for example, resulted in HealthTrust, LLC distributing approximately $4.5 million to LGC Parent in 2009 as its "strategic plan contribution" and LGC Parent, in turn, distributing $3.9 million of this amount to the Workers' Comp Pool. In 2010, HealthTrust, LLC distributed just shy of $4 million to LGC Parent for the "strategic plan" and LGC Parent, in turn, distributed $3.25 million to the Workers' Comp Pool. The Workers' Comp Pool also made strategic plan contributions in these years, but they were in much smaller amounts then HealthTrust distributed to LGC Parent and much less than LGC Parent distributed to the Workers' Comp Pool. In 2009, the Worker's

Comp Pool distributed $67,000 to LGC Parent and in 2010 the Workers' Comp Pool contributed $72,000 to LGC Parent. According to LGC's financial statements, since the time of the re-organization in 2003 through 2010, HealthTrust has distributed $31,000,000 to LGC Parent and the Workers' Comp Pool has distributed $300,000.

34. Since the inception of the re-organization plan in 2003, $18.3 million of HealthTrust, LLC distributions to LGC Parent were, in turn, transferred to the Workers' Comp Pool in the form of a subsidy. The nature of the transfers was not officially characterized by the single LGC board or the LGC officers that oversaw the HealthTrust and Workers' Comp pools, as well as LGC Parent, until 2011. In the summer of 2011, at the suggestion of Ms. Carroll, the LGC Board characterized just over $17 million of the $18.3 million in transfers as a "loan" by HealthTrust, LLC to the Workers' Comp Trust.[1] However, even though characterized as a loan and supported by a note, the Workers' Comp Pool is not required to pay interest on the loan and there is no finite schedule for re-payment of the loan. Indeed, the Workers' Comp Pool is not financially capable of repaying a $17 million loan.

35. The transfers of millions of dollars from HealthTrust, LLC to the Workers Comp Pool passed through LGC Parent despite the fact that member towns do not all belong to both the HealthTrust and the Workers' Comp Pools.

36. The transfers of millions of dollars from HealthTrust, LLC to the Workers' Comp Pool passed through LGC Parent despite the fact that many active and retired municipal employees pay all or a share of their health insurance premiums, but do not intend for, and do not know, these premiums are used to subsidize the Workers' Comp Pool.

[1] It is not clear why Ms. Carroll recommended an amount to the Board for characterization as a "loan" that was less than the amount transferred.

37. In addition to inter-pool transfers, the LGC Board has distributed funds from the 5-B Pools to LGC Parent and LGC Real Estate, Inc. as "distributions to parent" for property purchases, building improvements, and other activities that accrue to the benefit of LGC, Inc and, at least in part, do not benefit or relate to operation of the 5-B Pools.

38. For example, when the re-organization took place in 2003, HealthTrust and NHMA Prop. Liab. Trust transferred their respective 70% and 30% ownership interests in the LGC land and building to newly created LGC Real Estate. The Pools were not compensated for these transfers and LGC Real Estate continues to charge the 5-B Pools rent for use of space in the LGC building.

The Failed Corporate Restructuring of LGC Entities

39. As stated above, in or around 2003, Mr. Andrews and the boards of HealthTrust, Inc., NHMA Prop. Liab. Trust, Inc. and NHMA, Inc. devised a plan to restructure the entities through a convoluted process requiring the creation of Delaware shell companies, such that a single board of directors would control all programs and services of the three entities, including management of the 5-B Pools.

40. However, Respondents failed to properly effectuate corporate mergers into and out of Delaware shell LLCs, resulting in a failed merger of HealthTrust, Inc. and NHMA Prop. Liab. Trust, Inc. into LGC HealthTrust, LLC and LGC Prop. Liab. Trust, LLC, respectively.

41. Because a legal merger had not been completed, the Secretary of State sent notices of required 2005 registration renewals to HealthTrust, Inc. and NHMA Prop. Liab. Trust, Inc. In response, LGC Parent notified the Secretary of State by letters dated January 12, 2005, that HealthTrust, Inc. and NHMA Prop. Liab. Trust, Inc. had been "dissolved on July 1, 2003."

HealthTrust, Inc. and NHMA Prop. Liab. Trust, Inc. were subsequently administratively dissolved in 2006 for failure to renew their registrations with the Secretary of State.

42. Following the attempted merger, the Boards of HealthTrust and NHMA Prop. Liab. Trust were dissolved, and operation of the 5-B Pools was taken over by LGC HealthTrust, LCC and LGC Prop. Liab. Trust, LLC. The recently formed Workers' Comp Pool was created and operated by LGC Workers' Comp, LLC.

43. Following the re-organization, none of the LLCs purportedly operating the 5-B Pools had an independent board of directors, separate bylaws, or separate operating agreements. Instead, they purportedly were governed by the single board of directors of LGC Parent (hereinafter the "LGC Board"), pursuant to LGC Parent's bylaws (hereinafter the "LGC Bylaws"). The LGC Board also purported to govern the operations of LGC Parent, NHMA, LLC and LGC Real Estate, Inc.

44. On or about May 31, 2007, LGC Workers' Comp, LLC was merged into LGC Prop. Liab. Trust, LLC, which thereafter operated the Workers' Comp Pool.

45. In the wake of the Bureau's investigation of LGC, the LGC Parent and individual entities admitted to the failure of the intended merger into the Delaware shell LLCs and purported to revive the prior non-profit corporations which legally hold the Pool assets. The effort to revive the prior non-profit corporations occurred at a time after the Secretary of State was given regulatory responsibility over pooled risk management programs in 2009.

Calculation of LGC's Reserve Fund and Maintenance of an Illegal Capital Surplus

46. Pooled risk management programs are required to "[r]eturn all earnings and surplus in excess of any amounts required for administration, claims, reserves, and purchase of excess insurance to the participating political subdivisions." R.S.A. 5-B:5, I(c). LGC illegally

built up and maintains a capital surplus and does not return the surplus capital to the 5-B Pools' participating political subdivisions. LGC's current practices in this regard are a stark contrast to its operations in effect in 1987 when Mr. Andrews and others assisted the Legislature in drafting RSA 5-B with a goal of permitting the then existing practices of risk pools.

