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WORKERS' COMPENSATION BOARD  
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HAND-DELIVER

June 29, 2012

The Honorable Andrew M. Cuomo  
Governor of New York  
State Capitol  
Albany, NY 12224

The Honorable Sheldon Silver  
Speaker  
New York State Assembly  
LOB, Room 932  
Albany, NY 12247

The Honorable Dean Skelos  
Senate Majority Leader  
New York State Senate  
LOB, Room 909  
Albany, NY 12247

Dear Gentlemen:

Legislation passed in 2011 requires the Workers' Compensation Board (Board) to prepare a semi-annual report to the Governor and the Legislature regarding the status of the various insolvent group self-insured trusts.

In response to this legislative requirement, I am pleased to present you with a brief analysis of the current status of group defaults, actions taken by the Board to collect from employers of these defaulted trusts, and the current funding status of all other self-insurers.

Sincerely,

Robert E. Beloten  
Chair

Enclosure

In accordance with Chapter 57 of the Laws of 2011, the Board is hereby reporting on the current status of all insolvent group trusts and the funding positions of currently active self-insured employers.

## I. Insolvent Non-Municipal Group Self-Insured Employers

### A. Total Liability of Insolvent Non-Municipal Group Self-Insured Employers

The table below displays the current outstanding liabilities as set forth in the most recent audited financial statement. The total liabilities include: claims liability; accrued expenses; accounts payable; unreimbursed WCL §50(5)(g) funds; and accrued NYS Assessments. It does not reflect the GSITs assets or collections expected to be recovered from the GSITs members. These details are supplied in Section III of this report.

Name of Insolvent Non-Municipal Group Self-Insured Trust	Date of Transition	Total Liability from Previous Audited Financial Statement	Total Liability from Most Recently Audited Financial Statement ^
Provider Agency Trust for Human Services (PATH)*	03/01/2006	\$ 8,448,000	\$ 8,448,000
Manufacturing Industry WC Insurance Trust (NYMIT)*	03/31/2006	\$ 4,577,000	\$ 4,577,000
New York Healthcare Facilities WC Trust (HCF)*	07/31/2006	\$ 28,666,000	\$ 11,089,000
Manufacturing Self Insurance Trust (MSIT)#	06/01/2007	\$ 30,754,000	\$ 30,754,000
Public Entity Trust of New York (PETNY)#	01/15/2008	\$ 6,950,000	\$ 6,950,000
Healthcare Industry Trust of New York (HITNY)#	02/01/2008	\$ 180,927,000	\$ 180,927,000
Trade Industry WC Trust for Manufacturers (TRADE)#	05/16/2008	\$ 18,094,000	\$ 18,094,000
Wholesale and Retail WC Trust of New York (WRWCT)#	08/11/2008	\$ 51,727,000	\$ 51,727,000
Real Estate Management Trust of New York (REMTNY)#	07/07/2008	\$ 6,102,000	\$ 6,102,000
New York State Cemeteries Trust (NYSCT)#	07/07/2008	\$ 2,187,000	\$ 2,187,000
Transportation Industry WC Trust (TRANSPORTATION)#	09/08/2008	\$ 97,042,000	\$ 97,042,000
Retail and Wholesale Industry WC Self Insurance Trust (RWWCT)#	10/15/2008	\$ 4,403,000	\$ 4,403,000
Builders Self Insurance Trust (BUILDERS)#	05/01/2009	\$ 14,512,000	\$ 14,512,000
Healthcare Providers Self Insurance Trust (HCP)#	10/12/2009	\$ 207,917,000	\$ 207,917,000
Elite Contractors Trust of New York (ELITE)#	04/01/2010	\$ 76,584,000	\$ 76,584,000
Auto Service and Repair Self Insurance Trust (AUTO)#	10/15/2010	\$ 4,849,000	\$ 4,849,000
OHI Workers' Compensation Self-Insurance Trust(OHI)	07/01/2011	\$ -	\$ 7,584,000
<b>Total of GSIT's with completed Deficit Reconstructions</b>		<b>\$ 743,739,000</b>	<b>\$ 733,746,000</b>
Selective Safety Trust (SELECTIVE)**	03/18/2011	\$ 13,337,000	\$ 13,337,000
Long Term Care Risk Management Group (LONG TERM CARE)**	04/14/2011	\$ 22,602,000	\$ 22,602,000
New York McDonalds Operators' Workers' Compensation Trust(McDONALDS)**	07/15/2011	\$ 3,239,000	\$ 3,239,000
Community Residence Insurance Savings Plan Self-Insurance Trust for Workers Compensation(CRISP)**	08/08/2011	\$ 27,165,000	\$ 27,165,000
Empire State Transportation WC Trust(EMPIRE)**	01/01/2012	\$ -	\$ 42,536,000
Team Transportation Workers' Comp Trust(Team)**	02/01/2012	\$ -	\$ 13,867,000
<b>Total of GSIT's prior to completed Forensic Review</b>		<b>\$ 66,343,000</b>	<b>\$ 122,746,000</b>
<b>Total All Trusts</b>		<b>\$ 810,082,000</b>	<b>\$ 856,492,000</b>
*The Claims Liability has been transferred via an Assumption Liability Policy.			
**The audited financial statements were completed by the prior administrator and have not yet been confirmed by the WCB			
^ Does not reflect amounts held by the WCB or collections expected to be recovered.			
# Updated Audited Financial Statements will be Reflected in the December 2012 Report			

