PretiFlaherty

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VIA HAND-DELIVERY

October 16, 2013

Eileen Fox, Clerk
NH SUPREME COURT
One Charles Doe Drive
Concord, NH 03301

RE: Local Government Center, Inc., et al.
Appeal by Petition
Case No. 2012-0729

Dear Clerk Fox:

Please find enclosed an original and eight (8) copies of the *Appellants' Reply Brief* for filing with the Court in connection with the above-referenced matter.

Kindly note that copies of this letter and the within *Reply Brief* have been provided to all parties interested in this action.

Very truly yours,

William C. Saturley
wsaturley@preti.com
Direct: 603.410.1557

WCS/tew
Enclosures

cc: Suzanne M. Gorman, Esq.
Andru H. Volinsky, Esq.
Roy W. Tilsley, Jr.
Christopher G. Aslin, Esq.
Earle F. Wingate, III, Esq.
Jeffrey D. Spill, Esq.
Adrian LaRochelle, Esq.
Eric Forcier, Esq.
William S. Saturley, Esq.
David I. Frydman, Esq.
Michael D. Ramsdell, Esq.
Mark E. Howard, Esq.

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

CASE NO. 2012 – 0729

APPEAL OF THE LOCAL GOVERNMENT CENTER, INC. & a.

APPEAL BY PETITION PURSUANT TO RSA 5-B;4-a, VIII;
RSA 541:6; AND SUPREME COURT RULE 10
FROM A RULING BY THE BUREAU OF SECURITIES REGULATION

APPELLANTS' REPLY BRIEF

Submitted by:

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"**require ... 1** *obs* : to ask, request, or desire (a person) to do something ... **2 a :** to ask for authoritatively or imperatively : claim by right and authority : insist upon usu. with certainty or urgency ... **3 a :** to call for as suitable or appropriate in a particular case : need for some end or purpose ... **b :** to demand as necessary or essential (as on general principles or in order to comply with or satisfy some regulation) : make indispensable ... **c :** to demand as a necessary help or aid : need as an essential : stand in urgent need of : NEED, WANT. ..."

The Constitutional Provisions, Statutes, and Laws have already been reproduced in Appellants' Appendix.

REPLY ARGUMENT

I. The Bureau Misconstrues LGC's Argument Regarding Business Judgment.

The Bureau correctly asserts that the discretion afforded to corporate directors by the business judgment rule does not allow directors to violate a statute. Bureau Brief at 14-16. But the Bureau misconstrues LGC's argument regarding the reasonable exercise of business judgment by directors. LGC relies on business judgment because the statute its directors were charged with interpreting provides no guidance on how to calculate the level of reserves a risk pool should hold, or on the other issues on which the Bureau now second-guesses their decisions. Far from having made a "decision to violate [the] statute," LGC's directors exercised their sound business judgment in governing the risk pool, as specifically empowered to do under the statute.[1]

RSA 5-B:5, I(b) provides that "[e]ach pooled risk management program ... shall ... [b]e governed by a board ...." The mandatory "shall" and the plain meaning of the word "governed" show that the Legislature charged the board with "direct[ing] and control[ing]" the program. *See Franklin v. Town of Newport*, 151 N.H. 508, 510 (2004) (construing the phrase "shall be conducted and governed" and citing the definition of "govern" in *Webster's Third New International Dictionary* 982 (unabridged ed. 2002)). A program's board accordingly has discretion in determining how to apply the broad statutory language to the program, and its judgment should be accorded deference if within a range of reasonableness. *See Schaefer v. Eastman Community Ass'n*, 150 N.H. 187, 190 (2003) ("When a court is called upon to assess the validity of an action taken by a board of directors, it first determines whether the board acted

[1] The Bureau's reliance on *Miller v. American Telephone & Telegraph Co.*, 507 F.2d 759 (3rd Cir. 1974) is misplaced. In *Miller,* the District Court had dismissed a complaint alleging that AT&T's directors had violated federal campaign law by failing to collect a debt owed. *Id.* at 761. It reasoned that AT&T's "collection procedures were properly within the discretion of the directors . . . ." *Id.* at 761. The Third Circuit reversed because "the business judgment rule cannot insulate the defendant directors from liability if they did in fact [break the law]." *Id.* at 762. But while the business judgment rule is no defense to breaking the law, if there is only a broad, general statutory standard, directors must be permitted to apply the statute based on their sound business judgment.