47. Insurers and pooled risk management programs that act like insurers must maintain reserves to pay claims that are known or "in the house" and to pay claims that are in the "pipeline" and referred to as incurred but not reported claims ("IBNR"). As the payment of claims is not an exact science, insurers and pooled risk management programs retain earnings in the event that their actuarial estimates of claims "in the house" and "in the pipeline" are insufficient.

48. LGC addresses the foregoing for HealthTrust by maintaining a "claims payable" reserve designed to equal the amount needed to pay claims that are "in the house." In addition, LGC also maintains a "Claims Reserve" to pay IBNR, or claims "in the pipeline," at the end of the year. In 2009 and 2010, the "Claims Reserve" held approximately $20 million. Both of these reserves are properly characterized as liabilities on the balance sheets of LGC Parent.

49. In addition to these reserves for claims and IBNR, the LGC maintains two funds called "Board Unrestricted" assets and "Board Designated" assets. The Board Unrestricted assets were completely depleted from $25.7 million in 2008 to a negative ($757,000) in 2009 and have not been replenished. Perhaps coincidently, the Secretary of State gained the authority to regulate pooled risk management programs in 2009.

50. The Board Designated assets are a capital fund maintained to cover unexpected claim fluctuations above estimated claims and IBNR. The Board Designated assets for the HealthTrust Pool alone totaled $79.5 million in 2009 and $86.8 million in 2010. The Bureau

contends that the Board Designated assets are more than twice the amount needed to guard against LGC's inability to accurately predict claims and the excess constitutes surplus that should be returned to the Members. By LGC's own actuarial calculations, HealthTrust held $10.2 million in 2009 and $2.8 million in 2010 more than it has claimed is necessary to hold in Board Designated assets. In other words, the Board of LGC overshot its own inflated capital targets in each of these years and in many of the prior years.

51. Prior to the failed re-organization in 2003, HealthTrust maintained a fund analogous to the Board Designated assets fund equal to approximately 10% of annual claims.[2]

52. By comparison, the State's self-insured health care fund, which is a similar self insurance program serving State employees, is required to maintain an analogous capital fund equal to 5% of claims plus administrative expenses. See R.S.A. 21-I:30-b. This fund has been reduced twice since its inception in 2001, originally requiring the fund to maintain funds equal to three months of claims, then one month of claims, and finally the current 5%. See Amendments to R.S.A. 21-I:30-b enacted as 2005 N.H. Laws 177:62 and 2009 N.H. Laws 144:66.

53. The LGC Board increased its capital surplus by adopting a measure used for determining the solvency of insurance companies called Risk Based Capital ("RBC"). RBC was developed by the National Association of Insurance Commissioners ("NAIC") in 1994 and adopted by 49 states. RBC is the measure of capital adequacy to support an insurance company's business operations. RBC as a capital adequacy measurement is used for all types of insurance companies including property and casualty, life and health although the formula used in calculating RBC for different insurance operations varies. A similar approach is used to determine capital adequacy in banking. The two main components of the RBC system are: (1)

[2] Claims are currently $350-$360 million/year and if the HealthTrust were continuing to calculate its Board Designated assets in this fashion it would hold approximately $35-$36 million in that fund to guard against the inaccuracy of its ability to predict claims.

the risk based capital formula which establishes a hypothetical minimum capital level which is then compared to an insurance company's actual capital and (2) grants authority to the state insurance regulator to take specific actions based on the level of capital impairment.

54. The LGC HealthTrust is not required to use RBC since the HealthTrust by statute is not considered an "insurance" company and is, therefore, not under the regulatory supervision of the New Hampshire Department of Insurance. The LGC Board voluntarily adopted RBC ostensibly to measure reserve—not capital—adequacy.

55. The model act promulgated by the NAIC establishes five levels of capital measurement which are summarized in Chart 1 below. Again the RBC level applies to all insurance companies albeit the RBC formula calculation differs as among property & casualty, life and health insurers. RBC compares the insurance company's Total Adjusted Capital to its Authorized Control Level ("ACL"). ACL is the minimum capital required. An insurer with an RBC of 200% or 2.0 has twice the minimum capital required. The LGC chose an RBC of 4.2 as its target, which is more than four times the minimum capital requirement.

56. After the LGC Board set its target as an RBC of 4.2, it then set premiums at a rate sufficient to generate an RBC of 4.7.[3] For context, in 2002, HealthTrust maintained capital equivalent to approximately an RBC of 2.1.

57. LGC's records indicate that the HealthTrust Pool consistently maintained assets in excess of even LGC's chosen RBC of 4.2. For example, in 2008, the HealthTrust Pool held

[3] The LGC Board determined that funds equal to an RBC of 0.5 shall be identified as its annual administrative reserves, which are not subject to return to Members as earnings or surplus. Thus, regardless of actual administrative expenses in any given year, the LGC Board tied its "administrative reserve" to an authorized control level that fluctuates with the size of the pool, as well as adjustments made to the RBC formula established by the NAIC. In 2009, LGC's "administrative reserve" totaled $8,732,451.00. In 2010, the LGC Board abandoned the 0.5 RBC figure for administrative reserve and adopted a flat $500,000.00 value for annual administrative costs.

$92.7 million, the equivalent of an RBC of 6.4, or an excess of $31.8 million above an RBC of 4.2. Similarly, in 2007 and 2006, the HealthTrust Pool held an excess of capital (surplus) above LGC's target of 4.2 RBC of $34.4 million and $23.4 million, respectively. After the Bureau was given regulatory authority over LGC in 2009, LGC's acknowledged excess capital surplus shrank to $10.2 million above an RBC of 4.2.

