Lumsden & McCormick, LLP
Certified Public Accountants

FORENSIC ACCOUNTING SERVICE ENGAGEMENT
of
OHI WORKERS' COMPENSATION TRUST
for
THE NEW YORK STATE WORKERS' COMPENSATION BOARD
by
LUMSDEN & McCORMICK, LLP

July 11, 2012

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EXECUTIVE SUMMARY

The main mission of the New York State Workers' Compensation Board (WCB) is to equitably and fairly administer the provisions of the New York State Workers' Compensation Law. Supplementary responsibilities of the WCB include the approval and ongoing monitoring of self-insured corporations and groups. Self-insured corporations and groups must abide by the Codes, Rules and Regulations of the State of New York (NYCRR). The NYCRR requires the WCB to ensure group self-insured trusts are financially viable and have remediation plans in the event a trust's financial stability needs to be restored.

The NYCRR requires group self–insurers to maintain total qualified assets, as defined by NYCRR Part 317 effective January 31, 2001, at least equal to total liabilities. A group self-insurer that does not meet this funding requirement is deemed under funded and may be subject to various sanctions imposed by the WCB such as the limitation of new member admittance, increase of the required security deposit, and the revocation of a group's privilege to self-insure. As a result of mounting financial deficits incurred by a number of group self-insured trusts, the WCB initiated a process to pursue an independent assessment of both the financial and operational aspects of selected trusts, including those responsible for oversight and management of the trusts.

OHI Workers' Compensation Trust (hereinafter referred to as "OHI" or the "Trust") was created on October 21, 1997 and was managed by a Board of Trustees and Cody Management, Inc. (hereafter referred to as "Cody") through June 30, 2011. The Trust was established to offer workers' compensation coverage to employers engaged in the heat, petroleum, propane, gasoline and related industries including those involved with the distribution and handling of petroleum products. In October 2009, the Trustees of OHI formally decided to terminate the Trust's ability to offer workers' compensation insurance to its members effective January 1, 2010. During 2011, the WCB determined OHI was insolvent and on July 1, 2011 it assumed control of the Trust's net liabilities and operations.

As a direct result of the insolvency, Lumsden and McCormick, LLP (L&M) was engaged by the WCB through a competitive bid process to provide an independent review of OHI. Our independent review did not formally commence until on or around the date the WCB assumed control of OHI's net liabilities and operations on July 1, 2011. Our independent review consisted of three-parts: (1) a financial and forensic accounting review, (2) a performance and operational review, and (3) a claims review. This report concentrates on parts 2 and 3, while part 1 is addressed in our Deficit Reconstruction and 2012 Assessment report dated May 24, 2012. This report is intended to provide an overall analysis regarding the reasons behind OHI's insolvency including details regarding the procedures performed and the related conclusions reached. The final gross allocable members' deficit as calculated in our Deficit Reconstruction and 2012 Assessment report amounts to $8,273,275.

Group self-insured trusts are unique in that each group member must acknowledge and agree to be jointly and severally liable for *all* expenses and obligations of the fund incurred during its period of membership. By definition, joint and several liability refers to a shared responsibility whereby each debtor (member) can legally be held liable for an *entire* amount of debt or judgment.

Prior to commencing our document accumulation and analysis, L&M had numerous discussions with WCB officials to obtain an overview of the history of OHI and important details surrounding

its insolvency. L&M also met with NCAComp, Inc. (NCAComp), the third-party administrator appointed by the WCB subsequent to its taking control of OHI's affairs.

L&M, along with our third-party claims review specialist, read and analyzed vast amounts of documents provided by the WCB and other parties, including governing documents important to both OHI's formation and its ongoing operations.

L&M interviewed and/or had discussions with many individuals regarding various aspects of OHI's operations, including seven of the eleven Trustees, the president of Cody (David I. Harvey), representatives of selected members, insurance brokers, a representative of the independent accounting/auditing firm that provided both bookkeeping and auditing services, a representative of the actuarial firm OHI used, representatives from both firms that provided safety/loss control services, representatives of both third-party claims administrators that serviced OHI's claims, and the individual that personally performed all the payroll audits for OHI over its entire existence.

We requested and eventually received selected work-papers from the independent accounting/auditing to support procedures performed and account balances in conjunction with its audits of OHI's annual financial statements.

L&M engaged an independent actuarial firm to review OHI's 2004 - 2009 actuary reports prepared by Milliman, Inc., and provide us with an opinion relative to the methods used by it to estimate the ultimate incurred losses and related claims liability.

L&M engaged a third party claims review specialist to perform a comprehensive examination of the claims handling process.

The following summarizes some of the more significant issues revealed and observations noted as a result of our forensic procedures, all of which are further detailed in subsequent sections of this report:

1. L&M became aware of five actions taken by the Trustees that required a general membership vote, per Article III, Section 3.11 of the Trust and By-laws document, to formally ratify the action. We failed to locate evidence to support a vote by OHI's membership related to any of these five actions. Additionally, Article XI of the Trust and Bylaws document appears to conflict with Article III with respect to the Trustees' ability to amend the document absent ratification by the general membership. This discrepancy could be the result of the Trustees not reading and/or not having a complete understanding of the terms of the Trust and By-laws document.

2. We believe, in general, most of the Trustees had a reasonable understanding of their responsibilities and were actively involved in a "high-level" oversight of OHI's operations. However, we believe (1) at least some of the Trustees may not have adequately read the Trust and By-laws document, and (2) all lacked experience with the management and oversight of a self-insured group offering workers' compensation insurance. This apparent lack of involvement and relevant experience of the Trustees may have been at least partially responsible for some of the issues cited in this section as well as throughout our report. Additionally, we believe the Trustees *knowingly* engaged in improper accounting practices to artificially bolster the Trust's regulatory equity ratio.

3. We identified at least 23 instances where sections of the 2003 through 2010 Trustee meeting minutes provided the WCB were omitted/whited-out, with some omissions being as much as a full page. Additionally, it appears the minutes from both the April 27, 2004 and November 19, 2004 meetings were not provided to the WCB. It appears most of the information not provided to the WCB involved issues that either had previously been scrutinized by the WCB, or likely would have been upon discovery by the WCB. We believe the failure of Cody and the Trustees to fully comply with the WCB's simple and straightforward request to provide complete copies of all Trustee meeting minutes is problematic.

4. L&M calculated OHI's management fee to Cody (during the period OHI provided workers' compensation coverage) as a percentage of contribution revenue, and compared it to eight other trust funds on which we previously performed similar forensic procedures. According to our calculations, the fees OHI paid to Cody, as a percentage of contribution revenue, were *significantly* higher than seven and marginally higher than one of the other eight trust funds. We believe the Trustee's failure to obtain competing quotes for administrative services may have led to OHI paying fees higher than the eight other comparable trust funds.

5. The Trust's homogeneity policy was expanded over time to allow a much broader base of employers the ability to participate. L&M believes the expansion was done primarily to counteract the poor growth rates experienced in the Trust's early years. We question the rationale and motive behind allowing the participation of employers that, in our opinion, did not fall within the stated boundaries contained in the original Trust and By-laws document. L&M notes that the homogeneity expansion of OHI was not a product of a WCB recommendation(s) and was solely attributable to the desires of the administrator and/or Trustees. L&M identified 33 members admitted after the homogeneity standards were expanded to include other businesses that failed to meet the general homogeneous description stated in the Trust and By-laws document. L&M believes the participation of these 33 members contributed approximately $895,000 to the Trust's deficit (exclusive of any allocated IBNR and benefit of estimated recoveries from aggregate excess insurance), while Cody received approximately $315,000 in administrative fees as a result of their participation.

6. Three significant problematic issues regarding OHI's financial auditor were noted by L&M including (1) the potential for the auditor's independence to have been impaired as a result of the bookkeeping services it also performed for OHI, (2) possible collusion with Cody and/or intentionally overlooking inappropriate accounting treatment regarding contribution cash receipts and the application thereof to member accounts receivable designed to improve OHI's equity ratio, and (3) numerous required disclosures missing from the audited financial statements as well as various other deficiencies with the three basic financial statements themselves. Based on the types and quantity of errors noted, we question whether the CPA firm possessed the necessary industry experience to perform the audits.

7. OHI had minimum contribution amounts in effect during the entire period it offered workers' compensation insurance to its members, which L&M believes is a prudent business practice for self-insured trusts. However, OHI used two different minimum contribution amounts for the period February 27, 2003 through December 31, 2009 (based on when a

member joined), which could be deemed unfairly discriminatory and, as a result, a potential violation of the NYCRR

8. During our assessment of the underwriting process performed by Cody both on potential members and renewals, we noted the use of several non-standard practices and a general lack of documentation as compared to other trust funds (i.e., checklists, prescribed forms, prior carrier loss data and member financial information) to support the underwriting decisions made. The non-standard practices noted include the failure to numerically define the maximum loss ratio a member could have to be eligible to participate, and annually "capping" increases/decreases to the experience modification factor (EMF) for invoicing purposes. Virtually all self-insured groups we performed similar forensic procedures on had maximum loss ratios as part of their underwriting guidelines, while none capped annual increases/decreases to EMFs. We believe the failure to establish and adhere to a defined maximum guideline whenever possible, such as and including loss ratios, grant an unnecessary amount of latitude to the process and dramatically increases the risks of a poor underwriting decision. The EMF capping procedure used by Cody effectively reallocated member contributions, where members with significantly improving loss histories were billed more, and members with significantly deteriorating loss histories were billed less than they otherwise would have been. It is important to note that, under the NYCRR (effective January 31, 2001) self-insured groups were provided significant leeway in regards to the setting of its contribution rate structure so long as it is not deemed to be "… inadequate, unfairly discriminatory, destructive of competition or detrimental to the solvency of the group."

9. Our analysis of the discounts provided OHI's members indicate the effective discounts granted to numerous members during 1998 - 2008 exceeded 30%, which L&M believes could be considered excessive, and *all* members received a discount off CIRB rates (even those that were separately surcharged). Of concern to L&M is the Trust's use of stale CIRB rates as a starting point to calculate member contributions for the 2000 through 2009 years, despite the availability of updated rates. The use of stale CIRB rates had little effect on the total contributions OHI received, but did affect the amount of the invoices to individual members. An individual with considerable experience in the group self-insured trust field informed L&M the use of *current* CIRB rates is the standard billing practice, and that he had never seen the use of stale CIRB rates to determine contribution levels. Additionally, he confirmed L&M's suspicion that by not updating the CIRB rates, some of OHI's members were effectively being charged less to the detriment of others. It is important to note that under the NYCRR (effective January 31, 2001) self-insured groups were provided significant leeway in regards to the setting of its contribution rate structure so long as it is not deemed to be "… inadequate, unfairly discriminatory, destructive of competition or detrimental to the solvency of the group."

10. L&M does not believe Trustee member companies received preferential treatment with respect to discounts when compared to non-Trustee members.

11. Evidence suggests those governing the Trust failed to adopt and enforce a safety program for its membership similar to those widely used in both the self-insured group and commercial workers' compensation arenas. None of the originally intended safety guidelines that Cody informed the WCB would be put in place for OHI were ever implemented. Under its Service Agreement with OHI, Cody was required to "develop and conduct loss

prevention, safety and risk management programs." The Service Agreement granted Cody the ability to subcontract safety and loss control services (under its own expense), and it did so for 11½ of OHI's 12 years of active existence. Cody's safety program for OHI consisted merely of its subcontractor providing quarterly safety newsletters to members and making available a safety video library to members. We believe the minimal safety and loss control procedures implemented by Cody did little to deter or prevent the frequency and/or severity of losses sustained by members of OHI. An individual with considerable experience in the group self-insured field contacted by L&M stated OHI's program, in his opinion, "is basically nothing." L&M estimated Cody only paid approximately $18,500 for all the subcontracted safety and loss control services for OHI during 1998 – 2009. Planned annual member safety visits were basically abandoned very early during OHI's existence. It is possible Cody did not mandate the performance of annual safety visits in an effort to save it (Cody) the associated fees. L&M estimated Cody saved $157,000 by not having annual member safety visits performed. We believe the overall ineffectiveness of OHI's safety and loss control programs contributed significantly to OHI's deficit.

12. L&M believes the bad debts/uncollectible accounts of the Trust were negligible through July 2010 (when the one and only member deficit assessment billing was issued). We determined the assessment billing issued in July 2010 was not fair and equitable to all members. The inability of the Trust to collect the assessment billings from numerous members, and the negative effect this had on the cash flow available to pay individual claimants, was the primary reason the WCB assumed control of OHI on July 1, 2011.

13. In regards to the excess insurance policies procured by Cody for OHI, we believe OHI may have failed to provide timely notice as required by the carriers for certain significant claims in at least two instances. This is a significant potential problem for OHI since an excess carrier has the ability to deny or reduce coverage for any claim exceeding the applicable retention amount if the required notification procedures were not properly adhered to.

14. L&M obtained approximately 95% (894 of 945) of the payroll audits that we expected to have been performed over the active life of the Trust. In most cases, the payroll audit information appears to have been properly used to calculate final member invoices. Overall, it appears Cody diligently ordered, obtained, and generally applied the payroll audit results it received to member invoices in an appropriate and fair manner.

15. OHI did terminate certain poor performing members and steadily reduce average member discounts after 2006. Absent the implementation of an active safety program and the termination of other poor performing members, L&M questions why the Trustees did not issue an assessment before July 2010 in an attempt to cure OHI's significant negative equity (cumulative deficit) that its audited financial statements presented during 2006 – 2008.

16. It appears Cody and the Board of Trustees knowingly engaged in questionable and improper accounting practices to improve OHI's regulatory equity (funding) ratios as calculated by the WCB. The questionable and improper accounting practices consisted of not recognizing cash received at year end 2004 – 2006 and applying cash receipts for another purpose (member contribution payments for a specific policy period) against a 2005 – 2008 payroll audit receivable balance not yet billed. L&M questions how Cody, the Trustees, and the independent auditor believed it was proper to not recognize cash received at year end and

consider member contribution payments for a specific (subsequent year's) policy period as collections on unbilled payroll audit invoices

17. L&M believes a liability for ULAE was not recognized in OHI's 2001 – 2009 audited financial statements. For 2006 through 2009 year-ends, we estimated the unrecorded ULAE liability ranged between $82,000 and $167,000. If the estimated ULAE liability had been properly reflected in the 2001 – 2009 audited financial statements, OHI's equity ratio for each of those years would have decreased.

18. L&M could not determine with certainty what role, if any, the Trustees had in determining the claims reserves balance to record at each year-end. OHI recorded the claims reserve liability during 2004 – 2006 and 2008 - 2009 close to the actuarially calculated central estimate. For 2007, OHI recorded an amount close to the low end of the actuarially calculated range. L&M calculated that the 2007 financial statements would have shown a $218,000 after tax loss for the 2007 year (rather than the $36,000 profit shown) if the claims reserves had been recorded equal to the central estimate. L&M believes the primary, or at least part, of the reason why the Trust changed its "loss pick" methodology for 2007 was a desire to present a profit following the significant $589,000 loss OHI incurred for 2006.

19. An independent actuary firm hired by L&M to review the reports of OHI's actuary concluded that the estimates contained the 2004 – 2009 reports were generally within a reasonable range; however, the 2004 – 2006 reports fell in the lower end of what it considered reasonable. L&M's actuary firm also questioned some of the selections made throughout OHI's actuary's reports since, in its opinion, the selections tended to cause the estimated loss reserves in the earlier years to be undervalued.

20. NCAComp's estimate of case basis reserves is $5,957,000, which is $4,721,000 or almost five times higher than Claim Services, Inc.'s (the claims administration subcontractor used by Cody) comparable amount of $1,236,000 at June 30, 2011. Accordingly, it appears Claim Services, Inc.'s methods to estimate incurred losses yielded significantly understated claim reserves.

21. The $4.9 million estimated deficiency of contributions over losses and other direct expenses (exclusive of any allocated IBNR and benefit from aggregate excess insurance recoveries) generated by whom L&M believes to be the twelve poorest performing members of the Trust is approximately 126% of OHI's total comparable deficit as of August 31, 2011. Only three of these members were terminated for underwriting reasons, while seven participated through December 31, 2009 (the last day OHI offered workers' compensation insurance) and two left voluntarily before December 31, 2009.

22. The third party claims review specialist engaged by L&M noted numerous specific deficiencies during its audit of the claims handling process conducted by Claims Services, Inc. (CSI). Three of the more significant deficiencies noted include (1) an instance where CSI failed to properly structure a claim settlement to reserve the Trust's rights under Section 44 of the New York Workers' Compensation Law, (2) instances where eligible claims were never filed for reimbursement under the Special Disability Fund, or claims made were denied reimbursement under the Special Disability Fund due to CSI's failure to obtain the required M&S statement (usually provided by physician that performed an independent medical examination on the claimant) or timely file the required medical records, and (3) the accuracy

of CSI's claims processing system was below the industry average, which suggests a reduction in OHI's claims expense could have occurred had the claims been properly administered. KBM estimated the cost to OHI from CSI's failure to properly structure the settlement to be $147,000. The potential cost to OHI resulting from the Special Disability Fund issues could not be estimated by KBM at this time.

I. INTRODUCTION

1. Background

Every employer in New York State is legally required to procure and maintain workers' compensation coverage for its employees. Most employers have four options to obtain this mandated coverage: participate in a group self-insurance trust, obtain insurance from the New York State Insurance Fund, individually self insure, or obtain insurance from a private commercial carrier.

Title 12, Chapter V, Subchapter B of the NYCRR establishes application procedures, qualifications, and responsibilities for any group of employers which desire to become and have been approved to operate, as a group self-insurer. The NYCRR provides for WCB oversight over member admittance and termination, trust bylaws, security amounts, capitalization thresholds, excess insurance, types and amounts of investments, actuarial reviews, financial reporting, and marketing. Each group self-insured trust must have a set of documents, including a trust agreement and bylaws, which govern all aspects of the group's operations, and maintain a trust fund that is financed by contributions and assessments from its members.

OHI is the only New York self-insured group Cody ever provided third-party administration services to. Cody's President, David Harvey, had previous experience administering a similar self-insured group comprised of members of a Vermont-based oil heat association. Documents suggest Mr. Harvey had also been involved with the management of at least one other self-insured group in the State of New Hampshire.

At a meeting on October 21, 1997, the seven original Trustees executed a governing document that officially established OHI entitled "OHI WORKERS' COMPENSATION TRUST AND BY-LAWS." Upon satisfactory completion of a licensing process with the WCB, OHI began to offer workers' compensation insurance coverage on January 1, 1998. The governing document referred above (hereinafter referred to as the "Trust and By-laws document") outlined the powers, duties, and obligation of the Trustees, and addressed the handling of certain administrative and financial issues.

At this same 1997 meeting, OHI, represented by the seven original Trustees, and Cody, represented by David Harvey, executed the "ADMINISTRATION AGREEMENT" (hereinafter referred to as the "Service Agreement"). The Service Agreement delineated the basic responsibilities and obligations of the third-party administrator (Cody) and set compensation arrangements thereof.

OHI was established to provide workers' compensation coverage through a self-insurance program to New York State employers who, according to the Trust and By-laws document were "members of the Oil Heat Institute of Eastern New York involved in the heat, petroleum, propane, gasoline and related industries including the distribution and handling of petroleum products." The homogeneity standard originally used by OHI was based on payroll classification codes; however,

the standard was expanded shortly after it began operations to allow for the participation of employers with either an eligible payroll classification code or SIC code.

Employees were solicited to join OHI through a small restricted network of independent insurance brokers and agents. L&M estimates the active membership of OHI peaked during 2006 and 2007 when nearly 120 entities participated in OHI.

OHI reported audited cumulative losses of $1,906,000 up to and including the year ended December 31, 2010.

During the period January 1, 1998 through June 30, 2011, Cody charged OHI approximately $3,184,000 for services it provided under the Service Agreement. Total member contributions amounted to approximately $13,415,000 during that same period. L&M assembled the information used to compute the cumulative administration fees charged from OHI's audited financial statements (1998 - 2010) and OHI's general ledger report for 2011 that listed the administration fees charged.

The WCB engaged L&M in mid-2011 to provide both an independent operational assessment of OHI and to assist in the reconstruction of OHI's financial position as of August 31, 2011 and at the end of each preceding calendar year. Since then, L&M has assisted the WCB in its efforts to identify the principal reasons for OHI's deficit financial condition. L&M's methodology and observations are detailed throughout the remainder of this report.

2. Methodology

Prior to commencing our document accumulation and analysis, L&M had conferences with employees of the WCB in Albany, New York to gain a better understanding of the critical issues and required procedures. L&M also met with NCAComp, the current administrator appointed by the WCB after OHI was deemed insolvent.

The next step of our independent analysis of OHI's operations entailed an in-depth inspection of documents provided by the WCB and others, including but not limited to, the Trust and By-laws document, Service Agreement, Board of Trustee meeting minutes, general correspondence, general member files, member claim files (performed by third-party claims review specialist hired by L&M), excess/reinsurance insurance policies, annual audited financial statements and various supporting work-papers, annual payroll audits, annual actuary reports, agreements with claims and loss control subcontractors used by Cody for the Trust, and both the Level I reviews and Summary of Funding Status' performed by the WCB. A crucial part of this step included the inspection of a selection of the member files obtained from NCAComp. The inspection and analysis of this vast array of documents enabled us to obtain a basic understanding of the duties of the parties involved and an overview of the types of issues we could anticipate encountering during the forensic process.

L&M inspected all annual audited financial statements and analyzed selected work-papers for 1998 though and including 2010 that had been prepared by the CPA firm who performed those financial statement audits.

L&M interviewed seven individuals who served as OHI Trustees regarding their roles, interactions with Cody, the understanding they had of their fiduciary duties, and also posed various other

questions pertaining to the operations of OHI. We asked the Trustees interviewed a minimum of seventeen multiple part questions on a wide variety of topics.

We formally interviewed and had various discussions with Cody's President, David Harvey. Our interview and discussions included general questions such as those involving his role in various aspects of the Trust's formation and its ongoing operations, and those specific to issues uncovered as a result of our inspection of information received from the WCB, NCAComp, and others.

L&M contacted representatives from twenty-seven non-Trustee members, nine of which agreed to be interviewed.

L&M obtained and inspected each of the 2004-2010 actuary reports that were purported to have been used to determine the year-end reserves reported on the audited financial statements.

L&M interviewed representatives from the three insurance brokers and agents who placed the majority of OHI's members.

L&M engaged a third party claims review specialist to perform a comprehensive examination of the claims handling process, part of which included a detailed claims audit on a sample of open and closed claims.

L&M engaged an independent actuarial firm to review OHI's 2004 - 2009 actuary reports prepared by Milliman, Inc., and provide us with an opinion relative to the methods used by Milliman, Inc. to estimate the ultimate incurred losses and related claims liability.

L&M currently provides accounting and tax services to NCAComp, the administrator appointed by the WCB to replace Cody. The services currently provided or provided in the past by L&M to NCAComp did not impair our objectivity in performing our procedures and arriving at the conclusions enumerated throughout this and/or our Deficit Reconstruction and 2012 Assessment report.

3. Chronology of Key Events

- October 21, 1997 – OHI created and executed the Trust and By-laws document, Service Agreement between OHI and Cody, and Participation & Indemnification Agreements for the original Trustee companies. A total of five resolutions and/or policies are approved by the Trustees on this day.
- October 30, 1997 – Cody submits Form GSI-1 (Application for Group Self-Insurance) along with various other supporting documents necessary for OHI to obtain qualification as a group self-insurer to the WCB.
- November 14, 1997 – WCB grants conditional approval to OHI to pay compensation to participating employers' employees and/or their dependents as a group self-insurer under the Workers' Compensation Law.
- January 1, 1998 - OHI begins formal operations with the admission of its first sixteen members.
- January 23, 1998 – WCB provides OHI with Form GSI-7 (Notice of Qualification as a Group Self-Insurer Under the Workers' Compensation Law) with an effective date of

January 1, 1998. The GSI-7 identified the Trust's industry group as "Heat, Petroleum, Propane, Gasoline and Related Industries."

- December 31, 1998 – OHI was only able to add five members during its first full year of operations and ends 1998 with a total of 21 members.
- June 17, 1999 – Due to poor membership growth, the Trustees vote to adopt a "Resolution on a Moratorium for the Posting of Financial Security by New Members." The resolution acts to suspend the security deposit requirement for approximately eight months for new members to make the Trust more competitive with other self-insured groups.
- December 8, 1999 – Trustees vote to approve (1) an amendment to the Service Agreement with Cody (effective 12/1/99), and (2) a "Resolution on Commissions to Brokers of Record." Both of these documents structurally impacted the ongoing payments by OHI to Cody.
- July 27, 2000 – Trustees vote to modify two articles of the Trust and By-laws document. The Resolution modified the qualifications of OHI's Treasurer as well as the individual allowed to serve on OHI's Board as its seventh (of seven) Trustee.
- June 29, 2001 – Three Resolutions are voted on and approved by Trustees, including one amending the Trust and By-laws document that rescinded the requirement members belonged to the Oil Heat Institute of Eastern New York.
- December 31, 2001 – A total of 58 members participated in OHI during 2001, an increase of 21 (or 57%) from 2000.
- April 25, 2002 – Cody submits required 2001 financial and other reports to WCB. In an undated "Summary of Funding Status," the WCB calculated OHI's regulatory equity ratio for 2001 as 122.9%, thus no regulatory funding issues existed at that time.
- June 19, 2002 – Cody notifies the WCB of the Trust's intention to change claims administrators effective July 1, 2002.
- July 1, 2002 – OHI begins to use Claims Services, Inc. to administer the claims handling process. L&M notes Claims Services, Inc. administered OHI's claims from July 1, 2002 until June 30 2011l; the day prior to the date the WCB took control of the Trust's liabilities and operations.
- March 19, 2003 – Resolution is approved by the Trustees to add a predominant payroll class code to the underwriting criteria present in the Participation & Indemnification Agreement. While the Resolution itself indicates Trustee approval, L&M could not locate evidence of the formal approval of it in any of the Trustee meeting minutes we obtained. The code added was "7380 – Drivers, Chauffeurs & Their Helpers NOC." The Resolution stated the class code carried a lower rate than a code already approved by the WCB and as such "represents a lower risk to the trust." This is the first of three instances in 2003 the Trust formally moved to expand the pool of entities allowed to participate.
- April 29, 2003 - a "Summary of Funding Status" prepared by the WCB calculated OHI's regulatory equity ratio for 2002 as 89.6%, thus OHI is deemed under-funded.
- August 20, 2003 – Resolution is approved by the Trustees to add a SIC code and predominant payroll class code to the underwriting criteria present in the Participation & Indemnification Agreement. The SIC code added was "5211: Retail – Lumber Other Building Materials," while the payroll code added was "8232 – Fuel-Lumber Building Materials." The Resolution stated the 5211 SIC code represented "the retail counterpart to our already approved SIC codes of 5074 & 5075" and that the 8232 payroll code covered "employees engaged in the retailing of, among other things, plumbing, electrical, fuel and other heating related products."
- August 20, 2003 - The second amendment to the Service Agreement between OHI and Cody, as approved by the Trustees, goes into effect. The amendment extended the

agreement's term through 2019, set the fees for certain years of the contract, and modified certain aspects of the calculation of minimum and maximum fees.

- November 19, 2003 – Resolution is approved by the Trustees to add a SIC code to the underwriting criteria present in the Participation & Indemnification Agreement. The SIC code added was "3620: Boilermaking/Tank & Boiler Manufacturing."
- March 29, 2004 – WCB sends Cody a letter that allowed for the *temporary* admittance of two automobile dealers despite the apparent lack of homogeneity to the membership of the Trust. As noted previously, the Trust's GSI-7 identified the Trust's industry group as "Heat, Petroleum, Propane, Gasoline and Related Industries." Also in its letter, the WCB puts Cody officially on notice that similar applications for membership would be rejected.
- April 27, 2004 – Trustee meeting where Cody explained to the *Trustees h*ow OHI's equity ratio was harmed by depositing in December 2003 cash received for the 2004 policy period. Trustees agreed the Administrator should, in the future, hold (not deposit) checks such as these. (See report section "Equity Ratio and Contributions Subsequently Collected" for more information on this improper accounting practice designed to improve OHI's equity ratio). It appears these minutes were not provided to the WCB. We believe they were withheld intentionally in order to maintain the confidentiality of this questionable accounting practice.
- October 14, 2004 – WCB informs Cody of the results of its 2003 Level I review and calculates OHI's equity ratio as 120.5%, thus no regulatory funding issues existed at that time.
- May 16, 2005 - WCB informs Cody of the results of its 2004 Level I review and calculates OHI's equity ratio as 111.5%, thus no regulatory funding issues existed at that time.
- December 6, 2006 - WCB informs Cody of the results of its 2005 Level I review and calculates OHI's equity ratio as 111.4%, thus no regulatory funding issues existed at that time.
- April 27, 2006 – Trustee meeting where Cody reminded Trustees of their past decision to apply cash receipts for the 2005 policy period against the unbilled 2004 invoices from the 2004 payroll audit. Cody further reminded the Trustees that the WCB would "more than likely disagree with this accounting treatment." This portion of the minutes provided to the WCB was "whited out" by Cody, with full knowledge of the Trustees. We believe this was whited out in order to maintain the confidentiality of this questionable accounting practice. (See report section "Equity Ratio and Contributions Subsequently Collected" for more information on this improper accounting practice designed to improve OHI's equity ratio
- July 26, 2007 - WCB informs Cody of the results of its 2006 Level I review and calculates OHI's equity ratio as 78.8%, thus OHI is deemed under-funded.
- August 17, 2007 – WCB holds meeting with the Trustees to discuss the regulatory funding deficiency at December 31, 2006 and various other aspects surrounding the Trust's operations. Some of the recommended steps cited during the meeting included the expanded monitoring of loss development and the potential for a mid-year rate increase and/or assessment if warranted.
- November 2, 2007 – Trustees enter into a consent agreement that governed the administration of the Trust's affairs. One of the terms of the agreement required OHI to take the necessary steps to achieve a breakeven position for the 2008 contribution year. Information submitted to the WCB in 2009 indicates OHI did not comply with that requirement. (See April 24, 2009 bullet point below for subsequent consent agreement).
- October 21, 2008 - WCB informs Cody of the results of its 2007 Level I review and calculates OHI's equity ratio as 74.5%, thus OHI is deemed under-funded.

- February 26, 2009 – The third amendment to the Service Agreement between OHI and Cody, as approved by the Trustees, goes into effect. The amendment reduced the current administrative fees by 10% (subject to existing minimums), reduced the "broker of record fees" payable to Cody from 7% to 6%, and established the administrative fee schedule for the first two years of "run-off" should the Trust ever cease offering coverage to its members.
- April 24, 2009 – Trustees enter into a second consent agreement that governed the administration of the Trust's affairs. One of the terms of the agreement required OHI to take the necessary steps to achieve a breakeven position for the 2009 contribution year. If events were to transpire that made the attainment of breakeven status doubtful, OHI was to issue assessments to members by June 1, 2010 to the extent necessary to achieve breakeven status for the 2009 year. (See July 23, 2010 bullet point below relative to assessment issued).
- July 27, 2009 - WCB informs Cody of the results of its 2008 Level I review and calculates OHI's equity ratio as 71.3%, thus OHI is deemed under-funded.
- September 2, 2009 – Meeting between WCB, OHI's Trustees and Administrator Cody to discuss the Trust's financial status. The WCB requests an aggressive corrective action plan be submitted by November 1, 2009 that eliminates OHI's deficit by 2014.
- October 20, 2009 – The Board of Trustees vote to terminate the Trust's ability to offer coverage to its members after December 31, 2009. The vote was evidenced by a resolution that, amongst other things, accused the WCB of being unreasonable in its dealings with OHI and recommended a replacement insurance carrier for the members to consider.
- October 26, 2009 - A letter received by the WCB from OHI's Chairman of the Board of Trustees informs it of the Trustees decision to cease offering coverage to its members and of the Trust's intention to commence a significant assessment in July 2010 to meet the financial requirements of the NYCRR.
- October 30, 2009 - OHI Trustees send letter to current members notifying them of their decision to terminate the Trust, effective December 31, 2009, and offers assistance to the members by virtue of its recommendation of a replacement carrier.
- December 31, 2009 – At 12 midnight, OHI ceases offering workers' compensation insurance to its remaining membership.
- May 27, 2010 – Trustees adopt a "Resolution on Assessment" to establish an assessment on all former members of OHI totaling approximately $3,600,000. The original intent of the assessment was to provide sufficient resources to allow the Trust to dissolve by the end of 2012 through the use of a loss portfolio transfer.
- July 23, 2010 – Assessment invoices totaling $3,600,000, along with detailed member specific supporting worksheets and a payment option form, are issued to all former members of the Trust by Cody and OHI's Board of Trustees. A letter detailing various aspects of the assessment accompanied the invoices and included (1) a statement that 20% of the invoiced amount was due August 31, 2010, (2) an explanation how the assessment was allocated amongst the membership, and (3) a description of available payment options for the remaining 80% of the amount invoiced.
- September 10, 2010 - A "friendly reminder" is mailed to all members that have not paid the minimum 20% down-payment as requested on the assessment invoices issued July 23, 2010.
- October 4, 2010 – Cody and OHI's Board of Trustees send a "Notice of Default" along with a memorandum entitled "Assessment Considerations" to all members that failed to pay their initial 20% by the due date of August 31, 2010. The documents discuss the potential ramifications of the failure to pay at least the 20% that had been due August 31, 2010 including (1) the imposition of penalties and interest, (2) the added responsibility to pay legal

fees to the member's own legal counsel as well as the Trust's legal counsel, and (3) significant additional costs should the WCB ultimately take over management of the Trust.

- January 5, 2011 – OHI files a lawsuit against 58 former members who failed to make an initial required payment on the $3,600,000 assessment issued in July 2010. According to the suit, the *total* amount due from the named defendants, exclusive of late fees, interest and attorneys fees, amounted to approximately $1.1 million or roughly 1/3 of the total amount assessed on all members.
- July 1, 2011 – The WCB assumes control of the Trust's liabilities and operations, and subcontracts related responsibilities to NCAComp.
- July 14, 2011 – WCB holds membership meeting to provide an overview of the history of OHI and outline what members could expect prospectively including the performance of a forensic review and deficit reconstruction and related assessment of the Trust's former members.

II. OBSERVATIONS

1. Trust Formation and Ongoing Operations

Trust Formation and the Execution of Significant Documents

The application package for OHI submitted to the WCB by Cody in 1997 indicates the Trust was formed primarily as a result of a trade association's (Oil Heat Institute of Eastern New York) desire to sponsor a group self-insurance trust for workers' compensation purposes for its members. In 1996, the Oil Heat Institute of Eastern New York (hereinafter referred to as "OHIENY") retained Cody to conduct a feasibility study, and if the interest and commitment generated by the study was sufficient, to act as manager of the Trust. L&M believes Cody was administering a similar self-insured group comprised of members of a Vermont-based oil heat association at the time the feasibility study was performed. Documents suggest Mr. Harvey had also been involved with the management of at least one other self-insured group in the State of New Hampshire. Primarily as a result of Cody's efforts and the commitment of numerous OHIENY members to participate, OHI was legally created on October 21, 1997 and began to offer workers' compensation coverage on January 1, 1998 to sixteen members, all of which were deemed to be the Trust's "Founding Members." The Trust also designated certain other members that joined early in 1998 (but after January 1, 1998) as "Charter Members." The Trust and By-laws document included a number of conditions a member had to meet to be considered either a founding or charter member. Other than additional contribution discounts granted to these members (2% for founding members and 1% for charter members), L&M did not become aware of any other preferential treatment provided to OHI's founding and charter members. These additional contribution discounts were not cited in the Trust and By-laws document; however, they were named within a schedule to the Participation and Indemnification Agreement (hereinafter referred to as the "Participation Agreement") as noted below.

Based on our extensive experience with self-insured groups and the format of their governing documents, L&M deems the practice of combining an entity's Trust and By-laws document into one document, as done for OHI, as unconventional. A trust agreement (document) establishes a Trust and provides for the management of the Trust assets, while By-laws are written rules for conduct of an organization and provides the framework for its operation and management. An entity's By-laws represent an enforceable agreement by its leaders to follow certain policies and procedures. We

asked our legal counsel for an opinion on this practice and were informed "while it may be unusual, it is not prohibited."

Evidence suggests that by October 1996, Cody had received participation commitments from 15 OHIENY members and had accumulated over $11,000 in what it termed "Start up Funds" from these companies. In an October 1996 letter to one of the committed company's owners, Cody indicated $320,000 of the necessary $500,000 of annual contributions per the then current WCB regulations had been secured. The letter also asked the individual for assistance in procuring additional commitments for the remaining $180,000 in contributions so an application for the group could be submitted to the WCB. L&M located an "Acknowledgement Form" for the "Start up Funds" that indicated how amounts paid by prospective members would be applied (including a potential for refund) depending on whether or not the Trust was ultimately formed. We believe the "Start up Funds" noted above were in addition to the financial security (security deposit), required by paragraph 5.5 of Trust and By-laws document by most, if not all, of OHI's earliest participants. In June 1999, a one-year moratorium of the financial security requirement was instituted, and the requirement was eventually permanently rescinded due to a belief it severely hindered the Trust's ability to attract members because competing self-insured groups did not maintain the same or a similar condition to join. Over a period of years, the Trust returned the security deposit to all the members that had been required to post it as a condition of participation.