within the scope of its authority and, second, whether the action reflects reasoned or arbitrary and capricious decision making.") (citation omitted). *Cf. Bartlett v. Dumaine*, 128 N.H. 497, 512-13 (1986) ("Where ... a trust instrument allows the trustees to operate trust-controlled corporations ... [a] court ... will interfere in the trustees' corporate decisions only where the trustees have abused their discretion. In operating the trust-controlled corporations, the trustees are thus free to exercise their 'business judgment.'") (citation omitted).

LGC's directors are entitled to deference regarding how best to govern LGC's risk pool programs, including the setting of reserve levels – a critical element of risk pool governance.[2] The statute provides only that the program shall "[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." RSA 5-B:5, I(c). The phrase "any amounts required" does not mean the barest minimum possible. The plain meaning of the word "required" includes "suitable or appropriate in a particular case" as well as "necessary or essential." *See Webster's Third New International Dictionary* 1929 (definition of "require"). By its choice of the phrase "any amounts required," the Legislature therefore contemplated that a program would retain amounts its board viewed as suitable or appropriate to protect participating political subdivisions. In the Order, the Presiding Officer improperly usurped the Board's role.

The problems inherent in having the Presiding Officer make decisions that are properly committed to a risk pool board familiar with the program are apparent in the Order. It directs Property-Liability Trust to pay $17.1 million to HealthTrust, Order at 78, ¶ 13, even though the financial statements in the record showed that Property-Liability Trust could not make the

[2] The Bureau's argument that LGC's directors are not entitled to the protection of the business judgment rule because they were "interested" should be rejected. First, the Bureau fails to explain how the setting of reserves for one risk pool could influence another risk pool. Second, the argument ignores the history of the support of the workers' compensation risk pool, which began with the action of separate, independent boards. LGC Exs. 2-6.

payment and meet its coverage obligations. *See id.* at 27-28 (in 2010, the pool's net assets were $10,225,000); *id.* at 74, ¶ 5; LGC Ex. 169. Nonetheless, the Order concluded that Property-Liability Trust held $3.1 million in "excess surplus." Order at 77, ¶ 11. While the Workers' Compensation program may be "$17.1 million to the better for having received" the strategic support from HealthTrust, Bureau Brief at 28, that does not mean Property-Liability Trust has the capacity to repay that sum.[3] Even if the $17.1 million would be "surplus" as to *HealthTrust*, Bureau Brief at 29, it is not surplus as to Property-Liability Trust. The Bureau acknowledges as much. *See* Bureau Brief at 26 ("the LGC-controlled entities propped up a financially deficient program...."). Because the Presiding Officer acknowledged that the program lacked the assets to pay the $17.1 million, yet ordered it to distribute $3.1 million of "excess surplus," Order at 77-78, ¶ 11, the Order is logically inconsistent, fundamentally flawed, and unreasonable.

II. The Bureau Misreads RSA 5-B, Fails to Account for the Double Standard in Its Treatment of LGC and Its Competitors, and Makes Other Interpretive Errors.

The Bureau quotes language from RSA 5-B:1 that risk pools are "established for the benefit of political subdivisions," Brief at 19, as if that language proves that LGC has done wrong by holding greater reserves than the Bureau believes necessary. The Bureau's opinion, however, does not trump the Board's reasonable exercise of business judgment. The directors reasonably concluded that maintaining a financially sound pooled risk management program that can absorb year-to-year loss experience fluctuations without significant rate volatility benefits members, and the Court should reject the suggestion that pursuing such financial soundness violates the statutory mandate to govern the program "for the benefit of political subdivisions(.)"

[3] While the Order "permits Workers Comp to borrow the necessary funds from a commercial lender," Bureau Brief at 29, borrowing funds to make a payment that renders the borrower insolvent is necessarily problematic. No commercial lender has been willing to make such a loan to Property-Liability Trust. *See* Motion of Appellant Property-Liability Trust, Inc. for Partial Stay of Final Order Pending Appeal at 2 (filed October 7, 2013).

