

**STATE OF NEW HAMPSHIRE**

**DEPARTMENT OF STATE**

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IN THE MATTER OF:

Local Government Center, Inc. et al

RESPONDENTS

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Case No.: C-2011000036

**OMNIBUS ORDER**

(This order resolves the matters in conflict raised by the Bureau of Securities' Motion for Entry of Default Order against the HealthTrust, Inc., and Property Liability Trust, Inc. This order summarizes the administrative proceedings in this matter, incorporates into the orders' provisions the terms and conditions of a consent decree entered into between the parties, and addresses the Intervenor's motion seeking to receive a portion of the funds to be received by the HT from the PLT.)

**PROCEDURAL BACKGROUND**

On September 2, 2011 the Bureau of Securities Regulation (hereinafter "BSR") initiated a Staff Petition against the then Local Government Center, Inc. and its several entities<sup>1</sup> alleging certain violations of the "Pooled Risk Management Program Statute," Revised Statutes Annotated 5-B (RSA 5-B:1 et seq.) and, among other things, requested that the respondents cease and desist conduct that violated this statute. On September 2, 2011 the Secretary of State approved the Petition and issued an Order to Cease and Desist, an Order to Show Cause, and a Hearing Order, pursuant to RSA 421-B:26-a,V. These actions resulted in the initiation of administrative hearing proceedings as provided by Revised Statutes Annotated 421-B:26. These administrative

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<sup>1</sup> As of the issuance of the January 10, 2014 Supreme Court decision in this matter, named Respondents included the 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, and Local Government Center Workers' Compensation Trust, LLC.

proceedings have involved extensive litigation before the undersigned presiding officer.<sup>2</sup> A final order issued on August 16, 2012. Following a denial for reconsideration of the final order, an appeal on that order was taken to the Supreme Court on October 15, 2012 and accepted by the Supreme Court on November 14, 2012. The parties argued the matter before the court on November 13, 2013. The Supreme Court issued its decision on January 10, 2014 (*Appeal of the Local Government Center*, Docket No. 2012- 0729, slip-opinion) affirming the August 16, 2012 final order excepting aspects of the order relating to the prospective setting of reserve levels and the prospective purchase of reinsurance. The additional matter of repayment of legal fees by the respondents was remanded by the Supreme Court and is addressed in the terms and conditions expressed in the consent decree.

On February 7, 2014 following the Supreme Court's affirmation, in the main, of the August 16, 2012 order, and after gaining knowledge of a confidential agreement entered into between the HT and the PLT, the BSR filed a post decision "Motion for Entry of Default Order" against the respondents presently known as the HealthTrust, Inc. (hereinafter "HT") and the Property Liability Trust, Inc. (hereinafter "PLT"). On February 18, 2014 the respondents filed objections to the BSR request. Thereafter, preliminary motions to dismiss the BSR motion on the basis of a lack of jurisdiction were filed by the respondents. Also a motion to disqualify the presiding officer was filed by counsel for respondent HT. Both of these motions were denied. The parties filed their respective dispositive motions requesting summary judgment and corresponding objections thereto. Following a hearing on these dispositive motions each was denied and the final hearing on the merits remained as previously scheduled to begin on July 21, 2014.<sup>3</sup>

A "Motion to Intervene" in the proceedings was filed on behalf of several municipalities that were alleged to have been political subdivision members of the respondent HT at some prior time.<sup>4</sup> The request to

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<sup>2</sup> See Final Order dated August 16, 2012 for details and also view [www.sos/nh.gov](http://www.sos/nh.gov) for record of all prior legal proceedings in this matter.

<sup>3</sup> The contents of all parties' filings and of the orders issued also can be viewed in detail at [www.sos/nh.gov](http://www.sos/nh.gov) under the heading "Post Supreme Court Decree filings." A transcript of the hearing on the summary motions is also available at that site.

<sup>4</sup> These municipalities were initially represented to be: Salem, Peterborough, Meredith, Plainfield, Bennington and Temple; by oral motion to amend its prior request without objection by the parties, counsel for the intervenors, requested the following municipalities to be added: Auburn, Northfield.

intervene in these proceedings at this time was for the limited purpose of being heard on their participation in any distribution of funds by HT due to the repayment of funds by PLT to HT. There was no objection to the intervenors' motion by any party, and obtaining an oral waiver from all parties and the proposed intervenors of the need for a hearing, the presiding officer verbally granted the motion to allow the intervenors to participate for the expressed limited purpose. That order was formally issued on June 25, 2014.

On July 18, 2014 the PLT filed a motion to allow the sale of certain real estate interests that was to have been addressed by the parties following the presentation of evidence at the planned hearing on the merits.

By agreement of the parties, the final evidentiary hearing was to have been conducted on July 21, 2014 and July 22, 2014 in Concord, New Hampshire with all parties and the intervenors represented by legal counsel. Following a conference of counsel with the presiding officer immediately preceding the convening of the hearing, the parties requested time to consult with each other and their clients to consider settlement of their disputed issues, as raised by the BSR's motion. The parties thereafter requested that the proceedings be recessed until the following day to allow continued and full consideration of settlement.

The parties requested that the hearing remain in recess on the second day. Before recessing for the day, the presiding officer convened the hearing on the intervenors' motion to amend its initial motion in order to expand representation to include two additional municipalities. Without objection by any party, the motion to amend was granted. Thereupon, the "Intervenors' Motion Proposing Manner of Distributing Funds to Former Members of HealthTrust", as amended, was heard. All parties were provided the opportunity to address the issues raised by this motion. The BSR took no position. The HT objected and PLT joined in that objection. The presiding officer took the matter under advisement for consideration of the arguments made and the motion hearing was then adjourned. The hearing on the merits remained in recess as settlement discussions continued.