According to the minutes of an October 21, 1997 meeting arranged by Cody, and held at The Colonial Agency, Inc.'s (hereinafter referred as "Colonial") office, the original seven Trustees discussed, ratified, and executed a variety of significant documents on that day. All seven original Trustees were present at the meeting and executed (1) the Trust and By-laws document, (2) the initial Service Agreement with Cody, (3) their own Company's Participation Agreement, and (4) their own Company's Form GSI-1.1 application as required by the WCB. Items (1), (2) and (3), above are appended to our report as Appendices numbers 1, 4, and 2. Items (1) and (3) are discussed later in this report section, while the significant contents of item (2) are discussed in detail in the report section entitled "Administration Fees." A document provided to the Trustees by Cody notifying them of the meeting stated items (1) through (3) above, were "essentially the same as we use in Vermont with the fuel and propane dealers there and have used in other states as well." At the meeting, the Trustees also acted to approve a total of six resolutions and a policy pertaining to "Incident Only Events." The original Trustees consisted of (1) six individuals from companies that had expressed a desire to become a member of OHI at or around January 1, 1998 and, (2) the Executive Director of OHIENY. One of the Trustees that executed the documents referred to above never became a member of OHI and formally resigned his Trusteeship on January 30, 1998. The names and terms of all the individuals that served on OHI's Board of Trustees can be found in Appendix 3.

We asked certain of the Trustees that granted us the opportunity to interview them if they engaged independent legal counsel to review the Trust formation and other significant documents (i.e. – initial Service Agreement with Cody) and were provided with responses such as "do not recall," "unsure," "they were rubber stamped" (by the Trustees), and "I believe one of the other Trustees said they were going to have their own attorney look at them (the documents)." Based on these comments, L&M believes these documents were not reviewed by an independent third party legal professional. Independent legal counsel could have provided valuable advice and guidance to the Trustees regarding their responsibilities under the documents and opined on the overall reasonableness of the documents.

Details of Trust and By-laws Document

The Trust and By-laws document outlined the powers, duties and obligations of the Trustees, the rights and obligations of the general membership, termination provisions, and also appointed Cody as the administrator of the Trust. Attached as Appendix 1, is a copy of the Trust and By-laws document.

Section 317.12 of the NYCRR, effective January 31, 2001, addresses By-laws of self-insurers. This section of the NYCRR states each group self-insurer must establish written By-laws, and describes minimum content requirements. Based on our review of the Trust and By-laws document (as amended), we conclude it met most, if not all, of the minimum requirements for By-laws cited in that section of the NYCRR.

According to documents on file at the WCB, the Trust and By-laws document was amended a total of five times. Upon analyzing the documents supporting the five amendments, we determined the amendments on file at the WCB were actually those made to the Participation Agreement (not the Trust and By-laws document). Our exhaustive analysis of the documents provided to NCAComp by Cody uncovered at least four amendments had been made to the Trust and By-laws document as follows:

- July 27, 2000/Article V – eliminated requirement the seventh Trustee had to be the "principal paid executive of the Oil Heat Institute."
- October 25, 2000/Article IV – waived the otherwise mandatory 120 day voluntary withdrawal requirement for members who merged or sold their business(es).
- May 17, 2001/Article III – reduced quorum requirement for membership meetings from a simple majority of current participants to a fixed number of 15 (fifteen) members.
- June 29, 2001/Article I – eliminated requirement employers had to be members of the "Oil Institute of Eastern New York" to participate.

We have cited and commented below on a number of what we believe were the most critical areas addressed in the Trust and By-laws document.

Article I – Name and Purposes of Trust and By-laws

- It is stated the Trust was being created to serve "employers who are members of the Oil Heat Institute of Eastern New York ("OHI") involved in the heat, petroleum, propane, gasoline and related industries including the distribution and handling of petroleum products." We believe this quote is important because over a period of years those governing the Trust (the Trustees and Administrator) acted to dramatically expand the types of employers/industries able to participate in the Trust. L&M notes the determination of these parties to expand the homogeneity is evidenced by the numerous letters, e-mails, telephone conversations and other correspondence with the WCB and others, including the Trust's legal counsel. This issue is discussed in detail in subsequent report sections.
- An additional purpose of the Trust was to "establish, maintain, promote and enforce sound safety programs, so as to assist industry companies in protecting themselves from unwarranted losses." While the majority of OHI's members incurred few or no claims/losses, the remaining membership did, some of which were significant. Evidence suggests those governing the Trust failed to adopt and enforce a safety program for its membership similar to that widely used in both the self-insured group and commercial workers' compensation arenas. Refer to the report section entitled "Safety Programs" for further discussion on this issue.

Article II – Definitions

- Under the definition for administrator it is stated Cody was appointed "to carry out the policies established by the Board of Trustees and to provide directly or through subcontractors selected solely by the Administrator daily management of the Trust including managing claims handling responsibilities set forth in Section 2.2 and loss control responsibilities set forth in Section 2.3." L&M determined Cody opted not to perform the claims handling and loss control services and contracted with a number of independent contractors to perform these particular services. Evidence suggests that Cody kept the Board of Trustees apprised of the performance of all the professional service firms contracted either directly by Cody or by Cody on behalf of the Trust on an ongoing basis, including but not limited to those involved with claims handling, loss control, financial bookkeeping and auditing, and actuarial services.
- The definition for Safety Management states "The Administrator shall establish a safety management committee, arrange safety workshops, work with each Member to reduce the frequency and severity of workers' compensation claims and to provide safety management information for the members and the Trustees." In our opinion, the only safety responsibility listed above actually performed by Cody was that of providing the membership with safety management information since evidence suggests periodic safety newsletters were provided to members and a safety related video library was also available for their use. Refer to the report section entitled "Safety Programs" for further information on this subject.

Article III – Members

- It is stated "An annual meeting of the Members of the Trust shall be held at such location within the State of New York as the Board of Trustees may designate." L&M located meeting minutes for annual membership meetings for all years the Trust offered workers' compensation insurance except 1998 (the first year of OHI's active operations). Under Section 3.11 of this Article, "Action by Vote," members were entitled to vote on the appointment and removal of Trustees, amendments to the Trust and By-laws document, termination of the Trust, and such other matters as deemed necessary by the Board of Trustees.

  As detailed above, L&M believes at least four amendments were made to the Trust and By-laws document. In all four cases, we could not locate evidence to support a member vote occurring at an annual meeting or one being called specifically to ratify the amendments. In addition, on October 20, 2009 the Trustees adopted a resolution to terminate the Trust's ability to offer workers' compensation insurance to its members, effective January 1, 2010. The general membership of the Trust was notified of this action on October 30, 2009. We could not locate evidence to suggest a general membership vote occurred to ratify the Trustees' resolution terminating the Trust. As a result, we believe Section 3.11 was violated since all four amendments and the resolution to stop offering workers' compensation insurance appear to have been made *without* a membership vote.

- Article XI – Amendment and Termination of the Trust (discussed later in this report section) states the Trustees had the ability to amend the Trust and By-laws document, which appears to be in direct conflict with Article III. We believe this conflict may have arisen because the Trustees may have not read and/or otherwise obtained a complete understanding of the terms of the Trust and By-laws document.

Article IV – Default, Termination, and Withdrawal of Membership

- Two of the reasons cited as justification for involuntary termination were "failure of the Member to cooperate with the Administrator, claims agents, loss control representatives" and "failure by the member to reasonably comply with loss control recommendations of the Trust Safety Committee or the Administrator." We were informed by Cody that (1) a Trust Safety Committee never existed, and (2) on-site safety visits had been attempted in the earlier years (1998/1999) of the Trust but were unsuccessful primarily due to widespread resistance to such from the membership. On-site safety visits are a best practice and generally a mandatory requirement of virtually all workers' compensation carriers, including self-insured groups. We question why Cody and the Trustees had not been more resolute in this area with actions such as forming a Trust Safety Committee to set policy and procedure and threatening to ouster members who were uncooperative with reasonable and customary safety measures (i.e. - an on-site safety visit).

Article V – Board of Trustees

- Per the original Trust and By-laws document, the number of individuals that were to serve on the Board of Trustees were seven, with six being representatives (employees) of a member and the seventh being the "principal paid executive of the Oil Heat Institute." The requirement that the seventh Trustee be an executive of OHIENY was rescinded on July 27, 2000. From that date forward, the seventh Trustee was also required to be a representative (employee) of a member of the Trust. L&M notes OHI failed to fill the seventh Trustee seat after the "principal paid executive of the Oil Heat Institute" resigned his Trusteeship in mid-2000. Evidence suggests this was an intentional act by Cody and the remaining Trustees to hold open the seventh position for a future large potential member that expressed a desire to serve. In addition, it also appears there was nearly a two month period in 1999 when the Trust only had six Trustees. Based on the above, it appears the Trust did not adhere to the number of Trustee requirement set forth in the Trust and By-laws document for the majority of its existence.
- Section 5.2, "Appointment and Tenure" indicates the Trustees would serve staggered three year terms with three sets of two Trustees each comprising the pool of the six member representative Trustees per the original Trust and By-laws document. In simple terms, an election was to occur every year at the annual meeting of members for the expiring two Trustees. The section also stated "A Trustee may serve for an unlimited number of terms." L&M believes most boards do not incorporate unlimited terms in order to foster new perspectives, ideas and energy and avoid stagnation. Additionally, L&M notes the Trust and By-laws document were never modified to address the semantics surrounding the term of office of the individual that was to fill the seventh board seat as discussed above.
- It is stated "the affairs of the Trust shall be managed by the Trustees, who shall have and may exercise all powers of the Trust, except those powers reserved to the Members by law or the By-Laws" and "The Board of Trustees shall have all powers necessary to enable it to carry out its duties, and its decisions upon all matters within the scope of its authority shall be final." This section of the Trust and By-laws document provided numerous examples of the obligations and responsibilities of the Trustees, all of which appeared to be reasonable and normal duties L&M would expect to be performed by a Trustee of a self-insured group.
- Sections 5.6 and 5.7 addressed meetings and state regular meetings were to be quarterly and special meetings could be held whenever called by the (1) Secretary of the Board, or (2) by three or more Trustees. L&M notes the meeting minutes indicate that, in general, at least five meetings occurred annually (four regular and one "special" to approve the audited financial statements and other documents prior to submission to the WCB). We also noted

numerous other "special" meetings of the Board, some of which consisted of conference calls.

- It is stated "the Trustees shall, as soon as reasonably possible after the close of each Fiscal year, or more often if convenient to the Trustees, submit to the members a written report of the operations of the Trust for such year." While it is not clear what information was required to be included in the written report, some of the member representatives we interviewed informed us they had received limited financial and other information from the Trust on an ongoing (yearly) basis.
- Section 5.15 directed the Trustees to establish a "Trust Safety Committee" that would perform many tasks, including but not limited to (1) encourage each participating member to implement a sound safety program and internal safety committee, (2) recommend new safety and loss prevention rules and regulations to the Trustees, (3) elicit methods to obtain cooperation in accident an loss prevention from all committee members, and (4) recommend action to be taken with regard to members who have a consistently poor loss experience and fail to take corrective action. Our review of documents obtained and discussions with certain Trustees indicated a "Trustee Safety Committee" failed to exist at anytime and the Trustees had never been involved with any safety/loss control initiatives.

Article VI – Appointment of Administrator

- According to Section 6.1, Cody was appointed to be OHI's administrator for the *entire period* the Trust offered workers' compensation insurance to the members of OHI. L&M believes it is unusual (1) an appointment of a specifically named administrator be included in the Trust document and/or By-laws, and (2) the term of the appointment be unlimited. The original Service Agreement with Cody had a finite term of ten years, thus, the term of the agreement between the documents conflict. See the report section entitled "Administration Fees" for additional details and discussion of the Service Agreement between OHI and Cody.

Article XI – Amendment and Termination of the Trust

- As noted previously under Article III, members were entitled to vote on amendments to the Trust and By-laws document. Article XI states the Trustees had the ability to amend the Trust and By-laws document through a vote of two-thirds of the Trustees so long as the members were informed of the substance of the change prior to the notice of the next annual meeting. Article XI continues by stating "The members may alter, amend or repeal any by-laws adopted by the Trustees." Based on the wording in Article XI, it appears a member vote for this purpose would also need to be a two-thirds majority to be effective. As stated previously, four amendments to the Trust and By-laws document were instituted at Board of Trustee meetings solely by the Trustees then in office. L&M determined the amendments were not referenced in the agendas for the applicable annual meetings or in the minutes to the meetings. It is not clear when or how the membership base could have had an opportunity to alter, amend or repeal a recent amendment to the Trust and By-laws document other than at the annual meeting. Also as previously noted, the language in Article III appears to conflict with Article XI with respect to the Trustees' ability to amend the Trust and By-laws document.

Details of the Participation Agreement

The Participation Agreement detailed the rights and obligations of members to the Trust as well as certain obligations of the Administrator to the members. Each member was required to execute a Participation Agreement as a condition of participation. In a letter from Cody to the Trustees regarding a meeting to be held in October 1997, this document along with the Trust and By-laws document were referred as "the cornerstone documents of the trust."

The initial Participation Agreement contained a preamble, 23 sections and 4 Schedules. The Schedules detailed how member contributions were to be determined and paid to the Trust, qualification parameters for participation in potential dividend distributions, and an overview of the Trust's underwriting criteria. It is important to note that members' financial responsibility under joint and several liability was mentioned in several sections of the Participation Agreement. A supplement ("Supplement A"), also requiring a member signature, was added to the Participation Agreement for all members that joined on or after September 1, 2001. Supplement A acted to further highlight the concept of joint and several liability as well as a number of other items already addressed in the Participation Agreement, but apparently deemed significant enough by those charged with governance to warrant reiteration in a separate document.

Some of the more significant rights and obligations of *members* in the Participation Agreement are:

- Members agree to be bound by the By-laws (Trust and By-laws document), the Participation Agreement, and any and all other rules adopted by the Trustees in the future;
- Members can be involuntarily terminated/non-renewed with cause by the Administrator with 20 days notice;
- Members may withdraw from the Trust after at least one year of membership provided a minimum of 120 days notice is furnished to the Administrator;
- As noted above, the members' responsibilities under the joint and several liability concept is included in several sections and a "Supplement." Section 19 states "the Member is jointly and severally liable for the workers' compensation and employers' liability obligations of the Trust and its Members and any other financial obligations of the Trust which were incurred during the Member's period of membership in the Trust."
- Schedule 1 stated "Founding Members" would receive an additional 2% credit (discount) and "Charter Members" would be entitled to an additional 1% discount over and above the percentage discount otherwise determined by the Schedule.

Some of the more significant obligations of the *Administrator* noted in the Participation Agreement include:

- Provide loss runs to members on a quarterly basis. Our interviews of members indicate this task was either not performed at all or on an inconsistent basis by the Administrator.
- Section 10 states "The Trust, through its Administrator, shall provide loss control and safety programs to the Member, designed to assist the Member in following a plan which may result in reduced losses and costs resulting from employee accidents and illnesses." As discussed in detail in the report section "Safety Programs," evidence suggests the safety and loss control program(s) instituted by Cody for the benefit of OHI's members was substantially inferior to that normally used in the industry. We believe the "program" consisted merely of (1) the mailing of periodic safety related newsletters to the membership and, (2) the ability of members to borrow generic safety related videos to train its employees on proper safety practices. In our opinion, the program was deficient primarily due to the failure to perform safety visits of member facilities and/or otherwise monitor member

employees' work habits for the purpose of assessing member safety practices (and to make corresponding corrective recommendations, as appropriate).

Ongoing Operations

Introduction

The notes to certain of the audited financial statements stated "The Trust is governed by an elected board of trustees who establish all policies and is managed on a day-to-day basis by Cody Management Services, Inc." As stated above, Cody was responsible to provide all routine management tasks for the Trust; however, L&M notes it subcontracted the claims administration, marketing, and safety/loss control functions to various other entities. We determined that two of the three parties used to provide these services were in place at or near the time OHI began active operations and were Association Plan Administrators, Inc. (claims administration) and Colonial (marketing). Colonial was referred to by Cody on many documents as OHI's "Marketing Coordinator." After a short initial period when either no safety/loss control services were made available to OHI's membership or Cody performed this service, Cody subcontracted out this function to Bill Mather, Jr. Mr. Mather (also known as the Trust's "Safety Officer") performed the limited safety related services requested by Cody to OHI's membership. See report section "Safety Programs" for further information on Mr. Mather's duties.

Cody was actively involved with all aspects of OHI's operations, including but not limited to:

- Review of potential members to determine qualification under the then current underwriting guidelines;
- Review of existing members, at least annually (at renewal), to determine adherence to the then current underwriting guidelines;
- Preparation of declaration statements (estimated annual member contribution billing) and final (audited) invoices;
- Preparation of financial budgets including an in-depth analysis of actuarial reports prepared primarily to determine contribution rate(s);
- Check writing for operating bank account and depositing of contribution and other payments received;
- Hiring and oversight of subcontractors including third-party claims administrator, safety/loss control provider, payroll auditor, legal counsel, financial auditor, actuary, and insurance broker/agencies charged with marketing of the Trust.

Under the terms of the Trust and By-laws document, Cody was also appointed as the Secretary to the Board of Trustees. Section 5.14 of that document states "All acts and determinations of the Board of Trustees shall be duly recorded by, or under the supervision of the Secretary of the Board of Trustees." Evidence suggests Cody acted in this capacity and (1) recorded the minutes of all Board of Trustees and annual general membership meetings and, (2) drafted and subsequently finalized all Resolutions brought before the Board of Trustees for vote.

The Trust had a total of 20 members for at least a portion of 1998, and was only able to grow its participant base to 39 by 2000. Due to the sluggish growth, the Trust took measures designed to specifically increase membership including the suspension (and eventual rescission) of the need for members to post financial security, the use of multiple brokers to solicit potential members, and the addition of numerous eligible SIC and payroll codes to allow different types of employers the opportunity to participate. The Trusts' membership peaked in 2005 and 2006 when slightly over

115 employers participated for at least a portion of each year. L&M believes all the actions identified above, along with the overall acceptance of self-insured groups by New York employers as a viable alternative to traditional carriers, fueled the increase in OHI's membership over the 2000 through 2006 period.

In general, the Trustees met on a quarterly basis, and beginning in 2002, had an additional annual special meeting to, amongst various other agenda items, approve the audited financial statements. Occasionally other special meetings occurred on various issues that either the Administrator and/or the Trustees deemed needed to be addressed prior to the next regularly scheduled Board of Trustees meeting. The attendance by the Trustees at the meetings was generally very good and it appears those present were active and voiced opinions on topics discussed. A detailed discussion on the activities of the Board of Trustees is presented in the next report section, "Board of Trustees."

All Trustees interviewed informed us that Cody provided sufficient information for them to adequately oversee and manage the Trust. Certain of the Trustees interviewed commented that (1) the meetings were long which allowed for them to adequately address all pertinent issues and, (2) when he had first became a Trustee he was unfamiliar with the process, but overtime he became comfortable and understood what to do.

Investments

On two separate submissions to the Trust's fidelity bond carrier, Cody stated "long term investments are handled by the trustees who, in turn, utilize two separate fund managers to guide their investments" and "all long term investments are handled by an Investment Committee consisting of three of the six trustees." Based on these statements, it appears the responsibility for the ongoing management of the Trust's investments was borne by the Trustees. Evidence located by L&M suggests the Trustees were actively involved with the OHI's investment portfolio and had acted to (1) appoint and remove investment advisors and custodians, (2) select or otherwise approve the investments made and, (3) actively monitor the Trust's portfolio.

The "Investment/Finance Committee" is the only sub-committee of the Board of Trustees L&M became aware of. The minutes to the regular Board of Trustees meetings we obtained indicate this Committee was formed by a resolution creating such at the June 14, 2000 meeting, and was eventually made up of three Trustees: Donald Persico (the Chair), Joan Hastings and Joseph Alonzo, Jr. However, it appears the Trust began to invest its excess cash as early as mid-1999 when the Trustees passed a resolution to fund an investment account with an initial investment of $40,000. We located three sets of minutes from meetings of the Investment Committee, with the first being dated February 23, 2005 which, based on wording in those minutes, appears to be the first formally documented meeting of the Committee that ever took place. All three sets of Investment Committee minutes obtained indicate a presentation had been made by one of the Trust's investment advisors that included a review of the performance of OHI's portfolio as compared to the appropriate indexes, comments on the current portfolio mix, and recommendations for future investments. The meetings also included a presentation by Trustee Persico, or David Harvey on his behalf, that discussed topics such as upcoming certificate of deposit maturities, the potential to invest additional funds generated by OHI's operations, and investment related regulatory issues.

L&M notes *all* regular meetings (excepting the special meetings that occurred in April of most years to approve the audited financial statements) of the Board of Trustees, beginning with the February 11, 1999 meeting, appear to have contained a meaningful discussion of OHI's investments, and

included handout(s) that detailed various investment related balances and/or statistics for Trustee review/comment. However, the minutes we obtained contained only one formal approval of an investment policy statement by the Trustees (occurring at the May 26, 2005 meeting). Despite L&M's ability to locate only one formal investment policy, evidence suggests all investment advisors used by OHI were provided with either a formal written policy or, at the very least, some form of instructions consistent with the investment objectives adopted by the Trustees. In our opinion, the policy we located, even though it was only one page long, appeared to address, most if not all, of the areas normally included in an investment policy statement.

We tested compliance with one of the items contained in the investment policy statement under the sub-heading "Strategy." The item states "The Committee is charged with holding 50% of our total assets in cash, as defined by Checking, Savings & Certificates of Deposit." The results of our test of the 2005 through 2009 year-ends indicated full compliance with this directive as of each year-end.

Per the 1999 - 2009 audited financial statements, OHI's investments included cash and cash equivalents, certificates of deposit, government and corporate bonds, and equity mutual funds, and ranged from a low of 19.4% (1999) to a high of 60.8% (2004) of total assets, with the majority of years being in excess of 40%. We believe the range of investment balances cited above indicate the Trustees desired to maximize the return on OHI's excess cash balance for the good of the Trust's members. Based on statements in the Board of Trustees and Investment Committee minutes, it appears the performance of OHI's investments had generally been better or at least on par to comparable indices used to gauge the performance of OHI's portfolio.

Overall, we believe OHI's Trustees were actively involved with and did a respectable job managing the Trusts investments.

<u>Overview of and Limited Comments Regarding All Other Operational Areas L&M Deems Significant</u>

As mentioned at the beginning of this section, Cody was charged with managing all the day-to-day operations subject to the ongoing oversight of the Trustees. Under the terms of the Service Agreement with OHI, Cody had the ability, and acted to, subcontract certain of its duties to third parties. In our opinion, the most significant day-to-day tasks performed by Cody (not subcontracted) involved the (1) initial and renewal underwriting of members (including the assignment of individual member discounts), (2) procurement of excess insurance, and (3) procurement and ongoing assessment of the performance of various individuals and/or entities that performed professional services for the Trust, including but not limited to, accountants/auditors, actuaries, attorneys and payroll auditors. The duties subcontracted by Cody to other individuals/entities were those that involved marketing, claims administration, and member safety/loss control. The forensic procedures we performed on OHI included an assessment of all of the above mentioned operational areas. The details of both the procedures we performed and conclusions reached on these operational areas can found throughout our report.

While we ask readers to refer to the balance of our report to obtain a deeper understanding of the procedures performed and conclusions reached on other significant operational areas of the Trust, we have highlighted below a number of findings and conclusions we deem are important enough to repeat here.

- We were informed by Cody that underwriting (initial and renewal) was performed using a "common sense" approach, and as a result, underwriting decisions were often made without

an assembly of documents normally used by insurers in the underwriting of workers' compensation insurance policies. In addition, we believe OHI's internal underwriting guidelines were limited in number and too subjective.

- The effective discounts received by some members exceeded 40%, which by most if not all standards, may be considered excessive.
- While most of OHI's members incurred few or no claims, the remainder did, some of which were significant. No documentation was found in the member files reviewed to indicate members who incurred significant or numerous claims were subsequently subject to sufficient scrutiny or otherwise pressured to correct any deemed deficiencies in employee practices in an attempt to limit future losses.
- We believe the minimal safety and loss control procedures implemented by Cody did little to deter or prevent the frequency and/or severity of losses sustained by members of OHI.
- Despite its awareness of certain questionable accounting practices devised by Cody and the Trustees to improve OHI's equity ratio, the independent auditor issued unqualified audit reports on the Trust's financial statements. Additionally, we believe the financial statement auditor (1) was not independent with respect to OHI, which should have disqualified it from performing an audit for any and all the years it performed the service, and (2) may have lacked the necessary industry experience to perform the audits since the financial statements for OHI on which it opined were deficient in many respects.
- We believe the second firm hired by Cody to manage OHI's members' claims (Claims Services, Inc.) may have significantly under reserved for future claims liabilities as evidenced by the large (almost five fold) increase made by NCAComp to OHI's open claims as of June 30, 2011.

Requirement for Annual Meetings of Members

Section 3.7 of the Trust and By-laws document references the need for an annual meeting of the members, where at such meeting the "Board of Trustees shall report to the Members on the operation of the Trust for the preceding fiscal year." L&M located minutes to annual meetings that occurred during every year the Trust offered workers' compensation insurance to its members except for 1998. Because 1998 was the initial year of OHI operations, L&M believes an annual meeting would have most likely had minimal attendance due to the lack of members and information to report. The attendance records listed on the minutes to the meetings indicated the highest attendance of member representatives at an annual meeting was 6 (2000 and 2008 meetings), 4 of which were Trustees. In general, the meetings lasted 20 minutes or less, consisted of the election of Trustees whose terms had expired, and from 2005 on, the formal recognition of the members named to receive "Excellence in Workplace Safety Awards." Certain of the annual meeting notices located by us stated "the trust's annual meeting is expected to be very short, perhaps five minutes or less as its primary purpose is to elect 2 trustees for board seats with expiring terms." In L&M's opinion, the apparent lack of substance to the meetings could at least partially explain the lack of member attendance thereof.

Two problematic items relative the content and/or actions that took place at the annual meetings follow:

- As noted above, the Trust and By-laws document stated the "Board of Trustees shall report to the Members on the operation of the Trust for the preceding fiscal year" at the annual meeting. L&M deems this wording present in the Trust and By-laws document regarding the intended content of the meetings would require the report to the members to include, at a minimum, (1) an overview of the financial status of the Trust as of the most recent year-

end and a notification of any significant financial related items that may have transpired since then, (2) a presentation and discussion of multi-year historical financial trends (charts/graphs, etc.) for certain of the Trust's key financial components, (3) a regulatory update, (4) a synopsis of significant changes made to the eligibility and minimum underwriting requirements of the Trust, and (5) a discussion of the marketing trends of the Trust, including statistics regarding membership growth and the types of members added over the past year. As noted above, the meetings were all very short and consisted primarily of the formal election of Trustees, and none of the five items listed above took place at the meetings. L&M obtained copies of mailings to members from early Trust years that included selected information such as the then current member count and OHI's loss ratio, and some from later years that included (1) notification that additional eligible SIC and payroll codes had been instituted by the Trustees, (2) the percentage and dollar amount an average member had saved as a result of its participation in OHI, (3) the negative financial effect regulatory changes had/will have on the Trust (September 2008), and (4) copies of: audited financial statements, Level I Reviews performed by the WCB, copy of consent agreement entered into with the WCB, and correspondence the administrator had received from the WCB (August 2009). While we applaud the administrator and/or Trustees for providing the membership with the information noted above, we feel its content falls short of what had been required to be reported to the members on an annual basis by the Trust and By-laws document.

- Ten of the eleven meetings included the formal election of 2 Trustees, while only 1 Trustee was elected at the remaining meeting (2000 meeting). Article III, Section 3.11 of the Trust and By-laws document addresses votes by the members while Article III, Section 3.13 addresses what constituted a quorum for a vote of the members. As noted previously, an amendment was made to the Trust and By-laws document on May 17, 2001 to reduce the quorum requirement for membership votes from a simple majority of current participants to a fixed number of 15 (fifteen) members. However, also as previously noted, we determined this amendment along with several others were instituted without a ratification vote by the general membership as required under Section 3.11 of the Trust and By-laws document. However, Article XI of the Trust and By-laws document states the Trustees had the ability to amend the Trust and By-laws document, which appears to be in direct conflict with Article III. We believe this conflict may have arisen because the Trustees may have not read and/or otherwise obtained a complete understanding of the terms of the Trust and By-laws document.

L&M's Conclusions

- OHI was formed as a result of the joint efforts of Cody and a trade association known as the "Oil Heat Institute of Eastern New York."
- Sixteen members that joined OHI in 1998 received yearly additional contribution discounts solely as a result of the fact they began their participation early in the Trust's active existence.
- L&M believes the governing documents and certain other significant agreements (i.e. – Service Agreement with Cody) were not reviewed by an independent third party legal professional. Independent legal counsel could have provided valuable advice and guidance to the Trustees regarding their responsibilities under the documents and opined on the overall reasonableness of the documents.
- The Trustees met four to five times a year. The attendance by the Trustees at the meetings was generally very good and it appears those present were active and voiced opinions on topics discussed.

- Evidence suggests those governing OHI failed to adopt and enforce a safety program for its membership similar to that widely used in both the self-insured group and commercial workers' compensation arenas. We question why Cody and the Trustees had not been more resolute in this area with actions such as forming a Trust Safety Committee to set policy and procedure and threatening to ouster members who were uncooperative with reasonable and customary safety measures (i.e. - an on-site safety visit). Refer to the report section entitled "Safety Programs" for further discussion on this issue.
- L&M became aware of at least four instances when it appears Section 3.11 of the Trust document and Bylaws was violated as a result of amendments being made to the Trust and By-laws document *without* a vote of the entire membership. Additionally, in late 2009, the Trustees adopted a resolution to terminate the Trust's ability to offer workers' compensation insurance to its members, effective January 1, 2010. An action to terminate the Trust was specifically mentioned in Article III of the Trust and By-laws document as requiring a general membership vote. We could not locate evidence to support a member vote occurring at an annual meeting or one being called specifically to ratify the above amendments or resolution. However, Article III of the Trust and By-laws document appears to conflict with Article XI with respect to the Trustees' ability to amend the Trust and By-laws document. We believe this issue could be the result of the Trustees not reading and/or not having a complete understanding of the terms of the document.
- It appears the Trust did not adhere to the number of Trustee requirement set forth in the Trust and By-laws document for the majority of its existence.
- According to Section 6.1 of the Trust and By-laws document, Cody was appointed to be OHI's administrator for the *entire period* the Trust offered workers' compensation insurance to the members of OHI. L&M believes it is unusual (1) an appointment of a specifically named administrator be included in the Trust document and/or By-laws, and (2) the term of the appointment be unlimited. Additionally, the original Service Agreement with Cody had a finite term of ten years, thus, the term of the agreement between the documents conflict.
- Cody was actively involved with all aspects of OHI's operations, including but not limited to (1) review of current and potential members to determine qualification under the then current underwriting guidelines, (2) preparation of financial budgets including an in-depth analysis of actuarial reports prepared primarily to determine contribution rate(s), (3) hiring and oversight of subcontractors including third-party claims administrator, safety/loss control provider, payroll auditor, legal counsel, financial auditor, actuary, and insurance agencies charged with marketing of the Trust and, (4) acting as secretary to the Board of Trustees;
- All Trustees interviewed informed us that Cody provided sufficient information for them to adequately oversee and manage the Trust.
- Evidence located by L&M suggests the Trustees were actively involved with the OHI's investment portfolio and had acted to (1) appoint and remove investment advisors and custodians, (2) select or otherwise approve the investments made, and (3) actively monitor the Trust's portfolio. Overall, we believe OHI's Trustees were actively involved with and did a respectable job managing the Trusts investments.
- We believe that neither the Trustees nor administrator reported all information required to be conveyed to the members annually under the terms of the Trust and By-laws document.

2. Board of Trustees

Introduction

The NYCRR governing group self–insured employers defines the Board of Trustees as the governing body "responsible for all operations of the group self-insurer and which shall take all necessary action to protect the assets of the group self-insurer."

An active and informed Board of Trustees serves a vital role in the success of a group self-insurance trust. The Trustees represent the group's members and are expected to take all actions necessary to ensure the proper performance of the trust. Generally, members of a Board of Trustees have a fiduciary responsibility and must demonstrate an ongoing interest in the affairs of the trust. It is essential the Trustees attend meetings consistently and set forth their views on relevant matters so appropriate policy decisions can be reached. Trustees should normally hire the third-party administrator, establish and/or approve (1) By-laws, (2) qualifications for membership, (3) asset protection policies, and (4) the basis for establishing member contributions and minimum underwriting specifications. In addition, Trustees are usually responsible for such critical functions as employing (or at least approving the hire of) professional service firms including auditors and actuaries. Finally, the Trustees must ensure the group trust complies with all relevant statutes and the sections of the NYCRR that govern group trusts. Appendix 3 contains a summary of the individuals L&M believes served on OHI's Board of Trustees, their terms, and other pertinent Trustee related information.

L&M's deemed best practices dictate Trustees:

- Be proactive and ask questions about important matters, even for those not on the meeting's agenda;
- Receive and review relevant materials prior to meetings;
- Seek the advice of experts (auditors, actuaries, and attorneys) when necessary or appropriate, with preference towards the Board of Trustees directly engaging the expert, rather than management (the administrator);
- Allow sufficient time at meetings for all Trustees to present his/her views and ask questions;
- Document the governance process by recording adequate minutes that include all the issues discussed and related deliberation. Some indication of the nature of the discussions is warranted, even if no action is ultimately taken. The minutes should reflect the time expended by the Trustees in reviewing critical issues.

L&M's Interviews of OHI's Trustees

OHI had eleven different Trustees over the period of the Trust's autonomous existence (10/21/97 – 6/30/11). As previously noted in the "Trust Formation and Ongoing Operations" section, Article V of the Trust and By-laws document addressed significant issues surrounding the composition of the Board of Trustees. Article V included a statement that the number of individuals to serve simultaneously on the Board of Trustees was seven, with six being representatives (employees) of a member and the seventh being the "principal paid executive of the Oil Heat Institute." Also mentioned in that report section is our belief the Trust failed to properly engage the specified number of Trustees noted in the Trust and By-laws document for most of its active existence as well as several other items we believe are problematic regarding Trustee terms and tenure.

Two of the individuals that signed the Trust and By-laws document served as Trustees for OHI's entire 13.7 year existence. The terms of eight other Trustees ranged from a low of approximately nineteen months to a high of slightly over twelve years. The final Trustee, Richard Slote, was a representative of The King Service, Inc., which never became a member.

In light of the overall importance of the Trustees in the success of a group self-insurance trust, L&M attempted to interview nine of the eleven Trustees to discuss their roles, interactions with Cody, and the understanding they had of their fiduciary duties. We did not attempt to interview Mr. Slote since his company never became a member of OHI, and could not interview the Trustee who was the "principal paid executive of the Oil Heat Institute" (Mr. Benton) since he is deceased. L&M successfully interviewed seven of the remaining nine individuals that represented OHI's members and served as Trustees. One interviewed Trustee's (John Snyder's) answers were virtually all either "I do not recall," "I am unsure," or "I cannot remember." Mr. Snyder was a Trustee early in the OHI's existence and served for less than two years. As a result of his uninformative answers, we eliminated Mr. Snyder's interview from our assembly of responses and, as a result, they will not be included anywhere in our report. None of the Trustees interviewed opted to have legal counsel present during the interview process.

The two Trustees we could not interview were Trustees' Ottman and Hart. Mr. Ottman repeatedly refused our numerous attempts to schedule an interview, while Mr. Hart imposed restrictions on the location of the interview that made it extremely burdensome for us to efficiently conduct the interview process. Mr. Ottman was the chairman of the Board of Trustees for the majority of OHI's existence.

We asked the seven Trustees interviewed a minimum of seventeen questions on a wide variety of topics. The majority of the questions were multiple parts that were dependent on previous answers provided. When appropriate, we tailored our standard questions to incorporate Trustee specific information obtained through our review of WCB correspondence and the Trustee member's file. Where appropriate, we incorporated the results of our Trustee member interviews in the applicable sections of our report. Four of the more significant questions asked during the interviews, the Trustees' responses, and L&M comments follow:

Q – Using hindsight, how well of a job do you think Cody did managing the Trust – Excellent, Good, Fair or Poor?
A – Most of the comments received from the Trustees were complimentary towards the overall quality of Cody's performance and included comments such as "Excellent, he kept extremely meticulous records, kept us informed and was always attempting to anticipate what may affect the Trust" and "Cody always dotted the i's and crossed the t's."
L&M's comments – In general, the majority of Trustees were very pleased with the Cody's management of the Trust which is evidenced by the fact that quotes from other third-party administrators were never solicited or even considered by OHI's Trustees. In the report section entitled "Administration Fees," we conclude that Cody's fees were higher than eight other Trust funds on which we have completed similar forensic procedures. The notion that the Trustees were not informed of market prices for administration services during their tenures was evident during our interviews with them. L&M believes this lack of pricing knowledge should have prompted the Trustees to obtain other trust administration fee pricing data for comparison purposes and/or commissioned a process to periodically obtain quotes from other service providers. Had this occurred it is possible the deemed excessive administration fees charged by Cody would have been

exposed, which would have provided the Trustees with a basis to negotiate a lower fee with Cody or possibly engage another less expensive administrator.

Q – Governing documents suggest the Trust was formed to serve entities in the heat, petroleum, propane and gasoline and related industries. It appears that over time the homogeneity requirements were loosened to allow participation of many other types of businesses. Why was this done? Did you agree with this philosophy?
A – The responses received to this question were mixed, and ranged from having no problem with the modifications made, to whole-hearted disagreement with the issue. One Trustee mentioned his disagreement with the loosening of the homogeneity requirements was the reason his Company withdrew from the Trust. Some quotes made by the Trustees we believe were attempts to justify the change in philosophy include (1) the companies added as a result of the homogeneity expansion "was [were] not that far removed" from the operations of heating oil companies, "(a) heating oil company is a trucking company" and "Big Brother [assumed to be the WCB] always had the last say." Finally, several Trustees specifically mentioned or alluded to the need for new members as the reason for the expansion of acceptable SIC and payroll codes. Discussions surrounding homogeneity issues (mostly involving the expansion of allowable SIC and/or payroll classification codes) occurred *at least fourteen times* during the meetings that occurred on and between August 4, 1999 and May 26, 2005.
L&M's comments – Based on the tone of the interview responses, some of the Trustees were defensive and/or at least somewhat confused when asked about the reason(s) for the change in strategy. We believe the expansion of allowable SIC/payroll classifications that occurred over time was financially detrimental to OHI and discuss this issue in detail in report section "Underwriting, Including Renewal Process."

