



State Moves To Strip Former LGC Insurance Pool Of Nonprofit Status

By [Amanda Loder](#) | February 26, 2014

Despite a long-awaited [state Supreme Court ruling](#), the legal wrangling between the state and the former Local Government Center continues. This time, the focus is on the [HealthTrust](#) risk pool, which insures roughly 50,000 municipal and school district employees in New Hampshire.

Motion, Counter-Motion

For several years, the former LGC and the state have been in pitched battle. Much of that has been a series of arcane motions and counter-motions, covered by thick layers of legalese. (We've posted a primer [here](#).) Earlier this month, the [Bureau of Securities Regulation](#) filed a motion to strip HealthTrust of its status "as a pooled risk management program under RSA 5-B."

In other words, the state is moving to [revoke HealthTrust's nonprofit risk pool status](#).

HealthTrust, meanwhile, has filed a motion objecting to the BSR's move.

Payback Time

The key event in the LGC case was in August 2012, when Hearing Officer Donald Mitchell issued an [order](#) that mostly sided with the state.

One of the most well-publicized aspects of the 81-page document was Mitchell's finding that HealthTrust had overcharged members on premiums for years, building up an illegal surplus. He ordered HealthTrust to return \$33 million to communities.

For this particular dispute however, the important part of the order touches on a second LGC insurance program: [Property-Liability Trust](#) (PLT). PLT also offers workers' comp insurance. But for years, the program has floundered. So to keep it afloat, the old LGC board subsidized it with funds from HealthTrust.

Ultimately, Mitchell ordered Property-Liability Trust to return \$17.1 million to HealthTrust. Last month, the New Hampshire Supreme Court upheld that part of the order.

Property-Liability Trust maintains it only has \$12.2 million.

The state is skeptical.

A New Deal or the Old LGC?

Another key piece of background information has to do with the organization of the risk pools. The old LGC was created in 2003 as an umbrella organization covering HealthTrust, Property-Liability Trust, and the [New Hampshire Municipal Association](#). Everything was consolidated under one board, which controlled all the money. And that made it easy to move funds from one pot to another, like subsidizing workers' comp with HealthTrust money.

So in his order, Mitchell said each group had to have their own separate, independent boards and funds. By late last year, the old LGC was defunct.

So why is the case dragging on after the Supreme Court has ruled and the LGC is dead?

State: You're In Violation

Because the state says HealthTrust and Property-Liability Trust are now violating the Mitchell order. Remember, PLT owes HealthTrust \$17.1 million. But the people running PLT say the pool is about \$5 million short of that figure. They argue that to pay it off would make PLT insolvent.

HealthTrust Executive Director Peter Bragdon says the risk pools were running out of options to follow the order.

"Before I arrived here, [George Bald](#), who was the interim Executive Director...had tried numerous times with numerous private sector entities and public sector entities to borrow \$17 million. But nobody's going to loan \$17 million to an entity that really has no clear idea whether they'll be able to pay it back or not," he says.

So back in October, PLT and HealthTrust signed a [secret settlement](#) that if the Supreme Court ruled against them (which it did), HealthTrust would take over all of the liabilities and assets of PLT, and call it even.

The Bureau of Securities Regulation objects to this agreement for several reasons.

It says the deal essentially creates the old LGC Mitchell abolished in his order. Although the PLT board will continue to exist, BSR Special Counsel Andru Volinsky says it's still not legal. "They candidly told us that their board exists, and that their enterprise is an empty corporate shell. All of its operations and assets have been transferred to HealthTrust," he says.

Second, the state says in its motion that "the HT [HealthTrust] board simply relied upon the representations made by the PLT board, managers, actuaries, and auditors." In other words, HealthTrust simply took PLT at its word, rather than doing its own due diligence.

And the bureau also says that since the return of the \$17.1 million was ordered by the Hearing Officer, these pools didn't have the legal authority to come to a settlement on their own in the first place. They should have worked with the bureau and taken the agreement to Mitchell.

Of course, HealthTrust disagrees.