LGC pointed out in its opening brief that the Bureau has employed a double standard in its dealings with LGC and its competitors PRIMEX and SchoolCare, capping LGC at the lesser of a reserve level of fifteen percent of claims or an RBC ratio of 3.0, while agreeing that PRIMEX and SchoolCare could exceed an RBC ratio of 3.0 or a specified stochastic method limit, respectively, based on the business judgment of their directors. LGC Brief at 22-23. The Bureau responds that PRIMEX and SchoolCare must give 30 days' notice before exceeding those limits, Bureau Brief 23 n. 24, and under the Order "the parties are given discretion to vary" its limits if "it is concluded that a variation is merited." Bureau Brief at 23. The Bureau neglects to mention, however, that it, not LGC, has discretion under the Order to raise the 3.0 limit—and only upon "prior written notice of at least one (1) year." Order at 77. The Bureau's effort to equate LGC's limited ability to exceed an RBC ratio, only if the Bureau approves after one year's advance notice, with the authority of PRIMEX and SchoolCare to exercise their business judgment to decide for themselves to exceed such limits upon 30 days' notice, is not credible. Moreover, while PRIMEX is limited to an RBC ratio of 3.0, unless its board decides otherwise, LGC is limited to the lesser of an RBC ratio of 3.0 or reserves amounting to 15% of claims, Order at 76—and 15% of claims corresponds to an RBC ratio of 2.65. Finally, the voluntary PRIMEX and SchoolCare agreements have five year terms, BSR Exs. 64, 65, but the Order against LGC remains in effect indefinitely. *See* Order at 76-77, ¶¶ 9-10.

According to the Bureau, LGC relies on "legislative inaction to support a claim that the governing statutes lack sufficient detail, ignoring that the 'legislature expresses its will by enacting laws, not by failing to do so.'" Bureau Brief at 9. The 2010 legislative hearings on the level of reserves under RSA 5-B and the law requiring the Secretary to submit a report with recommendations on reserves and administrative expenses for risk pools was not "legislative

inaction." *See* Laws 2010, 149:6. It was legislative action based on the Legislature's determination that the required level of reserves was entirely unclear.

The Bureau attempts to secure a more favorable standard of review by categorizing the Presiding Officer's determination of the proper amount of reserves LGC's risk pools may retain as a factual determination. *See* Bureau Brief at 21 ("The Hearing Officer was required to factually determine the proper amount to be held."). The Bureau's analysis is flawed. The permissible reserve level for risk pools pursuant to RSA 5-B is not a factual determination. Because the determination is premised on the interpretation of RSA 5-B, it is at least a mixed question of law and fact, if not a purely legal determination.

While the Bureau asserts that "LGC does not challenge the constitutionality of RSA ch. 5-B on vagueness grounds[,]" Bureau Brief at 14 n. 14, LGC filed a dispositive motion on the issue. *See* "LGC's Motion to Dismiss Count II of the Amended Petition on the Grounds That the Bureau of Securities Regulation Has Improperly Failed to Promulgate Rules Under R.S.A. 5-B, and the Statute Unconstitutionally Delegates Unlimited Legislative Authority to the Bureau *and Is Unconstitutionally Vague*" (emphasis added) (filed March 12, 2012). LGC has narrowed its vagueness argument on appeal to the specific contention that, because the statute provides no guidance as to required reserve levels (and on other important issues), the Bureau was required to provide LGC with notice of its interpretation via rule-making before holding LGC to heretofore unannounced standards. *See* LGC Brief at 14 ("RSA 5-B lacks sufficient detail on its face to support the specific standards created by the Presiding Officer.")

In response to LGC's observation that the Presiding Officer improperly included over $2 million invested in capital assets (such as computer systems and furniture) in the "excess reserves" HealthTrust was required to return to its members, the Bureau asserts that "LGC

waived this argument by failing to raise it at the hearing." Bureau Brief at 27. LGC was not required to raise the argument at the hearing, however, when it had no notice, and therefore no idea, that the Presiding Officer would impose this unexpected and illogical requirement.