Q – We asked the Trustees several questions regarding their knowledge of the safety/loss control programs used by the Trust to mitigate risk and potential losses. Our questions varied between the Trustees and included inquiries such as how often safety/loss control had been discussed at Trustee meetings, whether their company had ever received a safety visit during its participation (and if so, how often), and if they were aware of any safety seminars conducted for the benefit of the members.
A – The general flavor of the Trustee responses were (1) OHI's safety programs were never discussed at meetings (excepting discussions involving the "Safety Award Program" that began in 2005), (2) either their companies definitely never had a safety visit, or they could not recall if their companies ever had a safety visit, and (3) no safety seminars had ever been conducted. Selected quotes made by the Trustees that discounted the potential consequences of the lack of a safety program include "Our ultimate loss numbers were consistently low. Many members never had a claim. How do you improve upon that," "Most oil people do them (safety seminars) in house" and "With so few losses, the final results speak for itself."
L&M's comments – Based on these quotes it appears at least certain Trustees believed OHI's lack of a comprehensive safety program that mandated member participation had not been detrimental in any way to the operations of OHI. Mandatory participation in a comprehensive safety program by all policyholders (members) is considered a best practice in the workers' compensation insurance industry. Table 2, included in the report section "Underwriting, Including Renewal Process," provides evidence that numerous members were in fact detrimental to the financial status of the Trust, and we are confident at least some of the losses at those particular members may not have occurred at all, or at least been less severe, had the Trust implemented reasonable safety procedures for its membership. Report section "Safety Programs" provides additional information on what we view as a general lack of a comprehensive safety program for OHI.

Q – Whether they had read the Trust and By-laws document and understood the responsibilities with which they had been charged.
A – Surprising to L&M, the responses received to this question crossed a wide spectrum:

- One of the six Trustees could not recall if he had read the document.
- Three claimed to have read the document and understood the nature of the Trustee responsibilities listed.
- One stated he read parts of the document, but "not cover to cover." When asked about his understanding of the duties charged to the Trustees under the document and if they had been performed, he stated "Truthfully, no…Cody did them."
- One stated he may have "looked over" the document and the list of responsibilities, but may not have fully understood them. He believed the duties required by the document were performed, on a collective basis, by the Trustees.

L&M's Comments – We believe the notion that three out of six of the Trustees were unsure if they had read the document, had only read parts, or had simply "looked over" the document is problematic. Section 5.5 of the Trust and By-laws document states "the affairs of the Trust shall be managed by the Trustee, who shall have and may exercise all powers of the Trust…" and also listed nine specific duties charged to the Trustees. The Trustees that failed to properly read the document were most likely unaware of the powers and the duties they were entrusted to perform. Additionally, while Cody may have done a reasonable job performing many of the duties necessary to operate the Trust, the Trustees had a fiduciary duty to OHI's beneficiaries that included monitoring the performance of not only Cody, but all other subcontractors as well. In our opinion, the three Trustees that failed to carefully read the document at least once, failed to act in a manner a reasonably prudent person would have in a similar situation.

Trustee Meetings

L&M obtained and inspected 74 sets of "regular" and "special" Trustee meeting minutes, some of which were conferences calls with representatives of the WCB. Very few of the 74 meetings were labeled as "special." The content of these documents is cited or otherwise referenced throughout various sections of our report. During the slightly over twelve year period the Trust offered insurance to its members, the Trustees, exclusive of any committee meetings, met an average of 5.5 times per year. This average meeting frequency is the highest of all of the trusts for which we have completed similar forensic procedures on.

Relative to the minimum number of Trustee meetings required per year, the Trust and By-laws document state in Sections 5.6 and 5.7 that regular meetings were to take place quarterly and special meetings "may be held at any time and any place when called by the Secretary of the Board of Trustees or by three or more Trustees." Based on the statistics above, the Trustees met the minimum required under the Trust and By-laws document on an *average basis*. However, the Trustees only met three times during 1998, and as a result, violated the requirements of the Trust and By-laws document for that year.

The minutes to the meetings were prepared by Cody as secretary to the Board of Trustees. The minutes indicated the Trustees generally had acted to review and formally approve the meeting minutes taken by Cody. During our Trustee interviews, we asked them to confirm both of the above items as well as whether they believed the minutes were an accurate reflection of both the topics discussed and the actions they had taken at the meetings. All six Trustees who were able to answer our questions confirmed the statements found in the first two sentences above and stated

the recorded minutes were a complete and accurate reflection of what had transpired at the meetings.

Based on the numerous meetings attended by the Trustees and the apparent interaction between the Trustees and the administrator (Cody) at the meetings, we believe the Trustees provided an acceptable effort to be active and express their opinions on significant issues *presented before them by Cody*. As with many self-insured trusts for which we have performed similar forensic engagements on, while the Trustees may have been experienced and well-versed in the fields of their specialization/employment, none had any prior experience with the governance or management of a self-insured group that offered workers' compensation insurance to a pool of homogenous members. Their lack of knowledge and experience, which was formally acknowledged by the Trustees during our interviews, could be at least partly responsible for some of the issues cited throughout our report.

We have detailed below some of the Board of Trustee meeting discussions and also provided selected comments as deemed appropriate:

- October 21, 1997 – First documented meeting of original Trustees. The minutes indicate the meeting lasted over three hours and accomplished many important tasks. During this meeting, the Trustees acted to (1) review and execute the Trust and Bylaws document, (2) review and execute the administration agreement with Cody, (3) review and approve the content of the Member Participation and Indemnification Agreement, (4) pass four resolutions on various operational matters, (5) vote to pass a policy on claims ("Incident Only Events"), (6) reviewed and accepted a financial projection prepared by a certified public accountant hired by the Trust, and (7) elect the Trust's first Chairman and Vice-Chairman. We believe at least forty-two resolutions were voted on (and passed) by the Trustees over the 13.7 year period of the Trust's autonomous existence.
- February 11, 1999 – David Harvey of Cody indicated to the Trustees that he felt approximately $40,000 of funds were available to invest on a long-term basis. One of the Trustees named a specific investment advisor/custodian as being the one chosen by the "sense of the board," and asked Mr. Harvey to obtain and bring information regarding its investment program to the next board meeting. A resolution to invest $40,000 occurs at the next meeting of May 4, 1999 and the funds are invested shortly thereafter. This action indicates the Trustees acted to initiate the investment of excess funds very early in the Trust's existence and had been involved with the selection of its initial investment advisor/custodian.
- May 4, 1999 - A representative from the Trust's initial claims administrator presents at the meeting. The individual states "he tries to use conservative case reserve estimates so that, to the extent possible, we are always looking at a worse case scenarios." While this statement may have been accurate (or at least somewhat accurate) on the date of the meeting, evidence suggests that over time, the case reserves set by the third party claims administrators hired by Cody were often unrealistically low. This action, whether intentional or not, underestimated the ultimate cost of claims incurred by OHI's members and painted an overly optimistic picture of the Trust's financial status. See report sections "Establishment of Yearly Reserves on the Balance Sheet" and "Claims Handling Procedures/Practices" for additional discussion on this issue. L&M believes this was one of only three times an individual from either of the Trust's claims administrators presented at a Trustee meeting.

  A representative of OHIs "marketing coordinator" at that time (Colonial) discusses some of the challenges it was facing when approaching potential members. Ideas discussed to at least

partially alleviate the challenges were to expand the marketing focus to business sectors *related* to those the Trust had been formed to serve. L&M notes this is the first instance of what we consider to have been a major shift in OHI's marketing strategy. From this date forward, substantial time and effort was expended by those governing and managing the Trust to attract members with business operations most would consider inconsistent with heat, petroleum, propane, gasoline and related industries. For example, at the February 13, 2001 meeting, it is stated it was the "sense of the board" to admit a *well driller* but not a *milk hauler* (L&M notes certain of the Trustees at the meeting expressed their opinion that the *milk hauler* should be admitted as well). The expansion of acceptable businesses allowed to participate in OHI is discussed in numerous sections of our report.

- May 17, 2001 - Cody reported only 3 out of the 38 current OHI participants needed "friendly reminders" for the most recent contribution installment due date. A later set of Trustee meeting minutes from early 2007 (over nine years after the OHI began operations) indicate the *first ever* uncollectible account of the Trust was to be written off in the amount of approximately $3,000. As a result of the stringent collection policies implemented and enforced by Cody, L&M believes the bad debts/uncollectible accounts of the Trust were negligible through July 2010 (when the one and only member deficit assessment billing was issued).
- February 27, 2003 – Statement is made by Cody "that known cases paid and case reserves represent a 25% loss ratio for the entire 5 years of operation." As described above under the May 4, 1999 bullet point above, evidence suggests the cost of OHI's claims as estimated by the Trust during its active operations were unrealistically low. L&M obtained a document prepared by Cody to support the calculation of the 25% loss ratio referred to above. We obtained a "re-reserved" detailed loss run report from NCAComp dated September 9, 2011 and calculated OHI's loss ratio as being 119% during its first five year period. While we understand certain claims can develop poorly over time, the significant differences between the 25% loss ratio provided to the Trustees and the 119% calculated by L&M using a current loss run report is troublesome. We believe the above provides a specific example of how unrealistically low loss estimates can act to dramatically distort the reporting of financial metrics. Loss ratio information of the overall Trust, as well as that of individual members, was provided to the Trustees by Cody on an ongoing basis.
- April 24, 2003 – Cody presents for 35 minutes on OHI's 2002 audited financial statements. Best practices dictate the CPA firm that performs an audit present the results to those responsible for governance. Evidence suggests the CPA firm that audited OHI financial records had *never* presented the results of the audit to the Trustees, and did not attend a meeting of the Trustees until February 25, 2010 (almost two months after the Trust ceased offering workers' compensation insurance to its members). We believe the Trustees should have mandated that OHI's CPA firm annually attend a Trustee meeting to present the audited financial statements and address any resulting questions from the same.
- April 27, 2004 – A statement is made by Cody "…the trust's solvency ratio is harmed by depositing funds for the following year in December." Additional statements and discussion on the matter occurred and Cody (1) stated the Trust had been penalized 13 "trust equity points" simply because it had deposited contributions applicable to the following year in the current year, and (2) asked the Trustees if they wanted to adopt a policy of "holding over" checks physically received in December for subsequent year policies for deposit in January to avoid the "penalty." This meeting is the first instance when the Cody and Trustees acted to formally modify generally accepted accounting/bookkeeping practices specifically to bolster the Trust's regulatory equity ratio. These modifications, all of which we deem to be

improper, are discussed at length in the report sections entitled "Financial Statement Auditor" and "Equity Ratio and Contributions Subsequently Collected."

- May 26, 2005 – Cody states OHI is one of only five trusts out of sixty-one that have an (regulatory) equity ratio over 100%. As explained in report section "Equity Ratio and Contributions Subsequently Collected," this ratio was calculated by the WCB without knowledge of OHI's improper accounting treatment of cash on hand at 12/31/04 and the absence of a liability for unallocated loss adjustment expenses (ULAE). Additionally, this ratio was also calculated using claims reserves we believe may have been significantly understated.
- August 23, 2005 – Cody states "we have terminated a few members in the past for these reasons (underwriting related/losses) but with each year, we have a larger body of data to use for peer comparisons." L&M believes only one member had been terminated by the Trust prior to the date of this meeting for reasons such as these, with four additional members terminated for these reasons after the date of this meeting. This amounts to only 3% (5 out of 166) of the members that ever participated in OHI. We believe the finances of the Trust on a cumulative basis would have improved dramatically had Cody and/or the Trustees (1) moved to terminate other poor performing members, (2) removed the five members it had terminated sooner, and (3) initiated risk mitigation techniques on *all* members, concentrating especially on those members with large losses.
- May 17, 2006 – Cody reviews a "cost containment letter" received from the Trust's current claims administrator, Claims Services, Inc. (CSI). It is stated that, because of CSI's actions to limit payments to NY State medical fee schedules, it had saved OHI over 50%, or $80,000, of potential overbillings during the period 4/1/05 – 3/31/06. In reaction to the savings mentioned, one Trustee states "they (CSI) are doing an excellent job for us," while another Trustee concurred with the positive assessment. A report similar to this quantifying "savings" generated for the Trust over a defined period of time by CSI was provided to the Trustees at least annually. Limiting medical bills received for claimants to state schedules is a routine procedure performed during the claims administration function, so the resultant savings was simply a product of a duty CSI had been hired to and should have performed. L&M believes the Trustees' comments signify the lack of a basic understanding of claims handling process and what would be normally expected from a trust's claims TPA.

  In report section entitled "Claims Handling Procedures/Practices," the claims auditing firm L&M hired determined CSI had (1) made numerous duplicate medical and indemnity payments, (2) failed to properly complete all steps necessary to obtain reimbursement for multiple claims under Section 15-8 of the Workers' Compensation Law, (3) not properly accounted for the findings of an independent medical examination prior to settling a claim, and (4) failed to properly structure a claim settlement to reserve the Trust's rights under Section 44 of the New York Workers' Law. Based on the above, we question the overall quality of the claims administration services provided by CSI.
- January 29, 2009 – Cody provided a listing to the Trustees of the 15 members (representing approximately $501,000 in contribution revenue) that had recently withdrawn from the Trust primarily due to the 13% rate hike instituted for 2009. Because these members represented approximately 20% of the cash flow of the Trust, its ability to cover its fixed costs, without an additional member assessment, was deemed severely affected by these departures. L&M believes both Cody and the Trustees may have realized at this meeting it would have been nearly impossible to maintain sufficient membership for the Trust to continue to offer coverage subsequent to 2009.

Redacted Minutes Provided to the WCB

Beginning in 2004, the WCB required OHI to submit copies of prior year Board of Trustee meeting minutes. When comparing the minutes Cody provided to NCAComp to those on file with the WCB, we noted certain sections of some of the minutes on file with the WCB had been eliminated ("whited-out"). Upon further inspection of documents on file at the WCB, L&M located a cover sheet dated April 27, 2004 prepared by Cody to accompany the 2003 minutes provided to the WCB. The cover sheet stated "Selected sections have been redacted as directed by the trustees where they deem them to be proprietary and confidential." The February 24, 2004 minutes also included a discussion regarding the "redaction concept" and why Cody felt it was both a proper and necessary process. The February 2004 minutes indicated all the Trustees concurred with Cody's assessment, and had moved to discuss and perform minute redactions in April of every year before submitting copies of the minutes to the WCB.

L&M compared the minutes for 2003 through 2010 NCAComp received from Cody to those on file with the WCB for the same period to determine both the nature of the types of information omitted and the frequency with which it occurred. We identified at least 23 instances where sections of the minutes given the WCB were omitted/whited-out, with some omissions being as much as a full page. Additionally, our inspections uncovered *two complete sets* of minutes that appear to have been withheld from the WCB (April 27, 2004 and November 19, 2004).

The nature of the redactions were wide ranging and included items such as information and discussions regarding (1) the redaction process itself, (2) homogeneity issues, (3) significant claims incurred by a particular member involved in the "trucking" industry, (4) the decision to continue to use stale CIRB rates to compute contributions, (5) improper bookkeeping and accounting techniques intended to improve the Trust's regulatory equity ratio, and (6) criticisms of the WCB's operations and the demands it had made of OHI. It appears most of the redacted information not provided to the WCB involved issues either previously scrutinized by the WCB, or likely would have been upon discovery by the WCB. We believe the failure of Cody and the Trustees to fully comply with the WCB's straightforward request to provide it with complete copies of all Trustee meeting minutes is problematic.

The two sets of 2004 minutes apparently not provided to the WCB also included a number of the items described directly above. We can only assume the Trustees deemed the majority of the information recorded within these minutes proprietary and confidential and, accordingly, did not submit either set to the WCB.

We have listed below three of what we believe to be some of the more significant omissions from the 23 redaction instances identified.

- May 20, 2003 – 5 sentence omission. Cody informs the Trustees a "grocer wholesaler account" added qualified to participate in OHI under the predominant payroll classification code #7219 – trucking. We believe the redaction occurred to reduce the chances the WCB would question the homogeneity of this member. While this member does not appear in Table 2 (the biggest losers in report section "Underwriting, Including Renewal process"), L&M notes this member was still detrimental to the Trust since we calculated it to have had the 16th highest estimated deficiency of contributions over losses and other direct expenses (exclusive of any allocated IBNR) amounting to over $141,000. We estimate Cody earned approximately $42,000 in administrative fees as a result of this member's participation.

- February 24, 2004 – 3 large paragraph omission. The redacted discussion surrounded the WCB's recent disapproval of two applications submitted for auto dealerships. The auto dealerships were eventually approved by the WCB and both were profitable to the Trust. The redactions included statements by the administrator and/or a Trustee such as "We're talking about the entire auto dealership marketplace and we shouldn't just give up on that especially when we believe we are right on this issue" and "He (a Trustee) spoke about not getting 'nickled and dimed' and 'pushed around' by the WCB." It was decided at the meeting to spend up to $5,000 on legal counsel to obtain a court injunction preventing the termination (disapproval) of the auto dealerships if its attempt to get the WCB to reverse its decision through the use of a friendly appeal letter was unsuccessful. This redaction provides evidence of the administrator and Trustees' drive to increase the membership of the Trust through the expansion of allowable business types and also indicates what appeared to be the beginning of a disdain towards certain actions of the WCB.
- April 27, 2006 – One large paragraph (11 sentence) omission. The redaction involved the administrator (Cody) reminding the Trustees that the 2005 accounting was prepared by crediting amounts determined to be due on payroll audits for 2005 policy years with funds received by the Trust for 2006 policies. Cody then provides the Trustees with the dollar amounts involved in the scheme, and an overview of how, in the end, the new accounting methodology was proper since the balances owed to the Trust were unaffected. Finally, Cody informs the Trustees "that the WCB more than likely will disagree with this accounting treatment but the 'problem' simply arises from the WCB's total arbitrary rule to only count as allowable assets those that are collected within 90 days of year end." The final sentence of the redaction states "David (Cody) asked if all trustees concurred with this accounting approach and all voiced agreement that this was a fair manner in which to proceed and that we would contest any adverse ruling by the WCB on this score." L&M deems this accounting methodology to be improper since this resulted in OHI "pretending" that payroll audit invoices were paid before they were actually billed to members. L&M discusses this issue at length in report sections entitled "Financial Statement Auditor" and "Equity Ratio and Contributions Subsequently Collected." The above indicates Cody was forthcoming with the Trustees regarding the practice by explaining the mechanics of the treatment, the potential ramifications should the WCB become aware of its use, and finally, asking the Trustees to formally concur with the practice.

L&M's Conclusions

- L&M believes it is possible that three of the six Trustees interviewed may not have adequately read the Trust and By-laws document which listed their responsibilities. While Cody may have done a reasonable job performing many of the duties necessary to operate the Trust, the Trustees had a fiduciary duty to OHI's beneficiaries that included monitoring the performance of not only Cody, but all other subcontractors as well. In our opinion, the three Trustees that failed to carefully read the document at least once, failed to act in a manner that a reasonably prudent person would have in a similar situation.
- The Trust and By-laws document required that regular meetings take place quarterly. During the twelve year period the Trust offered insurance to its members, the Trustees, exclusive of any committee meetings, met an average of 5.5 times per year. However, the Trustees only met three times during 1998, and as a result, violated the requirements of the Trust and By-laws document for that year.
- It appears the Trustees were actively involved and expressed their opinions on significant issues presented before them by Cody.

- While, in general, the Trustees appear to have been pleased with the quality of the services received from Cody, we believe their failure to obtain competing quotes for administrative services led to OHI paying fees comparably higher than eight other trust funds we performed similar forensic engagements on.
- We believe the Trustees lack of experience with best practices in use by workers' compensation self-insured groups may have contributed to OHI's lack of a conventional safety program. We are confident at least some member claims may not have occurred at all, or would have at least been reduced, had the Trust implemented and mandated a reasonable safety program for its members.
- Evidence suggests Cody and most of the Trustees agreed (albeit some possibly being confused by the concept as well) with the philosophy adopted shortly after the Trust began operations to expand the types of employers allowable to participate. Evidence suggests the addition of members qualifying as a result of the homogeneity expansion was financially detrimental to the Trust. This topic is discussed further in the report section entitled "Underwriting, Including Renewal Process."
- As a result of the stringent collection policies implemented and enforced by Cody, L&M believes the bad debts/uncollectible accounts of the Trust were negligible through July 2010 (when the one and only member deficit assessment billing was issued).
- Best practices dictate the CPA firm that performs an audit presents the results to those responsible for governance. Evidence suggests the CPA firm that audited OHI financial records had *never* presented the results of the audit to the Trustees, and did not attend a meeting of the Trustees until February 25, 2010 (almost two months after the Trust ceased offering workers' compensation insurance to its members). We believe the Trustees should have mandated OHI's CPA firm annually attend a Trustee meeting to present the audited financial statements and address any resulting questions from the same.
- At the April 2004 and 2006 Trustee meetings, Cody and Trustees acted to formally modify certain accounting/bookkeeping practices specifically to bolster the Trust's regulatory equity ratio. These modifications (the improper application of cash receipts against the payroll audit receivable balance and the improper non recognition of cash received at year end) are discussed at length in the report sections entitled "Financial Statement Auditor" and "Equity Ratio and Contributions Subsequently Collected."
- We identified at least 23 instances where sections of the 2003 through 2010 Trustee meeting minutes given the WCB were omitted/whited-out, with some omissions being as much as a full page. Additionally, it appears the minutes from both the April 27, 2004 and November 19, 2004 meetings were not provided to the WCB. The nature of the information redacted or withheld was wide ranging and included information and discussions regarding (1) the redaction process itself, (2) homogeneity issues, (3) significant claims incurred by a particular member involved in the "trucking" industry, (4) the decision to continue to use stale CIRB rates to compute contributions, (5) improper bookkeeping and accounting techniques intended to improve the Trust's regulatory equity ratio, and (6) criticisms of the WCB's operations and demands it had made of the Trust. It appears most of the information not provided to the WCB involved issues either previously scrutinized by the WCB, or likely would have been upon discovery by the WCB. We believe the failure of Cody and the Trustees to fully comply with the WCB's straightforward request to provide it with complete copies of all Trustee meeting minutes is problematic.
- On a least one occasion, the Trustees commented on what they thought were the high quality services OHI had been receiving from the claim administrator subcontracted by Cody (CSI). Based on numerous issues cited in the report of the claims auditing firm hired by L&M to perform an examination of OHI's claims handling process, we disagree with the

Trustees' assessment and question the overall quality of the claims administration services provided by CSI.

3. Administration Fees

Initial Agreement and Subsequent Amendments

OHI entered into its Service Agreement with Cody on October 21, 1997. The minutes from the Trustee meeting on that same day indicate the agreement was reviewed at length by the Trustees. This agreement provided that Cody would be paid a management fee equal to $.96 per $100 of total members' covered payroll for 1998 and 1999, with the rate increasing to $1.00 for 2000 and 2001, $1.04 for 2002 and 2003, and $1.09 for 2004 – 2007. The Service Agreement was executed by six Trustees.

The agreement does not contain any language to indicate it is on a life of claim (cradle-to-grave) basis, accordingly L&M concluded the agreement is on a life of contract basis. L&M's discussions with Cody confirmed the agreement was on a life of contract basis.

The agreement was for a ten year term, with automatic renewals for successive ten year terms unless either party provided written notice of its intention not to renew 120 days prior to the expiration date. The ten year term of the agreement heavily favored Cody; however, the Trust could cancel the agreement for cause by a two-thirds majority vote of the Trustees.

The initial Service Agreement was amended effective December 31, 1999 (amendment #1). This amendment was executed by six Trustees. Amendment #1 (1) extended the initial term by two years, (2) changed the management fee Cody was to be paid for 2007 from $1.09 per $100 of total members' covered payroll to $1.14, (3) established Cody's 2008 and 2009 management fee at $1.14 per $100 of total members' covered payroll, (4) established a maximum management fee to Cody (23% of total members' contributions) and a minimum (the greater of $62,000 or 21% of total members' contributions), and (5) provided that in addition to the management fee, Cody would be paid a brokerage commission of 7% of total members' contributions, out of which a 3% commission was to be paid by Cody to brokers of record for Trust members who joined before December 1, 1999.

A second amendment (Amendment #2) was effective August 20, 2003, and was also executed by six Trustees. Amendment #2 (1) extended the term through 2019, (2) established Cody's 2010 management fee at $1.14 per $100 of total members' covered payroll, 2011 – 2013 fee at $1.21, and years after 2014 at $1.26 per $100 of total members' covered payroll, (3) changed the maximum management fee to be 23% of the first one million dollars of total members' contributions and 18% of members' contributions above one million dollars, and (4) changed to minimum management fee to be the greater of $62,000 or 21% of the first one million dollars of total members' contributions and 16% of members' contributions above one million dollars.

L&M obtained documentation to indicate Cody had agreed to reduce its future management fees to offset the impact of a significant increase in OHI's excess insurance cost in return for a ten year contract extension through 2019.

The final amendment (Amendment #3) was effective February 26, 2009, and was executed by six Trustees. Amendment #3 (1) reduced the management fees by 10% subject to the same minimum amount, (2) reduced the 7% brokerage commission to 6%, with the one percentage point decrease to be borne by the brokers, and (3) established Cody's management fee during a runoff phase (if ever necessary) as $60,000 per quarter ($240,000 per year) for the first two years, with future years to be negotiated. The Trust entered runoff January 1, 2010, and Amendment #3 remained in effect until June 30 2011, the day before the WCB assumed control over OHI and appointed a different administrator (NCAComp) in accordance with its policy that a new administrator be appointed for all group self-insurance trust funds it assumes control of.

Three Trustees interviewed told L&M they were not sure if the Trust engaged independent legal counsel to review the Service Agreement and subsequent amendments.

A copy of the original Service Agreement between OHI and Cody and related amendments thereto is included in our report as Appendix 4.

Services Cody was to provide under the Service Agreement

The Service Agreement stated Cody was to provide a variety of services including:

- Manage the daily operations of the Trust;
- Organize, coordinate, and direct the marketing of the Trust;
- Prepare and review all documentation necessary to underwrite a prospective member;
- Invoice members;
- Provide guidance to the Trustees on policy issues relating to membership criteria, contribution levels, and risk management practices;
- Issue checks for claims and other operating expenses;
- Establish and update claims reserves;
- Investigate, review, negotiate, and settle claims;
- Arrange for medical examinations;
- Maintain a file for each claim;
- Develop and conduct loss prevention, safety, and risk management programs;
- Assist the trust in developing a safety committee;
- Arrange for attorneys to represent the Trust as deemed necessary;
- Arrange at the Trust's expense all other professional services as required, including actuarial, accounting, payroll audits, and private investigative services;
- Pursue through brokers, the placement of excess and other insurance.

The services Cody was responsible to provide appear to be normal administrative duties for an administrator.

The Service Agreement also states Cody can subcontract duties it is to perform under the contract; however, "such assignment or subcontracting shall not relieve Cody Management Services, Inc. of its obligations to the Trust hereunder." Cody subcontracted out claims services, loss control, and marketing for some/all of OHI's active existence.

Section 6.1 of OHI's Trust and By-laws document states "the duties and responsibilities of the Administrator or subcontractors selected solely by the Administrator shall include all daily management of the trust."

Testing of Fees

The above agreement and amendments provided Cody was to generally be paid a management fee equal to a percentage of total members' covered payroll from 1998 - 2009 (subject to minimum and maximum amounts for 2000 – 2009), and $60,000 per quarter from January 1, 2010 through June 30, 2011. Cody was also to be paid a broker commission of 7% of total member contributions from January 1, 2000 – February 26, 2009, and 6% of total member contributions after February 26, 2009.

Information contained in OHI's 1998 - 2010 audited financial statements and 2011 general ledger indicate the cumulative management fee to Cody was $3,184,000, and the cumulative broker commission was $890,000 during the term it served as administrator. L&M calculated OHI's expected cumulative management fee to be $3,181,000 based on total covered members' payroll obtained from the annual payroll audits and calculations of the minimum and maximum fees in effect during 2000 – 2009, and OHI's expected broker fee to Cody to be $893,000 based on data contained in the 2000 – 2010 audited financial statements. Accordingly, it appears the fees Cody received from OHI were in line with our expectations based on the terms of the Service Agreement and subsequent amendments.

Amendment #1 to the Service Agreement stated a portion of the broker fee Cody received was to be remitted to the brokers of record for members who joined prior to December 1, 1999. Cody informed L&M it paid all commissions to members' brokers out of the 7% it was paid by OHI. Thus, after Amendment #1 became effective, the Trust no longer remitted the 3% it had previously paid to members' brokers. Cody further explained that the commission it paid to members' brokers was (1) 3% for members who joined before December 1, 1999, (2) 7% for the first year for members who joined after December 1, 1999, and (3) 5% after the first year for members who joined after December 1, 1999. These 7% and 5% rates were later revised to 6% and 4% when Cody's broker commission rate was reduced to 6%.

L&M obtained a copy of a broker agreement dated August 6, 2004 between Cody and James P. Reagan Agency, Inc., one of OHI's four primary brokers, which stated the broker would receive either 6% or 7% for new members and 4% for renewal members. These percentages slightly contradict what Cody stated to L&M per above. However, an agreement effective February 1, 2000 between Cody and Independent Marketing Services, Inc. specified the broker would receive commissions of 7% for new and 5% for renewal business. A third broker interviewed by L&M explained it generally received commissions from Cody of 7% for new members and 5% on renewals. Thus, it appears brokers were generally paid 7% for new members and 5% for renewals.

In any case, it appears Cody received a 7% broker commission while frequently remitting less than that to the members' brokers. Cody explained to L&M that the difference retained by it effectively offset some of its fee lost due to the maximum fee limitation included in the contract amendments. L&M obtained a Cody authored proposal distributed to the Trustees shortly before Amendment #1 was executed. The document explained Cody's proposed change in its fee structure discussed the 7% commission fee it would receive, and stated "we will retain portions of the commissions at times, especially for the existing book of business."

L&M did not attempt to calculate an estimate of what portion of Cody's $890,000 cumulative broker commission was remitted by Cody to other brokers.

Comparison of Management Fees with Other Trusts

The management fee to Cody was a product of OHI's members' covered payroll, subject to a minimum and maximum calculation in 2000 – 2009 primarily based on member contributions. Throughout our experience with numerous other trust funds, both as a financial statement auditor and forensic accountant, L&M has only observed one other instance where a management fee was based on covered payroll. Additionally, two individuals with considerable experience in the group self-insured field contacted by L&M indicated they also had never seen a management fee calculated as a percentage of covered payroll, with one of the two stating "it's highly unorthodox at the very least." However, after year 2000, the maximum fee limitation (based on total member contributions) was less than the calculation based on covered payroll for each year, thus effectively changing the management fee calculation to a more customary percentage based on member contributions.

L&M calculated OHI's management fee to Cody (during its period of providing workers' compensation coverage) as a percentage of contribution revenue, and compared OHI to eight other trust funds L&M has performed forensic engagements on. Five of the other funds had commission expense segregated from their management fee expense, while the management fees on the other three included commissions the administrator was required to remit to the brokers. Accordingly, the broker commission paid to Cody was not considered when compared to the first five funds noted above, and was included in the amounts paid to Cody when compared to the other three funds. The following table summarizes the data comparing OHI to the eight other funds.

Table 1:

Management fee only (excludes broker commissions to Cody)	
OHI's cumulative fee as a % of total contribution revenue	21.0%
Average of 5 other trust funds	14.7%
Highest of 5 other trust funds	20.0%
Management fee and broker commissions to Cody	
OHI's cumulative fee as a % of total contribution revenue	27.7%
Average of 3 other trust funds	19.1%
Highest of 3 other trust funds	21.0%

Based on the above table, the fees OHI paid to Cody, as a percentage of contribution revenue were higher than each of the other eight trust funds L&M performed similar forensic accounting engagements on.

The minutes from the November 25, 2008 Trustee meeting indicate the Administrator initiated a discussion about a potential reduction in its fees (L&M believes this discussion led to Amendment #3). The minutes for that meeting note one Trustee stated "he was concerned that the management fees were high but at the same time he said the quality of David's (referring to David Harvey, the president of Cody) work is excellent and 'we couldn't run the program without you'." Based on that

statement, it appears at least one Trustee felt the administration fees were high, but the quality of Cody's services justified it.

Five Trustees informed us they had no knowledge that OHI performed a study or obtained quotes with other similar providers to determine if the fees to Cody were reasonable and comparable to amounts other trusts were paying, or what other providers would charge OHI.

In addition to the above, the Service Agreement states "the Administrator, or its duly licensed designee, shall act as broker of record for the purpose of procuring and maintaining excess insurance and a workers' compensation surety bond," and "the cost of the excess insurance and the brokerage commissions payable to the Administrator for placing the same shall be borne by the Trust." Cody confirmed to L&M it was the broker of record, and accordingly received commissions under a commission sharing agreement with the broker(s) used by OHI to procure the excess and other insurance obtained.

L&M's Conclusions

- The Service Agreement with Cody, which was on a life of contract basis, was initially effective for a ten year term and later extended for an additional twelve years.
- The services Cody was responsible to provide under the Service Agreement appear to be normal administrative duties for a claims administrator.
- The analysis and predictive test we performed on the administrative and broker fees paid to Cody indicate Cody's fees to OHI were in line with our expectations based on the terms of the Service Agreement.
- The management fee to Cody was a product of OHI members' covered payroll, subject to a minimum and maximum calculation in 2000 – 2009 primarily based on member contributions. L&M as well as two individuals with considerable experience in the group self-insured field contacted by L&M believe a management fee for a self-insured group calculated as a percentage of covered payroll is unusual. However, after year 2000, the maximum fee limitation (based on total member contributions) was less than the calculation based on covered payroll for each year, thus effectively changing the management fee calculation to a more customary percentage based on member contributions.
- L&M calculated OHI's management fee to Cody (during the period OHI provided workers' compensation coverage) as a percentage of contribution revenue, and compared it to eight other trust funds L&M has performed forensic engagements on. Based on L&M's calculations, the fees OHI paid to Cody, as a percentage of contribution revenue, were significantly higher than seven and marginally higher than one of the other eight trust funds L&M performed similar forensic accounting engagements on.
- The Service Agreement with Cody also appointed Cody, or its duly licensed designee, as OHI's broker of record for the purpose of procuring excess and other insurance and a surety bond. Cody confirmed to L&M it was the broker of record, and accordingly received commissions under a commission sharing agreement with the broker(s) used by OHI to procure the excess and other insurance. L&M could not calculate the commissions Cody received under this arrangement.

4. Member Interviews

As part of the forensic process, L&M attempted to interview numerous non-Trustee members to obtain third party credible information regarding the membership process and the ongoing operations of the Trust. As a first step, we attempted to contact representatives of twenty non-Trustee members to schedule interviews. We followed up with additional telephone calls and/or e-mails to all representatives we were unsuccessful communicating with as a result of our initial attempt. Due to a lack of response from our first sample of twenty members, we attempted to contact representatives from an additional seven non-Trustee members to schedule interviews. As a result of our efforts, nine member representatives agreed to be interviewed.

Seven interviews were conducted through telephone conferences while the remaining two were conducted through written correspondence. None of the member representatives we interviewed over the telephone had legal counsel present during the process. The length of participation of the members interviewed range from a minimum of approximately three years, to a maximum of almost ten years.

We asked the non-Trustee member representatives interviewed questions on a wide variety of topics. The majority of the questions included multiple parts that were dependent on previous answers provided. When appropriate, we tailored the standard questions to incorporate any member specific information obtained through our inspection of WCB correspondence and the member's file. Additional questions were crafted and posed to selected member representatives when deemed necessary. When appropriate, we incorporated the results of our member interviews in the applicable sections of our report. Some of the questions asked and the related member responses follow:

- **Q –** How the member had been marketed to and the reason(s) why they ultimately joined.
  A – Five of the nine indicated their insurance brokers/agents had marketed the Trust as an alternative to traditional forms of workers' compensation coverage. One member indicated OHI was marketed to it through an industry organization. The potential cost savings was frequently mentioned by the interviewees as one of, if not the main reason, they had joined the Trust. The remaining three members could not recall or did not know how OHI was initially marketed to them.
- **Q –** Whether the meaning of joint and several liability was explained prior to joining the Trust.
  A – Four of the nine member representatives stated the joint and several liability provision cited within the various Trust's governing documents was explained to them adequately prior to joining. The remaining five stated the provision either had not been explained or they were unsure if it had been explained. Three of the four members who indicated awareness of the joint and several provision stated they were not kept apprised of OHI's deteriorating financial position. One of these members stated if he had known about the deteriorating financial position of the Trust, his company would have terminated membership earlier. Two of the members who stated they were never made aware of the joint and several liability provision noted that they became aware of the provision during the last few months of the Trust's operation or shortly after the Trust's termination when they received correspondence regarding the termination of the Trust's active operations. One of these members indicated that in addition to the joint and several provision not being adequately explained prior to joining the Trust, Administrator Harvey significantly downplayed the overall risk by describing how excess insurance acted as a safeguard against significant claims sustained by the Trust. For all five members that stated the joint and

several provision either had not been explained or they were unsure, we located copies of signed Participation & Indemnification agreements executed when they joined OHI. All of the Participation & Indemnification agreements expressly stated the member's obligations under the provision. As a result, although it is possible the provision had not been adequately explained, these members should have had an understanding of the provision upon reading the Participation & Indemnification agreement each signed.

Q – If the member had been made aware of the minimum underwriting standards of the Trust.

A – Seven stated they were unaware of any minimum underwriting standards of the Trust. The remaining two stated they believed certain types of employers (businesses in the oil and heating industry) were allowed in the Trust, but were unaware of any other underwriting criteria. L&M notes three of the interviewee companies had a history of extremely poor loss ratios (over 100%); however, none of the three members stated they were asked to leave the Trust or threatened with termination if their loss ratios did not improve.

- **Q –** Whether they had been invited to attend a general membership meeting at any time during their membership.

  A - Eight stated they had not been made aware of, or formally invited to attend, any general membership meeting, or they were unsure if they had been made aware of membership meetings. The remaining member stated he believed membership meetings occurred, but he never attended.
- **Q –** If the member had received the Trust and By-laws document prior to joining the Trust.