## B. Total Open Claims of Insolvent Non-Municipal Group Self-Insured Employers

Name of Insolvent Non-Municipal Group Self-Insured Trust	Date of Transition	Number of Open Claims as of Transition	Number of Open Claims as of 05/31/2012	Difference
Provider Agency Trust for Human Services (PATH)*	03/01/2006	338	0	(338)
Manufacturing Industry WC Insurance Trust (NYMIT)*	03/31/2006	149	0	(149)
New York Healthcare Facilities WC Trust (HCF)*	07/31/2006	294	0	(294)
Manufacturing Self Insurance Trust (MSIT)	06/01/2007	256	114	(142)
Public Entity Trust of New York (PETNY)	01/15/2008	116	38	(78)
Healthcare Industry Trust of New York (HITNY)	02/01/2008	1,651	637	(1,014)
Trade Industry WC Trust for Manufacturers (TRADE)	05/16/2008	182	51	(131)
Wholesale and Retail WC Trust of New York (WRWCT)	08/11/2008	390	151	(239)
Real Estate Management Trust of New York (REMTNY)	07/07/2008	57	22	(35)
New York State Cemeteries Trust (NYSCT)	07/07/2008	24	9	(15)
Transportation Industry WC Trust (TRANSPORTATION)	09/08/2008	604	176	(428)
Retail and Wholesale Industry WC Self Insurance Trust (RWWCT)	10/15/2008	29	16	(13)
Builders Self Insurance Trust (BUILDERS)	05/01/2009	63	44	(19)
Healthcare Providers Self Insurance Trust (HCP)	10/12/2009	1,168	777	(391)
Elite Contractors Trust of New York (ELITE)	04/01/2010	501	270	(231)
Auto Service and Repair Self Insurance Trust (AUTO)	10/15/2010	21	11	(10)
OHI Workers' Compensation Self-Insurance Trust(OHI)	07/01/2011	38	33	(5)
<b>Total of GSIT's with completed Deficit Reconstructions</b>		<b>5,881</b>	<b>2,349</b>	<b>(3,532)</b>
Selective Safety Trust (SELECTIVE)	03/18/2011	92	78	(14)
Long Term Care Risk Management Group (LONG TERM CARE)	04/14/2011	263	223	(40)
New York McDonalds Operators' Workers' Compensation Trust(McDONALDS)	07/15/2011	48	31	(17)
Community Residence Insurance Savings Plan Self-Insurance Trust for Workers Compensation(CRISP)	08/08/2011	574	440	(134)
Empire State Transportation WC Trust(EMPIRE)	01/01/2012	464	482	18
Team Transportation Workers' Comp Trust(Team)	02/01/2012	193	183	(10)
<b>Total of GSIT's prior to completed Deficit Reconstructions</b>		<b>1,634</b>	<b>1,437</b>	<b>(197)</b>
<b>Total All Trusts</b>		<b>7,515</b>	<b>3,786</b>	<b>(3,729)</b>
*The Claims Liability has been transferred via an Assumption Liability Policy.				