The Bureau contends that LGC's business decision to save costs by holding sufficient reserves to guard against catastrophic losses instead of annually purchasing reinsurance violated RSA 5-B because it "resulted in the retention of excess surplus that should have been returned to members." Bureau Brief at 26. But RSA 5-B does not require that risk pools purchase reinsurance; rather, RSA 5-B:3, I authorizes risk pools to engage in "insurance by self-insurance" and "pooling of self-insurance reserves ...." LGC's decision to retain certain assets and self-insure the exposure, rather than purchase expensive reinsurance in the marketplace, is a reasonable exercise of the governance powers granted its board by the statute. Absent any contrary statutory or regulatory requirement that LGC purchase reinsurance, the claim that funds held to guard against catastrophic losses and otherwise temper rate volatility constitute "excess surplus" is arbitrary and incorrect.

III. The Bureau Fails to Rebut LGC's Argument that Requiring Property-Liability Trust to Repay Pre-June 2010 Strategic Support of the Workers' Compensation Program to HealthTrust Is Unconstitutional and Unfounded.

LGC argued in its opening brief that in ordering Property-Liability Trust to repay $17.1 million of strategic support to HealthTrust, most of which was provided at a time when the Bureau had no statutory power to regulate RSA 5-B risk pools, the Presiding Officer violated Part I, Article 23 of the New Hampshire Constitution by retroactively imposing new duties and obligations on LGC. In response, the Bureau points to the "express language of the Order," and "LGC's acts to ratify its obligation to repay the $17.1 million subsidy that occurred in June 2011, after RSA 5-B:4-a was enacted." Bureau Brief at 28. Neither point is persuasive.

The language to which the Bureau refers is the Presiding Officer's assertion that the funds in question "could have been returned to the members of the health trust and members of the property liability program . . . during the years in which they were transferred, *or can be returned presently as excess earnings and surplus.*" Bureau Brief at 28 (quoting Final Order at 41) (emphasis in original). While the Bureau is free to underscore the Presiding Officer's statement that the funds in question would, in HealthTrust's hands, constitute surplus that could "be returned presently," its argument is circular, as it assumes the very point the Bureau seeks to prove: that it has the authority to order one pool to return the funds to another in the first place.

The Bureau also claims that "LGC's acts to ratify its obligation to repay the $17.1 million subsidy that occurred in June 2011" give the Bureau regulatory authority over pre-June 2010 transfers. Bureau Brief at 28. The Bureau makes the unequivocal but conclusory assertion that "LGC's failure to repay the subsidy is a current and ongoing violation of RSA 5-B:5 ...." *Id.* at 29. But the Bureau never explains how LGC's 2011 decision to characterize HealthTrust's strategic support of the Workers' Compensation program as a series of loans cures the retroactivity problem. Indeed, making the Bureau's regulatory authority dependent on business entities' post-hoc characterizations of transactions is an absurd result.

The Bureau cites *SEC v. Chenery Corp.*, 332 U.S. 194 (1947), for the proposition that a balancing test should be applied in evaluating state action that gives legislation retroactive effect, meaning (in the Bureau's view) that it is "not necessarily fatal" to the validity of an enforcement action that it "might have a retroactive effect . . . ." Bureau Brief at 29 (quotation marks omitted). In *Chenery*, however, the U.S. Supreme Court was not interpreting Part I, Article 23 of the New Hampshire Constitution. Whatever *Chenery*'s impact on federal administrative law, it has no bearing on LGC's claim of violation of the New Hampshire Constitution. As for the

Bureau's suggestion that "[t]he Hearing Officer's interpretation of the statute presents no reversible legal error," Bureau Brief at 29, no amount of deference to that statutory construction can remedy a constitutional violation of Part I, Article 23, particularly where that construction applies regulatory authority retroactively to a period where the statute specifically provided that "[n]othing contained in this chapter shall be construed as enabling the department [of State] to exercise any rulemaking, regulatory or enforcement authority over any pooled risk management program." RSA 5-B:4 (as in effect prior to Laws 2009, 128:2 (effective June 29, 2009)).

IV. LGC Moved to Disqualify the Presiding Officer within Hours of Its Discovery of His Impermissible Pecuniary Interest in the Duration and Outcome of the Proceeding.

The Bureau urges the Court to reject LGC's due process claim based on the Presiding Officer's impermissible pecuniary interest in the duration and outcome of the proceeding, claiming: (1) LGC waived the claim; (2) LGC failed to identify a pecuniary interest; and (3) LGC's "approach" to disqualification is against public policy. The Bureau's arguments are factually incorrect and legally unsound.