  A - Seven of the representatives stated they either did not receive or were unsure if they had received this document. Two representatives stated they had received the document prior to joining the Trust.
- **Q –** If they were ever offered the opportunity to become a Trustee or vote in Trustee elections.

  A – All stated they were never offered an opportunity to become a Trustee. Five stated they were asked to vote in Trustee elections through proxy votes. Three of these members who stated they were asked to vote in Trustee elections stated the elections were annual while the remaining two were unsure of the frequency of elections. Four members had no understanding of how Trustees were elected or appointed.
- **Q –** If the Trust had regularly reported financial results to them and/or if they were ever made aware of the financial problems of the Trust.

  A – Five of the nine member representatives believed they had received financial results annually; however, the documents received never implied or expressly indicated OHI's financial condition had been deteriorating. All of these members participated in the Trust during 2006 and 2008, which is the two years OHI incurred the most significant losses. One of these member representatives stated it wasn't until the final years of OHI's operation, when it "heard through the grapevine" the Trust was underfunded. The member subsequently questioned Administrator Harvey about OHI's funding status to which he replied, according to the member, there were no funding issues and the financial concerns were the result of inaccurate actuarial computations. Based on these member representative's comments, L&M questions the nature and accuracy of the financial results members had received. The remaining four member representatives did not recall receiving any type of Trust financial information.
- **Q –** If any type of safety visit with associated recommendations was either performed or attempted at any point during membership.

A – Seven representatives stated a safety visit was never attempted or performed at their facility during their membership in the Trust. The remaining two members were unsure if a safety inspection was ever attempted.

- **Q –** At or around the time the Trust ceased active operations (December 31, 2009), did Cody or their broker recommend a specific replacement insurance carrier for their company to procure its workers' compensation coverage.
  A – Eight of the nine members were with the Trust when it ceased offering coverage on December 31, 2009, and all eight stated Cody did not *recommend* a replacement insurance carrier; however, two recalled Cody offering the *opportunity* of coverage with an alternative carrier, but they could not recall the carrier's name. Through our inspection of Trust documents, we determined Applied Underwriters, an entity unrelated to Cody, had been suggested as an option for members to replace coverage.

5. Marketing

Introduction

Section 317.18 of the NYCRR, effective January 31, 2001, governs marketing materials of self-insurers. The crux of this section of the NYCRR is that all marketing materials should be factual, truthful, supportable, and verifiable, and should not contain any statements that could be considered deceptive, misleading, or coercive.

As noted previously, in report section "Trust Formation and Ongoing Operations," the Trust was formed mainly through the resolve and efforts of Cody, OHIENY, and Colonial. The original application submitted to the WCB in 1997 stated Cody subcontracted out the "Marketing Coordinator" position. The function of the Marketing Coordinator was defined in that application as the party "to promote the program within the industry and to provide Cody completed applications for purposes of underwriting so the trust can grow while maintaining its high quality of membership in terms of low historical losses." The fees/commissions paid to these three entities (Cody, OHIENY and Colonial), as well as amounts paid to other insurance agents and brokers, is discussed below.

During its formative years of 1996 and 1997, as well as the early years of the Trust's active existence, it appears a significant effort was put forth by all three entities to grow the Trust's membership. For example, L&M located numerous listings of potential participants dated from 1996 – 1999 and evidence to suggest the listings were used by both Cody and Colonial as a component of the Trust's new member recruitment process. Documents suggest OHIENY officially endorsed the program even before it began operating, promoted it to its membership on an ongoing basis in newsletters and other mailings, and sponsored live informational sessions on the benefits of participating. We believe at least one OHI informational session was held at the same location and date OHIENY held a membership meeting. To compensate OHIENY for its endorsement and marketing efforts, OHI initially paid OHIENY a fee equal to 2% of final collected contributions for all members. Over a period of years and for what appear to be numerous reasons, the relationship between the Trust and OHIENY soured, and in June 2001, the Trustees voted to (1) remove the requirement that participants of OHI maintain a membership in OHIENY and (2) rescind the payment of the 2% fee paid by OHI to OHIENY on a prospective basis. A new resolution was passed simultaneously to compensate certain other "endorsing associations" that agreed to actively promote OHI with a fee equal to 1% of the final collected contributions for OHI members that also

belonged to the endorsing association(s). L&M noted a 2006 letter from OHI to selected members indicating nearly $8,000 was paid by OHI to one of these endorsing associations from 2001 through 2006.

In January 2006, Cody submitted a set of documents to the WCB in connection with a regulatory information and document request. The documents submitted included an overview of how the Trust was marketed, the multitude of ways Cody felt its process was different (and superior) to that used by many other self-insured groups, and a listing of the four brokers/agencies currently enlisted to market the program. L&M believes these four agencies/brokers, along with a related party to one of the four, were at least partly responsible for referring virtually all OHI's members. The following marketing related information was included in the submission:

- The number of brokers/agents authorized to market the Trust were intentionally restricted by the Administrator from the date the Trust began operations on January 1, 1998. The reasons cited for the restriction included the ability (1) to use only those brokers/agents with excellent reputations, (2) for Cody to closely monitor the "selling" process and the information provided to prospective members, (3) for Cody to meet with and train the brokers/agents staff on both positives and negatives (i.e. joint and several liability) of self-insurance, and (4) to develop a mutual understanding of the types of members acceptable and thereby limit the presentation of marginal accounts to the Administrator for consideration.
- Statements made that marketing materials are "virtually nonexistent" and the "Marketing (of) our program is based on the broker/agent's knowledge of our program and identification of sound prospects they believe will be a good match." L&M located a limited amount of documents used in the marketing of the Trust to prospects and discusses their contents below in the section entitled "Marketing Related Documents Provided to Prospective/Existing Members and Analysis Thereof."

Marketing Discussions at Trustee Meetings

The minutes of the Board of Trustee meetings we obtained contained indications that various aspects surrounding the marketing of the Trust were discussed. Some of these discussions are listed below:

- May 4, 1999 – The inability to get a large prospect to participate because it had received a competing quotation amounting to approximately one-half of OHI's is mentioned by a representative of the insurance agency currently acting as the marketing coordinator of OHI. A long discussion by the Trustees occurred that questioned the actuarial integrity of the data used in the competing quote and concluded with the following statement by a Trustee "we would not alter the rating plan to participate in a pricing war." The above indicates the apparent unwillingness of Cody and the Trustees, at least in the early years of the Trust's active life, to compete with other self-insured groups strictly on price alone, and OHI felt its pricing model was an accurate reflection of the contribution levels needed to adequately fund operations. Our analysis of contribution discounts provided to OHI's members is discussed in detail in the report section entitled "Discounts."
- August 6, 1999 – One member of the Board of Trustees expressed his displeasure with the marketing coordinator's production because through August 1, 1999 only $12,000 of the $100,000 in budgeted new revenue had been secured. It is stated the agency wanted to pursue auto dealers for admission into OHI. After some Trustee discussion, it was decided it was "the sense of the board" for the agency to pursue auto dealers. The agency representative concluded his presentation by stating his agency would do more mailing

campaigns and would generate and provide monthly marketing reports to the Board of Trustees. The minutes to the following Trustee meeting indicate the agency was replaced by Cody as OHI's marketing coordinator. The above indicates that at least during the first 7 months of 1999 the marketing efforts of the primary marketing agent were trailing far below the budgeted amount, and the agency requested and received Trustee authorization to expand its efforts to include auto dealers within the Trust's homogeneity requirements. We question the rationale and motive behind allowing auto dealers and other businesses that, in our opinion, did not fall within the boundaries stated in the original Trust and By-laws document (to serve employers that are "involved in the heat, petroleum, propane, gasoline and related industries including the distribution and handling of petroleum products)." L&M notes other Trustee/Administrator discussions surrounding homogeneity issues occurred quite often at the meetings, some of which are included below. Our overall opinion of the Trust's homogeneity policy is discussed in detail in report section "Underwriting, Including Renewal Process."

- February 13, 2001 – A review of the results of the replacement marketing coordinator hired by Cody in 2000 takes place and it is stated (1) Cody was unsatisfied with the results of the prior year, (2) the replacement marketing coordinator was stripped of its right to exclusively market the Trust, (3) a new agency (the third) was brought on board, and (4) the first primary marketing coordinator that had worked with the Trust in 1998 and 1999 had also continued to sell the Trust to prospects. Two primary marketing coordinators were terminated by Cody/OHI as a result of poor production after only slightly more than 3 years.
- May 17, 2001 – A two page memorandum is provided to the Trustees that indicated significant member growth had occurred since January 1, 2001. Eleven members had already been added to date and an additional 3 were slated to become Trust members prior to June 1, 2001. L&M believes 2001 was the beginning of a sustained period of growth for OHI and calculated the Trust's net contribution growth for the period 2001 through 2007 to average 37% and range from a low of 10% (2006) to a high of 67% (2001).
- October 30, 2001 – Cody states "that for our first four fund years, we have restricted marketing to certain 'core' types of employers such as fuel and propane dealers, HVAC contractors, gas stations and convenience stores." A Trustee states he "felt that bringing in a trucking employers such as a milk hauler was fine so long as the quality in terms of workers comp losses as so forth was similar to our underwriting standards." At the meeting, a motion is unanimously approved "to authorize the administrator and marketing agencies to pursue any employers that meeting the requirements on the state approved homogeneity list for our trust providing we maintain the same underwriting standards in terms of 'quality'." This discussion indicates a further expansion of the types of businesses allowed to participate (as first noted above in the August 6, 1999 minutes), with the caveat that they would be subject to the same underwriting requirements that had been followed since the Trust's inception.
- August 22, 2002 – Cody provides the details of a new commission program developed specifically for an additional group of agencies to potentially be added as authorized OHI marketers across New York State. The new commission program (the "6-4-1" program) is described under the sub-section below entitled "Sales Commissions Paid Relative to Procurement of Contribution Income for the Trust."
- May 20, 2003 – A representative of the telemarketing firm the Trust was using states "we are adding a new grocer wholesaler account whose qualifying code is the trucking code 7219 code." A Trustee states "that transporting groceries was hardly as hazardous as petroleum products and voiced support for the grocer application." It is further stated "Other Trustees

concurred." It is stated by Cody "one of the new agencies signed up under the "6-4-1" commission program had submitted an application for an auto parts retailer of significant size." L&M determined the "wholesale grocer" identified above performed poorly during its participation since it contributed the sixteenth highest amount to OHI's cumulative deficit and the section of the minutes that discussed the admittance of a "grocer wholesaler account" was removed by both Cody and the Trustees from the copy of the minutes provided to the WCB.

- February 24, 2004 – A WCB letter denying participation to two auto dealerships is handed out by Cody to the Trustees. A very long discussion occurs regarding the disapproval letter and the flawed logic the WCB had purportedly used in its determination to reject the applications. It is mentioned there were nine Trust members whose qualifying payroll code was 8391(Automobile sales or service – all operations and drivers). A Trustee states "a mechanic is a mechanic, the occupational hazard is the same whether you are mechanic for a service station or an auto dealership." A very long discussion on the subject ensued and ended with a vote to authorize the administrator to spend up to $5,000 in legal fees to obtain a court injunction preventing the WCB from disapproving the members without further review. L&M feels it is important to make the following comments regarding the above: (1) the attempt to formally admit auto dealers to the Trust is yet another indication in a change of philosophy of those governing the Trust to allow a much broader classification of employers into OHI than had been originally intended, (2) the admissions were so critical to certain individuals charged with governance that legal action against the WCB was contemplated, and (3) the section of the minutes that discussed the potential for legal action against the WCB if it would not agree to the admissions was removed by both Cody and the Trustees from the copy of the minutes provided to the WCB.
- November 10, 2004 – A representative of a marketing agency presents to the Trustees and states he was going to concentrate his efforts in the pursuit of auto repair shops and other auto related employers based on the 8391 payroll class code, and several Trustees expressed their approval. Cody informs the Trustees he had enlisted another agency to market the Trust in Syracuse and planned to formally "train" them in December. L&M believes this was the last insurance broker/agency officially enlisted by OHI to market the Trust.
- February 23, 2005 – Cody provides a copy of an OHI specific brochure used by one of the four agencies enlisted to market the Trust. It is mentioned that the brochure targeted auto repair shops, but with some modification could also be used for other types of employers. Finally, it is stated the Trustees were complimentary about the brochure and that Cody had travelled to the new insurance agency in Syracuse and completed its training process. While L&M could not procure a copy of the aforementioned brochure, it is apparent written marketing materials were developed and used to market the Trust, which is in direct conflict with the marketing information provided to the WCB by Cody in January 2006 in connection with a regulatory information and document request. L&M noted discussions of other marketing brochures/flyers that were either completed or being developed by Cody and the brokers/agents at other Trustee meetings and instances when the Trustees had occasionally suggested ideas to Cody for inclusion in new brochures/flyers. We obtained copies of numerous documents used to market OHI and discuss them below in the sub-section entitled "Marketing Related Documents Provided to Prospective/Existing Members and Analysis Thereof." It appears the Trustees were kept abreast of both the past results and current status of the marketing activities by both Cody and the brokers/agents and had been occasionally involved with the design of the Trust's marketing materials.
- November 17, 2005 – It is stated 17 members had been added to the Trust since January 1, 2005 representing approximately $200,000 in premium; only one-half of the growth of the

prior year. A breakdown by agency/broker for the new contributions is conveyed by Cody to the Trustees. L&M notes these types of statistics were provided to the Trustees by Cody at many of the Trustee meetings.

- August 29, 2006 – An agency representative indicates a plumbing supplier was accepted for membership in the spring. The representative also mentions that Cody had recently provided a quotation to a large (six figure contribution) plumbing/heating contractor with an experience modification factor of only .80. The Trustees commented favorably on the agency's submission. L&M's analysis of new member admissions and the Trust's growth indicates the plumbing/heating contractor referred to above never became a member, and membership growth for 2006 decreased to 10%, which was by far the smallest year over year growth during the years 2001 through 2007.
- 2007 through 2009 – While marketing was still discussed at many of the meetings, the topics and tone of the discussions were centered mainly on the many negative issues facing OHI, including its underfunded status, the constant flow of bad press regarding the self-insurance industry in general, and what was being be done to retain OHI's current membership.

The report sub-sections "Introduction" and "Marketing Discussions at Trustee Meetings" indicate (1) the Trust had a marketing plan and strategy that was modified as conditions warranted, (2) OHI was marketed conventionally to potential members through the use of insurance brokers and agents, but only four brokers/agents (including a related party to one of the four) had ever entered into a formal marketing agreement with the Administrator and were at least somewhat responsible for the referral of nearly all OHI's members, (3) the oil heat trade association involved in the original formation of OHI marketed the program directly to its members especially in the early years of the Trust's existence, (4) the Trust's marketing strategy was not focused primarily on price, especially in its early years, (5) due to poor initial growth, the Trust acted to expand the base of potential participants by expanding homogeneity requirements, and (6) the Trustees were kept reasonably aware of and provided input and commentary on the marketing plan and strategy on an ongoing basis.

Marketing Related Documents Provided to Prospective/Existing Members and Analysis Thereof

We located numerous documents used to market OHI within the information provided by Cody to the third-party administrator appointed by the WCB (NCAComp). The documents we obtained included an OHI "Q & A document," a 1996 request to participate in a "Feasibility Study" to OHIENY association members from OHIENY, an invitation from OHIENY to selected association members to attend a September 1998 information session on OHI, a multiple page glossy brochure, fax solicitations, and letters to existing and prospective members on OHI letterhead that touted the overall quality of the program on a standalone basis as well as various comparisons to other New York self-insured groups and national averages. The marketing materials touted the many advantages of obtaining coverage through OHI including (1) lower premium (contribution) costs, (2) aggressive claims management, (3) the benefit of participation in the Trust's safety programs, and (4) more control over policies and procedures as compared to traditional workers' compensation policies. L&M notes in report section "Safety Programs" that a traditional safety and loss control program for OHI's membership had never been implemented and individual members' safety related activities were largely unmonitored. Additionally, even though it was previously stated the Trust's general policy was to not compete on price alone, the majority of marketing materials stressed at least the current savings that could be realized from participation,

with some mentioning the potential for increased savings as the Trust matured. Some of the phrases noted in the materials included:

- "Typically we are between 15% and sometimes 25% lower than competing programs"
- "Your company will save over 10% right from the start on its workers comp costs… and our claims ratio suggests far greater savings as we build our reserves"
- "Within four to five years, most of these programs are priced 30% or more below what's available in the open market (and that's after all the discounts and rate deviations offered by regular insurance carriers)"
- "Rates deviate 30% from 1999 NYS Rating Board rates"
- "High solvency ratio as determined by state regulators"
- "This outstanding group has a superb 26% loss ratio"
- "We 'cherry pick' only employers with outstanding claims histories"
- "In sum, the trust is well run, solvent and financially sound"
- "In 2005, only 9 of 64 trusts had ratios higher than 100% - We are one of them!"
- "Aggressive claims management keeps cost low"
- "Embraces a strong safety program for individual companies and the trust as a whole"
- "Participation in safety programs that help prevent accidents from occurring"
- "The annual audit is shared with the membership so they know where every penny has been spent" (Per report section "Member Interviews," Five of nine member representatives interviewed believed they had received financial results annually while four other member representatives did not recall receiving any type of Trust financial information).

The above indicates (1) Cody and the brokers/agents used numerous avenues to market OHI, (2) the marketing materials touted the positives of OHI as compared to other insurance programs, and (3) OHI's marketing strategy centered mainly on the overall quality of the Trust, its underlying membership, and the potential cost savings of participation.

Sales Commissions Paid Relative to Procurement of Contribution Income for the Trust

As a result of our document accumulation and interviews with Cody and various brokers/agents, we determined sales commissions of as much as 7% of contributions were paid to the producing brokers and agents. Evidence suggests the commissions paid on members that joined OHI prior to December 1, 1999 were fixed throughout the Trust's active existence at 3%. L&M believes the commissions were disbursed directly by the Trust to the producing broker/agent prior to December 31, 1999, while after that date Cody received a brokerage commission from OHI at a fixed percentage of total contributions (7% from January 1, 2000 through February 25, 2009 and 6% from February 26, 2009 through December 31, 2009). The Service Agreement with Cody stated Cody "at its sole discretion, may retain all or a portion of this brokerage commission and or use any portion of this commission to retain the services of other brokers provided; however, that the Administrator shall pay a 3% commission to any Brokers of Record filed with the trust for ongoing trust members who initially joined the trust prior to 12/1/99." As a result, it appears Cody was responsible to pay any and all commissions due to the producing brokers/agents of members who joined on or after December 1, 1999.

Cody explained to L&M that during the approximate ten year period it received a 7% broker commission, it (Cody) paid commissions to members' brokers/agents as follows: (1) 3% for members who joined prior to December 1, 1999, (2) 7% for the first year of a member's participation in OHI for members who joined after December 1, 1999, and (3) 5% for renewals of members who joined after December 1, 1999. Cody also explained that during the ten month

period where Cody's commission was reduced to 6%, the 7% and 5% commissions it paid to members' brokers as noted above were reduced to 6% and 4%.

An agreement we obtained effective February 1, 2000, between Cody and Independent Marketing Services, Inc., specified the broker would receive commissions of 7% for new and 5% for renewal business. Another broker agreement we obtained dated August 6, 2004 between Cody and James P. Reagan Agency, Inc. stated the broker would receive either 6% or 7% for new members and 4% for renewal members. A third broker interviewed by L&M explained it generally received commissions of 7% for new members and 5% on renewals from Cody. Thus it appears the brokers were generally paid 7% for new members and 5% for renewals.

Two of the three brokers we interviewed stated the commissions they received for placing members with OHI were the lowest of all the self-insured groups with which they did business with. The minutes from the August 22, 2002 Trustee meeting include Cody explaining a new commission program whereby Cody would pay brokers 6% for new members, 4% for renewals, and an additional 1% override for new members who generate a certain amount of new member contributions (one example being $50,000). This tiered commission arrangement was set up to reward producers who generated a certain amount of new contribution revenue for the Trust during a given policy year, and at the same time incentivize other brokers to do the same.

It is not clear to L&M if the 1% override was also paid on renewal members. If it was, then the commissions paid to brokers who met the minimum new business threshold were 7% for new and 5% for renewal. However, L&M believes it likely all brokers did not meet the requirement necessary to receive the additional 1% override commission.

L&M Conclusions

- The Trust's marketing strategy included the conventional practice of referrals through brokers/agents as well as referrals obtained as a result of formal endorsements made by several trade (oil/petroleum related) associations;
- The number of brokers/agents that marketed the Trust was restricted. L&M believes only four agencies/brokers, along with a related party to one of the four, were at least somewhat responsible for the referral of virtually all OHI's members;
- The Trust's homogeneity policy was expanded over time which allowed a much broader base of employers the ability to participate. L&M believes the expansion was done primarily to counteract the poor growth rates experienced in the Trust's early years. We question the rationale and motive behind allowing the participation of employers that, in our opinion, did not fall within the stated boundaries contained in the original Trust and By-laws document;
- The Trust's highest period of growth occurred during the 2001 – 2007 period when it experienced average annual contribution growth of 37%;
- The Trustees were kept reasonably aware of and provided input and commentary on the marketing plan and strategy on an ongoing basis;
- The marketing related documents provided to prospective and existing members obtained and inspected by L&M reveal (1) Cody and the brokers/agents used numerous avenues to market OHI, (2) the marketing materials touted the positives of OHI as compared to other insurance programs, and (3) OHI's marketing strategy centered mainly on the overall quality of the Trust, its underlying membership, and the potential cost savings of participation;
- Evidence suggests numerous broker commission arrangements existed over the Trust's active life with the lowest commission noted by L&M being 3% and the highest being 7%. We believe Cody benefitted financially from the broker commission arrangement that was

part of its Service Agreement with the Trust from December 1, 1999 – December 31, 2009. Our conclusion is based on (1) for approximately nine years Cody received commissions from OHI totaling 7% of all member contributions while remitting commissions to members' brokers/agents at rates ranging from 3% to 7%, and (2) for approximately ten months Cody received commissions from OHI totaling 6% of all member contributions while remitting commissions to members' brokers at rates ranging from 3% to 6%.

6. Financial Statement Auditor

Fuller & LaFiura Certified Public Accountants, P.C. (Fuller & LaFiura), was the CPA firm hired to perform audits of the annual financial statements for 1998 – 2010.

Independence Issue

David Harvey, the president of Cody, explained to L&M that Richard Fuller (of Fuller & LaFiura) also "kept the books" for OHI. When asked to elaborate, Mr. Harvey explained he would send Mr. Fuller the monthly bank statements, information pertaining to checks written (which showed the account to be charged) and amounts received, and other information. Additionally, OHI's investment statements were either directly mailed to Mr. Fuller or provided to him monthly. Mr. Fuller then recorded the transactions in a general ledger and prepared reconciliations.

During a discussion with Mr. Fuller on August 19, 2011, we were informed that he "did the bookkeeping for OHI."

A rule governing the performance of a financial statement audit (an attestation engagement) requires the auditor and CPA firm to be independent with respect to the client. The American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct states "A member in public practice shall be independent in the performance of professional services as required by standards promulgated by bodies designated by Council." Accordingly, a CPA firm cannot issue an audit opinion on financial statements where the firm is not independent with respect to the entity.

The AICPA's Code of Professional Conduct provides examples of services provided to audit clients that would impair a CPA firm's independence. An example pertaining to bookkeeping services states that independence is impaired if the CPA were to "determine or change journal entries, account codings or classification for transactions." L&M's discussions with David Harvey indicate some of the source documents and other information provided to Mr. Fuller did not indicate the accounts to record the information in, nor how the transactions should be recorded. For example, Mr. Harvey did not attempt to analyze the investment activity or advise Mr. Fuller how to record it. Mr. Harvey explained that he is not an accountant and does not have any accounting experience, which is why he hired Mr. Fuller. Based upon the above, Fuller & LaFiura may not have been independent with respect to OHI.

Deemed Improper Accounting Practices Designed to Improve OHI's Equity Ratio

As detailed in report section "Equity Ratio and Contributions Receivable Subsequently Collected," we believe those charged with OHI's governance had engaged in two questionable accounting practices. A summary of the two follows:

Certain collections of member contributions received during the first three months of 2006, 2007, 2008, and 2009 were reclassified by OHI as payments on amounts due from members' payroll audits. However, the invoices resulting from the 2005 – 2008 payroll audits were generally issued and mailed to members in April and May of the following year. Thus, the January – March payments from members were clearly for that year's contributions and did not relate to the payroll audit for the prior year. L&M questions the legitimacy of applying cash receipts for another purpose against a 2005-2008 receivable that had not yet been recorded. By improperly applying the cash receipts, OHI represented to the WCB a greater portion of its year end accounts receivable balance was collected by March 31st of the subsequent year, which improved the equity ratio used by the WCB used to determine if OHI was under funded.

Since Fuller & LaFiura maintained OHI's accounting records in addition to performing the annual financial statement audit, L&M believes it highly unlikely Fuller & LaFiura did not know of the improper cash receipt application process in effect beginning in early 2006.

L&M questions how Fuller & LaFiura believed it was proper to disclose in the 2005 – 2008 financial statements collections received on the payroll audit receivable balances while knowing the collections had been for the subsequent year's policy. L&M believes Fuller & LaFiura knew this information would be used by the WCB to calculate OHI's equity ratio since footnote #6 from the 2003 – 2009 audited financial statements presented the Trust's internally calculated equity ratio using the WCB's methodology. Additionally, the WCB's 2005 – 2009 Level I reviews noted the total of receivables collected within 90 days after year end used by the WCB in its equity ratio calculation came from OHI's audited financial statements.

L&M concluded in report section "Equity Ratio and Contributions Receivable Subsequently Collected" that cash receipts totaling $137,175, $135,068, $238,562, and $235,143 for 2005 – 2008, respectively, should not have been disclosed as collections on the payroll audit receivable balance in the corresponding audited financial statements.

The second improper accounting practice involved the failure to record un-deposited cash received at year end 2004, 2005, and 2006. Cody intentionally held (did not deposit) contribution checks received late in the year that pertained to the next year's policy (a receivable had not been established by year end for the contribution amounts paid by these checks). Then early in the next year the checks were deposited. The checks received and held were not recorded until deposited in the subsequent year. Cody did this to improve OHI's equity ratio as calculated by the WCB.

L&M does not agree with this accounting treatment (checks received don't get recorded until they are deposited). Rather, the cash (checks) on hand not yet deposited should have been recorded at year end. By not recording the cash receipts, proper accounting principles were not adhered to.

L&M questions how Fuller & LaFiura believed it was proper to not record un-deposited cash on hand at the end of 2004 - 2006. As noted above, Fuller & LaFiura maintained OHI's accounting records and performed the annual financial statement audit. Accordingly, L&M finds it highly unlikely Fuller & LaFiura was not aware significant cash was held (not deposited) by Cody at the end of 2004 – 2006. Even if Fuller & LaFiura was not initially aware cash was held, auditing procedures such as review of Trustee meeting minutes, inspection of subsequent cash receipts, or investigation as to why the unearned contribution balance decreased to zero would have uncovered the nature of the Administrator's tactics (with agreement from the Trustees).

Required and Generally Accepted Disclosures Omitted and Other Errors Noted in 1998 – 2009 Audited Financial Statements

L&M inspected the 1998 – 2009 financial statements audited by Fuller & LaFiura and noted numerous required and generally accepted disclosures were omitted, and certain reporting and other errors were present. Based on the errors noted, L&M questions whether Fuller & LaFiura possessed the necessary industry expertise to perform the audits.

Required and generally accepted disclosures omitted, and other errors noted in the 1998 – 2009 audited financial statements include, but are not limited to:

- Schedule of claims liability activity for the year was not disclosed. This disclosure would normally include the beginning balance, expense incurred for current year claims, expense incurred for prior year claims, liability incurred to be covered by excess insurance, claim payments for current year claims, claim payments for prior year claims, and the ending balance (1998 – 2009).
- The basis for estimating the claims liability balance was not disclosed (1998 – 2009).
- No disclosure as to whether the claims liability was discounted or at full value (1998 – 2003).
- L&M believes a liability for Unallocated Loss Adjustment Expenses (ULAE) was not recorded (1998 - 2009).
- Significant change in estimate not disclosed in 2007 when OHI recorded its claim liability near the low end of actuarially calculated range of estimated claims liability, while in prior years it had recorded a liability near the actuarially calculated mid-point (central estimate) of the range. L&M calculated this change dramatically altered OHI's 2007 financial results; from a $218,000 loss to a $36,000 profit.
- Policy for doubtful accounts receivable not disclosed (1998 – 1999).
- Revenue recognition policy for contributions and related deferred revenue treatment not disclosed (1998 – 2009).
- The nature of book / tax differences, explanation of why income tax expense did not equal the pretax book income multiplied by the federal statutory rate, and the amount and expiration of any net operating loss carry-forwards not disclosed (2004 – 2009).
- 1998 financial statements disclosed OHI was formed January 1998, but opening cash balance and members' equity existed at January 1, 1998.
- Required auditors' opinion on additional information not present (2000 – 2007).
- Excess insurance expense (contribution revenue ceded) should be presented as a reduction of contribution revenue rather than an expense (1998 – 2009).
- Investment income was accounted for as if OHI were a not for profit entity. OHI is a commercial entity, which may have changed the accounting for unrealized gains and losses if debt securities were deemed held to maturity. Additionally, unrealized gains and losses on investments deemed available for sale would have been recorded directly to equity (accumulated other comprehensive income) rather than appearing on the statement of activities/income statement (1999 – 2009).
- Estimated receivables from excess insurance should be reported as an asset rather than netted against the claims liability balance (2008 and 2009, and could also be true of prior years).
- Change in deferred income tax asset on balance sheet did not equal deferred income tax expense disclosed (2007 and 2008).
- Investment gains/losses on the statement of cash flows should be presented as an operating rather than investing activity (1999 – 2009).

Lack of Timely Cooperation from Fuller & LaFiura in Conducting this Forensic Accounting Engagement

L&M initially contacted Mr. Fuller in early July 2011 to explain who we were and the scope of the engagement we were contracted to perform for the WCB. L&M also requested from Mr. Fuller at that time a copy of the 2010 audited financial statement. Mr. Fuller complied with this request by e-mailing L&M a copy of the 2010 audited financial statement on July 14, 2011.

On August 1, 2011 L&M e-mailed Mr. Fuller a document request that included a listing of schedules, work papers, and documents pertaining to OHI's financial statements audits. That e-mail also listed various questions we had directly related to the bookkeeping and accounting he performed and financial statements he prepared/audited. We also posed other questions to Mr. Fuller through subsequent e-mails on August 2nd and 4th. L&M called and left messages for Mr. Fuller on August 17th and 23rd relative to our earlier requests. On August 29th we spoke with Mr. Fuller who confirmed be did the bookkeeping for OHI in addition to the financial statement audits, and stated he would respond to our previous informational requests by September 2, 2011. L&M did not subsequently receive any of the information requested from Mr. Fuller until November 7, 2011, more than 3 months after we initially requested such and over 2 months after the date Mr. Fuller stated he would respond to our inquiries.

7. Minimum Contribution Amounts

Existence of Minimum Contribution Amount

L&M noted the following notations in the Trustee meeting minutes relative to a minimum contribution requirement:

- February 27, 2003 - "Dave indicated that in practical terms we have informally always had a $1,000 minimum premium but that he would like to have it established as a formal policy of the board…Jim Hart made a motion to establish $1,500 as the minimum for new members on or after February 27, 2003 while allowing current members with lower premiums to remain in the program in keeping with the $1,000 historical minimum premium, Don Persico seconded and the motion was passed unanimously."
- August 11, 2004 – "Bob Ottman then made a motion to…further setting a $1,500 minimum premium for all members effective the 2005 year, Don Persico seconded and the motion passed unanimously."
- May 26, 2005 – "David asked the trustees to think about perhaps raising our minimum premium to $3,000 for new members but grandfathering existing trust members who are below that threshold. He suggested we could discuss the matter at the August meeting and the trustees concurred."
- August 23, 2005 – "David then asked to address the tabled issue regarding increasing the current minimum annualized premium of $1,500 to a higher figure…David suggested the board raise the minimum premium to $2,500 on a go forward basis on new members but grandfather all existing trust members to the current $1,500 level…Jim Hart moved to adopt a minimum premium of $2,500 henceforth for all new memberships but grandfather all existing members to the $1,500 minimum premium, Joe Alonzo seconded and the motion passed unanimously."

Thus, based on the information contained in the above Trustee meeting minutes, the minimum contribution amounts in effect were:

- 1998 – 2002 - $1,000
- 2003 – 2004: $1,000 if member joined before February 27, 2003; $1,500 if member joined on or after February 27, 2003
- 2005 – 2009: $1,500 if member joined before August 24, 2005; $2,500 if member joined on or after August 24, 2005

Enforcement of Minimum Contribution Amounts on OHI's Members

L&M noted 45 instances where a member's contribution amount was increased by Cody to a minimum amount (this includes a partial year where a prorated portion of a minimum was used). However, based on the minimum amounts in effect at different times per the above, L&M noted 15 errors within the 45 instances when a member's contribution amount was increased to a minimum. The 15 errors noted consisted of: (1) 2 cases where the wrong prorated minimum was used, (2) 12 instances where the minimum used was too high (for example, $2,500 when $1,500 should have been used), and (3) 1 case where too low of a minimum was used. In addition, L&M identified 7 other instances where a member's partial year contribution amount was not increased to the prorated minimum amount.

The result of the above noted errors resulted in a net overbilling to members by Cody totaling $6,007.

While L&M concurs that the establishment of minimum contribution amounts is a prudent business practice for self-insured trusts, we believe only one minimum amount should have existed in any given year. This would have made the enforcement process easier and potentially eliminated some or all of the errors noted above, as well as ensured all members were treated equally.

Potential Violation of Section 317.7(a) of the NYCRR

Section 317.7(a) of the NYCRR (effective January 31, 2001) states "the contribution rates utilized by a group self-insurer shall not be inadequate, unfairly discriminatory, destructive of competition or detrimental to the solvency of a group." L&M believes OHI's use of two different minimum contribution amounts for the period February 27, 2003 through December 31, 2009 (based on when a member joined) may be deemed unfairly discriminatory and, as a result, a potential violation of the NYCRR. It is our understanding that trust funds are generally not required to provide detailed contribution reports listing each member's contribution to the WCB, thus it is doubtful it would have been made aware this situation existed.

Marketing Materials' and Underwriting Guidelines' Reference to Minimum Contribution Amounts

L&M's inspection of the underwriting guidelines and the limited marketing materials obtained failed to identify any references to a minimum contribution/premium.

Our interviews with selected brokers indicate they had a general understanding of the existence of minimum contribution amounts, while of the members interviewed, only those that had been subject to such were aware of the minimum contribution requirement.

L&M's Conclusions

- L&M believes the establishment of minimum contribution amounts is a prudent business practice for self-insured trusts.
- The Trust used three different minimum contribution amounts ($1,000, $1,500, and $2,500) during the Trust's active life.
- L&M noted 45 instances where a member's contribution amount was increased by Cody to a minimum amount (this includes a partial year where a prorated portion of a minimum was used). However, based on the minimum amounts in effect at different times per the above, L&M noted 15 errors contained in the 45 instances when a member's contribution amount was increased to a minimum. The 15 errors noted consisted of: (1) 2 cases where the wrong prorated minimum was used, (2) 12 instances where the minimum used was too high (for example $2,500 when $1,500 should have been used), and (3) 1 case where too low of a minimum was used. In addition, L&M identified 7 other instances where a member's partial year contribution amount was not increased to the prorated minimum amount. The result of the above noted errors resulted in a net overbilling to members by Cody totaling $6,007.
- L&M believes OHI's use of two different minimum contribution amounts for the period February 27, 2003 through December 31, 2009 (based on when a member joined) may be deemed unfairly discriminatory and, as a result, a potential violation of the NYCRR.

8. Underwriting, Including Renewal Process

Introduction

To be successful, a group self-insurance trust must implement, maintain and consistently enforce reasonably conservative underwriting criteria on its membership base. Evidence suggests the financial difficulties experienced by many group self-insurance trusts directly result from the failure to uniformly apply prudent underwriting guidelines to all participants during the admission and renewal processes.

Responsibility to Design and Maintain Underwriting Guidelines

Section 5.5 of the Trust and By-laws document states the Trustees are responsible to "accept applications for membership, including establishment of underwriting and other criteria for qualifications of membership." The service agreement with Cody states it was to "provide guidance to the Trustees on policy issues including, but not limited to membership criteria, fund reserve, contribution levels, proper risk management practices or other policies effecting the overall management of the Trust."

As a result, we conclude the Trustees, with guidance from Cody, were responsible for the design and maintenance of underwriting guidelines for the benefit of OHI's membership. We believe the Trustees failed to realize the true extent of this responsibility and expected Cody to competently perform this task.

Acceptance and Termination of Members

Section 3.3 of the Trust and By-laws document states "membership shall be effective upon acceptance of the applicable Participation and Indemnity Agreement by the Board of Trustees or the Administrator." Section 4.2 of the Trust and By-laws document states "if a condition of default is

not corrected by the Member, the Board of Trustees or the Administrator shall deliver written Notice of termination to the Member." The Participation Agreement states "membership in the Trust and coverage there under may be terminated by the Board of Trustees for failure to comply with the terms of this Agreement or of the By-Laws" and "the Board of Trustees or the Trust of the Administrator, may refuse to renew the membership of any member."

Although the Service Agreement with Cody stated it was to "prepare and review all applications, forms and related documentation necessary to underwrite a prospective member," it did not expressly state the party(s) ultimately responsible to accept, reject or terminate members. Based on the content of these documents, it appears both the Trustees and Cody were bestowed the authority and responsibility for member acceptance and termination decisions.