The issue of legal costs, remanded by the Supreme Court, was to be later addressed between the BSR, HT and PLT with the expectation by the parties being the later submission of an agreement to the presiding officer. Lacking agreement, that matter would be separately scheduled for hearing.

Thereafter the parties: BSR, HT, and PLT continued to undertake substantial effort to reach agreement on issues related to the BSR motion for entry of a default judgment which resulted in a proposed “Consent Decree” submitted to the presiding officer for acceptance. This order follows:

### *BSR Motion for Entry of a Default Judgment*

1. The terms and conditions contained within the Consent Decree signed by the parties and dated July 25, 2014 and in which the parties agree that this matter is resolved are incorporated into this order.  
(See Consent Decree, Attached)
2. Providing further that, since the parties have stipulated that the jurisdiction for enforcement shall remain with the presiding officer “for so long as this Consent Decree remains in full force and effect,” such actions and limitations upon the parties as appear in the consent decree that have not specifically expired by its terms or have been otherwise modified by legislative action, shall be the subject of a meeting of the parties on or before June 30, 2016. After that date, a statement confirming satisfaction of all terms of the consent decree shall be filed with the Office of the Secretary of State. In the alternative, any of the parties may file a motion alleging violation of any remaining provision of the consent decree and an administrative hearing to consider the necessity of the continuation of the subject provision shall be conducted.
3. The parties have reserved the right to request future participation by the presiding officer in the event that specified incidents occur during the implementation of the provisions of the order. In the event that the presiding officer shall be unable to fulfill the obligations of that office or be otherwise unavailable, the parties shall, as soon as possible, first participate in mediation conducted by a

mediator agreeable to both parties. In the event mediation does not resolve the issue or issues in conflict within thirty (30) days then, upon motion by any party directed to the Secretary of State, the matter shall proceed with a replacement presiding officer as the law may dictate.

*Intervenors' Motion Proposing Manner of Distributing Funds to Former Members of HealthTrust*

The intervenors seek to obtain some portion of the funds that HT shall distribute to its members as contemplated by the orders and decisions in this case and as further referenced in the terms and conditions of the consent decree. The intervenors argue that the distribution of funds by the HT to its members in the approximate amount of \$17.1 million is contrary to RSA 5-B, the so-called "Pooled Risk Management Statute" and is inconsistent with the underlying rationale of the August 16, 2012 final administrative order. The BSR takes no position on the issue raised by the intervenors. The HT, joined by the PLT, objected and advanced arguments in direct opposition to those of the intervenors. The intervenors do not represent any parties other than those eight municipalities named in their motion as amended. (See note #4). While the claim of groups of employees, former employees and retirees were referenced by counsel, no argument to achieve legal standing for such individuals was advanced by counsel and therefore no standing of any other intervenors can be considered by the presiding officer.

There appears to be little foundation in law for the intervenors' position that they are entitled to some proportionate share because they are alleged to have been past members of HT or its predecessor. Their reliance on the "rationale" of the final administrative order, as previously authored by the undersigned, is in error. Relevant references in that order are to "members," "member political subdivisions," and "participating political subdivisions." Specifically, the previous administrative order as affirmed by the Supreme Court directed that these "re-payment" funds shall be returned to members consistent with RSA 5-B:5,I(c). (Final Administrative Order ¶ 14). There is no provision that these re-payment funds, or any funds under consideration by that order, were to be paid to past members or former members.

The “Pooled Risk Management Program” statute does not make provision for any past or former member of a pooled risk management program. RSA 5-B:5,I(c) provides only for returns to “participating political subdivisions,” not any past or former participating political subdivisions. Applying rules of statutory construction considering the statute as a whole and assigning a word’s ordinary meaning in interpreting the statute, the more reasonable interpretation is that the word “participating” is a present participle attached to its subject, “political subdivisions.” A participle, i.e. a verb used as an adjective, in this instance indicates shows tense. That tense is the present tense.

The intervenors’ oral reference at hearing to *Harper v. Healthsource*, 140 N.H. 770, (involving RSA 420-C and a health maintenance organization's decision to terminate its relationship with a particular physician) provides little support for a “public policy” argument to be applied in this administrative proceeding. An expression of public policy must be expressed in a statute, rule, ordinance or other such authoritative document. The expression of public policy here is that expressed in RSA 5-B.

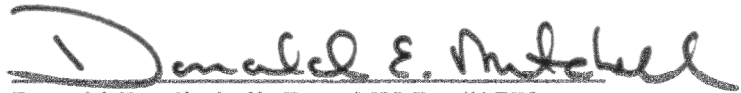
A fair reading of the law of this case in its entirety could not reasonably be interpreted to include former or past or intermittent or periodic members to qualify as recipients of disbursements provided for in the August 16, 2012 final order. Any proportionality referenced in that order was to be made within a universe of participating political subdivisions.

It may also be noted that the uncontroverted evidence in this case reveals that John Andrews, former executive director of HT’s predecessor, authored the language of the legislative bill that became RSA 5-B. Given this authorship and given the highly competitive circumstances among pooled risk program entities revealed by the evidence, no reasonable inference can be taken that Andrews’ language was intended to benefit political subdivisions that had left his organization’s fold.

The law was then and is now that the presiding officer in an administrative proceeding must apply the statute, as the expression of the legislature's intent, in reaching a decision. The authority provided to a presiding officer under the governing statutes here, RSA 421-B and RSA 5-B, as with most administrative hearing officers, does not allow application of any powers in equity.

Therefore, the intervenors' motion is denied.

So ordered, this 4<sup>st</sup> day of August, 2014

  
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Presiding Officer

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