The Bureau's third argument is dispatched easily. LGC never "has asserted that the appropriate way to conduct a hearing under RSA 421-B is to employ a full-time adjudicatory officer . . . ." *See* Bureau Brief at 34. LGC has asserted only that employing a presiding officer who was unilaterally selected and paid by the Secretary in a proceeding where he would award fees if the Bureau prevailed, was paid based on the duration of the proceeding, achieved greater compensation by denying LGC's dispositive motions than he would have been paid by granting them, and twice renegotiated his contract with the Secretary to increase his pay while the case was pending, offends due process. *See* LGC Brief at 33. The due process violation could have been avoided through different contract terms or, as LGC offered, through the parties agreeing to and splitting the cost of a retired judge.

The Bureau's second argument also requires only a brief response. "A *per se* rule of disqualification due to the probability of unfairness, applies when the trier has pecuniary interests in the outcome." *Appeal of Grimm*, 141 N.H. 719, 721 (1997) (citation omitted). "Every procedure which would offer a possible temptation to the average man as judge . . . not to hold the balance nice, clear, and true between the State and the accused denies the latter due process of law." *In re Murchison*, 349 U.S. 133, 136 (1955) (quoting *Tumey v. Ohio*, 273 U.S. 510, 532 (1927)). Actual bias need not be proven because the mere existence of improper incentives violates due process. *See Lucky Dogs LLC v. City of Santa Rosa*, 913 F. Supp. 2d 853, 860 (N.D. Cal. 2012); *Haas v. County of San Bernardino*, 45 P.3d 280, 285 (2002). Here, the Presiding Officer's temporary status, fee-shifting power, possibility of future employment, and duration-based compensation impermissibly incentivized him to rule in the Secretary's favor.

LGC did not waive its due process claim. LGC moved for disqualification within hours of first learning of the Presiding Officer's actual financial arrangement with the Secretary. The Bureau misstates a number of facts in support of its argument, in asserting that the Presiding Officer: (1) originally advised LGC that he was being paid in $5,000.00 *bi-weekly* increments and his contract would be *renewed* if the matter did not end by late December 2011; (2) *advised* LGC to file an RSA 91-A request about his contract, which LGC failed to do; and (3) at most, renewed his contract with the Secretary rather than renegotiating it. Bureau Brief at 31-33. It also is incorrect that the length of the proceeding was the result of LGC's conduct. *Id.* at 32.

When LGC inquired about the Presiding Officer's contract with the Secretary, he responded by asking whether LGC had obtained the information via a right-to-know law request. Bureau App. 33. LGC had "made inquiry, to which [it] had no response." *Id.*; Reply Appendix ("RApp."), p. 1, *infra*. Instead of advising LGC to pursue its inquiry, the Presiding Officer

addressed LGC's question, stating he would be paid in $5,000 increments without any reference to time. Bureau App. 34. Instead of stating that his contract would be *renewed* if the matter was not concluded by late December, he offered that he believed a longer contract was unnecessary, but that it "could be rolled over if you all take more than three months." *Id.*

The Presiding Officer's remarks implied that he was being paid a "flat fee," which attorneys commonly understand to mean a fixed compensation regardless if the event takes longer than anticipated. After LGC discovered the true nature of the Presiding Officer's contract on the penultimate hearing day, Tr. 2305 (App. 456), it moved to disqualify him the next morning. *Id.* The motion was made at the earliest possible time, and therefore, was timely. *Long Beach Fed. Sav. & Loan Ass'n v. Federal Home Loan Bank Bd.*, 189 F.Supp. 589, 612 (S.D. Cal.1960), rev'd on other grounds, 295 F.2d 403 (9th Cir. 1961) ("timely" can be during proceeding if salient facts unknown previously). LGC moved for disqualification before the evidence had concluded and motions were argued. While the Presiding Officer insisted that he was being paid on a "flat basis," he did not state that the contract had grown from a "not-to-exceed" amount of $30,000 (App. 160) to a not-to-exceed amount of $90,000 (App. 167). Tr. 2313-2317. Additionally, the Presiding Officer precluded LGC from inquiring about the incorrect or omitted information. Tr. 2317-2318.