Chart 1. Risk Based Capital

RBC Level	**RBC Level (Percentage)**	**Comment**
No action	Greater than 200%	The insurer is deemed to be in satisfactory financial condition with no regulatory action required
Company Action Level	150 to 200%	The insurer must prepare a report to the regulator outlining steps which will be taken to raise RBC to at least 200%
Regulatory Action Level	100 to 150%	The company must file a plan outlining steps to restore RBC to 200% AND the insurance commissioner is required to perform an examination or analysis of the insurer's business and issue appropriate corrective orders
Authorized Control Level	70 to 100%	Although the insurer is still considered technically solvent at this level, a regulator could take control of the insurer in addition to the company action plan and corrective orders.
Mandatory Control Level	Less than 70%	Requires a regulator to take steps to place the insurer under its control including placing the company under administrative supervision, or commencing a formal proceeding of rehabilitation or insolvency. Although the insurer may be reporting a positive level of capital most companies which trigger this action are technically insolvent

LGC Return of Earnings and Surplus

58. Pursuant to Sections 5.1 of the LGC Bylaws adopted on July 1, 2003, "The LGC's net income shall accrue to the Members as it is earned."[4]

59. Sections 5.1 and 5.2 of the 2003 LGC Bylaws further state that the LGC Board may periodically make a determination of the amount of earnings and surplus funds for a given year, if any. When the Board determines that earnings or surplus exist and should be distributed to eligible Members, the LGC Bylaws authorize the LGC Board to distribute 100% of the identified earnings and surplus to eligible Members, but in proportions set at the discretion of the Board.

60. Initially, any earnings and surplus determined by the Board were returned to Members in the form of an annual dividend check. Indeed, Section 8.2(n) of the LGC Bylaws expressly empowered the LGC Board to "declare dividends for distribution to eligible Members." LGC's predecessor entities touted the amount of dividends returned to Members in marketing materials used to solicit continued participation in the 5-B Pools. Prior to the 2003 restructuring, the Trusts began to offer to roll-over Member dividends as a credit against the following year's contributions. This became the *de facto* method of "returning" earnings and surplus to Members after the re-organization.

61. In 2007, the LGC Board amended the LGC Bylaws to allow for a new method by which to "return" earnings and surplus to Members. As amended, the LGC Bylaws allow "return" of earnings and surplus (if any are determined to exist in the discretion of the Board) "by means of the rating formula used to establish rates for each program of coverage." LGC Bylaws at Section 5.1 (as last amended December 15, 2011). In addition, the LGC Board,

[4] The LGC Bylaws appear to intentionally limit LGC's ability to return surplus to net income ($9 million) versus net capital (approximately $50 million).

contrary to statute, eliminated the requirement that 100% of identified earnings and surplus be returned to Members and HealthTrust does not return the entirety of surplus even as crediting rates. *See* R.S.A. 5-B:5, I(c).

62. LGC characterizes its new method for "return" of earnings and surplus as a rate stabilization plan whereby LGC purportedly takes identified earnings and surplus into consideration when setting rates for future years. LGC claims that its rate stabilization plan reduces the premium rates charged to Members in subsequent years, as well as reducing the volatility of rate changes, and thereby constitutes a "return" of the earnings and surplus retained by LGC.

63. In practice, the Board decides if and when it will recognize the existence of earnings and surplus for a given year, determines what portion of the Pool assets it deems to be earnings and surplus, keeps all of the money and purports to apply the identified earnings and surplus to Members rates in future years through an undisclosed actuarial calculation that purports to reduce the size of annual future increases in rates. Rather than receive their share of earnings and surplus each year, Members must remain members of the LGC Pools for subsequent years in the hope of receiving the benefit of the earnings and surplus accrued in prior years through premium rate credits.[5]

64. LGC admits that it does not apply all of the identified earnings and surplus funds to its rate stabilization program. Instead, the LGC Board doles out the identified earnings and surplus to the rate stabilization program in fractions over several years so that the LGC Board can unilaterally decide to recapture portions of the identified earnings and surplus at its discretion before those funds are "returned" to members through rate stabilization.

[5] This feature ties Members to LGC. The Member agreements also contain a two year lockout that prevents the return of Members who have left HealthTrust.

65. Members are not given the choice to opt out of the rate stabilization plan and receive a direct reimbursement of surplus funds. Rather, LGC has independently determined that it will retain earnings and surplus belonging to Members and "return" those Member funds by adjusting its actuarial rate computations at the LGC Board's discretion. LGC has explained that it parcels out the "return" of identified earnings and surplus through rate stabilization across multiple years as a hedge against increased claims.

LGC's *Post Hoc* Corporate Restructuring

66. In August 2011, after being informed of the fact that the 2003 corporate restructuring had never been legally completed, the available members of the former boards of HealthTrust, Inc. and NHMA Prop. Liab. Trust, Inc. filed certificates of revival with the Secretary of State to revive the dissolved corporations retroactive to July 1, 2003.

67. In October 2011, LGC Parent approved Limited Liability Company Agreements for LGC HealthTrust, LLC, and LGC Prop. Liab. Trust, LLC, purporting to retroactively submit the LLCs to oversight and governance by the LGC Board pursuant to the LGC Bylaws. LGC Parent further entered into Pooled Risk Management Program Agreements between HealthTrust, Inc. and LGC HealthTrust, LLC, and NHMA Prop. Liab. Trust, Inc. and LGC Prop. Liab. Trust, LLC, purporting to retroactively ratify the LLCs' operation of the HealthTrust, Prop. Liability Trust, and Workers' Comp Trust Pools.

68. At no time has LGC Parent or any of its subsidiaries, predecessors, or related entities ever registered its membership contracts in the 5-B Pools as securities pursuant to R.S.A. 421-B:11. Similarly, neither LGC Parent, its subsidiaries, predecessors, related entities, nor any of its officers, employees, or agents are licensed as Broker-Dealers, Issuer-Dealers or Agents pursuant to R.S.A. 421-B:6.

The Conduct of the LGC Circumvents the New Hampshire's Municipal Budget Laws.