Settled In Secret

HealthTrust Executive Director Peter Bragdon says a big reason for the secrecy was that the insurance pools were still in litigation against the state. So if they shared contingency plans with their regulator, they'd be undermining their own case with the Supreme Court.

And he says the settlement was in the best interests of HealthTrust members.

“Without some kind of settlement agreement in place, Property-Liability Trust would have been forced into bankruptcy. That would have, at the very least, delayed any payment to HealthTrust, but also would've delayed payments to any towns or cities or school districts in New Hampshire that had property coverage through Property-Liability Trust,” he says. “And because of the cost of the bankruptcy proceedings, would actually result in less money being recovered by HealthTrust and sent back to its members.”

The idea is HealthTrust would take over the remaining PLT accounts to recoup its money, and then slowly shutdown, or “runoff” the program. The state strongly disagrees with that assertion, says Volinsky.

“HealthTrust has taken on all of the employees of Property-Liability Trust, it renewed contracts without telling customers that the Property-Liability program was going out of business. It did it at a losing premium structure. You could go on and on, detailing the ways that HealthTrust is not acting as a party trying to maximize return,” he says. “So they can claim their approach is appropriate. The bottom line is this is a court-approved order. The parties were not at liberty to compromise it, in secret, on their own, and without public scrutiny.”

Volinsky also points out that workers' comp claims have a “long tail.” A claimant could be receiving medical benefits for ten years or more, meaning HealthTrust couldn't just rundown PLT's coverage in a year or two. He also says contracts made with PLT members following the secret settlement “were obtained under false pretenses.”

In its motion to revoke HealthTrust's RSA 5-B risk pool status, the Bureau cites a passage in the Mitchell order that says if the LGC doesn't reorganize into separate entities by a certain date, their status as a nonprofit risk pool would be revoked. With this new arrangement, Volinsky says HealthTrust is flouting that order.

Communities React

The state also says it has received formal and informal complaints from member communities about the secrecy of the deal. Included as exhibits in the BSR's motion are letters from the select boards of two towns, North Hampton and Stratham.

In a letter to Secretary of State Bill Gardner, the North Hampton select board argues the agreement doesn't just transfer funds from PLT, it also transfers the risk pool's financial troubles to HealthTrust members. Which they didn't sign up for. The selectmen write the secret agreement:

“...exemplifies precisely the kind of bad management practices, some of which were found to be unlawful, that brought LGC to this point in what has been a long and difficult saga. It appears that the leadership of HT, PLT and LGC have learned little from their experiences in recent years, the Order, or most recently the Supreme Court's decision.”

The letter from the Stratham Select Board has a similarly scathing tone. Focusing on Property-Liability Trust's finances, the selectmen say they disagree with the idea that PLT would need to claim bankruptcy, or that HealthTrust would somehow be tarnished by PLT's financial difficulties.

"We have now lost confidence in their ability to forge and judge a resolution to this issue and are not willing to take their unilateral say so that the Agreement best serves the communities of New Hampshire."

Bragdon takes exception to the idea that member communities would feel duped.

"North Hampton...does not have Property-Liability coverage. So I'm not sure what the issue is with them. And I guess since we weren't sent any of those letters, it's hard to say what the issue was," he says. "They got everything they were promised. And if they're HealthTrust members, which North Hampton is, then the board's action acted in the best interest to maximize the amount of money that gets returned to North Hampton when all is said and done. They didn't call us asking questions, so it's hard for us to understand where they're coming from."

Bragdon adds that for the renewal period ending in January, HealthTrust retained 97 percent of its members, and added a couple of new ones.

What Happens Next?

The law here is complex, and neither Bragdon nor Volinsky would go into specifics and hypotheticals. But Bragdon did mention that as a nonprofit risk pool, HealthTrust doesn't face a lot of the same regulations and reporting requirements as a private insurer like [Anthem](#) or [Harvard Pilgrim](#) would. And HealthTrust doesn't have to pay the state's insurance premium tax.

But whether that means HealthTrust would somehow make that transition to a for-profit company, or it would essentially kill the risk pool should it lose its RSA 5-B status, is difficult to say.