Finally, the Bureau's claim that the length of the proceeding is attributable to LGC's conduct is belied by the October 2011 proposed structuring conference order. RApp. 2-6. The parties predicted that the hearing would take 7-10 days (it lasted ten), and jointly recommended that the hearing take place in July 2012, two months later than it actually occurred. Thus, in October 2011, the Bureau recognized that the matter would require longer than the duration of the original contract between the Secretary and the Presiding Officer.

Respectfully submitted,

LOCAL GOVERNMENT CENTER, INC., *et al*
By Their Attorneys,

Dated: October 16, 2013

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CERTIFICATE OF SERVICE

I certify that on the 16th day of October, 2013, I mailed two copies of the foregoing *Appellants' Reply Brief* to all counsel of record via first class United States mail, postage prepaid, and supplied all counsel with a digital version by electronic mail.

William C. Saturley

REPLY APPENDIX

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PretiFlaherty

BRIAN M. QUIRK
ATTORNEY AT LAW

September 13, 2011

Earle F. Wingate, III, Esquire
Staff Attorney
NH Bureau of Securities Regulation
State House Room 204
107 North Main Street
Concord, NH 03301-4989

RE: **Local Government Center, Inc., *et al* – NH Department of State, Bureau of Securities Regulation**
Subject: **Hearing Officer Donald E. Mitchell**

Dear Earle:

As you know, we represent Local Government Center, Inc., its wholly owned New Hampshire LLC subsidiaries, and Local Government Center Real Estate, Inc., in connection with the above-referenced matter. I write on a particular aspect of Secretary of State Gardner's Order, dated September 2, 2011, appointing Donald E. Mitchell as Presiding Officer for this matter.

For the purpose of confirming that Attorney Mitchell is free of any conflicts with any of the corporate entities and individuals named in your Cease and Desist Order, that he qualifies as an impartial person to hear this case, and that there are no restrictions on his work in this matter, we request a copy of (a) the engagement letter and/or agreement between the State of New Hampshire and Attorney Mitchell; and (b) any and all related documents in connection with his application, appointment, and service as a presiding officer in this matter.

I believe we are entitled to this information as a matter of fairness and due process, owed to the various respondents in this matter. If you prefer, instead, I can style this inquiry as a formal Right-to-Know request.

I look forward to receiving this information. If you have any questions concerning our request, please do not hesitate to contact William Saturley or me. Thank you.

Very truly yours,

Brian M. Quirk

BMQ:mdr

cc: William C. Saturley, Esq.

R. App. 1

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION

IN THE MATTER OF: Local Government Center, Inc.; Local Government Center Real Estate, Inc.; Local Government Center HealthTrust; LLC; Local Government Center Property-Liability Trust, LLC; HealthTrust, Inc.; New Hampshire Municipal Association Property-Liability Trust, Inc.; LGC-HT, LLC; Local Government Center Workers' Compensation Trust, LLC; and the Following individuals: Maura Carroll, Keith R. Burke, Stephen A. Moltenbrey, Paul G. Beecher, Robert A. Berry, Roderick MacDonald, Peter J. Curro, April D. Whittaker, Timothy J. Ruehr, Julia N. Griffin, Paula Adriance, John P. Bohenko, and John Andrews	Case No.: C-2011000036

FULLY ASSENTED TO
[AMENDED PROPOSED] STRUCTURING CONFERENCE ORDER

The Bureau of Securities Regulation ("BSR") and the Respondents, by and through their attorneys, hereby respectfully submit this Fully Assented To [Amended Proposed] Structuring Conference Order, following the Parties' Meet and Confer Conference held on October 5, 2011.