69. R.S.A. 5-B must be interpreted consistently with the New Hampshire municipal budget laws that govern New Hampshire municipal finance. See e.g., R.S.A. 32 and 35. New Hampshire municipal budget laws require municipalities to budget in gross, which means the municipalities must account for all sources of revenues each year. R.S.A. 32:5, III. Off-book revenue sources are not permitted. These same laws require municipal appropriations to lapse at the end of each year. R.S.A. 32:7. This means that municipalities, absent special circumstances, may not maintain surpluses. Id. Surpluses are intended for return to taxpayers in reduced tax rates.

70. These municipal budgeting concepts are completely consistent with the prohibition against Pools maintaining surpluses year to year as Pools are no more than associations of municipalities. See R.S.A. 5-B:5, I(c) (requiring Pools to "[r]eturn all earnings and surplus in excess of any amounts required for administration, claims, reserves, and purchase of excess insurance to the participating political subdivisions.").

71. The exception to statutes that prohibit municipalities from maintaining surpluses year to year are those statutes that allow for the creation of non-lapsing funds. See R.S.A. 31:19-a; R.S.A. 35:1-c. These funds may be legally carried over from year to year by a municipality. However, because non-lapsing funds are the exception and not the rule, they must be specifically approved by the voters for identified purposes. R.S.A. 32:7, VI; R.S.A. 35:3. Monies held in non-lapsing funds by municipalities may only be held for limited periods of time not to exceed 5 years and may only be invested in certain relatively safe investments. R.S.A. 32:7, VI; R.S.A. 35:9.

72. The LGC, by not returning surpluses and instead carrying surpluses from year to year, assists its members in violating New Hampshire's municipal budget laws because voters at town meeting, or at other budget approval proceedings, are not told of the amounts held by LGC as surplus for each municipality. LGC and its Members do not obtain specific voted approval for LGC to maintain these funds as non-lapsing. Finally LGC invests the Member town's surplus funds in investments more adventurous than could the Member municipalities, putting these funds at greater risk than could the municipalities directly. At the end of 2010, approximately 17% of the investments held by LGC would not conform with RSA 35:9 and could not be held by municipalities in non-lapsing funds.

CAUSES OF ACTION

COUNT I.

Operation of a Pooled Risk Management Program in Violation of R.S.A. 5-B:5 --Improper Corporate Structure--

73. The Bureau restates and incorporates each of the preceding paragraphs in this Petition.

74. R.S.A. 5-B:5, I(b) and (e) require that every pooled risk management program shall "be governed by a board," and by "written bylaws," which shall "be filed with the department." The LGC entities, operating under the direction of its single board and with the assistance of its management, are in direct violation of these statutory requirements.

75. Following the corporate re-organization in June 2003, the assets of the HealthTrust and Prop. Liab. Trust Pools were purportedly transferred to LLCs and the Workers' Comp Pool was operated by LGC Workers' Comp Trust, LLC. At no time did any of these

LLCs have a board of directors or written bylaws. All three LLCs were further made subsidiaries of the LGC Parent holding company.

76. Upon the filing of the Bureau's Petition, LGC Parent belatedly adopted Limited Liability Company Agreements for LGC HealthTrust, LLC and LGC Prop. Liab. Trust, LLC purporting to retroactively subject the LLCs to governance by the LGC Board pursuant to the LGC Bylaws.

77. Nevertheless, LGC's current structure utilizes one single board to govern the operations of the three (3) different 5-B Pools plus NHMA, LLC, LGC Parent and LGC Real Estate, Inc., all according to one set of bylaws. This holding company structure violates the intent and requirements of R.S.A. 5-B, as well as basic concepts of fiduciary duty and conflicts of interest.

78. There is an inherent conflict of interest in any transfer of funds from a 5-B Pool governed by the LGC Board to one of the non-5-B Pool entities also governed by the LGC Board. In any such transaction, the LGC Board has a duty on one hand to insure that the 5-B Pool receives the lowest fair price for any services, while on the other hand, the LGC Board has a duty to seek the highest price for the non-Pool entity providing the services. In essence, the LGC Board must debate itself in order to fulfill its conflicting fiduciary duties to the 5-B Pool and the non-Pool entity.

79. Where a board member sits on both sides of a transaction, it is customary for that board member to recuse herself from voting due to the inherent conflict of interest involved. In LGC's case, the entire LGC Board should properly be recused from voting on any transaction between a 5-B Pool and an LGC entity, such as LGC Parent. The LGC Board simply cannot

perform its fiduciary duties to, for example, LGC HealthTrust, LLC and LGC Parent, when deciding how much to pay LGC Parent for administering the HealthTrust Pool.

80. This parent-subsidiary holding company structure with a single board overseeing operations of the multiple 5-B Pools also purposely blurs the lines among the entities to facilitate improper inter-entity transfers without easy detection by members or the public.

81. Each time the LGC Board members, including the individual Respondents named in this action, voted to transfer funds from a 5-B Pool to a non-pool entity (e.g., LGC Parent), the Board members were likely violating their fiduciary duties as directors of member funds. This demonstrates the need for independent boards for 5-B Pools, as expressly required by R.S.A. 5-B:5, I(b).

82. The same inherent conflicts exist in any transfer of funds between two or more 5-B Pools. There can be no independent, arms-length transaction where the LGC Board is negotiating with itself. Given that the three LGC Pools have different Members, it is hard to imagine any circumstance where a transfer of funds from one Pool to another would be in the interests of all of the Members of the transferring Pool. With a single board governing multiple 5-B Pools, there is no independent oversight to prevent improper transfers between Pools.

83. Indeed, the very purpose of the LGC re-organization was to facilitate inter-pool transfers to subsidize the failing Workers' Comp Pool in order to compete with Primex. Jenny Emery, a consultant hired by LGC Parent to advise it on strategic issues, described the plan this way in her sworn affidavit:

> I assisted LGC in developing a strategic plan that called for roughly one percent of each year's employer contributions for health coverage, and from other lines, to be used to subsidize LGC's workers compensation rates and risk control programs. At the time this plan was developed, I do not recall that there was any question raised regarding whether integration of the product line funding from different pools was authorized by the enabling legislation. All of LGC's pools

> were governed by the same broad statute, and the whole merger/integration of 2003 was premised on this.

Oct. 21, 2010 Affidavit of Jenny P. Emery, LGC-AH009950-62.

