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New Hampshire Secretary of State Orders N.H. Risk Pool to Cease and Desist Alleged Unlawful Practices

CONCORD, NH (July 2, 2024): New Hampshire Secretary of State David M. Scanlan has issued an order following a staff petition from the New Hampshire Bureau of Securities Regulation against New Hampshire Interlocal Trust (NHIT) and Albert C. Jones Employee Benefits, Inc. (ACJEB) to stop practices that the Bureau alleges violate New Hampshire's pooled risk management statute, [RSA 5-B](#).

The primary purpose of pooled risk management programs under [RSA 5-B](#) is to provide New Hampshire's political subdivisions, which include cities, towns, and school districts, among other entities, with an alternative to traditional insurance on favorable terms. Pooled risk management programs pool resources among its members, who then are to receive the surplus funds, to the extent that they're available, from each program for the public's benefit.

The Bureau alleges that NHIT was not formed by an association of two or more political subdivisions for the subdivisions' benefit, as required by [RSA 5-B:3, I](#). Instead, NHIT was created by Albert C. Jones for his and a private insurance company's own business gain. In addition, the Bureau alleges that NHIT was not formed in compliance with applicable trust law and is therefore not a properly formed New Hampshire legal entity as required by [RSA 5-B:5, I\(a\)](#).

The Bureau alleges NHIT became wholly dependent on ACJEB, a private, for-profit corporation that Jones solely owned until 2019, to perform its day-to-day operations and gave Jones and ACJEB significant influence and control over NHIT's operations. Through NHIT's no bid, long-term, auto-renewable administrator services agreement with ACJEB, Jones was not only the administrator of NHIT but also the exclusive broker of record for NHIT. In violation of [RSA 5-B:5, I\(c\)](#), NHIT improperly spent assets derived from public funds and conferred disproportionate private benefits to Jones and ACJEB through that agreement, including millions of dollars in remuneration every year in broker commissions and per-member fees that were not dependent on Jones' or ACJEB's actual performance.

The Bureau alleges that the respondents violated [RSA 5-B:5, I\(f\)](#) by manipulating proposed contribution rates and providing “not-to-exceed” rates to acquire new business or maintain existing business, rather than basing contribution rates “solely on the actual experience” of the participating member political subdivisions and an actuarial evaluation of what is reasonably required to fund the program and the reserves necessary to meet all incurred and incurred but not reported claims, and other projected needs. This disparate treatment creates “winners and losers” among political subdivisions.

Finally, the Bureau alleges the respondents violated their fiduciary duties to NHIT’s member political subdivisions by:

- Failing to improperly manage and spend trust assets comprised of public funds that were supposed to benefit the members;
- Improperly creating, ratifying, and operating NHIT for the benefit of private interests and to the detriment of NHIT’s members;
- Manipulating contribution rates for competitive purposes that disparately treat members;
- Failing to obtain confirmation from the Internal Revenue Service (IRS) of NHIT’s tax-exempt status under Internal Revenue Code Section 115, possibly placing political subdivision members at risk of being liable for federal income taxes.

Secretary Scanlan’s order grants immediate and preliminary relief by ordering the respondents to cease and desist from violating [RSA 5-B](#) as described in the staff petition. To the extent that they are still involved, the respondents are also ordered to continue operating in the ordinary course the risk pool program, but in compliance with [RSA 5-B](#). In addition, respondents must immediately deposit any further commission payments they receive relative to their provision of insurance brokerage services to NHIT into an escrow account. The presiding officer named in the order may consider additional relief necessary for the protection of the political subdivisions involved.

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The respondents named in the Bureau’s Order have a right to request an administrative hearing on the cease and desist order.