Our inspection of member files revealed that David Harvey (the President of Cody) approved a potential member's acceptance into the Trust by signing the member's application (GSI-1.1) submitted to the WCB. Five Trustee members informed us they either were never involved, or did not recall ever being involved, in the member acceptance process. One trustee member stated David Harvey had implemented a confidentiality policy that prevented the Trustees from being involved with routine member acceptance decisions. However, our inspection of Trustee meeting minutes and other documentation revealed several instances where Mr. Harvey asked the Trustees for approval regarding the admittance of a prospective member or termination of an existing member. These instances always involved potential members considered borderline to the homogeneity of the Trust, or existing members with poor loss histories.

L&M notes that the WCB approves or disapproves a member for participation based on the limited information presented on its prescribed application form (GSI-1.1). The decision of whether or not to submit a potential member to the WCB for approval is/was based solely on the analysis of member attributes deemed necessary by (and presumably performed by) those charged with the Trust's governance (the Trustees and administrator).

In summary, while both the Trustees and Cody had the authority to accept and terminate members, Cody generally performed this function. Only in select instances, when unusual acceptances or terminations were being considered by Cody, were the Trustees provided an opportunity to comment.

Underwriting Guidelines

L&M's inspection of page 1 and Schedule 4 from the original Participation Agreement (hereinafter referred to as the "Underwriting Criteria"), effective January 1, 1998, revealed the following statements, each of which could be considered an underwriting guideline:

- "Any prospective Member of the trust must be a fully paid Member of the Oil Heat Institute (OHIENY) in accordance with membership criteria of OHI."
- "The member is an employer within the State of New York."
- "Prospective Members must demonstrate a loss history satisfactory to the Trustees or its Administrator." The Underwriting Criteria indicate:
    - An experience modification factor (EMF) below 1.00 will "generally qualify," with possible disqualification due to "negative trending."
    - An EMF between 1.00 and 1.20 will "generally qualify", with possible disqualification due to "negative trending or a high frequency of claims."

- An EMF more than 1.20 "may or may not qualify based on a number of underwriting issues including loss trending, the degree to which 'shock losses' have contributed to a high mods (EMFs), the commitment by management to safety programs…and other considerations of underwriting that the Administrator and/or Trustees deem pertinent."

- "Prospective Members must demonstrate that either a significant portion of their payroll, their manual premium, or their number of employees are homogenous with one or more of the governing classification codes ("governing codes") of the Trust. The initial governing codes (payroll class codes) include 5183/5193, 7219, 7502, 8006/8033, 8350/8353, and 8380/8381."

A copy of the original Participation Agreement is included in our report as Appendix 2.

The following amendments to the Underwriting Criteria were subsequently made:

- August 23, 2000 - An amendment was approved to add payroll class codes 3724 and 8391 to those deemed acceptable for admittance to OHI. Additionally, a prospective member would be considered homogenous if its standard industrial code (SIC) was 1711, 3433, 3443, 3585, 5074, 5075, 5171, 5172, 5411, 5531, 5541, 5983, 5984, or 7549. Additional SIC codes could be accepted under special approval from the WCB.
- June 29, 2001 - The requirement for members of the Trust to also be members of OHIENY or another endorsing association was removed.
- March 19, 2003 - An amendment was approved to add payroll class code 7380 to those deemed acceptable for admittance to the Trust.
- November 21, 2003 - An amendment was approved to add payroll class code 3620 to those deemed acceptable for admittance to the Trust.

The Underwriting Criteria issued after the August 23, 2000 amendment also allowed for related parties to join OHI even if their SIC or predominant payroll classification codes were not included within the realm of those defined as allowable. The Underwriting Criteria issued after August 23, 2000 states "all existing and prospective Members who may have affiliated or incidental corporations or legal entities with common ownership to that of the qualifying Trust Member shall be permitted to apply for and obtain coverage for their common ownership entities through the trust provided that the primary qualifying Trust Member represents at least 51% of either the total payroll, or manual premium or number of employees of all common ownership entities proposed for coverage… and as measured by its predominant classification code, the common ownership entity(ies) represent a generally comparable or lower level of occupational hazard to the Trust."

The Trustee meeting minutes L&M obtained indicated all amendments made to the original Underwriting Criteria were voted on and approved by the Trustees. However, no evidence was obtained to indicate the Trustees approved the original Underwriting Criteria.

The Trust and By-laws document included statements similar to those cited above, and included an additional statement in Section 4.1 that could be considered an underwriting guideline: "a Member shall be deemed to be in default upon occurrence of…failure by the Member to reasonably comply with loss control recommendations of the Trust Safety Committee or of the Administrator."

There were no underwriting guidelines present in the Service Agreement and L&M did not locate or otherwise become aware of any additional internal underwriting guidelines during our inspection of member files, WCB correspondence, or as a result of our interviews with member representatives.

We also obtained excess insurer promulgated underwriting guidelines for the 2002 policy year from the related policy.

Cody Prescribed Underwriting Forms, Common Reports and Member Letters

During our inspection of member files, L&M noted the presence of some Cody prescribed forms along with reports and letters sent to members relative to the underwriting of both new and renewal businesses. When compared to workers' compensation trusts managed by other administrators L&M has completed similar forensic accounting services on, OHI's member files were deficient in both the quality and frequency the forms found. Generally, other administrators used internally developed underwriting worksheets to summarize relevant member specific data during both the initial underwriting and renewal process. This process can be a useful tool in evaluating current and prospective members, and aid in termination and acceptance decisions. Administrator Harvey informed L&M prescribed underwriting forms generally were not used by Cody during the initial or renewal underwriting process. Rather, Administrator Harvey stated underwriting (initial and renewal) was performed using a "common sense" approach, and as a result, underwriting decisions were often made without an assembly of documents normally used by insurers during the underwriting of workers' compensation insurance policies.

Based on the lack of documentation, it is difficult for L&M to conclude if Cody spent sufficient time and effort when carrying out its administrative duties relative to underwriting.

A listing of the prescribed forms found during our inspection of selected member files is as follows:

- Annual EMF Promulgation Worksheet
- New Member Checklist
- Special Acceptance Worksheet
- Notice of Default Checklist

Some of these prescribed forms included both fill-ins and check-offs for limited underwriting and administrative matters or data deemed significant by Cody, as well as signature/initial areas for Cody's approval.

The following general comments can be made regarding the prescribed underwriting related forms we located in member files:

- Annual EMF Promulgation Worksheets were found for all members Cody deemed eligible for an EMF promulgation, and the EMF calculated on the worksheet appears to have been used to determine each member's annual contribution (see below for further discussion regarding EMFs and capped EMFs).
- New Member Checklists appear to have only been used during OHI's early years, and those located were fully completed.
- Special Acceptance Worksheets were rarely present in member files, and when present the forms were always incomplete.
- The Notice of Default Checklists contained sections to describe underwriting issues, but in the majority of instances, the date of default and/or termination was the only information listed.
- No prescribed forms could be found that acknowledged a violation of an underwriting requirement.
- The overall quantity and quality of the documents to support both initial and renewal underwriting decisions made were poor to non-existent. Numerous member files did not

contain any underwriting documentation, thus L&M is unsure what basis was used by Cody to admit and/or renew these members since there is no documentation to support any underwriting analysis having been performed.

Top 12 Deficit Members

We obtained a cumulative summary loss report by member from NCAComp as of September 9, 2011. That report only reflected case basis reserves and did not include any provision for IBNR. Table 2 that follows was derived from that report and various other sources, and lists the twelve members L&M believes to have the largest estimated deficiency of contributions over losses and other estimated direct expenses (exclusive of any allocated IBNR and aggregate excess insurance recoveries). These members are also referred to as the "biggest losers" in the balance of our report. Included in estimated other direct expenses are New York State assessments, Cody's administrative fees, broker commissions, and excess insurance. Trust members are referenced by an associated alpha character in this and other subsequent sections of our report. Member references are consistent throughout the remainder of our report.

We obtained the reason for termination for these twelve members (Member's A - L) from the GSI-3.1 Forms (Notice of Termination of Employer's Participation in Group Self-Insurance Plan) submitted to the WCB by Cody. As noted below in Table 2, seven of these twelve members participated until December 31, 2009, the date OHI ceased offering coverage. Of the remaining five members, three were terminated as a result of an underwriting decision based on excessive claims and two left voluntarily. Because seven of these poor performing members participated until OHI no longer offered coverage, and only three of the remaining five members were terminated due to performing poorly (excessive losses), we believe Cody may have failed to consistently enforce prudent underwriting standards.

Table 2:

Member	Entrance Date	Termination Date	Cumulative Contributions Over Life of Trust	Cumulative Losses Incurred Net of Specific Excess Insurance as of 9/9/11	Estimated Other Direct Expenses	Estimated Deficiency of Contributions Over Losses and Other Estimated Direct Expenses
A	03/01/99	12/31/09	$ 191,950	$ 605,501	$ 167,794	$ (581,345)
B	09/19/99	12/08/06	22,301	485,407	89,498	(552,604)
C	12/02/04	04/22/09	139,905	417,724	259,804	(537,623)
D	04/01/05	12/31/09	64,830	467,102	93,657	(495,929)
E	10/01/03	12/31/05	79,817	451,221	109,672	(481,076)
F	05/10/99	12/31/09	170,685	412,849	130,371	(372,535)
G	10/22/99	12/31/01	30,877	289,421	111,800	(370,344)
H	05/26/04	12/31/09	340,959	426,667	250,742	(336,450)
I	01/01/07	12/31/09	627,916	592,066	365,251	(329,401)
J	07/01/98	12/31/09	383,014	447,237	225,926	(290,149)
K	01/01/98	12/31/09	166,418	227,736	203,917	(265,235)
L	05/01/04	04/10/09	588,676	522,312	316,361	(249,997)
			$ 2,807,348	$ 5,345,243	$ 2,324,793	$ (4,862,688)

Note: Member A was a Trustee Member Company from 6/7/99 - 6/30/11.

The $4.9 million estimated deficiency of contributions over losses and other estimated direct expenses generated by members A through L, exclusive of any allocated IBNR and aggregate excess insurance recoveries, is approximately 126% of OHI's comparable gross modified member's deficit as of August 31, 2011.

Testing Of Compliance with Underwriting Guidelines

The significant underwriting guidelines of the Trust are summarized below. The underwriting guidelines identified may constitute those stated in the Trust and By-laws document (including Underwriting Criteria mentioned above), excess insurer promulgated, or both.

1) New York employers only.
2) Fully paid membership in OHIENY (effective 1/1/98 - 6/29/01).
3) An EMF of 1.20 or less (the maximum EMF that "generally qualifies"), although exceptions were allowed (maximum 2002 excess insurer EMF was 1.24).
4) Acceptable SIC codes and/or payroll classification codes.
5) Compliance with loss control recommendations.

Underwriting guideline (3) listed above stated exceptions could be made at the discretion of Cody and/or the Trustees based on other underwriting considerations. In L&M's opinion, this policy was vague and extended significant leeway and judgment to the underwriting process and increased the likelihood a substandard member could have been admitted strictly to generate additional administration fees for Cody.

L&M inspected a selection of member files to ascertain compliance with the above underwriting guidelines. The members chosen varied in respect to contribution size, Trust entrance dates, and the length of Trust membership. Our inspections included member files for Trustee member companies and included an evaluation of any pertinent documents contained in the member files selected. Our procedures also included a search and accompanying retrieval of relevant WCB provided documents related to underwriting.

Members described within this section and throughout the remainder of our report may have not met or otherwise violated one or more of the underwriting guidelines at various times throughout their membership. Each report section is independent, meaning the testing performed and the conclusions reached relate solely to the attribute(s) tested within that section.

The results of our testing of adherence to the above underwriting guidelines on a selection of the Trust's members can be found below.

<u>Guideline (1) - New York employers only.</u>

L&M obtained no evidence to suggest any members of OHI had facilities in a physical location other than New York State. All member listings and documents inspected by L&M indicated members had operated primarily within the State of New York.

<u>Guideline (2) - Fully paid membership in OHIENY (effective 1/1/98 - 6/29/01).</u>

L&M obtained no evidence to suggest any member of OHI was not also a member of OHIENY during the effective dates of this requirement. David Harvey indicated every member of OHI was

also a member of OHIENY, and that Trustee Benton (the Executive Director of OHIENY during that period), had properly handled this portion of underwriting compliance.

L&M obtained a letter from Mr. Benton to the WCB dated May 22, 2000 which served as verification to the WCB that all members of OHI were also members of OHIENY. In the letter, Mr. Benton states "I can verify that all trust members are also members of our association and must maintain their association membership. I can further verify that we require new Trust members who have not historically been association members to join the association." Based on the above, we believe this guideline was properly enforced for all members of OHI.

Guideline (3) - An EMF of 1.20 or less (the maximum EMF that "generally qualifies"), although exceptions were allowed (maximum 2002 excess insurer EMF was 1.24).

The experience modification factor (EMF) represents a unique mathematical formula that compares an employer's loss history to industry averages over a prior period of years, most commonly three years. Calculation of the EMF is complex, but the underlying theory and purpose of the formula is straight forward. The EMF is a multiplier used against the employer's manually rated contribution to calculate the final contribution. An EMF of 1.00 represents the employer's industry average. When the employer's loss history is lower than its industry's average, the EMF will be less than 1.00 and acts to reduce the final contribution when multiplied against the employer's manually rated contribution. Thus, an employer is rewarded for efforts to reduce work place injuries. When losses are higher than industry average, the EMF will exceed 1.00. The result is a higher contribution, with the intention that this additional contribution will act as an incentive for the employer to reduce work place injuries.

Documentation indicated Cody annually subcontracted the calculation of member EMFs to Aon Worldwide Actuarial Solutions (Aon) for the policy years 2000 to 2009. It appears Cody did not calculate any member EMFs during policy years 1998 and 1999 due to the deemed insufficient loss history each member had with OHI. L&M located correspondence from Cody to Aon that indicated EMFs were not necessary for members with (1) no claims and small contributions, described by David Harvey as less than $3,000 in annual contributions, or (2) insufficient history with the Trust (generally less than 3 full years of membership). For each of these circumstances, Cody calculated the member's contributions using an EMF of either 1.00 (generally when no loss history was available) or equal to the EMF used by the member's prior carrier. In conjunction with our forensic review of another self-insurance trust, an individual with considerable experience in the industry indicated to us that these are acceptable industry practices.

Because of both the complexity of the calculation and the lack of accurate annual loss data for members, L&M did not recalculate the EMFs used by Cody to determine the final yearly contribution for any member. L&M notes the maximum EMF "generally acceptable" per the Trust and By-laws document was 1.20 for all years of the Trust's active life.

In general, OHI's members met this minimum underwriting requirement. Additionally, we did not locate any evidence that the 2002 maximum EMF allowed by excess insurer underwriting guidelines had been breached. However, our procedures revealed a minimum of six instances when two different members were admitted and/or renewed with a billed EMF (see below regarding capped EMFs) higher than the 1.20 "generally acceptable" maximum. The documents in one of these member files failed to include the rationale used by Cody to justify the member's renewal despite not meeting this underwriting requirement.

One of these two members is the member we believe generated the third largest deficit for OHI (Member C from Table 2). This member only breached the maximum allowable EMF for the 2009 renewal, which was the final year of the Trust's active operations. Additionally, Member C sustained no claims during the 2009 policy period. The other member breached the maximum EMF during five of its six years of membership, but had no claims during its entire membership with OHI. Documentation in the member's file suggested the member's EMF was inflated due to a fraudulent claim filed with the member's prior carrier that was being disputed. It appears Cody used this as justification for allowing this member to participate even though the EMF was over 1.20. This member's participation was financially beneficial to OHI since this member never had a claim.

L&M found evidence that Cody advised Aon to "cap" fluctuations in member EMFs as compared to each member's prior year EMF. As advised by Cody, Aon calculated each applicable member's EMF in the normal manner, then capped those of members whose EMF had changed by an amount greater than the limits instituted by Cody. The maximum allowable increase or decrease to member EMFs from the prior year were as follows:

- Policy year 2000 - Maximum increase of 0.10, maximum decrease of 0.03.
- Policy years 2001 through 2005, 2008, and 2009 - Maximum increase of 0.09, maximum decrease of 0.04.
- Policy years 2006 and 2007 - Maximum increase of 0.09; maximum decrease of 0.03.

Our inspection of Trustee meeting minutes revealed no discussions on capped EMFs, and no other documentation was found to indicate this methodology was ever communicated to the Trustees. Therefore, L&M believes it is possible this process was created by Cody without the knowledge of the Trustees. Similarly, and as noted previously, the WCB generally does not receive member specific premium calculations and therefore would also have been unaware of this practice.

Our inspection of Aon issued EMF reports relating to policy periods 2000 through 2009 revealed 173 separate instances of a member's EMF being capped (31 instances of EMF increase limitations and 142 instances of EMF decrease limitations). L&M recalculated member contributions (including Trustee members) using the non-capped EMFs computed by Aon and found the use of EMF caps caused OHI's member contributions to be $295,000 higher than they otherwise would have been over the lifetime of the Trust. L&M calculated Cody was paid $53,000 in administrative fees on the $295,000 of contributions resulting from capping the EMFs.

We asked two individuals with considerable experience in the group self-insurance industry for their opinion on the use of capped EMFs. One individual stated "I know of no insurer that would offer such a program" while the other individual stated "I have never seen capping changes (to EMFs) as a practice" and "there is so much wrong with this practice." Both individuals stated this methodology could cause better members to leave a trust due to inflated contribution rates resulting from using higher than prescribed EMFs. L&M believes the use of capped EMFs caused a reallocation of contributions among members whereas contribution levels from members with a significantly improving loss history were kept artificially high while contribution levels from members with a significantly deteriorating loss history were kept artificially low.

Two examples demonstrating the effect of capped EMFs on individual members are:

- Biggest loser Member A from Table 2 (also a Trustee member company) sustained a significant claim during 2007 while its EMF for the 2007 policy year was 0.87. As a result, Member A's Aon calculated non-capped EMF increased to 1.06 for 2008 and 1.42 for 2009. The use of EMF caps caused Member A's contributions to be calculated using an EMF of

0.96 for 2008 and 1.05 for 2009. This caused Member A's 2008 and 2009 combined contributions to be approximately $11,000 less than if conventional (non-capped) EMFs were used. If OHI had continued to offer coverage after 2009 and Member A's uncapped EMF continued to approximate the 1.42 it had for 2009, it would have taken an additional four years for Member A's contributions to be calculated using an accurate EMF.

- A non-Trustee member that joined OHI during August 2001 had an EMF with their prior carrier of 1.20, which Cody used to calculate its contributions for the first three policy periods it participated in OHI. The member sustained very few losses ($2,134 during their entire membership) and as a result, its Aon calculated uncapped EMFs were .94 for 2004, 1.01 for 2005, .97 for 2006, .98 for 2007, and .95 for 2008. The use of EMF caps only allowed the member's initial 1.20 EMF to be decreased .03 or .04 each year. During its final membership period, the member's contributions were still being calculated at a capped EMF over 1.0. L&M estimates this member was charged $3,646, or 10% in additional contributions from 2004 to 2008 as a result of having its EMFs capped.

Although the overall extent of member and Trustee knowledge regarding capped EMFs is unknown, L&M found one example of correspondence between Cody and a member where the EMF capping system was mentioned. In a letter dated May 8, 2009, Cody stated "Some trusts, such as ours, have opted to use a different system in calculating mods, a difference we deem to be a benefit to trust members. This system involves 'capped mods' which place caps on how high or low mod changes can be from one year to the next…Our premium calculation system which includes the 'capped mods' has generated somewhere over $25,000 in savings to (the member) each and every year." The member who received this letter was repeatedly billed using capped EMFs that were higher than its actual EMFs. Thus, contrary to what was stated by Cody in its May 7, 2009 letter to the member, this member was clearly being charged higher contributions than if a normal (uncapped) EMF system was in place.

We performed procedures to determine if documents were present to support the EMFs used by Cody to calculate a member's final contribution invoice. We inspected the Aon prepared "Experience Modification Calculation" worksheets for all members included in the biggest loser listing on Table 2, as well as several other judgmentally selected members. The sample of members inspected amounted to a total of 147 unique individual billing periods. In every instance, the EMF used for the members' final invoices agreed to the capped EMFs as calculated by Aon.

Based on the above, we conclude Cody generally followed this underwriting guideline.

<u>Guideline (4) - Acceptable SIC codes and/or payroll classification codes</u>.

According the original Participation Agreement, eligible members needed to have a predominant payroll classification code among the ten listed in that document. On August 23, 2000, an amendment was made to this criterion wherein a member now had to have either (1) an eligible SIC classification code, or (2) an eligible predominant payroll classification code based on those listed in the Participation Agreement and subsequent amendment. This change to an "either/or" requirement provided OHI with a much larger population of prospective members than otherwise would have qualified. A SIC code represents a category within the Standard Industrial Classification System established to classify all industries in the United States economy; the first two digits of which designate each major industry group. A payroll classification code groups employees to reflect exposures common to job responsibilities.

Acceptable payroll classifications as defined in the original Participation Agreement were 5183, 5193, 7219, 7502, 8006, 8033, 8350, 8353, 8380, and 8381. The Participation Agreement was later amended in 2000 and 2003 to add payroll codes 3620, 3724, 7380, and 8391.

The August 23, 2000 amendment to the Participation Agreement included a provision to allow employers to qualify for membership in OHI if they were classified under one of the following SIC codes: 1711, 3433, 3443, 3585, 5074, 5075, 5171, 5172, 5411, 5531, 5541, 5983, 5984, and 7549.

The August 23, 2000 amendment also included a common ownership provision that allowed businesses not meeting the homogeneity standards of the Trust to be admitted if they were commonly owned by members who met the homogeneity standard, provided the non-homogenous entity accounted for less than 50% of the related group's total payroll, manual premium, or number of employees, and "represents a generally comparable or lower level of occupational hazard to the trust."

The Trust and By-laws document stated OHI was formed for the benefit of employers "involved in the heat, petroleum, propane, gasoline and related industries including the distribution and handling of petroleum products." However, the following quotations from Trustee meetings indicate those charged with governance acted frequently to expand the population of qualifying entities:

- October 30, 2001: "Some board members such as Jim Hart…felt that bringing trucking employers such as a milk hauler was fine so long as the quality in terms of workers comp losses and so forth was similar to our underwriting standards. Bob Ottman agreed and said he felt we should go for everything on the state approved list, again so long as the quality is maintained. Don Persico and Joan Hastings concurred. Bob Eldredge said we need to be creative and we need to expand."
- May 20, 2003: "A new grocer wholesaler account whose qualifying code is the trucking 7219 code. David (Harvey) reminded the board of previous decisions made by the board in support of allowing trucking companies who do not distribute petroleum products into the trust based on the state's class code qualifying definitions, in this case the 7219 trucking code. Joe Alonzo, Jr said that transporting groceries was hardly as hazardous as petroleum products and voiced support for the grocer application. Other trustees concurred."
- February 24, 2004: "David (Harvey) feels we need to establish the principal that if a member has one of our qualifying SIC or (payroll) class codes, then that condition is both necessary and sufficient, to meet the homogeneity requirement regardless of the employer's name or some other 'subjective' opinion of the WCB" and "Don Persico said we aren't just talking about these 2 (auto) dealerships. We're talking about the entire auto dealership marketplace and we shouldn't just give up on that."
- November 10, 2004: "Ross (Setlow, a Colonial employee) said he was planning in particular to pursue repair shops and other auto related employers based on the 8391 class code. Several trustees expressed approval for these efforts."

Based on these quotes, it appears the Trustees were aware OHI was being marketed to businesses not involved in the "heat, petroleum, propane, (and) gasoline" industries in hopes of expanding the number of members in the Trust. Additionally, L&M noted the above statements from the May 20, 2003 and February 24, 2004 minutes were included in those "whited-out," and did not appear in the copies of minutes sent to the WCB. We believe this suggests Cody and/or the Trustees were aware that the pursuance of entities with questionable homogeneity ties to OHI would have been further scrutinized by the WCB. L&M notes that the homogeneity expansion of OHI was not product of a

WCB recommendation(s) and was solely attributable to the desires of the administrator and/or Trustees.

In addition to the SIC/payroll codes added through the previously listed revisions or amendments to the Participation Agreement, evidence suggests the Trustees and/or Cody sought approval to add additional SIC and payroll classification codes on at least one other occasion. During 2003, the Trustees/Cody attempted to add SIC code 5211 - *Lumber and Other Building Materials Dealers)* and payroll code 8232 - *Lumberyard New Materials Only*. L&M believes these codes were attempted to be added to justify the participation of a non-homogenous member. This member was admitted to the Trust in July 2003 and terminated in October 2003 after the WCB denied the request to add the additional codes. This member did not sustain any claims during its three month membership in OHI.

As a result of our inspection of member files, we believe no members of OHI, other than the one terminated shortly after the WCB disapproval discussed above, were admitted that did not meet the allowable payroll class or SIC code requirement in effect at the time of the member's admittance. However, L&M identified 33 members we consider to have not met the homogeneity requirement had the Trust only admitted employers who were "involved in the heat, petroleum, propane, gasoline and related industries including the distribution and handling of petroleum products." While, based on the data present on their GSI-1.1 applications, these members may have technically met the homogeneity requirements in force when admitted; we believe it is important that the reader be made aware that the homogeneity expansion had a net negative financial impact on the Trust.

L&M determined none of these 33 members were related parties that would have qualified based on the exception included in the aforementioned August 23, 2000 amendment to the underwriting guidelines. The participation of 8 of these 33 members was detrimental to the financial position of the Trust, while the remaining 25 were profitable since their contributions exceeded the sum of their cumulative losses and allocated other direct expenses.

A summary of our findings related to these 33 members is as follows:

- One member was in the wholesale grocery distribution industry, and qualified for membership in OHI based on its predominant payroll code (*7219 - Trucking NOC-All Employees & Drivers*). This member participated in OHI for over five years and remained until OHI ceased providing coverage on December 31, 2009. As noted above, at the May 20, 2003 Trustee meeting, Cody and the Trustees discussed this member's potential admittance, and the Trustees approved this member's application even though its business was "transporting groceries." At least one of the Trustees justified this member's acceptance by reasoning that the transportation of groceries was "hardly as hazardous" as the transportation of petroleum related products. L&M estimates this member's participation contributed approximately $141,000 towards OHI's net deficit (exclusive of any allocated IBNR and benefit of estimated recoveries from aggregate excess insurance).
- Another member was an ice distributor who qualified for membership in OHI based on a predominant payroll code *(7380 - Drivers and Helpers NOC Commercial)*. Evidence indicated the Trustees revised the underwriting guidelines on March 18, 2003 to add code 7380 to those listed as acceptable to justify this member's acceptance. It appears Cody and/or the Trustees valued this member's participation due to its favorable loss history during the years immediately prior to its participation in OHI. This member's participation was beneficial to OHI, as L&M estimates it generated a $93,000 surplus during its period of participation

(exclusive of any allocated IBNR and benefit of estimated recoveries from aggregate excess insurance).

- According to its current website, one of the 33 members is a water distributor, and our inspection of member files indicated the member qualified for membership based on its predominant payroll code *(7219 - Trucking NOC-All Employees & Drivers)*. This member (Member E from Table 2) participated in OHI for approximately 26 months and is believed by L&M to have generated the fifth biggest deficit for OHI ($481,000). Cody decided not to renew this member as of January 1, 2006 because of its extremely poor loss history.
- Through our inspection of member files and other trust documentation, we determined the other 30 members were in the automotive service/repair and/or sales industry. Examples of these members include, but are not limited to, auto dealerships, auto part stores, service shops, and auto body repair shops. One of these 30 members (Member D from Table 2) is believed by L&M to have generated the fourth biggest deficit for OHI ($496,000). As previously noted, beginning in 2004 the Trust made a concerted effort to pursue and approve entities in the automotive industry for membership with OHI. Evidence suggests 28 of these 30 members joined OHI between January 1, 2004 and June 19, 2007, likely as a direct result of this effort. L&M located various correspondence between WCB and Cody that expressed the WCB's reluctance to allow these types of entities to be admitted into OHI, and it appears in early 2004 the WCB originally rejected two applications submitted by automotive industry employers (both of which were eventually allowed to join). A letter from the WCB to Cody dated March 29, 2004 stated, "the types of businesses that you are attempting to bring into the trust, which are auto dealerships, are not consistent with the stated purpose of the trust." A temporary agreement was eventually reached between the WCB and Cody to allow "employers with the predominant payroll class code 8391 into the OHI trust." L&M noted that the two member applications originally rejected by the WCB listed the predominant payroll code as *8391 - Automobile Sales or Service Agency*. The remaining 26 auto industry members who joined after January 1, 2004 all listed ether SIC code 5541 (gasoline service station) or 5531 (auto and home supply store) on their initial membership application, both of which were allowable at that time. L&M questions the legitimacy of auto dealerships, service shops, or collision shops being classified as a gasoline service station or an auto and home supply store. L&M believes it is possible many or all of these members were directed by Cody or their broker to list an inaccurate (yet acceptable) SIC code on their application to limit the possibility of rejection by the WCB. These 30 members' participation was beneficial to OHI as L&M estimates they generated a cumulative $366,000 surplus during their period of participation (exclusive of any allocated IBNR and benefit of estimated recoveries from aggregate excess insurance).
- We believe the participation of these 33 members contributed approximately $895,000 towards the Trust's net deficit (exclusive of any allocated IBNR and benefit of estimated recoveries from aggregate excess insurance), and Cody earned approximately $315,000 in administrative fees as a result of these members' participation.

<u>Guideline (5) - Compliance with loss control recommendations.</u>

Section 10 of our report entitled "Safety Programs" addresses the significant details of the risk management/safety programs that appear to have been used by the Trust. Because these other sections of our report concentrate solely on these important areas of Trust administration, we have only provided herein some general thoughts and an overall conclusion regarding compliance with this guideline.

- Section 4.1 of the Trust and By-laws document states "a member shall be deemed to be in default upon occurrence of any one of the following events…(f) failure of the Member to cooperate with the Administrator, claims agents, loss control representatives…(g) failure by the Member to reasonably comply with loss control recommendations of the Trust Safety Committee or of the Administrator." We believe this internal underwriting guideline is consistent with the member participant requirements cited in the Participation Agreement.
- As noted in our report section entitled "Safety Programs," Cody's safety program for OHI consisted essentially of quarterly safety newsletters sent to members and making a safety video library available to members. Since safety site visits were not performed, safety recommendations were never made to any member. L&M believes the lack of what we consider a formal safety program made it impossible for members to be uncooperative with safety recommendations since none were made, thus negating the value and applicability of this guideline.

Additional Industry Standards for Underwriting

Based on information we obtained in performing similar forensic accounting engagements on numerous other self-insured workers' compensation trusts, we have listed two additional underwriting guidelines that appear standard in the industry.

Acceptable Loss Ratio History

Each of the other trusts L&M performed similar forensic accounting engagements on had an underwriting guideline that established a maximum allowable loss ratio for current and prospective members.

Administrator Harvey informed L&M that while historical loss ratios were one of the main criteria considered when determining a potential member's eligibility for the Trust or when evaluating a current member, OHI did not establish an acceptable maximum loss ratio percentage. Information L&M obtained in performing similar forensic accounting engagements on numerous other self-insured workers' compensation trusts indicates acceptable loss ratios at or around 50% appear in line with group self-insured industry standards.

We examined 21 member files for information pertaining to each member's loss history for the years immediately preceding their membership in OHI. We found 13 of 21 member files we examined to contain this information. Documentation in 12 of these 13 member files indicated the member had a favorable loss history (less than 50% loss ratio) during the years immediately preceding their membership in OHI. One of the members, as previously discussed, had an unfavorable loss history due to the apparent presence of a large fraudulent claim that erroneously inflated its loss ratio.

L&M obtained Cody prepared schedules for the policy years 2005 through 2008 that summarized each member's loss ratio during their membership with OHI. It appears these schedules were used by Cody to rate each member based on its loss history and identify those members with exceptional or poor loss histories. L&M noted 36 instances (18 different members) of loss ratios exceeding 60%. In all of these instances Cody acknowledged their poor loss history by giving them an "F" grade. Based on Cody's grading system, L&M believes Cody informally considered 60% as a maximum allowable loss ratio percentage. L&M noted only 3 of these 18 members were cancelled by Cody and/or the Trustees because of their poor loss history, while 11 of these members participated until December 31, 2009, many years after Cody acknowledged their poor loss ratio.

Of the 11 members given a failing grade by Cody who participated in OHI until December 31, 2009, three had loss ratios over 74% for both 2007 and 2008, one had a loss ratio over 78% for 2006, 2007, and 2008, and two had loss ratios over 60% for four consecutive years (2005 – 2008), with one member's loss ratio over 169% for each of the four years (biggest loser Member K from Table 2). We question why some or all of these members who were given a failing grade for two or more consecutive years were allowed to continue to participate in OHI until it ceased offering coverage.

In conclusion, we believe Cody evaluated prospective members' loss history and loss ratios to ensure only those with a favorable experience were allowed to join OHI. However, although Cody actively monitored the loss ratios of OHI's participating members, L&M believes the above demonstrates Cody and/or the Trustees failed to consistently terminate poorly performing members, and the Trust likely sustained additional claims that could have been otherwise avoided.

Return to Work Program

A return to work program (RTWP) provides a mechanism for companies to encourage employees to return to work as soon as possible after injury or illness. National statistics indicate a RTWP is a valuable loss control measure to help control workers' compensation costs. Studies show that employees who return to work in a modified or alternate duty capacity are (1) likely to recover more quickly and with less impairment, and (2) less likely to become treatment dependent. While it is important that a general awareness about RTWPs and their potential benefits be obtained by all members, their true financial value is derived primarily only from those members with claims.

Administrator Harvey informed L&M he was not aware of an active RTWP for any members of OHI, but it was possible that some were implemented either voluntarily by members, or under the direction of CSI. The loss control service agreement between Cody and CSI did not specifically list one of CSI's duties to be assisting members set up a RTWP, thus L&M doubts CSI would have provided this service. L&M questions why OHI did not mandate every member to initiate a RTWP as a condition of its membership. Our document inspections did not provide evidence to indicate an RTWP existed at *any* member.

Other Noteworthy Underwriting Related Findings

- While the internal underwriting guidelines did not specifically include a requirement that participants supply historical financial information, we noted that financial statements and/or tax returns had been requested from numerous members by Cody at the time it performed initial underwriting procedures. This information is generally requested from prospective and current members to gauge the financial health of the entity, which may correlate to its ability to remit contributions in a timely manner. However, our inspection of the various member files that had requests for financial information revealed that many contained no financial statements, tax returns or financial information of any kind.
- During our file inspections, we noted evidence to suggest many members had been delinquent, at one time or another, in paying contributions to the Trust. However, based on the number of collection related letters/e-mails and associated documents noted in the member files, it appears Cody had little patience for delinquent members and did not allow members with payment problems to participate for prolonged periods of time. We believe approximately 15 members had been cancelled by Cody for non-payment of required contributions.

- Overall, we believe Cody's failure to consistently obtain and analyze member financial statements and/or tax returns did not have a significant adverse affect on the amounts it was able to ultimately collect from OHI's members.

L&M's Overall Conclusions

- While the Trustees, with guidance from Cody, had been charged with the design and maintenance of underwriting guidelines, we believe the Trustees failed to realize the extent of their responsibilities and expected Cody to perform this task.
- Although five of OHI's voting Trustees informed us they had either never been involved with, or could not recall being involved with member admittance and/or termination decisions, Trustee meeting minutes and other documentation revealed several instances where Cody sought approval from the Trustees for unusual member acceptance or termination decisions.
- Prescribed underwriting forms were generally not used by Cody. The few prescribed underwriting forms found were often incomplete. As a result, underwriting decisions were often made without an assembly of documents normally used by insurers during the underwriting of workers' compensation insurance policies.
- The $4.9 million estimated deficiency of contributions over losses and other estimated direct expenses (exclusive of any allocated IBNR and benefit of aggregate excess insurance recoveries) generated by who L&M believes to be the twelve poorest performing members is approximately 126% of OHI's comparable gross modified member's deficit as of August 31, 2011.
- We were informed by two individuals with considerable experience in the group self-insurance industry that Cody's use of a "capped" EMF system is not a common industry practice. The use of capped EMFs caused a reallocation of member contributions whereas members with significantly improving loss histories were billed more, and members with significantly deteriorating loss histories were billed less than they otherwise would have.
- The Trust and By-laws document stated OHI was formed for the benefit of employers who were "involved in the heat, petroleum, propane, gasoline and related industries including the distribution and handling of petroleum products." However, during 2000 -2003 various amendments were ratified to expand the types of businesses eligible to participate. L&M identified 33 members who did not meet the original homogeneous standard stated in the Trust and By-laws document, but gained admission after the requirements were expanded to other businesses. L&M believes the participation of these 33 members contributed approximately $895,000 to the Trust's deficit (exclusive of any allocated IBNR and benefit of estimated recoveries from aggregate excess insurance), while Cody received approximately $315,000 in administrative fees as a result of their participation.
- Administrator Harvey informed L&M that while historical loss ratios were one of the main criteria considered when determining a potential member's eligibility for the Trust or when evaluating a current member, OHI did not establish an acceptable maximum loss ratio percentage.
- L&M believes Cody evaluated a prospective member's loss history and loss ratio to ensure only those with a favorable experience were allowed to join OHI.
- L&M believes Cody informally considered 60% as a maximum allowable loss ratio percentage since members that exceeded that ratio were graded with an F. L&M noted 36 instances (18 different members) during 2005 – 2008 of individual member loss ratios exceeding 60%. L&M noted only 3 of these 18 members were cancelled by Cody and/or the Trustees because of their poor loss history, while 11 of these members participated until December 31, 2009, many years after Cody acknowledged their poor loss ratio. Of the 11

members given a failing grade, 6 had two to four consecutive years of loss ratios exceeding 60%, with one member's loss ratio over 169% for each of the four years (biggest loser Member K from Table 2). We question why some or all members who were given a failing grade for two or more consecutive years were allowed to continue to participate in OHI until it ceased offering coverage. The fact only three of these members were cancelled for underwriting reasons suggests Cody and/or the Trustees failed to consistently terminate poor performing members.