84. Not surprisingly, the LGC Bylaws fail to address conflicts of interest or set forth procedures for avoiding self-interested transactions by the LGC Board. The LGC Bylaws provide no guidance to the LGC Board on how to balance conflicting interests of the different Pools and/or the non-pool LGC entities. Instead of observing their duty to recuse themselves from interested transactions, the LGC Board members relied on the direction of Mr. Andrews, Ms. Carroll, legal counsel, and professional consultants when deciding how to manage Member funds held in the 5-B Pools.

85. The intent and purpose of the board and bylaw requirements in R.S.A. 5-B:5, I(b) and (e) is to prevent just the type of inherent conflicts of interest and transfers of funds between Pools and between the Pools and related non-pool entities that occurred here.

86. By operating without independent boards of directors and without independent bylaws, HealthTrust, LLC and LGC Prob. Liab. Trust, LLC are in direct violation of R.S.A. 5-B:5, I(b) and (e). Nor has LGC's attempted fix—purporting to place HealthTrust, LLC and LGC Prop. Liab. Trust, LLC under the governance of the single LGC Board pursuant to the LGC Bylaws—brought the LLCs into compliance with the statute.

87. The purpose of R.S.A. 5-B is to reduce the cost of obtaining health and liability coverage. This purpose is frustrated by directing Member funds to pay non-Pool expenses, including the expenses of separate 5-B Pools. LGC's single-board and bylaw holding company structure complies with neither the letter nor the intent of R.S.A. 5-B, and must be changed to maintain the status of LGC HealthTrust, LLC and LGC Prop. Liab. Trust, LLC as 5-B Pools exempt from regulation as insurance companies.

COUNT II.

Operation of a Pooled Risk Management Program in Violation of R.S.A. 5-B:5 --Failure to Return Surplus Funds to Members--

88. The Bureau restates and incorporates each of the preceding paragraphs in this Petition.

89. R.S.A. 5-B:5, I(c) mandates that 5-B Pools "[r]eturn all earnings and surplus in excess of any amounts required for administration, claims, reserves, and purchase of excess insurance to the participating political subdivisions." This requirement reflects the special status of pooled risk management programs as statutory not-for-profit programs authorized to hold and manage Member assets for the sole benefit of the Members.

90. The statutory purpose of 5-B Pools is not to amass assets under management for the benefit of the Pool administrators, but to responsibly manage Member contributions to ensure adequate health or other coverages to Members and their employees while balancing these costs against the other costs encountered by municipal members.

91. In order to perform their statutory function, 5-B Pools must maintain adequate capital to cover unanticipated losses. At the same time, consistent with the statutory purpose of 5-B Pools, the Pools must return any earnings and surplus funds to their Members.

92. Since 2002, the LGC Board has used an inappropriate actuarial method for calculating reserves for the 5-B Pools that inflates the capital needs of its Pools and compromises the return of surplus. Pursuant to the RBC method, and the LGC Board's chosen RBC level of 4.2, the 5-B Pools have amassed enormous wealth that exceeds prudent levels needed to manage the 5-B Pools. Indeed, HealthTrust, LLC alone has held more than $60 million more than reasonably necessary to safely and responsibly operate the HealthTrust Pool.

93. LGC's failure to return surplus funds is a direct violation of R.S.A. 5-B:5, I(c). The 5-B Pools must employ an actuarial method that establishes the minimum reserves that meet industry standards for prudency, such as the Stochastic Modeling method recommended by the Segal Company or an RBC closer to 2.0 or a capital measure closer to the State's 5% calculation.

94. Even using LGC's RBC method of calculating reserves, LGC failed to return surplus funds accumulated above and beyond its chosen RBC of 4.2. For example, the HealthTrust Pool held $10.2 million *in excess* of an RBC of 4.2 in 2009, and $2.8 million *in excess* of an RBC of 4.2 in 2010.

95. In addition to utilizing an inappropriate actuarial method to calculate required capital, LGC has improperly inflated its administrative costs, misappropriated Pool assets for non-Pool management purposes, and transferred assets between Pools without appropriate safeguards. Use of these funds for non-Pool purposes demonstrates that these funds were actually surplus funds that should have been returned to the Members pursuant to R.S.A. 5-B:5, I(c).

96. For example, LGC transferred millions of dollars ($8.7 million in 2009) in Pool assets to LGC Parent for "administrative" costs instead of returning the surplus funds to the Pool Members. LGC's subsequent 2010 change that assigned $500,000 as proper administrative costs demonstrates that "administrative" costs in excess of $500,000 in any given year are *prima facie* surplus funds. Similarly, the LGC Board Unrestricted asset fund, which was wiped out the year before regulation, was clearly surplus money that should have been returned to Members. When it became apparent that the Bureau would be given regulatory authority over LGC, this $25 million fund promptly consumed. Needless to say, it was not returned to Members.

97. In addition, the LGC Board caused Member funds to be transferred, without any security or even an expectation of repayment, from the HealthTrust Pool and the Prop. Liab. Trust Pool to LGC Parent, which then used the Member funds to subsidize the Workers' Comp Pool. In addition to constituting a blatant breach of fiduciary duty, the transfer of funds out of 5-B Pools for non-investment purposes unequivocally demonstrates that those funds were not needed to maintain a prudent reserve and were, therefore, surplus funds that should have been returned to Members.

98. The LGC Board's *post facto* attempt to re-characterize the $17 million in transfers as a loan has no bearing on the status of these funds as surplus. The so-called loan is non-interest bearing and repayment is contingent on the Workers' Comp Pool generating excess earnings; a contingency that is unlikely at best. Further, the majority of LGC's non-cash investments are held in instruments with maturities that far exceed the turn rate for health claims. Thus, these funds are not available to make up shortfalls in claim reserves and serve no purpose other than as excess capital or surplus.