## II. Qualified Non-Municipal Self-Insurer Groups

- A. Pursuant to Chapter 57 of Laws of 2011, only certain group trusts were allowed to provide coverage effective 1/1/12. As a result, each self-insured group must post an annual security deposit as calculated by Board. The following lists active self-insured groups:

<b>Trust Name</b>	<b>Current Security Deposit Posting Status</b>
Associated Builders & Contractors Compensation Trust	Fully Posted
Electrical Employers Self-Insurance Safety Plan	Fully Posted
New York College & University Risk Management Group	Fully Posted
New York Lumbermen's Insurance Trust Fund	Fully Posted

- B. There are an additional 35 inactive trust as of 6/30/12. Groups have been issued guidelines on successfully managing their groups' obligations in run off. A significant component of this is ensuring sufficient cash is available to pay outstanding claims obligations. Specifically, groups that have 18 months of cash or less are required to levy an assessment to their members. Groups that fail to maintain cash in excess of 9 months of payouts will be transitioned to the Board for liquidation. At this time, there are 8 trusts that have between 6 and 18 months of cash. The Board continues to work with the trusts to ensure amounts are levied against their former members. To the extent such levies are successful; the Board will allow a trust to continue to administer its own run off. In addition, there are 13 groups with cash balances sufficient to cover 18 to 36 months of claims and another 14 groups whose cash is sufficient for 36 months or more. It is important to note, however, that the inability of these groups to maintain successful cash balances will result in the number of insolvent trusts increasing, which will lead to increased assessments of the self-insurance industry.

### **III. Current NYS Workers Compensation Board Efforts to Extinguish Outstanding Liabilities**

One of the primary objectives of the Board's Litigation Unit is to facilitate the extinguishment of the liabilities of insolvent GSITs. The Litigation Unit employs a variety of methods to accomplish this goal including: 1) the collection of funds from the former employer members of the insolvent GSIT; 2) recoupment of damages from the former management of the insolvent GSIT; and 3) transfer of the liabilities to a commercial insurer by way of an assumption of liability policy (ALP).

#### **COLLECTIONS FROM MEMBERS**

There are number of different avenues by which the Board seeks to collect funds from the former employer members of insolvent GSITs. Some employer members of insolvent GSITs have acknowledged their liabilities. For those employers that are in agreement with the Board's assessment of their pro rata share of the liabilities, the Board enters into a Deficit Assessment Contractual Agreement (DACA) where the employer agrees to repay its pro rata share of the deficit over a specific time period. For those employers that acknowledge some amount of liability in connection with their participation in a GSIT, but dispute the amount alleged owed by the Board, the Board enters into an interim repayment agreement (MOU) with those employers. The employers participating in the MOU collectively pay sufficient funds so as to meet the insolvent GSIT's claims liability during the period of the MOU in exchange for the opportunity to engage in informal discovery relative to the accuracy of the Board's deficit calculations, with each party reserving all of their rights.

For those employers that refuse to acknowledge any liability in connection with their participation in a GSIT the Board commences a civil collection action against those employers. To date the Board has commenced four such collection actions. Alternatively, the Board will file a default judgment against the employer in the amount of unpaid claims obligations arising out of the claims of the employees of that particular employer. However, prior to doing so, the Board provides the employer with a final opportunity (Final Demand) to otherwise enter into a repayment agreement, generally either the DACA or the MOU. In the event that an employer refuses to enter into a repayment agreement, and a judgment is entered against the employer, the Board will attempt to enforce the judgment by filing restraining notices and information subpoenas. In the event that the judgment goes unsatisfied for a period of ninety days after notification of its entry, the employer then becomes subject to the issuance of a stop work order.

Finally, where the Board is in possession of sufficient information as to the ability to fully collect the pro rata shares of the deficits of all the employer members of a GSIT, the Board will issue a Tender Offer. The Tender Offer is a settlement offer from the Board to the employers members of a GSIT as a whole, whereby if sufficient employers agree to repay their pro rata shares, as adjusted by the Board to account for both insolvent former members and potential collections from third parties, the Tender Offer will become binding with the members receiving releases from the Board after the complete repayment of the amount as stated in the Tender Offer.

To date, the approximate cash and contracted recoveries from these methods are as follows:

NYMIT DACAs:	\$5,007,000
PATH DACAs:	\$15,004,000
HCF DACAs and Tender Offer:	\$31,494,000
MSIT Tender Offer:	\$14,500,000
ELITE MOUs and DACAs:	\$8,017,000
HITNY MOUs and DACAs:	\$43,712,000
HCP MOUs and DACAs:	\$27,111,000
NYSCT MOUs and DACAs:	\$1,399,000
PETNY MOUs and DACAs:	\$4,885,000
REMTNY MOUs and DACAs:	\$780,000
RWWCT MOUs and DACAs:	\$2,593,000
WRWCT MOUs and DACAs:	\$11,168,000
ASR MOUs and DACAs:	\$533,000
TIWCT MOUs and DACAs:	\$4,116,000
TRADE MOUs and DACAs:	\$1,345,000
BUILDERS DACAs:	\$2,787,000
PREFERRED DACAs and MOUs:	\$4,111,000