9. Discounts

Introduction

The success of a workers' compensation self-insured group insurance trust hinges on the ability to attract and maintain members with low loss rates. Due to the extreme competitive nature of the workers' compensation insurance marketplace, premium discounts were and still are used in combination with other incentives to recruit new members. OHI offered discounts to recruit and retain members, especially during the earlier years of the Trust. Due to financial issues encountered later in OHI's active life, both the number of members receiving a discount and the average percentage discount granted decreased dramatically over time.

The range of discounts extended to individual members should normally be a function of overall member quality, including individual loss histories, EMFs, and the insured's cooperation with safety and other loss prevention programs promulgated by the trust. In the early stages of a trust's existence, prudent business practice suggests the marketing of *competitive* discounts with the potential for members to earn dividends in later years based on the overall financial performance of the fund. This approach is logical since it creates a buffer for the vast amount of unknowns, including lack of claims history, loss development, investment returns, and member growth rates for the trust.

Various marketing related documents obtained by L&M cited specific potential percentage discounts available to OHI's participants. The documents included the following statements:

- "Rates deviate 30% from 1999 NYS Rating Board rates."
- "Initial members save over 10% on their current traditional market compensation costs. Over time, these savings can grow to 30%, 40% or more."
- "Typically we are between 15% and sometimes 25% lower than competing programs."
- "Your company will save over 10% right from the start on its workers comp costs…and our claims ratio suggests far greater savings as we build our reserves."

Other marketing materials obtained mention various reasons for OHI's lower participant costs and include statements such as "aggressive claims management keeps cost low" and "our claim costs remain low allowing the trust to charge lower premiums to cover costs."

Responsibility for and Types of Discounts Provided to Members

Section 317.7(a) of the NYCRR, effective January 31, 2001, addresses member contribution rates by stating "the contribution rates utilized by a group self-insurer shall not be inadequate, unfairly discriminatory, destructive of competition or detrimental to the solvency of a group." In regards to the determination of the adequate amount of member contributions for OHI, the Trust and By-laws document states the Trustees shall "determine the amount of Contributions to be made to the

Fund." The member Participation Agreement states "the member agrees to pay to the Trust Contributions computed in accordance with a Rating Plan, as amended from time to time, approved by the Trustees." The Service Agreement with Cody states Cody would "provide guidance to the Trustees on policy issues including, but not limited to membership criteria, fund reserve, contribution levels, proper risk management practices or other policies effecting the overall management of the Trust." The above quotations indicate the Trustees were ultimately responsible for the determination of member contribution levels.

The effective discount rate provided to each member of OHI consisted of as many as six different components. These components were the (1) founding member discount, (2) charter member discount, (3) renewal discount, (4) security discount, (5) OHI WCT discount/surcharge (hereinafter referred to as the "standard discount"), and (6) payroll rate discount, each of which is explained below. The fact a member could not receive both a founding member and charter member discount limited individual members to five of the six discounts stated above.

- A founding member discount was granted to all sixteen members whose participation in OHI commenced on January 1, 1998. Two additional members who joined OHI between April and July of 1998 were also granted this discount. The founding member discount was applied during each year of participation and equaled 2% of the member's standard contribution (manual contribution adjusted for employer modification factor).
- The charter member discount was similar to the founding member discount and was granted to two members that joined OHI between March and April of 1998. The charter member discount equaled 1% of the member's standard contribution and was available during all years of the member's participation in OHI. It is not clear to L&M why some members who joined OHI between March and July of 1998 were given the founding member discount while other members that joined during the same timeframe were given the charter member discount.
- A renewal discount of 1% was applied to each member's standard contribution upon the renewal of its coverage with OHI, provided the member had previously participated for at least six months in the Trust.
- A security discount equal to 1% of a member's standard contribution was granted to members that provided OHI with cash deposits (labeled as "members' capital" in the audited financial statements). Our inspection of member invoices revealed this discount was only available during policy years 2000 through 2003, during which it was granted on 48 different occasions to 23 different members. L&M believes the credit ended because during 2004 OHI paid back to the members the balance of cash deposits it previously held.
- The standard discount was an additional discount or surcharge solely based on Cody's recommendations. The standard discount was applied to the net contribution computed after the application of all the other discounts described in bullet points one through four directly above.
- The payroll rate discount was the primary discount and applied to all members. The discount relied on actuarial computed pricing models created each year. Milliman was contracted to perform an annual pricing analysis designed to calculate the contribution rate by payroll class code necessary to cover all of OHI's estimated claim and administrative costs to be incurred for that year. The actuarially calculated discounted contribution rates were generally determined by applying a uniform discount percentage to New York's CIRB rates. In each of Milliman's pricing analysis reports, it was acknowledged that all additional discounts/surcharges mentioned above were available to be applied to the members of OHI. See below for a detailed discussion regarding the use of payroll rate discounts.

Of the above mentioned discounts used by the Trust, only the standard discount was determined subjectively and had the potential to be affected by underwriting and/or administrative decisions. We asked David Harvey, the president of Cody, various questions relative to the determination of a member's standard discount/surcharge. Mr. Harvey indicated that standard discounts/surcharges, when granted, were applied to OHI's membership at Cody's discretion based on loss history. L&M inspected the files of several members to recover documents that justified the reason(s) behind the granting of standard discounts. No documents found included any discount related information. We asked Mr. Harvey if documents were produced to help determine each member's standard discount such as underwriting worksheets or other documentation. Mr. Harvey stated that Cody did not produce any documentation to support or otherwise justify member standard discount rates.

Mr. Harvey informed L&M that any member with an EMF over 1.06 would be surcharged at least five percent. L&M investigated the validity of this statement and found that of the 84 instances where a member had an EMF over 1.06, a surcharge of at least five percent was applied 62 times. Four of the twenty-two instances not surcharged were from one member who had an EMF between 1.08 and 1.17 during four consecutive years, but still received a standard *discount* between two and six percent during each of the four years. Mr. Harvey also informed L&M that the additional discounts/surcharges (all discounts other than payroll rate discounts) applied to members were designed so the net effect on the trust was to break even, which L&M verified to be accurate.

Additionally, Mr. Harvey informed us that the 1998 discounts were primarily based on a 13% rate decrease from the premiums (contributions) charged by the member's prior carrier. L&M noted that of the 20 members that joined OHI during 1998, all but one was granted standard discounts/surcharges carried to the nearest hundredth of a percent. This generally occurred only during OHI's initial year, suggesting Mr. Harvey's statement regarding a thirteen percent discount off members' prior policies was correct. Many of these members maintained the same or similar (one or two percent variation) standard discount rate throughout their membership, suggesting the pricing model used for these members was a product of their former policy, some lasting twelve years (1998-2009) after the former policy expired. L&M notes that of the above mentioned 20 members, those that endured a poor loss history during their participation in OHI were subject to a gradually increasing standard surcharge (or decreasing discount).

Since it appears Cody determined the 1998 standard discounts with the intention to charge members less than what had been paid on their prior policy, L&M believes it likely a similar methodology was used for many members who joined the trust after 1998. Mr. Harvey indicated it was possible for a member with a good loss history to be surcharged because the member's prior carrier had charged rates higher than OHI's standard rates. Our member interviews indicated members were unaware of the methodology used to determine standard discounts.

Trustee Involvement with Determining Discounts

Our inspection of the Trustee meeting minutes indicate Milliman's annual pricing analysis was discussed by the Trustees and Administrator at the last meeting of the year, with the Trustees either approving the report as is or with modifications to the percentage discount from New York's CIRB rates. As previously explained, the pricing analysis prepared by Milliman was used to determine the payroll rate discount granted to all members, which was the primary discount OHI provided. Accordingly, Trustee approval of the annual pricing analysis, with or without modifications, amounted to the Trustees approving the annual payroll rate discounts.

L&M also noted references to the founding member discount, charter member discount, renewal discount, and security discount in the minutes from the October 27, 1998, October 27, 1999, and October 25, 2000 Trustee meetings and a November 30, 1999 memo from Cody to the Trustees.

In relation to standard discounts, the Trustees interviewed informed us they did not participate in the standard discount determination process. On at least two occasions during 2006, Cody provided the Trustees a current range of possible standard discounts. In addition, minimum contribution levels were in effect during the entire period of OHI's active operations, which when enforced, acted as a surcharge on the members to which they were applied and, as a result, directly affected the overall contributions received by OHI.

Methodology used to Determine Payroll Rate Discounts, Responsibility for Assignment, and Analysis Thereof

The New York Compensation Insurance Rating Board (NYCIRB), according to its website, is the official organization responsible "to collect the loss, premium and payroll data from each carrier, summarize this information and develop an adequate rate structure." Its website also states NYCIRB "has more than 93 years of experience in understanding the workers compensation insurance coverage and underwriting of the New York market."

NYCIRB develops and publishes rates, generally annually, which list a payroll rate for each payroll class code. The remainder of this report will refer to these rates as the CIRB rates.

As previously noted, Milliman performed an annual pricing analysis designed to calculate the contribution rate by payroll class code necessary to cover all of OHI's estimated claim and administrative costs to be incurred for that year. The actuarially calculated discounted contribution rates were generally determined by applying a uniform discount percentage to New York's CIRB rates.

Milliman's pricing analysis for the 1998 and 1999 policy years used the CIRB rates currently in effect at that time. However, the 2000 pricing analysis used the October 1, 1998 CIRB rates as the benchmark, while for 2001 through 2009, the October 1, 1999 CIRB rates were used as the benchmark. Accordingly, the 2000 – 2009 pricing analyses relied on stale CIRB rates from 1998 or 1999 rather than the current rates available.

Each CIRB rate was then discounted, generally at a uniform percentage, to determine the payroll rates to charge members of OHI to adequately cover all claims and administrative costs expected to be incurred.

While Cody explained to L&M that OHI could determine its member contributions any way it wanted to, L&M questions the methodology of using stale CIRB rates because by circumventing CIRB rate changes, OHI failed to acknowledge changes in safety, claims, and other factors systemic to the workers' compensation environment, from which the updated rates released by NYCIRB were based.

A letter dated October 9, 2003 from David Harvey to Milliman states "At one point I thought we might suggest changing the methodology of our rate setting by using the more current February 2003 NYS rate table thinking this would look more 'updated' in terms of marketing (versus using the 1999 rate table as we always have done). However, there has been such a radical rate reduction in

the NYS Manual rates (CIRB rates) since 1999, it would create a chaotic scenario trying to use the 2003 table while still trying to freeze rates. I prefer to simply continue to use the 1999 rates and besides, since the 1999 rates are so much higher than current rates, it could be argued that we are more 'conservative' using the older table." Another letter dated October 11, 2004 from David Harvey to Milliman states "I recommended to the trustees at the August board meeting that we…simplify the methodology by staying with the 1999 NYS Manual Rate Table…the trustees approved both measures." Based on these letters, both the Administrator and the Trustees were aware stale CIRB rates were used as the basis to determine member contributions, but despite their awareness, the Trustees voted to continue their use for 2005.

The use of stale CIRB rates was also discussed at the November 19, 2003 Trustee meeting whose minutes state "he (David Harvey) explained that after careful consideration of the 'mechanical' complexities of trying to convert from the October 1999 state rates to the February 2003 rates, Milliman USA concurred that the easiest way to freeze rates was to stay with the existing system based on the October 1999 state rates."

We believe Mr. Harvey's reference to a *chaotic scenario* in his October 9, 2003 letter to Milliman refers to the action that would have been needed to maintain each member's contribution rate per payroll class code while using updated rates. In order to freeze the 2004 rates while reflecting the updated CIRB rates in the pricing analysis, a different discount percentage would have had to be applied to each payroll class code. It is not clear to L&M why stale CIRB rates were used as the basis to calculate the rates for the various payroll class codes for the other years (2000-2003, 2005-2009).

L&M questions the logic used by Mr. Harvey when referring to a more *conservative* rate structure in his October 9, 2003 letter to Milliman because any change in the rate structure would only affect the discount percentage applied to stated rates. Using the most current CIRB rates would have had little effect on the total contributions received by OHI since the actuary would have calculated a different percentage discount off of the updated CIRB rates to arrive at the same contribution amount deemed necessary to cover OHI's expenses. The only change would have been the allocation of the total contribution amount among the members.

In conjunction with our analysis of the discounts used by OHI, we asked an individual with considerable experience in the group self-insured trust field for his opinion on the use of stale CIRB rates as the benchmark used for pricing workers' compensation insurance. He informed us the use of current CIRB rates is standard practice because competing carriers also use current CIRB rates, and he had never seen the use of stale CIRB rates to determine contribution levels. Additionally, he acknowledged that although there would not be an effect on the financial results of the trust, the determination of contributions due from specific members would be effected. He agreed that by not updating the CIRB rates, some members were effectively being charged less at the expense of others.

Similarly, and as noted previously, the WCB generally does not receive member specific premium calculations and therefore would also have been unaware of this practice."

The following table illustrates the effect of using stale CIRB rates by comparing two members of similar size and similar loss history based on each member's annual EMF.

Table 3:

	Member EMF		Milliman Reported Discount Combined With Other Discounts (Surcharges)			Effective Discount (Surcharge) Rate Recomputed Using Updated CIRB Rates		
Year	Member 1	Member 2	Member 1	Member 2	Difference	Member 1	Member 2	Difference
2004	0.87	0.95	22%	24%	2%	24%	9%	15%
2005	0.87	0.91	14%	16%	2%	18%	(2%)	20%
2006	0.89	0.90	16%	15%	1%	25%	15%	10%
2007	0.90	0.87	9%	7%	2%	20%	8%	12%
2008	0.91	0.90	14%	11%	3%	22%	(11%)	33%
2009	0.91	0.89	2%	(1%)	3%	12%	(25%)	37%

The above table illustrates the difference between each member's effective discount rate based on amounts billed (using the rates established in the pricing analysis based on stale CIRB rates) was between one to three percentage points, while the difference between the two using updated CIRB rates available when the members were billed increased to between ten and thirty-seven percentage points. Based on the above, Member 1 actually received additional cumulative discounts that were partially subsidized by Member 2. Recalculating the discounts granted using the updated CIRB rates also illustrates even though Member 2 was considered a safer member during 2007, 2008, and 2009 (based on a lower EMF than Member 1), its effective discount was recalculated to be between 12 and 37 percentage points lower than Member 1 during those three years. L&M believes this reveals the general inequity that occurred among members because OHI did not use updated CIRB rates in the pricing analysis.

L&M noted contribution invoices never mentioned the actual payroll rate discount. Member invoices for policy periods 2001 - 2003 indicated the payroll rates were discounted 1999 rates; accordingly, careful examination of their 2001 – 2003 invoices would have provided them with the knowledge that their contributions were being based on stale rates. However, invoices for policy periods after 2003 simply listed "OHI WCT Rates." Thus, the fact that stale CIRB rates were used would not have been apparent to members based on a careful inspection of their invoices for the 6 year period from 2004 – 2009.

Throughout the active life of the Trust, it was likely not possible for a member to know the actual discount percentage it received (either effective discount based on current CIRB rates or discount based on stale 1998 or 1999 rates) through inspection of the invoices issued by Cody.

We asked nine non-Trustee members about their understanding of the rate structure implemented by OHI, to which eight stated they did not understand the rate structure or know how the payroll rates were determined, while one could not answer the question. Additionally, two of the eight members surmised OHI probably used the same payroll classification rates as the then current NYS (CIRB) rates. These member interviews suggest (1) members were largely unaware how the payroll class rates were determined, nor that stale CIRB rates were used, and (2) Cody made little or no effort to publicize the rate structure to OHI's members.

Member Discount (Surcharge) Statistics and Analysis Thereof

Due to the complex structure of discounts provided to OHI members, it was deemed impractical by L&M to compute the effective discount rate for all members of OHI. Rather, we determined the effective discount rate for a sample of ten non-Trustee members and all Trustee members for each year. We recalculated the payroll rate discounts for the ten non-Trustee and Trustee members, and

an average of all members based on the most current CIRB rate available for the contribution year (rather than the stale CIRB rates used by Cody as previously described).

The non-Trustee members chosen (ten for each year) reflected a wide variety of characteristics including members that participated in OHI anywhere from three to twelve years, members with a predominant payroll class consistent with the most common class codes for the Trust, members with EMFs ranging from below 0.80 to above 1.10, and members with a predominant payroll code that endured significant CIRB rate changes from 2001 to 2009. We consider this sample of members to be representative of the group as a whole based on the above and because the average discount of the sample is relatively consistent with the Trust-wide average discount rate as shown in the following table.

The following table provides discount related statistics compiled from our assembly of the final invoices or other alternative billing information for the selected ten non-Trustee members, by policy periods:

Table 4:

		Selected Non-Trustee Members				
Policy Period Ended in	Trust-Wide Average Effective Discount (Surcharge) %	Maximum Effective Discount % Noted	Minimum Effective Discount % (Maximum Surcharge) Noted	Average Effective Discount (Surcharge)%	Average EMF of Members with Effective Discount Higher Than Trust Average	Average EMF of Members with effective Discount Lower Than Trust Average
1998	14.5%	42.7%	4.2%	17.5%	0.87	0.93
1999	26.8%	41.5%	19.2%	27.6%	0.88	0.96
2000	29.9%	34.7%	25.9%	30.7%	0.88	0.95
2001	28.6%	32.7%	23.4%	29.4%	0.93	0.96
2002	25.6%	34.5%	21.0%	26.9%	0.94	0.97
2003	17.0%	43.5%	5.1%	16.0%	0.83	1.00
2004	23.4%	42.4%	(4.8%)	24.4%	0.96	1.00
2005	15.8%	36.5%	(16.8%)	15.5%	0.93	0.98
2006	20.7%	42.5%	4.2%	22.8%	0.93	0.99
2007	15.7%	41.1%	(7.1%)	19.0%	0.90	0.96
2008	9.4%	37.8%	(33.4%)	5.6%	0.91	0.93
2009	(1.3%)	24.4%	(49.5%)	(7.2%)	0.90	0.94

Based on the statistics in the table above, it appears:

- The average effective discount rate decreased significantly from 2006 to 2009. L&M believes the decrease in average effective discount during this period was because the WCB determined that OHI was under-funded at December 31, 2006.
- The maximum effective discount noted in the sample was 43.5% while the largest effective surcharge noted was 49.5%, which amounts to a range of over 90 percentage points between members;
- During 2007 - 2009 some members still received reasonably large discounts even though the WCB determined that the Trust was under-funded for 2006 – 2008;
- Members who received discounts higher than the Trust's average generally had lower EMFs; accordingly, it appears members with a better loss history received larger discounts. This statistic is consistent with what L&M would expect.

In conjunction with our forensic engagement of a different self-insured group, we asked an individual with considerable experience in the group self-insured trust field for his opinion about discounts at or exceeding 30% and were informed "There is no possible justification for such a

discount. It is affront to every other trust participant." Of the ten non-Trustee members tested per year (18 unique members in total for all years), at least one member received an effective discount of at least 30% in every year except 2009, with 33 of 110 discounts calculated for the non-Trustee members during 1998 – 2008 amounting to at least 30%. This suggests numerous instances when OHI's members were given discounts we believe were excessive.

Trustee Company Discounts/Surcharges

L&M assembled and analyzed the discounts granted to all Trustee member companies to determine if, in our opinion, any had received preferential treatment.

Six of the nine Trustee member companies participated in OHI throughout its active existence (January 1, 1998 – December 31, 2009), although one of the six was an active Trustee for only approximately two years. Table 5 below provides discount related statistics for Trustee members in comparison to average discount rates provided to all members. For the purposes of Table 5, only policy periods during active Trustee membership were considered. Effective discount rates were computed using the same methodology as Table 4 above.

Table 5:

		Trustee Members		
Policy Period Ended in	Trust-Wide average Effective Discount (Surcharge) %	Average Effective Discount (Surcharge) %	Maximum Effective Discount % Noted	Minimum Effective Discount (Maximum Surcharge) % Noted
1998	14.5%	18.9%	46.1%	2.0%
1999	26.8%	27.6%	36.1%	15.1%
2000	29.9%	31.8%	34.8%	27.3%
2001	28.6%	31.4%	34.9%	26.4%
2002	25.6%	23.4%	30.1%	18.7%
2003	17.0%	13.5%	16.3%	8.7%
2004	23.4%	20.8%	23.4%	18.4%
2005	15.8%	12.5%	15.6%	9.4%
2006	20.7%	20.6%	23.3%	15.6%
2007	15.7%	13.6%	16.8%	9.7%
2008	9.4%	5.8%	10.2%	0.3%
2009	(1.3%)	(5.7%)	0.5%	(17.1%)

The table above indicates the average effective discount to the Trustees was similar to those granted to all members.

L&M inspected the loss history of each Trustee member and noted a correlation between large or frequent losses and the standard discount rates applied by Cody. Five of the nine Trustee members had little or no claims throughout their membership and, accordingly, each of their standard discount rates either did not change or varied slightly (one to two percent deviation). Generally, a decrease in the standard discount (or increase in the surcharge) was noted for the remaining four Trustee members that sustained large or frequent claims during certain years.

Based on the above, L&M does not believe Trustee member companies received preferential treatment with respect to discounts when compared to non-Trustee members.

Analysis of Selected Members with the Largest Estimated Deficiency of Contributions over Losses and Other Estimated Direct Expenses

Table 6 that follows lists the discounts (surcharges), excluding payroll rate discounts, while Table 7 lists the effective discounts (surcharges) recomputed using updated CIRB rates, for a sample of members with the largest estimated deficiency of contributions over losses and other direct expenses as per Table 2 (Members A, C, F, H, I, and K):

Table 6:

	|----------Discount (Surcharge) Excluding Payroll Rate Discount----------|				
Contribution Year Ended in	Member A	Member C	Member F	Member H	Member I	Member K
1999	0%	N/A	0%	N/A	N/A	(6%)
2000	0%	N/A	2%	N/A	N/A	(5%)
2001	0%	N/A	2%	N/A	N/A	(5%)
2002	0%	N/A	2%	N/A	N/A	(5%)
2003	0%	N/A	2%	N/A	N/A	(11%)
2004	0%	5%	1%	(5%)	N/A	(12%)
2005	0%	7%	1%	(3%)	N/A	(12%)
2006	0%	11%	5%	(5%)	N/A	(12%)
2007	0%	1%	3%	(4%)	10%	(15%)
2008	0%	(2%)	4%	(4%)	4%	(16%)
2009	0%	(7%)	3%	(8%)	4%	(15%)
Date of First Claim Over $100,000	9/13/2007	11/21/2005	3/17/2004	1/10/2005	2/3/2007	9/11/2000

Table 7:

	|-------Effective Discount (Surcharge) Rate Recomputed Using Updated CIRB Rates-----|				
Contribution Year Ended in	Member A	Member C	Member F	Member H	Member I	Member K
1999	29%	N/A	29%	N/A	N/A	25%
2000	33%	N/A	33%	N/A	N/A	28%
2001	33%	N/A	31%	N/A	N/A	24%
2002	26%	N/A	30%	N/A	N/A	23%
2003	16%	N/A	15%	N/A	N/A	5%
2004	23%	23%	24%	19%	N/A	(5%)
2005	15%	13%	15%	12%	N/A	(17%)
2006	22%	11%	13%	0%	N/A	4%
2007	14%	(4%)	3%	(8%)	22%	(7%)
2008	0%	(6%)	8%	(1%)	11%	(33%)
2009	(17%)	(28%)	3%	(18%)	(1%)	(49%)
Date of First Claim Over $100,000	9/13/2007	11/21/2005	3/17/2004	1/10/2005	2/3/2007	9/11/2000

L&M's Conclusions

- Several marketing related documents obtained by L&M cited specific potential percentage discounts available to OHI's participants, some of which could be considered excessive.
- The Trust and By-laws document, member Participation Agreement, and Service Agreement with Cody all indicate the Trustees were ultimately responsible for the determination of member contribution levels.
- The effective discount rate provided to each member of OHI consisted of as many as six different components: (1) founding member discount, (2) charter member discount, (3)

renewal discount, (4) security discount, (5) OHI WCT discount/surcharge (referred to as the "standard discount"), and (6) payroll rate discount. Because individual members could not receive both a founding member and charter member discount, members could only receive a maximum of five different discount components.

- The amount of the standard discount/surcharge was subjectively determined by Cody.
- The payroll rate discount percentage (the primary component of the effective discount) was provided to all members and calculated by Milliman in its annual pricing analysis.
- Stale CIRB rates were used to calculate the payroll rate discount in Milliman's pricing analysis for the 2000 through 2009 years, and also used to calculate members' invoices.
- The Trustees ultimately approved the rate structure and the methodology used to compute payroll rates including the use of stale CIRB rates.
- The use of stale CIRB rates likely had little effect on the total contributions received by OHI since the actuary would have calculated a different percentage discount off of the updated CIRB rates to arrive at the same contribution amount deemed necessary to cover OHI's expenses. However, using stale CIRB rates did affect the amount invoiced to individual members.
- An individual with considerable experience in the group self-insured trust field informed L&M the use of current CIRB rates is standard billing practice because competing carriers use current CIRB rates, and he had never seen the use of stale CIRB rates to determine contribution levels. Additionally, he confirmed L&M's suspicion that by not updating the CIRB rates, some of OHI's members were effectively being charged less at the expense of others.
- To illustrate the potential inequity among members resulting from the use of stale CIRB rates, L&M compared two members of similar size and similar loss history based on each member's annual EMF. The difference between each member's effective discount rate using the stale CIRB rates was between one and three percentage points. The difference between the two using updated CIRB rates available when the members were billed increased to between ten and thirty-seven percentage points.
- L&M determined the average effective discount rate granted to all members by recalculating the payroll rate discounts based on the most current CIRB rate available on the dates the contributions were billed (rather than the stale CIRB rates used by Cody as previously described). L&M calculated the average effective discount rates to be 27.7% for 1999-2002, 19.2% for 2003-2006, and 7.9% for 2007-2009.
- L&M also calculated the effective discount granted to each of 10 non-Trustee members selected for each year in the same manner as explained in the above bullet point. L&M's calculations revealed 33 of 110 effective discounts for the non-Trustee members during 1998 – 2008 were at least 30%. This suggests numerous instances when OHI's members were given discounts we believe were excessive.
- An individual with considerable experience in the group self-insured trust field was questioned by L&M relative to his opinion about discounts at or exceeding 30%, to which he responded "There is no possible justification for such a discount. It is affront to every other trust participant."
- L&M does not believe Trustee member companies received preferential treatment with respect to discounts when compared to non-Trustee members.
- Our analysis of the discounts granted to six of the twelve members whom L&M believes generated the largest deficiency of contributions over losses and other direct expenses for OHI (see Table 2 in report section "Underwriting, Including Renewal Process") indicates that in most instances, Cody penalized these poor performing members by applying an

unfavorable adjustment (decrease of discount/increase in surcharge) to the member's subsequent year contribution discount/surcharge percentage.

10. Safety Programs

Introduction

The implementation of a comprehensive safety program is recognized in the workers' compensation industry as a best practice for organizations to help minimize their exposure to losses. Statistics indicate that employers who take advantage of safety services obtain a reduction in workplace injuries, and for many of them, the reduction is significant.

Regulatory Requirement for Description of Safety Program

Section 317.4(2) of the NYCRR (effective January 31, 2001) requires a "new" self-insured employer group to provide the WCB's chair with a description of its proposed safety program, if any. Although the Trust was formed prior to January 31, 2001, L&M located a description of the safety program (hereinafter referred to as the "Safety Guidelines") that appears to have been submitted to the WCB by Cody during OHI's self-insured group application and qualification process.

The Safety Guidelines detail a "three pronged program approach" designed to reduce workplace injuries. Below is a synopsis of the content within each area including some direct quotes we deem significant:

- Safety Visits - each member was to receive a site visitation at least annually by a "Loss Control Specialist." It was stated "larger companies with multiple facilities may receive two or even three visits as deemed appropriate." Safety recommendations would then be made and monitored, with the goal of improving workplace safety. Additionally, Cody was to ensure each member had an "active ('not paper') Safety Committee." Each member's Safety Committee was expected to meet quarterly and provide meeting minutes to Cody.
- Group Safety Committee - a committee was to be established by the Trust to be responsible for addressing problems "systemic to all members." This committee was to hold two or three formal meetings per year, with each member having a representative responsible to discuss issues with the Group Safety Committee. The Safety Guidelines do not indicate the individuals that would comprise the Group Safety Committee, nor the process for appointments to the committee.
- Safety Seminars - several safety seminars were to be held each year to provide advice on various safety related topics relevant to the members. The Group Safety Committee was to determine the topics for each safety seminar.

L&M believes the submission of this document to the WCB would have satisfied the NYCRR requirement for a description of the proposed safety program, had the requirement been in effect at the time the Trust was formed.

Party Responsible to Provide Safety/Loss Control Services

Section 2.3 of the Trust and By-laws document states "The Administrator (Cody) shall establish a safety management committee, arrange safety workshops, work with each Member to reduce the

frequency and severity of workers' compensation claims and to provide safety management information for the Members and the Trustees."

Section 10 of the Participation Agreement states "the Trust, through its Administrator, shall provide loss control and safety management programs to the Member."

Two of Cody's responsibilities under its Service Agreement with OHI were to "develop and conduct loss prevention, safety and risk management programs for the purpose of reducing the frequency and severity of potential losses" and to "assist the Trust in its development of a trust-wide safety committee."

Based on the above, it is apparent Cody was the party responsible to provide safety and loss control services.

Cody subcontracted the safety and loss control services for approximately 11 ½ of OHI's 12 years of active existence. This was permitted under its Service Agreement with OHI which stated "Cody Management Services, Inc. reserves the right, in its sole discretion, to assign or subcontract the performance of its duties under this agreement to such third parties as it may select or as may otherwise be required under state statute or regulations, without the necessity of the Trust's prior approval; provided, however, that such assignment or subcontracting shall not relieve Cody Management Services, Inc. of its obligations to the Trust hereunder." This language makes it clear that the subcontracting of the safety and loss control services to a third party did not relieve Cody of its responsibility for the implementation of these services.

Implementation of Safety/Loss Control Programs

We determined that between August 1998 – December 2009 Cody subcontracted OHI's safety and loss control programs to third parties. During 1998 – 2000 a "safety officer" appears to have been responsible for the implementation of all safety programs at the direction of Cody.

William Mather, Jr.

We believe the first official safety officer of OHI was William Mather, Jr., who was employed by HMS Agency, Inc. (HMS) and served as the Trust's safety officer from August 1998 to December 2000. We conducted an interview with Mr. Mather, during which we asked him questions relative to his role as safety officer and the duties he performed. Mr. Mather stated to L&M that to the best of his knowledge, the Trust's Administrator (David Harvey) served as the unofficial safety officer during OHI's first seven months of operation, until such time as he was approached with the opportunity to become the safety officer.

Although a service agreement between Cody and HMS could not be located, Mr. Mather indicated to us his role was to inform the members of available safety services, develop a safety video library, conduct safety presentations at Cody's request, and hold periodic meetings with members.

Mr. Mather stated he visited approximately six members to conduct safety related meetings. The meetings were not detailed safety inspections, but rather a forum for Mr. Mather to introduce himself, describe the safety services available, and provide information regarding the formation of a safety committee. According to Mr. Mather, facility inspections were never performed and safety recommendations were never made to any member during the approximately 2 ½ year term he

served as OHI's safety officer. Mr. Mather stated there was poor cooperation from most members with regard to safety meetings, and he was eventually directed by Mr. Harvey to stop attempting them. Mr. Mather also indicated he attended a member or Trustee meeting where he gave a five minute presentation on safety that included information such as the availability of safety videos and general safety information.

Mr. Mather informed us his term as safety officer ended as a mutual decision between him and Mr. Harvey due to the inconsequential amount of services he had been asked to perform and the insignificant amount of fees he earned (Mr. Mather stated he made approximately $100 for each member meeting conducted, and the total fees he received from Cody throughout his 2 ½ year term as safety officer were likely less than $1,000).

Finally, Mr. Mather informed us he concentrated his efforts on promoting a positive attitude toward safety rather than performing on-site safety inspections.

Claims Services, Inc.

L&M obtained a service agreement that indicated Cody retained Claims Services, Inc. (CSI) to provide loss control and safety services to OHI as of January 1, 2001. Cody retained CSI for safety and loss control services through December 31, 2009 (the date OHI ceased active operations). A copy of the service agreement between Cody and CSI for OHI's Safety Services, and amendments thereto, is included in our report as Appendix 5.

The service agreement for safety and loss control services dated January 1, 2001 between Cody and CSI stated CSI would, among other things, (1) serve as "a technical safety resource" available to all members, (2) maintain a library of safety videos for viewing by members, (3) publish and distribute quarterly safety newsletters, (4) if requested, attend one Trustee meeting each year to discuss the safety program, (5) as requested by Cody, perform safety site visits and generate written reports listing recommendations for the member to make, monitor compliance with said recommendations by performing follow-up with the specific members 90 days after the report, communicate to Cody the members' level of compliance, and (6) present safety seminars as requested by Cody.

CSI's fees to be paid by Cody were structured as follows: $250 per quarter for items (1) through (4), $175 per site visit (item 5), and $250 to $400 for seminars (item 6) depending on the length of the seminar. An amendment to the service agreement effective July 1, 2004 increased the quarterly fee to $500 for items (1) through (4). Subsequent amendments effective July 1, 2005 and July 1, 2008 altered the quarterly fee for items (1) through (4) to $625 and $550, effective each respective date. The amendment effective July 1, 2008 also provided that the quarterly fee would include three site visits at no additional cost. Additional site visits would remain at $175 each. The amended agreement effective July 1, 2008 did not provide a fee for CSI to conduct safety seminars, probably because CSI (according to the Trustees we interviewed) had not provided any seminars prior to July 1, 2008.

Implementation of Planned Safety and Loss Control Measures

Video Library

CSI was to maintain a library of safety videos members could request for their viewing. Our Trustee and member interviews indicate safety videos were available for member use, although some members did not recall the existence of a video library.

Safety Newsletters
CSI was to publish and distribute to the members a quarterly safety newsletter. We located one newsletter that appears to have been issued during Mr. Mather's seventeen month term as safety officer, and twenty-four during CSI's nine year period of performing safety and loss control services for OHI. Both the Trustees and members interviewed recalled receiving newsletters in the mail. The newsletters contained articles relative to safety tips, identification of work hazards and risk management techniques, insurance fraud, violence in the workplace, and other items the safety service providers deemed pertinent to the members.

Safety Seminars
The Trust's Safety Guidelines stated several safety seminars were to be held each year to provide advice on various safety related topics relevant to the members, with the Group Safety Committee determining the topics for each safety seminar. L&M's Trustee and member interviews indicate no safety seminars were ever held for OHI's members. It appears a safety seminar was scheduled for late 1999, but was cancelled (according to Cody) due to a lack of member interest. Assuming the reason for cancellation stated by Cody is accurate, L&M questions why no apparent further attempt was ever made to hold other safety seminars during the 2000 – 2009 period.

Safety Committee at Each Member
The Trust's Safety Guidelines stated Cody was to ensure each member had an "active ('not paper') Safety Committee." We located a manual titled "Organizing a Company Safety Committee," which we believe to have been authored by either Cody or CSI and sent to OHI's members with the initial safety newsletter. Each member's Safety Committee was expected to meet quarterly and provide minutes of the meetings to Cody. L&M's Trustee and member interviews failed to uncover the existence of any member safety committees. Accordingly, L&M questions the true effort Cody expended to both explain the value of a member safety committee and pressure members to form one.

Formation of Group Safety Committee
The Trust's Safety Guidelines also stated a committee was to be established to be responsible for addressing problems "systemic to all members." This committee was to hold two or three formal meetings per year, with each member having a representative responsible to discuss issues with the Group Safety Committee. Section 2.3 of OHI's Trust and By-laws document also stated the Administrator was to establish a safety committee. We located no evidence to support the formation of this committee.

Member Site Visits
OHI's Safety Guidelines stated each member was to receive a site visitation at least annually by a "Loss Control Specialist." The guidelines further stated "larger companies with multiple facilities may receive two or even three visits as deemed appropriate." Safety recommendations would then be made and monitored, with the goal of improving workplace safety.

Although the Trust's Safety Guidelines state each member was to receive an annual site visitation, and the agreement between Cody and CSI details a fee schedule for safety visits, we could not find documentation to support any safety visits performed for any member of OHI.

As previously noted, Mr. Mather informed us he visited approximately six members to conduct safety related meetings. The meetings were not detailed safety inspections, but rather a forum for Mr. Mather to introduce himself, describe the safety services available, and provide information

regarding the formation of a safety committee. According to Mr. Mather, facility inspections were never performed and safety recommendations were never made to any member during the approximate 2½ year term he served as OHI's safety officer.

We contacted Linda Guttridge, the President and owner of CSI from April 2007 (the month of her husband Jeff's death) until July 31, 2011 (the date CSI closed), and asked if she had any knowledge of safety visits being performed by CSI on OHI's members. During our conversation, she informed us site visits were probably performed for members with frequent losses. We asked for, but never received from her, documentation to support the performance of any safety site visits by CSI.

All of the Trustees and members interviewed by L&M stated they never had a safety site visit while a member of OHI, while some explained their current workers' compensation carrier and/or prior workers' compensation carrier performs(ed) regular safety visits and provides(d) safety recommendations.

We asked David Harvey, President of Cody, specific questions regarding the safety programs and loss control procedures that were to be initially implemented by OHI. Mr. Harvey indicated most of the Safety Guidelines submitted to the WCB were not implemented by the Trust due to members' lack of interest and/or cooperation, and site visits were "few and far between." Mr. Harvey informed L&M that Mr. Mather did not have any success with the site visits he attempted, so a decision was eventually made to rule out additional attempts. This contradicts what Mr. Mather told L&M, namely that while he did visit approximately six members to conduct safety related meetings, they were not detailed safety inspections, but rather a forum for Mr. Mather to introduce himself, describe the safety services available, and provide information regarding the formation of a safety committee.