99. Finally, even when LGC identified surplus funds for return, it applied an illegal scheme to retain the surplus funds. LGC's rate stabilization program does not constitute a permissible means of return of surplus funds to Members under the statute. The LGC's rate stabilization program is an actuarial formula purportedly used to reduce future rates for Members that continue their participation in the 5-B Pools. No actual return of surplus to Members takes place, nor do Members receive an actual monetary credit against their future contributions. Instead, LGC claims to take into account surplus funds when calculating the next years' rates.

100. Moreover, even when the LGC Board identifies surplus funds for "return" to Members through rate stabilization, the surplus funds are not credited immediately to rate

stabilization. Rather, LGC admits that it spreads identified surplus funds over a number of years so that the LGC Board can recapture the surplus funds at its discretion rather than use them for rate stabilization as initially designated. In addition, LGC retains surplus accrued by Members who leave the 5-B Pools, as those Members are ineligible to receive the so-called "return" of surplus funds through future rate credits.

101. The illegality of LGC's rate stabilization method is made clear by the fact that it results in the illegal use of municipal funds pursuant to R.S.A. 32 and 35. Pursuant to R.S.A. 32:7, annual appropriations by municipalities lapse at the end of the year unless they are part of a specially created non-lapsing fund, such as a non-capital reserve fund pursuant to R.S.A. 35. Moreover, such non-lapsing funds must be created by vote of the legislative body at an annual or special meeting.

102. Pursuant to the municipal budget laws set forth above, members cannot legally agree to allow LGC to retain surplus funds and apply them either as a credit to future contributions to the 5-B Pools or for alleged rate stabilization in future appropriation years. LGC facilitates this violation of the municipal budget laws through the opaque rate stabilization program. To make matters worse, LGC has invested a significant percentage of the illegally retained member funds in investment vehicles that are not permissible investments for municipal entities under R.S.A. 35:9.

103. The interplay between the municipal budget laws and R.S.A. 5-B's requirement to return earnings and surplus to members clearly demonstrates that compliance with R.S.A. 5-B:5, I(c) requires annual returns of <u>all</u> earnings and surplus directly to Members. LGC's retention of Member funds through complex and opaque actuarial calculations violates the clear mandate of

R.S.A. 5-B:5, I(c) and has facilitated the violation of the Municipal Budget laws by LGC's members.

104. LGC's failure to annually return all earnings and surplus, calculated using an appropriate actuarial method, constitutes a clear violation of R.S.A. 5-B:5, I(c), and LGC must return improperly retained earnings and surplus to its Members.

COUNT III.

Sale of Unregistered Securities by Unlicensed Broker-Dealers, Issuer-Dealers, and Agents in Violation of R.S.A. 421-B:6 and 11

105. The Bureau restates and incorporates each of the preceding paragraphs in this Petition.

106. Pursuant to the New Hampshire Securities Act, all securities offered or sold in New Hampshire must be registered, exempt, or federally covered securities. R.S.A. 421-B:11. LGC Parent and its subsidiary LLCs have been engaged in the offer and sale of unregistered and non-exempt securities in violation of the New Hampshire Securities Act.

107. Pursuant to R.S.A. 421-B:2, XX(a), an "investment contract" is a "Security." Two tests are frequently applied to determine what constitutes an "investment contract" in the context of securities law: the "Howey" test and the "Risk Capital" test. The United States Securities and Exchange Commission and the Bureau have adopted the "Howey" test. See SEC v. W.J. Howey Co., 328 U.S. 293 (1946); In re Gary Arthur Gahan, COMO5-028 (N.H. Cur. Sec. Reg., Dec. 30, 2008); In re Viatical Investments, Status As Securities, Into4-003 (N.H. Bur. Sec. Reg., Oct. 10, 2004). Some other state securities agencies and many courts also apply the alternative "Risk Capital" test. See, e.g., State v. Hawaii Market Center, Inc., 52 Haw. 642, 485 P.2d 105 (1971); Silver Hills Country Club v. Sobieski, 55 Cal.2d 811, 361 P.2d 906 (1961). In accordance with either the "Howey" test, or the "Risk Capital Test" membership interests in

NHMA, LLC and participation contracts for participation in each of the 5-B Pools ("risk pool contracts") are "investment contracts," and therefore securities that must be registered prior to offer or sale in New Hampshire.

108. The "Howey" test applies a four-prong analysis to identify an investment contract: (1) investment of money; (2) in a common enterprise; (3) with the expectation of a profit; and (4) to come solely through the efforts of the promoter or some third party. See SEC v. W.J. Howey Co., 328 U.S. 293 (1946); In re Gary Arthur Gahan, COMO5-028 (N.H. Cur. Sec. Reg., Dec. 30, 2008); In re Viatical Investments, Status As Securities, Into4-003 (N.H. Bur. Sec. Reg., Oct. 10, 2004).

109. With regard to "risk pool contracts," Members invest money (member contributions) in common enterprises (the 5-B Pools). Further, Members have an expectation of a profit in the form of a return of earnings. LGC advertises a return on investment to Members, previously in the form of annual dividends paid to Members and currently in the form of rate-stabilization or offsets to future contributions. To achieve the advertised returns on investment, the LGC Board directs the investment of Member contributions and achieves substantial investment income above and beyond the operating expenses of the 5-B Pools. Once Members make their annual contributions (investments) in the 5-B Pools, LGC and its professional agents unilaterally manage the investment of the member funds to achieve a return on investment. Members have no input or control over the investment and management of their funds once transferred to the 5-B Pools. Accordingly, "risk pool contracts" satisfy all four prongs of the *Howey* test, and are securities in the form of investment contracts.

110. Similarly, the Risk Capital Test also has four elements: (1) an investment furnishing initial value to an offeror; (2) a portion of this initial value is subjected to the risks of

the enterprise; (3) the furnishing of initial value is induced by the offeror's promise or representation which give rise to a reasonable understanding that a valuable benefit of some kind, over and above the initial value, will accrue to the offeree as a result of the operation of the enterprise; and (4) by someone other than the investor.