Total: \$178,562,000

Additionally, with respect to judgments and judgment enforcement, the Board has issued approximately two hundred and five Pre-Judgment Final Notices across ten GSITs. Approximately twenty of these Final Notices have resulted in the employer agreeing to enter into either an MOU or DACA. Another approximately twenty employers have repaid the judgment amounts, or executed repayment agreements, in the aggregate of approximately \$358,000.<sup>1</sup> Approximately one hundred and four judgments in the aggregate amount of approximately \$5,162,000 have been entered against the employers to whom Final Notices were issued and who refused to enter into a repayment arrangement. Information subpoenas and restraining notices have been served on approximately forty two of these employers. Additional judgments, information subpoenas and restraining notices will be filed against all employers who refuse to enter into a repayment arrangement.

However, we would note that the Board's collection ability may become impaired as a result of a decision rendered on April 30, 2012, in *Riccelli Enterprises Inc., et al v. State of New York Workers' Compensation Board, et al* (Onondaga County, Index No. 10-6901). The decision preliminarily enjoined the Board from filing proposed judgments and taking any other enforcement action with respect to the plaintiffs in the case. We anticipate appealing once a final order is entered.

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<sup>1</sup> These funds are reflected in the recovery totals immediately above. It is also noted that these employers remain subject to the filing of additional judgments for any and all compensation payments to their employees from the end date of the first judgment into the future and additional judgments will be entered against these employers.

### **THIRD PARTY ACTIONS**

Upon the Board's assumption of the assets and liabilities of a GSIT, the Board commissions a forensic accounting of the GSIT. In connection therewith a performance and operational report is generated which identifies the causes, if any, that contributed to the insolvency of the GSIT. In the event the performance and operational report identifies actionable conduct the Board will commence a civil action to recoup damages against such parties. Any funds received from such actions will be used to extinguish the liabilities of the respective GSIT.

To date the Board has commenced seven such actions. Two actions involve the eight insolvent GSITs formerly managed by Compensation Risk Managers; one against Compensation Risk Managers and a number of related and affiliated entities and officers and directors seeking \$472 million and a second against the former accountant and actuary of the eight GSITs seeking \$557 million. Two actions involve HCF; one against the Hamilton Wharton Group and its principal seeking \$33 million and a second against the former trustees and certain other service providers, also seeking \$33 million. A fifth action was commenced against the management and certain service providers in relation to HCPSIT seeking \$188 million in damages. A sixth action was commenced against the management and the Trustees relative to MSIT seeking \$21 million in damages. A seventh action has been commenced against Consolidated Risk Services, and certain service providers and Trustees relative to PATH, RWWCT and NYMIT seeking \$42 million in damages. All seven lawsuits are ongoing.

### **ALP's**

Part R of Chapter 56 of the Laws of 2010 allows self-insurers to transfer future and contingent claim liabilities by executing an assumption of workers' compensation liability insurance policy (ALP). To date, the Board has effectuated an ALP for PATH, NYMIT and HCF thereby extinguishing all claims liabilities. In addition, ALPs have been executed by an inactive GSIT that was administering its own liabilities and an individual self-insurer. The Board anticipates releasing an Invitation for Bid (IFB) in the near future to generate interest from a large number of carriers so as to better facilitate the execution of ALP policies on behalf of other insolvent GSITs.

#### **IV. Status of Individual Self-Insured Employers Requisite Security Deposit Posted**

Currently the NYS Workers' Compensation Board has 431 active individual (large corporate) self-insured employers. This number consists of 132 parent companies and 299 subsidiary companies which are self-insured on a consolidated basis. All 132 self-insured accounts (parents + subsidiaries) have fully posted the requisite security, with the exceptions noted below. A listing of the 132 self-insured parents is attached herein:

##### **Employers**

ABA Transportation Holding Co., Inc.  
ABF Freight System, Inc.  
Albany International Corporation  
American Express Company  
Arnot-Ogden Medical Center  
Ascension Health  
Aspire of Western New York, Inc.  
Aurubis Buffalo, Inc.  
Ball Corporation  
BJ's Wholesale Club, Inc.  
Bon Secours Health System, Inc.  
Brookdale Hospital Medical Center, The  
Brooklyn Bureau of Community Service  
Bush Industries, Inc.  
Carillon Nursing and Rehabilitation Center, LLC  
Cayuga Medical Center at Ithaca, Inc.  
CBS Corporation  
Champlain Valley Physicians Hospital Medical Center  
Climax Paperboard, Inc.  
Columbia University N.Y., Trustees of  
Consolidated Edison Company of New York, Inc.  
Cornell University  
Costco Wholesale Corporation  
Crouse Health Hospital, Inc.  
Cummins Inc.  
Curtis Niagara LLC