Mr. Harvey informed L&M, that to the best of his knowledge, only one safety visit was completed. L&M found documentation to indicate a safety meeting was conducted at the facility of the member named by Mr. Harvey, but the main topic simply involved the formation of a safety committee. Based on the above, it appears Mr. Harvey's reference to the performance of a safety visit was actually a meeting intended to encourage a member to form a safety committee.

Based upon the above, L&M concludes no safety site visits were ever performed.

An individual with considerable experience in the group self-insured field contacted by L&M stated that, in his opinion, each and every member of a trust should have a least one safety site visit per year, and if a member fails to cooperate, it should be terminated. Additionally, L&M notes (1) safety site visits (including facility inspections, recommendations, and follow-up visits) are/were an integral part of the safety programs in place at other workers' compensation trust funds on which we perform/performed financial statement audits and forensic accounting engagements on, and (2) we consider the performance of periodic safety site inspections on all policyholders to be a best practice.

While L&M recognizes both Mr. Mather and Mr. Harvey stated there was poor cooperation from OHI's early members with respect to safety meetings, which Mr. Harvey may believe to mean member site visits, L&M questions the true effort Cody expended to insist safety site visits be performed. L&M also questions why Cody essentially abandoned the plan for annual member safety visits after the purported lack of cooperation from OHI's early members. In L&M's opinion, this important aspect of OHI's safety program should not have been abandoned after the resistance

encountered during part of 1998 and 1999, but rather, Cody should have made it clear to members that failure to cooperate with this program was grounds for expulsion from OHI (per Section 4.1 of the Trust and By-laws document which state members who failed to cooperate with loss control representatives or comply with loss control recommendations shall be terminated).

As previously noted, Cody subcontracted out the safety and loss control services for approximately 11½ of OHI's 12 years of active existence. L&M believes it is possible Cody failed to insist on the performance of annual safety visits to members in an effort to save it (Cody) the $100 or $175 associated with performing each one. L&M estimates Cody saved $157,000 by not having the annual member site visits performed (as promulgated under the Safety Guidelines).

Safety Award Program

Administrator Harvey informed L&M that an effective aspect of OHI's safety program was its formal member safety award initiative. Through our inspection of Trust documents, we confirmed a safety award program was adopted in 2005. Through this program, Cody provided certain members a plaque to reward them for having exceptional loss histories. L&M questions the effectiveness of the safety award program in reducing claims since it was in essence recognition of extraordinary loss experience after the fact, and did not include proactive steps to reduce losses. L&M doubts members would initiate changes to their employees' work habits to obtain a plaque. In L&M's opinion, the safety award program likely had little or no effect on the overall effectiveness of the loss control programs implemented by Cody, and more importantly, on either the frequency or severity of claims incurred by OHI's members.

General Conclusions on Implementation of Planned Safety and Loss Control Measures

Based upon the above, none of the Safety Guidelines that Cody informed the WCB would be established for OHI were implemented. Rather, Cody's safety program for OHI merely consisted of quarterly safety newsletters sent to members and making a safety video library available to members. An individual with considerable experience in the group self-insured field contacted by L&M stated that the program, in his opinion, "is basically nothing." It is L&M's understanding that the WCB's oversight would generally not include a determination if the safety program of a trust was operating as planned. Accordingly, L&M believes the WCB was not aware that none of the planned Safety Guidelines for OHI were put in place. L&M questions why the planned annual member safety visits were basically abandoned very early during OHI's existence. It is possible Cody did not insist on the performance of annual safety visits to members to save it (Cody) the fee that would have been associated with their performance. L&M estimates Cody saved $157,000 by not having the annual member site visits performed (as promulgated by the Safety Guidelines). Based on L&M's interview with Mr. Mather and inspection of Cody's service agreement (and subsequent amendments) with CSI, L&M estimates Cody only paid approximately $18,500 for all of the subcontracted safety and loss control services for OHI during 1998 – 2009.

Termination of Members Based on Safety Program Deficiencies

The Trust and By-laws document states in Section 4.1 that a member who fails to cooperate with loss control representatives, or fails to comply with loss control recommendations made shall be terminated.

The Participation Agreement states "The Trust, through its Administrator, shall provide loss control and safety management programs to the Member, designed to assist the Member in following a plan which may result in reduced losses and costs resulting from employee accidents and illnesses covered by the New York Workers' Compensation Law. The Member agrees to cooperate in instituting and actively participating in any and all such safety management programs, including but not limited to injury prevention and safety programs to reduce or eliminate risk of employee injury and illness. The Member understands that failure to reasonably comply with loss control recommendations could lead to termination of the Member's membership in the Trust and coverage thereunder."

Since the majority of the safety programs initially planned were not implemented by the Trust, we could not determine if any member was ever terminated or threatened with termination for non-compliance with safety or loss control programs. Individual safety recommendations were never made to members; therefore, members could not address safety deficiencies.

Based on the above, one can conclude OHI's members could have been terminated for failure to cooperate with the general safety initiatives required of all members, but the failure to maintain and enforce adequate safety programs negated this possibility.

L&M's Conclusions

- Cody was the party ultimately responsible to provide safety and loss control services. Cody subcontracted the safety and loss control services for approximately 11 ½ of OHI's 12 years of active existence.
- None of the originally intended Safety Guidelines that Cody informed the WCB would be established for OHI were implemented.
- Cody's safety program for OHI merely consisted of quarterly safety newsletters sent to members and making a safety video library available to members. An individual with considerable experience in the group self-insured field contacted by L&M stated OHI's program, in his opinion, "is basically nothing."
- We believe the minimal safety and loss control procedures implemented by Cody did little to deter or prevent the frequency and/or severity of losses sustained by members of OHI.
- L&M questions why the planned annual member safety visits were basically abandoned very early during OHI's existence. It is possible Cody did not insist on the performance of annual safety visits to members to save it (Cody) the fee that would have been associated with their performance. L&M estimated Cody saved $157,000 by not having the annual member site visits performed.
- The lack of member safety visits likely allowed many losses that otherwise may have been avoidable to be sustained by OHI.
- Based on L&M's interview with Mr. Mather and inspection of Cody's service agreement (and subsequent amendments) with CSI, L&M estimates Cody only paid approximately $18,500 for all of the subcontracted safety and loss control services for OHI during 1998 – 2009.

11. Excess Insurance

Introduction

Section 317.10 of the NYCRR, effective January 31, 2001, requires group self-insurers to maintain excess insurance (also known as stop-loss and reinsurance) to reduce the exposure of the group self-insurer to workers' compensation claims and employers' liability. The excess insurance must be in a form approved by the superintendent of insurance and from a carrier licensed by the superintendent of insurance to write excess insurance in New York with respect to workers' compensation and employer's liability insurance. The retention levels for the excess insurance shall be in an amount acceptable to the chair. Section 317.2(f) of the NYCRR, effective January 31, 2001, states "the excess insurance may be specific, aggregate, or other insurance, singly or in combination, in amounts and form acceptable to the chair."

Additionally, group self-insurers must file certificates with the WCB providing evidence appropriate excess insurance has been obtained, and must immediately notify the WCB of any changes in the excess coverage.

The WCB requires group self-insurers to obtain specific excess insurance, but does not require aggregate excess insurance coverage.

Summary of OHI's Coverage

L&M obtained information pertaining to the excess/reinsurance coverage maintained by OHI from the WCB, Cody, and NCAComp. A summary of the coverage is as follows (the aggregate retention for 1998, 1999, 2003 and 2009 are the estimated amounts appearing in the certificate of insurance or policy endorsement):

Table 8:

		Specific		Aggregate	
Period	Carrier	Retention	Limit	Retention	Limit
1/1/98 - 12/31/98	American Home	$ 250,000	Statutory	$ 712,400	$ 1,000,000
1/1/99 - 12/31/99	American Home	200,000	Statutory	800,000	1,000,000
1/1/00 - 12/31/00	American Home	200,000	Statutory		
1/1/01 - 1/14/02	American Home	250,000	Statutory		
1/15/02 - 9/30/02	General	350,000	10,000,000		
10/1/02 - 9/30/03	Midwest	* 350,000	Statutory	1,072,000	1,000,000
1/1/04 - 12/31/04	Midwest	* 350,000	Statutory	2,150,000	1,000,000
1/1/05 - 12/31/05	Midwest	400,000	Statutory	2,819,000	1,000,000
1/1/06 - 12/31/06	Midwest	400,000	Statutory	2,681,000	2,000,000
1/1/07 - 12/31/07	Midwest	400,000	Statutory	2,853,000	3,000,000
1/1/08 - 12/31/08	Midwest	400,000	Statutory	2,969,000	1,000,000
1/1/09 - 12/31/09	Midwest	400,000	Statutory	2,104,000	1,000,000

* Retention was increased to $400,000 if the injury occured during 11PM - 6AM at a gas station or convenience store business normally operated between those hours.

Policyholder Reporting Requirements Under Excess Policies

The policy information we received for the American Home Assurance Company (American Home) and Midwest Employers Casualty Company (Midwest) excess policies required claim reporting requirements by the policy holder as noted below. L&M did not obtain a copy of OHI's policy with General Reinsurance Corporation (General).

American Home

- Immediate written notification of each claim which involves a fatality or serious injury (as defined by American Home), or a serious injury to two or more employees.
- Immediate written notification of any claim in which it appears reasonably likely the injured employee's disability will exceed one year.
- Immediate written notification of each claim whose incurred amount equal or exceeds 50% of the policy retention.
- Provide quarterly loss run reports containing specific data as detailed by carrier.

Midwest

- Prompt written notice for any claim, award, judgment, or suit which (or might in the future) exceed 50% of the specific policy retention.
- Provide written notice within 30 days for any accident that involves a fatality, permanent total disability, or serious injury as defined.
- Prompt written notice of any claim in which the injured employee's disability exceeds 52 weeks.
- Written notice within 30 days of any occurrence which causes injury to two or more employees.
- Provide insurer with a quarterly report that provides various information with respect to all claims.

Trust's Adherence to Reporting Requirements Under Excess Insurance Policies

The Administrator's responsibilities stated in its Service Agreement with the Trust do not specifically denote providing notice to the carriers based on the criteria listed in the excess policies; however, the tasks to be performed by the Administrator effectively involved management of all operations of OHI. Therefore, L&M believes it is reasonable to conclude the Administrator also had the responsibility to provide the excess carriers with notice as required per the excess insurance policies.

The Administrator subcontracted out the claims administration services to other entities. Claims Services, Inc. (CSI) was the third party administrator used by Cody after June 30, 2002. Attached as Appendix 6 is the agreement (and amendments thereto) for claims administration services for OHI between Cody and CSI. The agreement between Cody and CSI stated CSI's duties included "report to any specific excess insurer(s) or aggregate excess insurer(s) notice of any claim that is or may be required to be reported to such excess insurers." Cody informed L&M that CSI was also responsible to provide quarterly reports to the carriers as required under the policies. However, since Cody and not OHI subcontracted the claims related services to CSI, L&M believes Cody was still ultimately responsible to ensure notice was provided to the excess carriers.

L&M was informed by the current president of CSI that she believed her employees would either directly, or in conjunction with Cody, put the carriers on notice. The Trust's service agreement with

Cody states "Cody Management Services, Inc. reserves the right, in its sole discretion, to assign or subcontract the performance of its duties under this agreement…provided, however, that such assignment or subcontracting shall not relieve Cody management Services, Inc. of its obligations to the Trust hereunder."

An excess insurance carrier can deny or reduce coverage for a claim if it is determined the required notification procedures were not followed.

L&M reviewed a loss run report of all claims at or exceeding $100,000 at June 30, 2011 (the day before NCAComp replaced Cody as the Trust's administrator), and identified 7 claims that required notification to the excess insurance carriers based on the criteria of American Home and Midwest that notice be provided for claims exceeding 50% of the retention.

L&M requested documentation to determine if the excess carriers had been provided timely notification with respect to the 7 claims that required such.

L&M obtained documentation to indicate CSI had provided the applicable excess carrier with notice for six on the above seven claims. No excess carrier notice was located for the seventh, but evidence suggests the carrier remitted the amount paid by OHI on the claim above the retention after the claim was closed. Accordingly, it appears the carrier was provided with proper notice for the seventh claim.

During our inspection of excess carrier notification documentation, L&M noted the carriers were initially put on notice in 2010 or 2011 for five of the six above noted claims. L&M obtained two loss runs generated by CSI as of December 31, 2007 and November 30, 2008, and determined one of the five claims where the carrier was put on notice in 2010 exceeded 50% of the retention at both December 31, 2007 and November 30, 2008, and another one of the five claims exceeded 50% of the retention at November 30, 2008. L&M believes notification in 2010 violates the requirement to immediately or promptly provide written notification to the carrier given the two claims exceeded the 50% retention amount at least 25 months and 19 months prior to the actual notification to the carriers. It is possible the excess carriers could deny or reduce coverage on these two claims if it is deemed OHI should have provided the notification in a prior period. L&M does not believe the WCB would have been privy to this potentially problematic situation since it does not require information regarding notification to excess carriers.

Two of the seven claims noted above that required notice involved employees with the last name of Harvey, which is the same last name as Cody's president. The president of Cody informed L&M that he did not have any relatives employed at any of OHI's members. One of the two members whose injured employee had the last name of Harvey stated to the best of its knowledge its employee was not related to Cody's president. The other member refused our attempts to interview it. Two Trustees interviewed stated the two claimants named Harvey were definitely not related to Cody's president, while a Third Trustee stated he did not believe they were related.

Comparison of OHI's Excess Insurance Cost with Other Trust Funds

L&M obtained information that summarized 59 active group self-insurer's excess insurance expense as a percentage of contribution revenue for 2003 – 2006. The information received also listed the 2006 retention level for the specific reinsurance. As noted above, OHI had a $350,000 retention on

its 2003 and 2004 specific excess insurance policies and a $400,000 retention on its 2005 and 2006 specific excess policies.

L&M used this information to compare OHI's excess insurance expense to other trusts not administered by Cody. The information did not indicate what the retention amounts were for 2003 - 2005. However, most trust funds do not frequently change specific retention amounts. Accordingly, L&M assumed the retention amounts listed for 2006 were the same for 2003 – 2005 years in the analysis below.

Table 9:

	2003	2004	2005	2006
Retention amount noted as $350,000 for 2006				
OHI	18.6%	14.4%		
Average of 9 other trusts	7.7%	7.9%		
Highest of the 9 other trusts	13.3%	11.8%		
Retention amount noted as $300,000 & $350,000 for 2006				
Average of 12 other trusts	8.5%	9.0%		
Highest of the 12 other trusts	15.0%	16.8%		
Retention amount noted as $400,000 for 2006				
OHI			13.6%	14.5%
Average of 13 other trusts			9.4%	11.8%
Highest of the 13 other trusts			14.9%	26.6%

Based on Table 9, the excess insurance cost (as a percentage of member contribution revenue) of OHI was considerably higher than the average of the other trusts deemed to have similar specific retention amounts. Additionally, L&M also included three trusts deemed to have had a smaller retention amount ($300,000) in a separate calculation for 2003 and 2004, and noted their insurance cost was also less than the percentages for OHI. L&M noted only 4 instances (out of 50 total) where the 12 other trusts noted above for 2003 – 2004 and the 13 noted for 2005 – 2006 had a percentage greater than OHI's for the same year. The minutes from the August 23, 2007 Trustee meeting noted the Administrator stating "our trust already pays a high percentage of its operating budget for XS [excess] policies, more than other programs he's heard." In this statement, the Administrator communicated the relative high cost of OHI's excess insurance to the Trustees.

The cost of excess coverage is based on the payroll class code categories of the trust members' employees. Accordingly, this is an important consideration when comparing the percentages. However, since OHI's 2003 – 2006 percentages were compared to the average of both 9 and 12 other trusts for 2003 – 2004, and 13 other trusts for 2005 - 2006, L&M believes some generalizations can be made when comparing the data.

The information provided by the WCB did not denote which funds had aggregate excess insurance in place. OHI had aggregate excess insurance in place during 2003 – 2006. Thus, OHI's relative high cost could be partially explained if a large portion of the other trust funds noted in Table 9 did not have aggregate coverage during 2003 – 2006.

One individual with considerable experience in the group self-insured field contacted by L&M indicated he believed the aggregate coverage would have added 10% to the cost of the excess insurance. Another such individual said he believed the cost of OHI's aggregate coverage for 2005 and 2006 would have approximated 9% of the total excess premium, essentially the same estimate as previously noted.

Additionally, the small size of OHI may also have contributed to the higher than average premiums it paid. Based on the information obtained from the WCB, only 4 of the other 25 funds to which we compared OHI's excess insurance cost to had total covered payroll less than OHI's. The 2006 average cost of excess coverage as a percentage of contribution revenue for the other 4 funds (all had the same $400,000 retention as OHI) smaller than OHI was 16.3%, a higher percentage than OHI's 14.5%.

Administrator and Trustee Responsibilities

One of the Administrator's responsibilities stated in its agreement with the Trust was to pursue the placement of excess insurance. Accordingly, L&M believes it was the Administrator's responsibility to contact the brokers and/or underwriters to obtain the most cost effective excess coverage for the Trust. L&M obtained information to indicate the Administrator worked with the broker to "shop the coverage" to obtain the best premium rate for OHI almost every year. Additionally, L&M also obtained correspondence the Administrator sent to the carriers and/or broker in an attempt to negotiate further premium discounts for OHI.

Article 5.5 of the Trust and By-laws document state the affairs of the Trust shall be managed by the Trustees, who are granted the authority to purchase excess insurance for OHI. Based on the above and our discussions with the Administrator, L&M believes the Administrator was responsible to obtain all relevant information pertaining to the excess insurance policies, while the Trustees were ultimately responsible to decide which carrier to select based on the information provided to them. Thus, L&M would expect documentation in the Trustee meeting minutes to indicate the Trustees were keep apprised of, and involved with the decision making process pertaining to the acquisition of excess insurance.

L&M noted numerous notations in the 1998 – 2009 minutes to indicate excess insurance was discussed, including the current and future estimated cost, results of competitive quotes, retention levels, and change in carriers, and the Trustees made decisions pertaining to the Trust's excess coverage.

Four Trustees informed L&M competitive quotes were frequently obtained, the Trustees were definitely involved with decisions pertaining to excess insurance, and the Administrator kept the Trustees adequately informed in regards to activities that involved the Trust's excess insurance. A fifth Trustee was somewhat sure, but not positive, competitive quotes were obtained, and explained that while the Trustees discussed excess insurance at meetings, they generally "rubber stamped" what Cody proposed.

Based on the above, L&M concludes (1) the Administrator frequently obtained competitive quotes to obtain the best premium rate for OHI, (2) the Administrator generally kept the Trustees apprised of the Trust's excess insurance policies' status, and (3) the Trustees were involved with decisions pertaining to the Trust's excess insurance.

L&M's Conclusions

- L&M believes the Administrator was responsible to provide the excess carriers with notice as required per the excess insurance policies.
- L&M identified 7 claims from a June 30, 2011 loss run report that required notification to the excess insurance carriers based on the criteria of American Home and Midwest that notice be provided for claims exceeding 50% of the retention. The first notice for 2 of the 7 claims was found to have occurred at least 25 months and 19 months after the two claims exceeded the 50% retention, which appears to violate the excess policy requirement for the Trust to provide either immediate or prompt written notification to the carrier once a claim exceeds 50% of the applicable retention amount. It is possible the excess carriers could deny or reduce coverage if it is determined OHI should have provided the notification in a prior period.
- Based on information received, OHI's cost of excess insurance as a percentage of contribution revenue for 2003 - 2006 was considerably higher than the average of twelve (for 2003 and 2004) and thirteen (for 2005 and 2006) other funds we believe had similar or better coverage. OHI's relatively higher cost for excess insurance may be due to OHI also having aggregate insurance in place during 2003 – 2006, and the small size of OHI compared to the other 25 funds. Based on the information obtained, only 4 of the other 25 funds to which we compared OHI's excess insurance cost to had total covered payroll less than OHI's. The 2006 average cost of excess coverage as a percentage of contribution revenue for the other 4 funds (all had the same $400,000 retention as OHI) smaller than OHI was 16.3%, a higher percentage than OHI's 14.5%.
- The Trustee meeting minutes and other information obtained indicate (1) the Administrator frequently obtained competitive quotes to obtain the best premium rate for OHI, (2) the Administrator generally kept the Trustees apprised of the Trust's excess insurance policies' status, and (3) the Trustees were involved with decisions pertaining to the Trust's excess insurance.

12. Transfer of Trust Assets to the WCB

Introduction

L&M performed procedures to determine if all cash and investment balances existing on July 1, 2011 (the date the WCB assumed control over OHI) were properly transferred to the WCB.

The 2010 audited financial statements, general ledger, and various bank and investment statements for December 2010 indicate OHI had two checking accounts (claims and operating) and a savings sweep account at Glens Falls National Bank and certificates of deposit at National Bank of Coxsackie.

L&M determined the investment balance at National Bank of Coxsackie (totaling $491,965) was seized by the bank in May 2011 to partially satisfy the balance it was due from OHI resulting from the bank remitting $936,000 to the WCB under the letter of credit it issued on behalf of OHI. See report section "Security Deposits" for more information on this transaction.

L&M determined the three accounts with Glens Falls National Bank were used by the Trust through June 30, 2011. L&M obtained the statements for the three accounts for the months of June 2011

through September 2011, and determined the following based on a limited inspection of the transactions during that four month period:

Claims Account with Glens Falls National Bank

- No unusual transactions were noted in the account for the month of June 2011.
- Transfers from the savings sweep account totaling $34,123 were deposited into the claims account during July through September 2011.
- The majority of the checks that cleared the account during July through September 2011 were checks written in the month of June 2011. L&M did not note any unusual payees or amounts per our inspection of the check copies.
- There was little activity in the account during the months of August 2011 and September 2011.
- This account had a zero balance at September 30, 2011.

Operating Account with Glens Falls National Bank

- In late June 2011, $50,000 was transferred from the claims account to the WCB. Information obtained from the WCB confirmed it received $50,000 from OHI on June 29, 2011. The majority of the checks that cleared in June 2011 appear to relate to legal services performed for OHI.
- Only one check (written in June 2011 for $51) cleared this account during July 2011 through September 2011. Correspondingly, one transfer for $51 was made to this account from the savings sweep account.
- This account had a zero balance at September 30, 2011.

Savings Sweep Account with Glens Falls National Bank

- Activity in June 2011 consisted of transfers to and from the claims and operating account and $27 of interest earned.
- Activity in July through September 2011 consisted of transfers totaling $34,174 to the claims and operating accounts along with interest and bank fees.
- This account had a balance of $55,850 at September 30, 2011.

L&M's Conclusions

- All of OHI's cash accounts at July 1, 2011 were put under the WCB's control.
- All the activity in OHI's cash accounts during the period June 1, 2011 through September 30, 2011 appeared reasonable, including all transactions involving withdrawals and transfers.

13. Integrity of Group Self-Insurance Trust Funds

Section 317.8 of the NYCRR states the group self-insurer shall not commingle its trust assets with those of any member, nor shall the funds dedicated to the payment of a group self-insurer's costs be commingled with any other funds. Additionally, the group self-insurer, its Trustees, and its group administrator shall:

- Make every effort to preserve the integrity, strength, and liquidity of the group's fund so as to permit the timely and complete payment of all group claims and other liabilities;
- Not use any of the funds collected from group members or earned by the trust for any purpose not directly related to trust obligations;
- Not borrow money from the trust fund or in the name of the trust;
- Not permit any lending, issuance of debt, or other forms of obligations.

L&M judgmentally selected four months from each of OHI's operating, claims, and sweep bank accounts during the period Cody served as its administrator to determine if the account balances included amounts and/or transactions attributable to other entities.

L&M judgmentally selected ten cleared checks from each of the four monthly claims account statements and determined the related claims appeared on OHI's claims system, and the companies were participants in OHI.

L&M also selected ten checks and/or wire transfers from each of the four operating account statements selected and traced all ten to supporting documentation which indicated the transactions related to OHI. Note that L&M only tested eight transactions for one of the four monthly statements selected since that month had only eight cleared checks.

Finally, L&M traced all transactions listed on the four monthly statements for the sweep account to transfers to and from the claims and operating accounts.

L&M's Conclusion
Based on the procedures above, it does not appear cash balances of other entities were commingled with OHI's during the months chosen for testing.

14. Payroll Audits

An annual payroll audit for each member is a generally accepted industry practice. The payroll audit provides a means to reconcile member contributions based on estimated payroll to those based on actual payroll.

OHI appeared to require annual payroll audits following the Trust's fiscal year end. L&M concluded this based on Section 6 of the Participation Agreement that explains the contributions paid during the year "shall be adjusted by audit annually as of the end of each fund year to reflect the actual payroll of the Member." Additionally, the Service Agreement with Cody listed one of Cody's duties as "retain at trust expense…payroll auditing services."

OHI contracted with Anchor Insurance to perform these services for the 1998 – 2009 years. Both Cody and Anchor Insurance informed L&M that all Anchor Insurance did/does is perform payroll audits – that is its line of business.

L&M was also informed by Robert Richard, the president of Anchor Insurance, that:

- It was probably hired by Cody because it also performed payroll audits for a Vermont trust also administered by Cody;
- He has been in the payroll audit business since 1985 and personally performed all of the payroll audits for OHI;
- His company's payroll audit reports can contain various additional information if the customer requests it; however, Cody did not did make such a request. The price for the payroll audit is the same whether this additional information is included or not.

The payroll audit process results in a report generated by the payroll auditor which determines the applicable payroll by class code for the member during the period requested (generally a one year period). Cody used this data to calculate a final invoice for the member that would result in either

an additional contribution due or an overpayment to be refunded or applied against future amounts billed.

Based on the number of member years, there should have been approximately 945 member payroll audits performed throughout the life of the trust. We obtained all of the member files from NCAComp and inspected all of the documents within each member file to locate the payroll audits.

We could not obtain 51 of the 945 expected payroll audits, thus, we have no evidence to indicate whether those were performed. We located two memoranda Cody sent to the payroll auditor where the auditor was instructed (1) not to perform payroll audits in 2000 on 8 members because the members were either very small, joined OHI late in 2000, or left OHI, and (2) not to perform a payroll audit in 2007 on 5 members because they left OHI during 2007. Cody may have decided not to have certain payroll audits performed for cost-benefit reasons. L&M did not note any reference in the trustee meeting minutes obtained to advise the Trustees certain payroll audits were not going to be performed. Thus L&M in unsure if the Trustees were aware this was done.

In addition, we obtained documentation that indicated some of the payroll audits attempted were deemed unproductive, which means the payroll auditor was unsuccessful in its attempts to perform the payroll audit. A common reason is repeated unsuccessful attempts to contact management or obtain the required payroll information from management. Cody explained to L&M that a member who was uncooperative with the payroll audit process could be final invoiced by as much as 50% above the estimated payroll the member originally provided to the Trust; however, he did not recall ever actually increasing a member's final invoice by more than 25%. L&M obtained a document Cody sent to the payroll auditor where three members who were uncooperative with the 2001 payroll audit process were going to be final billed either 5% or 10% above the amount per their declaration statement. L&M located a Trustee resolution adopted February 27, 2003 that stated a member who failed to timely cooperate with the payroll audit process would be final invoiced at 50% above the contribution calculated using the estimated payroll per its declaration statement. It appears the payroll auditor would prepare a payroll audit report for unproductive audits similar to productive ones, and calculate final payroll using a percentage of the payroll amounts on the member's declaration statement. Accordingly, it was not readily apparent to L&M how many payroll audits were actually unproductive.

L&M questions why OHI's policy relative to members who did not cooperate with the payroll audit process did not include termination of the guilty members. L&M believes that all, or at least the majority, of the members who did not cooperate with the payroll audit process are those who believed the audit would have resulted in additional contributions owed to OHI. Final billing these members anywhere from 5% to 25% above the estimated payroll the member provided to Cody may not have been reflective of their true payroll. L&M would have expected all uncooperative members to have been terminated after being billed for the affected period.

Cody explained to L&M it was very satisfied with the quality of the payroll audits performed by Anchor Insurance; however, L&M obtained correspondence Cody sent Anchor Insurance regarding the 2004 – 2008 payroll audits where Cody identified numerous errors in the completed payroll audit reports. Additionally, payroll audit reports prepared by other entities that provide this service (Overland Solutions, Inc. and Charles E. Hock Associates, Inc.) contain valuable information such as the nature of the member's business operations, suspicion of employees paid "off the books," disagreement with payroll class codes used, the possibility of uninsured contractors used by the member, relatives of the business owner potentially being paid below market rates, and verification

that claimants were employed by the member on the date of an injury. The only type of additional information we noted in the Anchor Insurance reports was an occasional brief description of the business the member was in. While Cody informed L&M the payroll auditor would verbally inform it "if something did not seem right," OHI's payroll audit reports failed to document this information, and were not as useful of a management tool as the other payroll audit providers' reports.

We traced all data contained in the payroll audits obtained to amounts used to generate the final invoices, and noted numerous differences between the audited payroll figures and the amounts Cody included on the members' final invoices. The differences included transposition and "typo" errors on the final invoice relative to corresponding amounts on payroll audit, and the use of different payroll class codes than those listed on the payroll audit. The differences were generally minor and resulted in both understatements and overstatements of amounts billed members. As further explained in OHI's "Deficit Reconstruction and 2012 Assessment Report," L&M used the actual amounts billed to each member to compute each member's share of OHI's cumulative deficit.

In summary, L&M obtained approximately 95% (894 of 945) of the payroll audits we expected to have been performed over the active life of the Trust (the 894 may include some unproductive payroll audits since they are not labeled as such by the payroll auditor). The payroll audit information was generally properly used to calculate final member invoices. Overall, it appears Cody diligently ordered, obtained, and generally applied the payroll audit results it received to member invoices in an appropriate and fair manner.

L&M's Conclusions

- L&M obtained approximately 95% (894 of 945) of the payroll audits we expected to have been performed over the active life of the Trust (the 894 may include some unproductive payroll audits since they were not labeled as such by the payroll auditor).
- In most cases, the payroll audit information appears to have been properly used to calculate final member invoices; however, we noted numerous differences between the audited payroll figures and the amounts Cody included on the members' final invoices (such amounts were generally minor and resulted in both understatements and overstatements of amounts billed members).
- Overall, it appears Cody diligently ordered, obtained, and generally applied the payroll audit results it received to member invoices in an appropriate and fair manner.
- L&M questions why OHI's policy relative to members who did not cooperate with the payroll audit process did not include termination of the guilty members. L&M believes at least the majority of members who did not cooperate with the payroll audit process are those who believed the audit would have resulted in additional contributions owed to OHI. Final billing these members anywhere from 5% to 25% above the estimated payroll the member provided to Cody may not have been reflective of their true payroll. L&M would have expected all uncooperative members to have been terminated after being billed for the affected period.
- Cody explained to L&M it was very satisfied with the quality of the payroll audits performed by Anchor Insurance; however, L&M obtained correspondence Cody sent Anchor Insurance regarding the 2004 – 2008 payroll audits where Cody identified numerous errors in the completed payroll audit reports. Additionally, payroll audit reports prepared by other entities that provide this service (Overland Solutions, Inc. and Charles E. Hock Associates, Inc.) contain valuable information such as the nature of the member's business operations, suspicion of employees paid "off the books," disagreement with payroll class codes used, the

possibility of uninsured contactors used by the member, relatives of the business owner potentially being paid below market rates, and verification claimant were employed by the member on the date of the injury. The only type of additional information we noted in the Anchor Insurance reports was an occasional brief description of the business the member was in. While Cody informed L&M the payroll auditor would verbally inform it "if something did not seem right," OHI's payroll audit reports failed to document this information, and as a result, were not as useful of a management tool as the other payroll audit providers' reports.

15. Assessments to Members

Introduction

Section 317.9 of the NYCRR, effective January 31, 2001, lists actions an under-funded trust fund (as defined in Section 317.6 of the NYCRR) may be required to take, at the discretion of the WCB's Chair. Among these actions is the requirement to levy an assessment upon the group members to make up the deficiency.

Section 5.5 of the Trust and By-laws document states the Trustees shall have all powers necessary to enable it to carry out its duties, and one specifically mentioned power was the determination of assessment amounts to issue to members.

By signing the Participation Agreement, the member agreed to be bound by the terms of the Trust and By-laws document. Section 7 of the Participation Agreement stated "the Member understands that if the assets of the Trust are at any time insufficient to enable the Trust to discharge its legal liabilities…or to maintain reasonable and necessary reserves, the Trust may levy an assessment on the membership to make up the deficiency. The additional assessment to each Member shall be calculated on a pro-rata basis, in proportion to each member's contribution to the trust for the Fund Year in which the assessment is made."

Information in the audited financial statements and Trustee meeting minutes indicate a $3,600,000 assessment was issued to members in 2010.

The term "assessment" was used in the Board of Trustee meeting minutes; however, these assessments may be more accurately characterized as a surcharge on member contributions or an additional billing to members designed to improve the Trust's financial position. For purposes of the remainder this report, we will continue to refer to these as assessments. A discussion of the only assessment we became aware of follows.

$3,600,000 Assessment Issued in 2010

In response to numerous conferences with the WCB relative to the Trust's deteriorating financial condition and the 2009 consent agreement which required OHI to issue an assessment before June 1, 2010 if breakeven did not occur for contribution year 2009, the Trustees agreed on May 27, 2010 to issue an assessment totaling $3,600,000 to all former members of the Trust. The $3,600,000 total assessment was deemed by those governing the Trust to be sufficient to eliminate the cumulative deficiency of each individual year (net of any surpluses for individual years). The assessment for

each individual year was to be allocated to members based on each member's contributions as a percentage of total contributions for each year the member participated.

L&M located a June 25, 2010 letter, purportedly sent to all members, explaining the reason for the assessment and how each member's share was to be calculated. That letter was followed by a packet of related information mailed in late July 2010 that contained an individual member worksheet showing the specific member's share of the $3,600,000 assessment, and an explanation of the three different payment options available.

L&M selected a sample of members from an assessment related schedule located that listed the portion of the $3,600,000 assessment allocated to each member, and obtained the assessment calculation worksheet for the members selected in the sample. The results of our testing indicates at least two of the allocated assessment amounts were calculated using individual member contributions higher than the amounts the members were actually billed. Accordingly, L&M believes the $3,600,000 assessment issued in 2010 was not fair and equitable to all members.

Because the assessment has been deemed inequitable, it has been reversed in the computation of OHI's deficit. See report section titled "Member Deficit" and L&M's "Deficit Reconstruction and 2012 Assessment" report for additional information.

Effectiveness of Assessment Issued in 2010

The 2009 audited financial statements indicate a cumulative deficit of $755,000 while the WCB's 2009 Level I review (issued in October 2010) indicated OHI had a regulatory funding deficit of $1,672,000 (using a 100% trust equity ratio criteria). Based on these deficiencies, and assuming all members would have paid the assessment in accordance with the payment options offered, L&M concludes the assessment was an adequate response to cure both the regulatory and financial statement deficit that existed at December 31, 2009. However, the Trust had ceased active operations and was in run-off when the assessment was issued. Accordingly, the projected timing of when the assessment will be collected becomes equally important in order for the Trust to maintain an adequate cash balance to prevent a WCB takeover.

L&M obtained information to indicate management was very proactive in its attempts to collect the assessment which included (1) phone calls to members and/or their accountants, (2) friendly reminder letters sent to members, (3) meetings and subsequent correspondence with three key brokers to better explain the assessment process and how the $3.6 million amount was calculated, (4) a "Notice of Default" sent to 58 members who failed to pay, and (5) initiation of legal action against the same 58 members who failed to pay (the collective balance from these members equaled about $1.1 million of the $3.6 million assessment). In spite of these actions, the Trust failed to maintain an adequate cash balance (as defined by the WCB), and on July 1, 2011 the WCB assumed control of OHI's operations.

The audited financial statements reflect a positive equity position that generally increased each year from $48,000 in 1998 to $308,000 in 2005. The Level I reviews or summary funding status reports prepared by the WCB concluded there were no funding issues for any of these years year except for 2002 which was slightly under-funded (by $1,900 using a 90% trust equity ratio criteria the WCB used for that year). During 2006, the Trust recognized a significant loss of $589,000 that generated a cumulative deficit of $281,000 at December 31, 2006. The Trust continued to recognize additional cumulative losses totaling $474,000 during 2007 – 2009, generating negative equity of $246,000 at

2007, $815,000 at 2008, and $755,000 at 2009. The WCB's Level I reviews concluded OHI was under-funded for each year during 2006 – 2009.

L&M believes certain actions such as (1) an overall reduction in member discounts, (2) termination of poor performing members, (3) reduction in the number and severity of claims through member safety programs, and (4) issuance of a special assessment to members all contribute to improvement in a trust's financial position. Generally, the issuance of a member assessment is viewed by trust's management as a last resort due to the potential difficulty in collecting such. OHI steadily reduced the average member discount from 20.7 % in 2006 to (1.3%) for 2009. In addition, certain poor performing members were terminated. Absent the implementation of an active safety program and the termination of additional poor performing members, L&M questions why the Trustees did not issue an assessment before July 2010 to cure the significant negative equity (cumulative deficit) OHI's audited financial statements presented during 2006 – 2008.

L&M's Conclusions

- L&M determined at least two member allocated assessment amounts were calculated using individual member contribution amounts higher than what they were actually billed. Accordingly, L&M believes the $3,600,000 assessment issued in 2010 was not fair and equitable to all members.
- Based on the $755,000 cumulative financial statement deficit and a $1,672,000 regulatory funding deficit at December 31, 2009, and assuming all members would have paid the assessment in accordance with the payment options offered, L&M concludes the $3,600,000 assessment was an adequate response to cure both the regulatory and financial statement deficit that existed at December 31, 2009.
- Absent the implementation of an active safety program and the termination of additional poor performing members, L&M questions why the Trustees did not issue an assessment before July 2010 to cure the significant negative equity (cumulative deficit) OHI's audited financial statements presented during 2006 – 2008.

16. Member Dividends

Section 317.8(e) of the NYCRR, effective January 31, 2001, does not allow a trust fund to pay dividends to members if the distributions result in total assets (as defined in section 317.2 of the NYCRR) being less than total liabilities. Accordingly, a trust fund determined to be under-funded based on the WCB's calculation of its regulatory funding position (hereafter referred to as "equity ratio") is precluded from issuing dividends.