COUNSEL PRESENT/REPRESENTING:

Earle F. Wingate, III Kevin Moquin Adrian LaRochelle Bureau of Securities Regulation	Department of State Bureau of Securities Regulation

William C. Saturley Brian M. Quirk Preti Flaherty Beliveau & Pachios PLLP	Local Government Center, Inc.; Local Government Center Real Estate, Inc.; Local Government Center HealthTrust, LLC; Local Government Center Property-Liability Trust, LLC; HealthTrust, Inc.; New Hampshire Municipal Association Property-Liability Trust, Inc.; LGC-HT, LLC; Local Government Center Workers' Compensation Trust, LLC; Maura Carroll
Michael D. Ramsdell Joshua M. Pantesco Orr & Reno, P.A.	John Andrews
Mark E. Howard Howard & Ruoff, P.L.L.C.	Keith R. Burke; Paul G. Beecher; Robert A. Berry; Peter J. Curro; April D. Whittaker; Timothy J. Ruehr; Julia N. Griffin
Jaye L. Rancourt Brennan, Caron, Lenehan & Iacopino	Stephen A. Moltenbrey; Roderick MacDonald

INITIAL PRODUCTION OF DOCUMENTS: Respondents Local Government Center, Inc. and its affiliated entities ("LGC") will make an initial production of documents on or before November 4, 2011. The BSR will make an initial production of its documents on or before November 4, 2011.

All documents produced by the Parties will be Bates-stamped.

JOINDER OF ADDITIONAL PARTIES: November 15, 2011

STATUS CONFERENCES: December 16, 2011
February 17, 2012
April 20, 2012

The Parties will confer with one another prior to the status conferences, and if they conclude a status conference is unnecessary, they will request that the conference be canceled.

DESIGNATION OF EXPERTS:

Petitioner's Disclosure of Experts and Reports:	December 30, 2011
Respondents' Disclosure of Experts and Reports:	March 16, 2012

Expert reports are required and will be provided as part of the disclosure.

COMPLETION OF DISCOVERY:

Fact Discovery:	April 6, 2012
Expert Discovery:	April 20, 2012

DISPOSITIVE MOTIONS: April 20, 2012

AMENDMENTS TO THE BUREAU OF SECURITIES' STAFF PETITION OR ORDERS ISSUED BY THE SECRETARY OF STATE: The Parties agree that if the BSR seeks to amend its Staff Petition or the Secretary of State amends its Orders, the final hearing in this matter shall not occur until 90 days after any such amendment. The Parties agree that additional discovery may take place during this 90-day period.

WITNESS AND EXHIBIT LISTS: Due no later than the final prehearing conference.

FINAL PREHEARING CONFERENCE: June 22, 2012

HEARING DATE: July 9, 2012

HEARING ESTIMATE: 7 to 10 days

Respectfully submitted,

LOCAL GOVERNMENT CENTER, INC.;
LOCAL GOVERNMENT CENTER REAL ESTATE, INC.;
LOCAL GOVERNMENT CENTER HEALTHTRUST, LLC;
LOCAL GOVERNMENT HEALTHTRUST, LLC;
LOCAL GOVERNMENT CENTER PROPERTY-LIABILITY TRUST, LLC;
HEALTHTRUST, INC.;
NEW HAMPSHIRE MUNICIPAL ASSOCIATION PROPERTY-LIABILITY TRUST, INC.;
LGC-HT, LLC;
LOCAL GOVERNMENT CENTER WORKERS' COMPENSATION TRUST, LLC; and
MAURA CARROLL,

By Their Attorneys:
PRETI FLAHERTY BELIVEAU & PACHIOS PLLP

Dated: October 6, 2011

By: /s/ William C. Saturley
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JOHN ANDREWS

By His Attorneys:
ORR & RENO, P.A.

Dated: October 6, 2011

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KEITH R. BURKE;
PAUL G. BEECHER;
ROBERT A. BERRY;
PETER J. CURRO;
APRIL D. WHITTAKER;
TIMOTHY J. RUEHR; and
JULIA N. GRIFFIN

By Their Attorneys:
HOWARD & RUOFF, PLLC

Dated: October 6, 2011

By: /s/ Mark E. Howard
Mark E. Howard
1850 Elm Street, Suite 6
Manchester, NH 03104
Tel.: 603-625-1254
Fax: 603-625-2504

STEPHEN A. MOLTENBREY; and
RODERICK MACDONALD

By Their Attorneys:
BRENNAN CARON LENEHAN
& IACOPINO

Dated: October 6, 2011

By: /s/ Jaye L. Rancourt
Jaye L. Rancourt
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NEW HAMPSHIRE BUREAU OF
SECURITIES REGULATION

Dated: October 6, 2011

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