DCH Auto Group (USA) Inc.  
Delhaize America, LLC  
DePaul Group, Inc.  
DHL Holdings (USA), Inc.  
Dolgencorp of New York, Inc.  
E. I. du Pont de Nemours and Company  
Eastman Kodak Company  
Entergy Nuclear Operations, Inc.  
ESCO Turbine Technologies - Syracuse, Inc.  
Federal Express Corporation  
FedEx Freight, Inc.  
FedEx Ground Package System, Inc.  
Finger Lakes Regional Health System, Inc.  
Ford Motor Company  
Fulton Boiler Works, Inc.  
Fulton Group N.A., Inc.  
Gannett Co., Inc.  
General Motors, LLC  
Gleason Works, The  
Golub Corporation, The  
Great Atlantic & Pacific Tea Co., Inc., The  
Harden Furniture, Inc.  
HealthStar Network, Inc.  
Herr Foods Incorporated  
Highland Hospital of Rochester  
Hillside Family of Agencies  
Hollingsworth & Vose Company  
International Paper Company  
John D. Brush & Co., Inc.  
KeyCorp  
Kistner Concrete Products, Inc.  
Klein Cutlery, LLC  
Knight Transportation Inc.  
Krasdale Foods, Inc.  
L. & J.G. Stickley, Inc.  
Lenox Hill Hospital

Leprino Foods Co.  
Lifetime Healthcare Inc.  
Limited Brands Inc.  
Lowe's Home Centers, Inc.  
Macy's, Inc.  
Marriott International Inc.  
McWane Inc.  
MeadWestvaco Corporation  
Memorial Sloan-Kettering Cancer Center  
Metropolitan Museum of Art, The  
National Fuel Gas Company  
National Grid USA  
New Era Cap Co., Inc.  
New York Black Car Operators Injury Comp. Fund,  
Inc.  
Nordstrom, Inc.  
NYSARC Inc. Chautauqua County Chapter  
NYU Hospitals Center  
O-AT-KA Milk Cooperative, Incorporated  
Oldcastle, Inc.  
Orange & Rockland Utilities, Inc.  
Oswego Hospital  
Our Lady of Lourdes Memorial Hospital, Inc.  
Our Lady of Victory Homes of Charity, Inc.  
Owens-Corning  
Owens-Illinois Inc.  
Parker Hannifin Corporation  
Pathmark Stores, Inc.  
People, Inc.  
Queens Borough Public Library  
Raymond Corporation, The  
Rochester General Health System  
Rochester Institute of Technology  
Rockefeller University, The  
Roman Catholic Diocese of Albany  
Roman Catholic Diocese of Buffalo

Roman Catholic Diocese of Ogdensburg  
Roman Catholic Diocese of Syracuse  
Rosina Food Products, Inc.  
Roswell Park Cancer Institute Corporation  
Saint-Gobain Abrasives, Inc.  
Samaritan Medical Center  
Samaritan-Keep Nursing Home, Inc.  
Sherwin-Williams Company, The  
Shop Vac Corporation  
Shopwell, Inc.  
SKF USA, Inc.  
St. Barnabas Community Enterprises, Inc.  
St. Elizabeth Medical Center  
St. Joseph's Health System, Inc.  
St. Joseph's Hospital Health Center  
St. Mary's Healthcare  
Stanley Black & Decker, Inc.  
Starbucks Corporation  
Stewart's Shops Corp.  
Swift Transportation Co., LLC  
Syracuse University  
Target Corporation  
Unifrax I LLC  
United Airlines Inc.  
University of Rochester  
Upstate Niagara Cooperative, Inc.  
Viacom, Inc.  
Visiting Nurse Service of New York  
Wal-Mart Associates, Inc.  
Washington Mills Electro Minerals Corporation  
Wegmans Food Markets, Inc.  
Wendy's International, Inc.  
White Castle System, Inc.  
White Rose, Inc.  
Yeshiva University

The following self-insurers are not fully posted for the reasons noted:

The Great Atlantic & Pacific Tea Company, Inc., Pathmark Stores, Inc., & Shopwell, Inc. emerged from bankruptcy this year and will be posting their respective increases shortly.

Marriott International, Inc. has requested an extension and is expected to post an increase shortly.