111. As with the *Howey* test, "risk pool contracts" satisfy the first prong of the Risk Capital test. Member contributions paid as consideration for risk pool contract are an investment that furnishes initial value to LGC in the form of control of Member assets. Because LGC invests Member contributions, a portion of the initial value provided to LGC is "subjected to the risks of the enterprise." Further, Members purchase "risk pool contracts" in reliance on LGC's inducements of below market rates for coverage, which create an expectation of benefits over and above the initial value of Member contributions, as a result of LGC's advertised efforts to manage the risk pools. Thus, "risk pool contracts" satisfy each element of the Risk Capital Test, and are, therefore, "investment contracts" that must be registered prior to offer or sale in New Hampshire.

112. Neither LGC Parent and its subsidiaries nor HealthTrust, Inc. or NHMA Prop. Liab. Trust, Inc. have registered their "risk pool contracts" as securities with the Bureau. Accordingly, each offer or sale of a "risk pool contract" constitutes a violation of R.S.A. 421-B:11, giving rise to a separate administrative fine. LGC and its related entities continue to violate the statute each time they offer or sell a "risk pool contract."

113. In addition, the Securities Act requires that all broker-dealers, issuer-dealers, and agents must be licensed with the Bureau, pursuant to R.S.A. 421-B:6.

114. A "broker-dealer" is defined as "any person engaged in the business of effecting transactions in securities." R.S.A. 421-B:2, III. All transactions involving the offer or sale of

"risk pool contracts" were performed by LGC Parent on behalf of the 5-B Pool entities. Accordingly, LGC Parent is a "broker-dealer" that must be licensed by the Bureau in order to offer or sell securities, including "risk pool contracts." LGC Parent has not been licensed as a "broker-dealer."

115. An "issuer-dealer" is defined as "any person, including . . . [a] limited liability company . . . issuing its own securities for sale directly to any member of the general public who is not a general partner, executive officer, manager, or director of the issuer." R.S.A. 421-B:2, XIII-a. LGC HealthTrust, LLC, LGC Prop. Liab. Trust, LLC, and LGC Workers' Comp Trust, LLC are each "issuer-dealers" that issued "risk pool contracts" for sale to members, and each has its principal place of business in New Hampshire. None of the LGC LLCs are licensed as "issuer-dealers" with the Bureau, and each is, therefore, in violation of R.S.A. 421-B:6.

116. An "agent" is defined as "any individual . . . who represents a broker-dealer, issuer or issuer-dealer in effecting or attempting to effect purchases or sales of securities." R.S.A. 421-B:2, II. LGC's officers and employees, including Mr. Andrews and Ms. Carroll, are "agents" under the Act, and are required to have been licensed as Agents with the Bureau prior to offering or selling "risk pool contracts" in New Hampshire. LGC is vicariously liable for each violation of R.S.A. 421-B:6 by sales of unregistered securities by unlicensed agents in the employ of LGC. See Hollinger v. Tital Capital Corp., 914 F.2d 1564 (9th Cir. 1990) (*en banc*).

117. For the foregoing reasons, the Respondents have been, and continue to be, in violation of the New Hampshire Securities Act. Each violation of the Act is subject to administrative fines not to exceed $2,500.00 per violation pursuant to R.S.A. 421-B:26.

COUNT IV.

Knowing or Negligent Aid in the Sale of Unregistered Securities by Unlicensed Broker-Dealers, Issuer-Dealers, and Agents by the Individual Respondents in Violation of R.S.A. 421-B:26, III-a.

118. The Bureau restates and incorporates each of the preceding paragraphs in this Petition.

119. Pursuant to R.S.A. 421-B:26, III-a, a "principal executive officer or director" of an entity dealing in securities, "who materially aids in the act or transaction constituting [a] violation [of the Securities Act] either knowingly or negligently" may be subject to "an administrative fine not to exceed $2,500" for each separate act in violation of the Act.

120. Mr. Andrews, Ms. Carroll, and each member of the LGC Board named in this action (collectively the "Individual Respondents") either knowingly or negligently aided LGC in selling unregistered securities in violation of R.S.A. 421-B:11. The Individual Respondents knew, or should have know through the exercise of reasonable care of facts sufficient to establish that "risk pool contracts" and NHMA membership contracts are securities under New Hampshire law and must be registered before sale.

121. Furthermore, the Individual Respondents participated in, or approved, the marketing of "risk pool contracts" to Members and potential Members with a purpose of inducing investment in the 5-B Pools by Members by creating an expectation of value and/or a return on investment.

122. Finally, the Individual Respondents knew, or should have know through the exercise of reasonable care, that broker-dealers, issuer-dealers, and agents must be licensed in order to offer securities for sale in New Hampshire. The Individual Respondents are, therefore,

personally liable for administrative fines for each offer or sale of "risk pool contracts" in New Hampshire by LGC, its subsidiaries, and/or its agents, all of which were unlicensed.

COUNT V.

Fraud, Deceit and Material Omissions in Connection with the Offer or Sale of Securities in Violation of R.S.A. 421-B:3

123. The Bureau restates and incorporates each of the preceding paragraphs in this Petition.

124. Pursuant to R.S.A. 421-B:3, it is unlawful for any person, in connection with the offer or sale of a security:

> (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
> (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

R.S.A. 421-B:3, I.

125. Respondents have consistently failed to disclose material facts, in connection with the offer or sale of securities in the form of both NHMA membership contracts and "risk pool contracts" in violation of R.S.A. 421-B:3. Specifically, Respondents have failed to disclose to Members and potential Members material facts including, but not limited to:

a. NHMA membership contracts and "risk pool contracts" are unregistered securities;

b. LGC Parent and its subsidiaries are not licensed as broker-dealers or issuer-dealers as required by law to offer or sell securities; and

c. LGC Parent's officers and employees are not licensed as agents as required by law to offer or sell securities.

126. Each of these material omissions constitutes an violation of R.S.A. 421-B:3, I (b) each time LGC Parent or its subsidiaries, officers, or employees offer or sell NHMA membership contracts or "risk pool contracts" in the State of New Hampshire.

127. Similarly, Respondents have engaged in actions that operate a fraud or deceit on their Members as defined by the statute. Specifically, Respondents have used Member funds held in trust in the 5-B pools for non-pool purposes without the knowledge or written authorization of Members, including, but not limited to:

a. Diverting Member funds from the HealthTrust and Prop. Liab. Trust pools to LGC Parent for use to subsidize the Workers Comp Pool;

b. Diverting Member funds from the HealthTrust and Prop. Liab. Trust pools to LGC Parent for the benefit of LGC Parent's non-pool administration activities; and

c. Investing Member funds in risky investment vehicles not authorized by Municipal Budget laws.

128. LGC failed to notify Members of its use of Member funds for non-pool purposes, and failed to obtain written authorizations from Members to so use their funds. Each misuse of Member funds for non-pool purposes constitutes an "act, practice, or course of business which operates or would operate as a fraud or deceit" upon Members in violation of R.S.A. 421-B:3, I(c).

COUNT VI.

Civil Conspiracy

129. The Bureau restates and incorporates each of the preceding paragraphs in this Petition.

130. The Individual Respondents conspired together to place each of the LGC 5-B Pools under the control of a single board of directors in order to facilitate inappropriate transfers of Member funds to LGC and to subsidize the Workers' Comp Pool with Member funds held in trust by other 5-B Pools, and to obfuscate their actions through opaque record keeping.

131. In addition, the Individual Respondents conspired to accumulate excessive funds in the 5-B Pools by establishing an inappropriately large fund of retained earnings and surplus for investment by LGC and its subsidiaries. The Individual Respondents conspired to illegally retain Member funds that were required to be returned to Members and to invest such illegally retained funds in long-term investment instruments in violation of municipal budget laws.

132. The Individual Respondents also conspired to improperly transfer Member funds from the 5-B Pools to LGC and its subsidiaries for non-Pool purposes, and to transfer funds from some 5-B Pools to other 5-B Pools in blatant disregard of their role as fiduciaries for Member funds held in trust by the 5-B Pools and in violation of their fiduciary duties to the Members.

133. The Individual Respondents acted in furtherance of their conspiracies and in breach of their fiduciary duties to the 5-B Pools and their Members. The Individual Respondents directed LGC and its subsidiaries over a course of years in furtherance of their conspiracies, and acted to disguise their efforts from the public and their Members. The conspiracy continues through the present, which is after the Secretary of State obtained regulatory responsibility for the Pools in 2009.

134. The fruit of the Individual Respondents' conspiracies are ongoing and are the proximate causes of the current violations of R.S.A. 5-B and R.S.A. 421-B alleged against LGC and its subsidiaries in this Petition.

135. The Individual Respondents' actions in furtherance of their conspiracies were done in bad faith and in breach of their duties of loyalty to LGC and the 5-B Pools. Consequently, the Individual Respondents should not be indemnified by LGC using Member funds, and should bear their liability in their individual capacities.

WHEREFORE, the Bureau of Securities Regulation respectfully requests that the Presiding Officer:

A. Make findings of fact and rulings of law consistent with the allegations set forth in this Amended Petition;

B. Order the Respondents to cease and desist all actions in violation of State law or regulations, including the operation of 5-B Pools in a holding company structure;

C. Order Respondents to come into compliance with R.S.A. 5-B:5 by appointing independent boards of directors and adopting appropriate bylaws for each of the 5-B Pools;

D. Order Respondents to come into compliance with R.S.A. 5-B:5 by adopting an appropriate actuarial method to calculate prudent reserves and capital funds and to annually return all accrued earnings and surplus to Members by direct payment in proportion to Member contributions;

E. Order the Respondents to pay restitution to current and past members of the 5-B Pools in the amount of all earnings and surplus funds and property interests illegally transferred by Respondents to LGC Parent and/or for subsidies improperly paid to the Workers Comp Pool and order that no additional subsidies be paid;

F. Order the Respondents to pay restitution to current and past public employees and retired public employees to compensate them for the illegal application of their health care premiums to pay subsidies to prop up a failing Workers Comp program;

G. Order the return of the HealthTrust's and NHMA Prop. Liab. Trust's equity in the land and buildings now owned by LGC;

H. Order the Respondents to pay administrative fines for each violation of R.S.A. ch. 5-B and R.S.A. ch. 421-B;

I. Order the Respondents to pay the reasonable costs of the BSR's investigation and prosecution of this matter in accordance with R.S.A. 5-B:4-a, V, R.S.A. 421-B:22, IV, and R.S.A. 421-B:23, II; and

J. Take such other actions as are necessary and just within the Presiding Officer's jurisdiction.

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

Dated this 17th day of February, 2012

/s/ *Andru H. Volinsky*

Andru H. Volinsky No. 2634
Roy W. Tilsley, Jr. No. 9400
Christopher G. Aslin No. 18285
PO Box 1120
Manchester, NH 03105-1120
603.623.8700
avolinsky@bernsteinshur.com

Dated this 17th day of February, 2012

/s/ *Earle F. Wingate, III*

Earle F. Wingate, III No. 2763
Jeffrey D. Spill No. 2416
Bureau of Securities Regulation
State of New Hampshire
107 North Main Street, Room 204
Concord, NH 03301
603.271.1463
Earle.Wingate@SOS.NH.gov

Certificate

I hereby certify that the foregoing motion was provided to counsel of record on the below service list by hand or electronically, this 17th day of February, 2012.

/s/ Andru H. Volinsky

Service List:
Jeffrey D. Spill, Esq.
Earle F. Wingate, III, Esq.
Kevin B. Moquin, Esq.
Eric Forcier, Esq.
Adrian S. LaRochelle, Esq.
William C. Saturley, Esq.
Brian M. Quirk, Esq.
David I. Frydman, Esq.
Michael D. Ramsdell, Esq.
Joshua M. Pantesco, Esq.
Mark E. Howard, Esq.
Jaye L. Rancourt, Esq.
Roy W. Tilsley, Jr., Esq.
Glenn R. Milner, Esq.
Andru H. Volinsky, Esq.
Steven M. Gordon, Esq.
Benjamin Siracusa Hillman, Esq.
Christopher G. Aslin, Esq.
Kimberly Myers, Esq.