L&M inspected OHI's annual audited financial statements for 1998 – 2010, the WCB's Level I reviews for 2003 – 2009, and the Trustee meeting minutes we obtained, and did not observe any indication member dividends were issued. The possibility of issuing $12,000 of dividends was discussed at the July 27, 2000 Trustee meeting, during which a decision was made not to issue any at that time. The possibility of issuing dividends was discussed again at the October 30, 2001 Trustee meeting, at which time it was stated the sentiment of the Trustees was to build surpluses and not issue any dividends until a significant surplus had accumulated. L&M did not note any further discussion pertaining to dividends in the minutes obtained for subsequent meetings.

Cody informed L&M that no dividends were ever issued to members. Additionally, the interviews we conducted with the Trustees and member representatives did not provide information to indicate OHI issued member dividends.

L&M's Conclusion
Based on the above, it appears no dividends were issued to members, and accordingly, OHI was in compliance with Section 317.8(e) of the NYCRR.

17. Corrective Action Plans

Introduction

Section 317.9 of the NYCRR, effective January 31, 2001, grants the WCB Chair the authority to require a fund's trustees and/or administrator to prepare a written plan that details the actions that will be taken to restore a fund's financial stability.

2007 Consent Agreement

As a result of the WCB's 2006 Level I review, which classified OHI as "under funded" at December 31, 2006 (see report section "Equity Ratio and Contributions Subsequently Collected"), a consent agreement was executed between the WCB and OHI's Trustees on November 7, 2007. The consent agreement included the following terms and conditions:

- The Trust will achieve a break even position for the 2008 contribution year, meaning revenue for the 2008 contribution year will equal or exceed expenses associated with the 2008 contribution year.
- The Trust will monitor interim results during the year to ensure contribution year 2008 achieves a breakeven status. In the event the assumptions used by OHI to project a 2008 breakeven status do not materialize and a breakeven will not be met for 2008, actions will be taken to reach breakeven status including mid-year increases in 2008 member contributions (through an issuance of supplemental invoices) and/or the reduction of administrative expenses.
- Certain reports, schedules, and analysis shall be provided to the WCB quarterly and/or annually.

The consent agreement stated OHI's failure to comply with the conditions may result in (1) the Trust being closed to new members, (2) manual rather than adjusted contribution rates being billed to members, and (3) the Trust losing its status as a group self-insurer.

While the Trust's 2008 audited financial statements indicated a net loss totaling $570,000 had been incurred, other information submitted to the WCB from the Administrator indicated OHI's 2008 contribution year generated a 441,000 net loss. The primary difference between the two net losses was the 2008 contribution year information submitted did not include claims expense recorded in 2008 related to 1997 – 2007 claims s (loss development on prior years' claims).

Accordingly, it appears OHI was not in compliance with the 2007 consent agreement.

2009 Consent Agreement

On April 24, 2009 a second consent agreement was executed to replace the 2007 agreement. The 2009 consent agreement included the following terms and conditions:

- The Trust will achieve a break even position for the 2009 contribution year.
- The Trust will monitor interim results during the year to ensure contribution year 2009 achieves a breakeven status. In the event the assumptions used by OHI to project a 2009 breakeven status do not materialize and a breakeven will not be met for 2009, actions will be taken to reach breakeven status including mid-year increases in 2009 member contributions (through an issuance of supplemental invoices) and/or the reduction of administrative expenses.
- In the event the actions discussed in the bullet point above are unsuccessful, the Trust will issue assessments to members to the extent necessary to achieve breakeven status for 2009. The assessments must be issued by June 1, 2010 and collected by December 31, 2010.
- Any shortfall for the 2007 and 2008 contribution year identified in 2009 will be billed to and collected from members in 2009 (by an assessment) to achieve breakeven status for each of those years.
- If OHI is under funded, the Trust will provide a plan which details how it will achieve fully funded status by 2014. This plan must be provided to the WCB simultaneous with the Trust's audited financial statement.
- Certain reports, schedules, and analysis shall be provided to the WCB quarterly and/or annually.

On April 29, 2009, the Trust submitted a written plan to eliminate its deficit by 2014 through rate increases, Section 32 settlements, and continued favorable loss development. Information obtained by L&M indicate the Trustees, Administrator, and representatives from the WCB participated in a conference call to discuss, among other things, the Trust's plan to eliminate its deficit by 2014. During the conference call, the WCB expressed doubt the Trust's plan would be successful without the issuance of a member assessment.

OHI voluntarily ceased active operations effective January 1, 2010; therefore, the WCB deemed it unnecessary to evaluate the Trust's compliance with the terms of the 2009 consent agreement since OHI's status made it a moot point.

Actions after OHI Ceased Active Operations

As a result of meetings with the WCB, the Trustees agreed in May 2010 to issue assessments totaling $3,600,000 to all former members of OHI. The assessment invoices mailed to members in late July 2010 required 20% of the amount invoiced to be paid by August 31, 2010, and allowed members to elect how the remaining 80% would be paid (monthly, quarterly, or one lump sum payment).

OHI subsequently sent members who did not pay at least the minimum required balance by August 31, 2010 a reminder letter in September 2010 followed by a notice of default letter in October 2010. In January 2011, the Trust filed a lawsuit against 58 former members in an effort to collect the approximate $1.1 million assessment balance (before late payment fees) due collectively from them.

L&M's Conclusions

- OHI did not meet the required regulatory funding position as of December 31, 2006, which resulted in the execution of the 2007 consent agreement. At December 31, 2008 OHI was not in compliance with the 2007 consent agreement's requirement for the 2008 contribution year to achieve breakeven status.
- A second consent agreement was executed in 2009 which superseded the 2007 agreement. OHI voluntarily ceased active operations effective January 1, 2010; therefore, the WCB deemed it unnecessary to evaluate the Trust's compliance with the terms of the 2009 consent agreement since OHI's status made it a moot point.
- In 2010, the Trust issued $3.6 million of assessments to former members in an effort to raise sufficient cash to continue payment of workers' compensation claims. In early 2011, OHI filed a lawsuit against 58 former members that failed to make the initial installment requested under the assessment.

18. Equity Ratio and Contributions Receivable Subsequently Collected

Equity Ratio

Section 317.6 of the NYCRR, effective January 31, 2001, requires group self-insurers to maintain qualifying trust assets at least equal to all trust liabilities. Thus, group self-insurers must maintain a regulatory funding position (hereafter referred to as "equity ratio") of at least 100%. A group self-insurer that does not meet this funding requirement is deemed under-funded and may be subject to sanctions imposed by the WCB including those involving new member admittance, security deposits, and the revocation of the group's privilege to self-insure. However, the WCB's policy through 2009 was to impose sanctions only on those under-funded groups whose equity ratio fell below 90%. Thus, the WCB considered groups with a 90% or better equity ratio to have no funding issues.

Section 317.2(n) of the NYCRR, effective January 31, 2001, excludes member contributions receivable from assets used to calculate the equity ratio of a trust fund. However, WCB policy considers member contributions receivable collected within 90 days of a trust fund's fiscal year end as an allowable asset provided these collections directly relate to the receivable presented on the year end financial statements.

Discussions by Cody and OHI's Board of Trustees Pertaining to the Equity Ratio

The Administrator and the Board of Trustees were cognizant of the NYCRR equity ratio requirement based on the following discussions and notations in the Board of Trustees meeting minutes obtained by L&M:

- April 25, 2002 - The WCB's equity ratio calculation was discussed; OHI at 123%, Administrator disagrees with way equity calculation is determined because receivable from 2001 payroll audits will not be reflected as an asset while amounts due to members from 2001 payroll audits will be counted as a liability.
- May 28, 2002 – Administrator distributed a letter written to the WCB regarding disagreement with allowable assets for WCB equity ratio excluding receivables from payroll audits conducted in subsequent year while liabilities for equity ratio include refunds payable to members from same set of payroll audits.

- April 24, 2003 – Discussion about regulatory assets for WCB equity ratio calculation excluding $100,000 collateral on bank letter of credit and $53,000 receivable from 2002 payroll audits.
- February 24, 2004 – A recent mailing received from the WCB regarding changes made to its "funding status report" is discussed. It is mentioned OHI's status was correctly described in the mailing as "properly funded and have no restrictions."
- April 27, 2004 - Trust equity ratio was 130%, Administrator explained how OHI's equity ratio is harmed by depositing in December cash received from members for the next year policy period, Administrator explained how OHI's equity ratio would have improved had OHI *elected* not to deposit the cash received in 2003 until 2004, Administrator asked in future if he should hold (not deposit until January) checks received in advance – the Trustees concurred with this plan.
- May 20, 2004 – Trustees question what would be the impact on OHI's equity ratio if a portion of members' capital is returned.
- August 11, 2004 – Administrator informs trustees that returning a portion of members' capital would decrease equity ratio by two percentage points.
- November 10, 2004 – OHI's equity ratio is 120%, probably one of highest in the state.
- April 26, 2005 – OHI's equity ratio is 112%.
- April 27, 2006 – Equity ratio remains at 111%, Administrator reminded Trustees of decision last year to apply cash received in January for the new policy year against the (unbooked) receivable resulting from the payroll audits, which improves the equity ratio; however, the WCB will likely disagree with this accounting treatment.
- April 26, 2007 – The actuary believes a substantial increase in claims liability is required; the equity ratio decreased to 75% as a result.
- May 24, 2007 – Either a $400,000 increase in assets or a decrease in liabilities will increase OHI's equity ratio to 91%.
- November 20, 2007 – Collateral on bank letter of credit is excluded from assets used to calculate equity ratio, thus an increase in collateral would negatively impact the equity ratio.
- February 28, 2008 – Deemed high claims liabilities estimated by actuary are contributing to equity ratio under-funded status.
- April 29, 2008 – Administrator explained the equity ratio will be 81% at December 31, 2007. (Note that the 81% incorrectly assumed the claims reserve balance recorded, which was close to the actuarially calculated low end of the range, would be accepted by the WCB).
- November 25, 2008 – Discussion of 2007 WCB equity ratio calculation and that OHI deemed under-funded, need to collect receivables within 90 days after year end for them to be counted as asset by WCB.
- April 28, 2009 – Equity ratio is estimated to be 77%, discussion of expected regulatory adjustments to assets and liabilities to be made by WCB in calculating equity ratio.
- April 27, 2010 – Equity ratio decreased to 56%, discussion of expected regulatory adjustments to assets and liabilities to be made by WCB in calculating equity ratio.

Contributions Receivable Subsequently Collected and Incorrect Data Provided to WCB

The footnote disclosures in note #6 of the 2002 - 2009 audited financial statements identified the amounts collected on accounts receivable during the first 90 days of the subsequent year. The WCB used that information to calculate OHI's equity ratio in its 2002 Summary of Funding Status and its 2003 - 2009 Level I reviews. The footnote disclosures contained in the 2001 audited financial statements did not disclose the amount of receivables subsequently collected within 90 days, thus

the WCB did not consider any portion of that balance as a qualifying asset in calculating OHI's equity ratio in its 2001 Summary of Funding Status.

At least a majority of the total receivable balances reflected in the 2002 – 2009 audited financial statements related to amounts due OHI from payroll audits performed after year end. Based on what was noted in the April 25, 2002, May 28, 2002, and April 24, 2003 Trustee meeting minutes, the timing of when the payroll audits were conducted did not allow OHI to bill and collect balances within the 90 day period required for them to be included in allowable assets for the WCB's equity ratio calculation.

The minutes to the April 27, 2006 Trustee meeting state "He [David Harvey – the president of Cody] specifically reminded the trustees of our decision last year to rectify the inherent unfairness of the WCB's decision (to count audit related refunds due against us in defining the trust equity ratio but refusing to count as allowable assets the audit invoices due the trust). This is done by crediting early January current year premiums against the audit invoice amounts and then subsequently crediting the May 31st audit invoices received against the current year premiums collected. Specifically for 2005, the trust has $159,000 in audit premium invoices and our financials reflect crediting $137,000 of this out of 1st quarter 2006 premium deposits for purposes of calculating the trust equity ratio. In return, $137,000 of audit invoices collected in May/June will be credited towards the 2006 estimated premium payments of those affected members. David further reminded the trustees that the WCB more than likely will disagree with this accounting treatment…David asked if all the trustees concurred with this accounting approach all voiced agreement."

To summarize the above and other statements contained in the April 27, 2006 Trustee meeting minutes:

- The Administrator and Trustees believed the WCB's 90 day collection rule was unfair.
- OHI's payroll audit invoices were sent to members in May, making it impossible to collect the balances within the 90 day period required to be included as an asset in the WCB's equity ratio calculation.
- For the 2005 financial statements, member collections in early 2006 relating to the 2006 policy year were considered payments against the 2005 payroll audit invoices that were not invoiced to the member's until after March 31st. Accordingly, $137,000 of the $159,000 payroll audit receivable balance at December 31, 2005 was deemed collected within 90 days after year end on the 2005 audited financial statements.
- The Trustees agreed to this accounting treatment for 2005 and again for 2006.
- The Administrator reminded the Trustees the WCB would likely disagree with this accounting treatment. Because the Administrator was "reminding" the Trustees of this suggests the WCB's likely disagreement with this treatment had been discussed in the past.

L&M inspected all of the member invoices generated from the 2005 – 2009 payroll audits and noted that none for the 2005 – 2008 payroll audits were dated before April 11th of the subsequent year, while the earliest the 2009 payroll audit invoices were dated was March 31, 2010. Accordingly, it was not possible for the Trust to collect any of the balances due from these invoices within 90 days of the subsequent year.

Before this improper accounting practice was instituted, there were no cash receipts noted as being collected within 90 days after year end on the payroll audit receivable balance recorded at year end 2003 and 2004. After the improper accounting practice was instituted, cash receipts noted as being collected within 90 days after year end on the payroll audit receivable balance recorded at year end

2005, 2006, 2007, and 2008 were $137,175, $135,068, $238,562, and $235,143, respectively. $4,500 was shown as being collected within 90 days after year end on the 2009 payroll audit receivable balance. This amount is much less than the previous four years because OHI stopped offering coverage after 2009, thus the Trust should not have received any contribution payments in early 2010 that were available to apply against the 2009 payroll audit receivable balance. Because the amount was insignificant, L&M did not attempt to determine the validity of the $4,500 listed as collected on the 2009 balance.

L&M questions the legitimacy of applying cash receipts for another purpose against a 2005 – 2008 receivable not yet billed (and would not be billed for many months). Additionally, the WCB's policy previously noted states collections during the first 90 days of the new year must *directly* relate to the receivable presented on the year-end financial statements. This policy was explained in each of OHI's Level I reviews for 2005 - 2009. Clearly, collections from members for the subsequent policy year do not relate to payroll audit invoices not yet billed to the members.

The Administrator "whited-out" the section cited above from the April 27, 2006 Trustee meeting minutes provided to the WCB. It was noted in the 2004 and 2005 minutes that portions of the 2003 and 2004 Trustee meeting minutes provided to the WCB were redacted with the approval from the Trustees. The redacted or "whited-out" sections were deemed "proprietary and confidential" by the Trustees and/or Administrator. L&M believes the section explaining the inappropriate cash receipts application was removed from the minutes provided to the WCB because the Administrator and/or Trustees knew it was improper.

According to Cody, Fuller & LaFiura maintained OHI's accounting records and also performed the annual financial statement audits. This was subsequently confirmed by Richard Fuller of Fuller & LaFiura. Accordingly, L&M finds it impossible Fuller & LaFiura did not know the improper cash receipt application process was in effect beginning in early 2006.

L&M questions how Fuller & LaFiura, the CPA firm who conducted the 1998 – 2010 financial statement audits, believed it was proper to disclose in the 2005 – 2008 financial statements collections were received on the payroll audit receivable balances while knowing that the collections had been for the subsequent year's policy. L&M believes Fuller & LaFiura knew this disclosed information would be used by the WCB to calculate OHI's equity ratio since footnote #6 from the 2003 – 2009 audited financial statements presented the Trust's internally calculated equity ratio using the WCB's methodology. Additionally, the 2005 – 2009 Level I reviews noted the total of receivables collected within 90 days after year end used by the WCB came from OHI's audited financial statements.

L&M concludes that cash receipts totaling $137,175, $135,068, $238,562, and $235,143 for 2005 – 2008, respectively, should not have been shown as collections on the payroll audit receivable balance reflected in the corresponding audited financial statements.

Other Accounting Practices Deemed Improper by L&M Designed to Improve OHI's Equity Ratio

The April 27, 2004 Trustee meeting minutes stated the Administrator explained to the Trustees how OHI's equity ratio was harmed by depositing in December cash received from members for the next year policy period. The Administrator further explained how OHI's equity ratio would have improved had OHI *elected* not to deposit the cash received in 2003 until 2004. Administrator asked

in the future if he should hold (not deposit until January) checks received in advance. The Trustees concurred with this plan.

In essence, the plan cited above would result in Cody not depositing funds received (payments for the next policy year) in December until January of the next year. Cody believed this action would result in a reduction in the cash balance at year end along with a corresponding reduction in liabilities (deferred revenue), which would yield a higher equity ratio for OHI. (Note that a receivable had not been established by year end for the contribution amounts paid by these checks.) L&M agrees with Cody's belief that when a trust's qualified assets exceed its liabilities, a reduction in qualified assets and liabilities of the same amount results in a higher equity ratio.

However, L&M does not believe checks received but not deposited should not be recorded until they are deposited. Rather, the cash (checks) on hand not yet in the bank should have been recorded as cash at year end.

If checks were held (received but not deposited) and not reflected as cash on hand at year end, then the "unearned contributions" liability balance on the 2004 and later financial statements would be much less than previous years. Additionally, the deposits into OHI's checking account in early January of the following year would also be significantly higher than years when this was not done.

While the minutes of four other Trustee meetings held in 2004 were provided to the WCB, information contained in the WCB's 2004 Level I review of OHI indicate the minutes from the April 27, 2004 Trustee meeting were not sent to the WCB. L&M believes these minutes were not provided to the WCB because the Trustees and/or Administrator recognized what they planned to do (not record next year's cash contributions received at year end) was improper.

The information in the table below was obtained from OHI's 1999 – 2007 audited financial statements and the January 2000 – 2008 checking account statements.

Table 10:

Trust Year-Ended December 31,	Unearned Contribution Balance Reflected in Year End Financial Statement	Amount of Next Year's First Day's Deposit into Checking Account
1999	$ 46,924	$ 6,614
2000	50,111	15,887
2001	145,065	16,541
2002	125,317	18,509
2003	164,407	34,196
2004	118	304,829
2005	-	350,105
2006	-	286,178
2007	339,581	37,190

The unearned contribution (liability) balance effectively went from an average balance of $145,000 in 2001 – 2003 to zero in 2004 – 2006. At the same time, the average amount deposited into the checking account early in January of the subsequent year went from $23,000 for 2002 – 2004 to $313,000 in 2005 – 2007. Then in 2007, a $339,581 unearned contribution was recorded while the

first deposit into the checking account in January 2008 decreased to $37,190. L&M believes this table provides strong evidence the Administrator held (did not deposit until the next year) checks received from members at the end of 2004 – 2006 relating to their next years' workers' compensation policy.

L&M questions how Fuller & LaFiura, the CPA firm who conducted the 1998 – 2010 financial statement audits, believed it was proper to not record un-deposited cash on hand at the end of 2004 - 2006. As noted earlier, Cody advised L&M that Fuller & LaFiura maintained OHI's accounting records and also performed the annual financial statement audits. Accordingly, L&M finds it highly unlikely Fuller & LaFiura was not aware significant cash was being held (not deposited) by Cody at the end of 2004 – 2006. Even if Fuller & LaFiura was not initially aware cash was held, common auditing procedures such as review of Trustee meeting minutes, inspection of subsequent cash receipts, or investigation as to why the unearned contribution balance decreased to zero would have uncovered the nature of the Administrator's tactics (with the consent of the Trustees).

To estimate the amount of cash on hand at year end 2004, 2005, and 2006, L&M estimated the amount of cash actually received in early January 2005, 2006, and 2007 (thus would not have been on hand at December 31, 2004, 2005, and 2006). To estimate these amounts, L&M calculated the ratio of reported cash received at year end (the unearned contribution liability balance on the balance sheet) on the 2001 – 2003 audited financial statements to the total of that liability plus the amount of cash deposited in early January 2002 – 2004. The liability representing cash received at year end 2001 – 2003 averaged 86.6% of the total cash received at year end plus the amount deposited in early January of the following year (deemed to represent contributions actually collected in early January). Using this 86.6%, L&M estimates that $264,000, $303,000, and $248,000 of cash for the next year's contributions were received but not recorded on the audited financial statements for year end 2004, 2005, and 2006.

In addition, while not necessarily an improper accounting practice, OHI recorded the claims reserve liability balance for 2007 at $411,000 below the actuarially calculated central estimate, while the amounts recorded for 2004 – 2006 were very close to the actuarially calculated central estimate. As explained in report section "Establishment of Yearly Reserves on the Balance Sheet," L&M believes part of the reason why the Trust changed its methodology in 2007 (recording a claims reserve balance significantly below the central estimate amount) was a desire to present a profit after the significant loss for 2006. Based on OHI's calculation of its equity ratio included in its 2007 audited financial statements, and a letter from Cody to the WCB disagreeing with the WCB's equity ratio calculation which increased OHI's claims reserves, it is apparent the Administrator and/or Trustees did not expect the WCB to increase OHI's claims liability to calculate its 2007 equity ratio.

L&M believes the issues noted above relative to (1) the improper application of cash receipts against the payroll audit receivable balances, (2) the improper non-recognition of cash received at year end, and (3) recording the 2007 claims reserve balance at $411,000 below the actuarially calculated central estimate demonstrates what the Trustees and/or Administrator were willing to do in order to improve OHI's equity ratio. Since OHI's audited statements were purported to have been prepared under generally accepted accounting principles, L&M believes the WCB would have had no reason to question (1) the accuracy of the disclosures, or (2) the legitimacy of the accounting policies used to record the balances therein.

L&M questioned the Trustees as to how they concluded it was okay to employ improper accounting practices. One Trustee stated the reason(s) had to do with the process of comparing generally

accepted accounting principles (GAAP) to regulatory accounting, and it was "us versus them" (with them referring to the WCB). A second Trustee stated "the actions were taken to show a more accurate picture of the trust." A third Trustee stated he did not believe the actions taken violated any WCB guidelines or broke any laws, while a fourth stated he did not recall the above improper accounting practices.

Equity Ratio Calculated, and Funding Position as Determined by the WCB

A Table identifying subsequent receipts, equity ratios and funding status for each of the 2001 – 2009 years per the WCB's Summary Funding Statuses and Level I reviews follows. Note how the improper cash receipt application policy adopted beginning in 2006 significantly changed the amount of receivables shown as collected within 90 days after year end.

Table 11:

Trust Year-Ended December 31,	Total Receivables Reflected in Year End Financial Statement	Receivables Collected Within 90 Days Reported as	Equity Ratio as Calculated by the WCB	Funding Position per WCB Based on Section 317.6 of the NYCRR
2001	$ 47,433	$ -	122.9%	No funding Issue
2002	69,458	16,287	89.6%	Under Funded
2003	13,561	-	120.5%	No funding Issue
2004	122,324	-	111.5%	No funding Issue
2005	163,518	137,175	111.4%	No funding Issue
2006	160,656	135,068	78.8%	Under Funded
2007	299,665	238,562	74.5%	Under Funded
2008	279,709	235,143	71.3%	Under Funded
2009	294,235	97,047	47.7%	Under Funded

Conclusions Pertaining to 2001 - 2003

The WCB allowed $16,287 of the 2002 contribution receivable in its calculation of OHI's equity ratio since that amount was disclosed in the 2002 audited financial statements as collected during the first 90 days of the subsequent year. There was no related disclosure pertaining to receivables collected after year end in the 2001 audited financial statements, thus the WCB did not consider any of the $47,433 as an allowable asset. The 2003 disclosure did not list any of the $13,561 receivable balance as being collected within 90 days after year end, thus the WCB did not consider any of the $13,561 as an allowable asset.

As noted in report section "Establishment of Yearly Reserves on the Balance Sheet," L&M believes a liability for unallocated loss adjustment expense (ULAE) was not recognized in OHI's 2001 - 2003 audited financial statements used by the WCB to calculate The Trust's equity ratio. If the estimated ULAE liability of $9,000 for 2001, $10,000 for 2002, and $12,000 for 2003 as calculated by L&M had been recognized in the corresponding audited financial statements, OHI's equity ratio for each year would have decreased between two to three percentage points, still resulting in a "no funding issue" designation for 2001 and 2003, and "under funded" for 2002.

Conclusions Pertaining to 2004

As noted above, L&M estimated approximately $264,000 of un-deposited cash on hand at year end 2004 was not recorded. Accordingly, both cash and liabilities (unearned contributions) should have been increased by $264,000 on the 2004 year end financial statements.

As noted in report section "Establishment of Yearly Reserves on the Balance Sheet," L&M believes a liability for ULAE was not recognized in OHI's 2004 audited financial statements used by the WCB to calculate the Trust's equity ratio. L&M estimated this unrecorded liability to have been $23,000.

After correcting for both of these items, L&M calculated OHI's equity ratio would have decreased to 105.6%, still resulting in a "no funding issue" designation.

Conclusions Pertaining to 2005

As noted above, L&M estimated approximately $303,000 of un-deposited cash on hand at year end 2005 was not recorded. Accordingly, both cash and liabilities (unearned contributions) should have been increased by $303,000 on the 2005 year end financial statements.

As also noted above, L&M concluded the $137,000 disclosed as cash collected within 90 days after year end on the 2005 payroll audit receivable balance was actually cash received for the 2006 policy period, and thus, no cash was actually received within 90 days after year end on the 2005 payroll audit receivable balance.

As noted in report section "Establishment of Yearly Reserves on the Balance Sheet," L&M believes a liability for ULAE was not recognized in OHI's 2005 audited financial statements used by the WCB to calculate the Trust's equity ratio. L&M estimated this unrecorded liability to have been $38,000.

After correcting for the above three items, L&M calculated OHI's equity ratio would have decreased to 96.0%, still resulting in a "no funding issue" designation.

Conclusions Pertaining to 2006

As noted above, L&M estimated approximately $248,000 of un-deposited cash on hand at year end 2006 was not recorded. Accordingly, both cash and liabilities (unearned contributions) should have been increased by $248,000 on the 2006 year end financial statements.

As also noted above, L&M concluded the $135,000 disclosed as cash collected within 90 days after year end on the 2006 payroll audit receivable balance was actually cash received for the 2007 policy period, and thus, no cash was actually received within 90 days after year end on the 2006 payroll audit receivable balance.

As noted in report section "Establishment of Yearly Reserves on the Balance Sheet," L&M believes a liability for ULAE was not recognized in OHI's 2006 audited financial statements used by the WCB to calculate the Trust's equity ratio. L&M estimated this unrecorded liability to have been $82,000.

After correcting for the above three items, L&M calculated OHI's equity ratio would have decreased to 72.8%, still resulting in an "under funded" designation.

Conclusions Pertaining to 2007

As noted above, L&M concluded the $239,000 disclosed as cash collected within 90 days after year end on the 2007 payroll audit receivable balance was actually cash received for the 2008 policy period, and thus, no cash was actually received within 90 days after year end on the 2007 payroll audit receivable balance.

As noted in report section "Establishment of Yearly Reserves on the Balance Sheet," L&M believes a liability for ULAE was not recognized in OHI's 2007 audited financial statements used by the WCB to calculate the Trust's equity ratio. L&M estimated this unrecorded liability to have been $116,000.

After correcting for both of these items, L&M calculated OHI's equity ratio would have decreased to 64.9%, still resulting in an " under funded" designation.

Conclusions Pertaining to 2008

As noted above, L&M concluded the $235,000 disclosed as cash collected within 90 days after year end on the 2008 payroll audit receivable balance was actually cash received for the 2009 policy period, and thus, no cash was actually received within 90 days after year end on the 2008 payroll audit receivable balance.

As noted in report section "Establishment of Yearly Reserves on the Balance Sheet," L&M believes a liability for ULAE was not recognized in OHI's 2008 audited financial statements used by the WCB to calculate the Trust's equity ratio. L&M estimated this unrecorded liability to have been $138,000.

After correcting for both of these items, L&M calculated OHI's equity ratio would have decreased to 61.7%, still resulting in an "under funded" designation.

Conclusions Pertaining to 2009

As noted in report section "Establishment of Yearly Reserves on the Balance Sheet," L&M believes a liability for ULAE was not recognized in OHI's 2009 audited financial statements used by the WCB to calculate the Trust's equity ratio. L&M estimated this unrecorded liability to have been $116,000. If the $116,000 estimated ULAE liability had been recognized in the 2009 audited financial statements, OHI's equity ratio would have decreased to 46.0%, still resulting in an "under funded" designation.

L&M's Conclusions

- The minutes of the Board of Trustee meetings noted above demonstrate Cody and the Trustees were concerned and focused on meeting the WCB's required 90% equity ratio.
- It appears Cody and the Board of Trustees engaged in questionable and improper accounting practices to improve OHI's equity ratios. The questionable and improper accounting practices consisted of not recognizing cash received at year end 2004 – 2006 and

applying cash receipts for another purpose (member contribution payments for a specific policy period) against a 2005 – 2008 payroll audit receivable balance yet to be billed.

- L&M questions how Cody, the Trustees, and the financial statement auditor believed it was proper to not recognize cash received at year end and consider member contribution payments for a specific (subsequent year's) policy period as collections on unbilled payroll audit invoices. These improper accounting policies resulted in the equity ratios calculated by the WCB for 2004 - 2008 being overstated.
- L&M believes an estimated liability for ULAE was not recognized in OHI's 2001 – 2009 audited financial statements. If the estimated ULAE liability had been properly reflected in the 2001 – 2009 audited financial statements, OHI's equity ratio for each of those years would have decreased.

19. Establishment of Yearly Reserves on the Balance Sheet

Amount Recorded on Balance Sheet Compared to Actuarial Estimate

L&M compared the balance of the unpaid losses and loss adjustment expenses (hereafter referred to as "claims reserves" or "claims liability") reported in the annual audited financial statements for 2004 – 2009 with the claims reserves calculated in the annual actuary reports. L&M did not include 2010 in the following analysis since the Trust ceased providing ongoing workers' compensation coverage the first day of that year.

OHI used the actuary firm Milliman, Inc. (Milliman) to perform the actuarial calculation of the claims reserves for the 2004 - 2009 years. The Trust's Service Agreement specified Cody was responsible to "retain at trust expense independent actuarial…services."

The following table compares the actuarially calculated claims reserves to the balance recorded by OHI as reflected in the audited financial statements. Note that L&M calculated the 2004 discounted range and the low and high discounted amounts for 2005 based on undiscounted information provided in the actuary reports, and the 2006 report presented a central estimate without any estimates of a low and high range.

Table 12:
(000 omitted)

	2004	2005	2006	2007	2008	2009
Actuary	Milliman	Milliman	Milliman	Milliman	Milliman	Milliman
Actuarial Range :						
Low	$ 386	$ 644	N/A	$ 2,195	$ 2,042	$ 1,628
Central	$ 457	$ 767	$ 1,631	$ 2,724	$ 2,752	$ 2,450
High	$ 581	$ 967	N/A	$ 3,390	$ 3,666	$ 3,466
Discount rate used	4%	4%	4%	4%	4%	4%
Claims Reserves on Balance Sheet	$ 463	$ 757	$ 1,643	$ 2,313	$ 2,768	$ 2,328

Table 12 indicates the following with respect to the claims liability balances recorded compared to that calculated by the actuary:

- 2004 – 2006 - a liability close to the central estimate was recorded;
- 2007 – a liability $411,000 below the central estimate was recorded;
- 2008 – a liability slightly above the central estimate was recorded;
- 2009 – a liability equal to 95% of the central estimate was recorded.

Apart from 2007, it appears OHI generally used a consistent approach to record the claims reserves since an amount close to the actuarially calculated central estimate was recorded. For 2007, an amount close to the low end of the actuarially calculated range was recorded.

The 2006 audited financial statements disclosed a $589,000 loss for that year. The 2007 audited financial statements showed a $36,000 profit after recording the amount for claims reserves close to the low end of the actuarially calculated range. According to L&M's calculations, the 2007 financial statements would have shown an after tax loss approximating $218,000 for the 2007 year if the claims reserves had been recorded equal to the central estimate. L&M believes part of the reason why the Trust changed its "loss pick" methodology for 2007 was a desire to present a profit after the significant loss for 2006. L&M finds it curious the 2007 audited financial statements failed to disclose this deemed significant change in accounting estimate, which is not in accordance with generally accepted accounting principles.

Additionally, L&M determined the 2008 - 2009 audited financial statements presented the claims liability on the balance sheet net of the insurance recoverable (asset) balance. This may have been true for some prior years as well. Accounting principles require the receivable from excess insurance asset and claims liability be presented separately rather that netted against each other. This improper netting had no effect on the profit or loss recorded for those years.

Trustee Involvement in Determining Claims Reserve Balance to Record

The actuary reports for years prior to 2007 were titled "Pricing Analysis For The OHI Workers' Compensation Trust" and were generated to determine the probability (confidence level) the Trust's proposed contribution rates would be adequate (would not result in an underwriting loss). The 2004 – 2006 pricing analysis reports also contained information relative to the actuary's estimate of claims reserves at each year end.

L&M noted numerous instances in the Trustee meeting minutes obtained when Milliman's pricing analysis reports relative to OHI's contribution rates and loss ratio were discussed. As noted above, Milliman's 2004 – 2006 pricing analysis reports also contained information relative to the actuary's estimate of claims reserves at each year end. Milliman generated the traditional "Unpaid loss and Allocated Loss Adjustment Expense" report for the 2007 – 2009 years. The minutes L&M obtained indicate the Trustees were provided with the actuary reports prior to the April meeting when the audited financial statements and actuary reports would be discussed.

Three Trustees who served from ten to twelve years each informed L&M they had discussed the level at which to record the year end claims reserves, and they definitely had input on what balance was ultimately recorded. A fourth Trustee who served from 1998 – 2001 stated the Trustees had no input on what level to record the year end claims reserves at; rather, Cody did it and the Trustees "took what Harvey would say." A fifth Trustee who served from 2000 – 2011 stated he did not

recall the Trustees being given the option to decide the claims reserve balance to record. A sixth Trustee interviewed did not recall how the year end claims liability amount was selected.

Cody explained to L&M that an annual "group decision" took place amongst the Trustees and Cody to determine which amount within the actuarial range to record, and the minutes to the meetings should reflect this process. However, L&M only noted the four instances detailed below in the Trustee meeting minutes obtained that compared the claims reserves on the year end audited financial statements to the estimated amounts in the actuary reports.

- April 26, 2007 – The Administrator (Cody) reviewed the 2006 audited financial statements and noted these financial statements used "the more conservative 'best' actuarial estimates as opposed to using the lowest range."
- April 29, 2008 –The Administrator noted the Trustees were previously sent the 2007 actuary report which showed the low, central estimate, and high reserves, and "the low estimates were used in our audited financials." Later in the minutes, the Administrator noted once again "we are now using Milliman's low estimate reserves."
- April 28, 2009 – The Administrator pointed out that the actuary's low estimate was used for 2007, while the central estimate was used for 2008. He also stated "the auditor did not reduce the 'central' estimate by the 5% allowed by the WCB, instead opting to apply this reduction in the trust equity ratio calculations found in notes #6 and #7."
- September 2, 2009 (conference call with WCB) – The Administrator stated the major reason for the $600,000 increase in claims reserves was "our decision to use Milliman's best estimate in 08 versus low estimate used in 07 financials."

L&M found no evidence in any of the Trustee meeting minutes obtained to indicate discussions occurred about what number to use within the actuarially calculated range to record at any year-end. Accordingly, the minutes appear to confirm what two Trustees told L&M, that is, the Trustees did not have any input on the claims reserves balance recorded for any year-end. This conflicts with what three other Trustees and Cody told L&M, namely, the Trustees discussed and had input on the claims reserve balance to record at year-end. If the Trustees did not have any input on what claims reserves balance was recorded at each year-end, one can conclude they agreed with the decision made based on the fact the Trustees approved the audited financial statements each year at the April meeting.

L&M obtained a letter dated November 2, 2010 from Cody to the WCB that addressed the WCB's 2009 Level I review. The letter stated the following with respect to claims reserves: "Rick Fuller's process was to take Milliman's central discounted claims estimated of $2,450,406 and reduce that by 5%. That results in the figure of $2,327,885 as reflected in the audited financial statements." Rick Fuller of the firm Fuller & LaFiura was the CPA who was both OHI's bookkeeper and financial statement auditor. L&M believes the above statements appearing in the letter can either mean (1) as OHI's bookkeeper, Rick Fuller recorded the claims reserves at 5% below the central estimate per instructions from Cody and/or the Trustees, or (2) Rick Fuller decided to record the claims reserves at 5% below the central estimate.

The notation in the April 28, 2009 meeting minutes that indicates the auditor (CPA) made the decision not to record the claims reserve at 5% below the central estimate, coupled with the possibility he also made the decision on the balance to record for 2009, is problematic if true. A CPA performing an audit of an entity's financial statements should not decide what balances to record, rather management (those charged with governance) determine the balances recorded, which are then audited by the CPA. Mr. Fuller did not respond to L&M's inquiry about the above

notation in the minutes. (See report section "Financial Statement Auditor" for additional comments from L&M on Fuller & LaFiura).

Liability for ULAE

L&M reviewed the Service Agreement in place between Cody and OHI during 1998 – 2010, and failed to note language to indicate the agreement was on a life-of-claim (cradle-to-grave) basis; therefore, the Service Agreement appears to have been on a life-of-contract basis. Cody confirmed to L&M its contract with OHI was on a life of contract basis. Accordingly, a liability for unallocated loss adjustment expenses (ULAE) should have been reflected in the annual financial statements.

L&M failed to note financial statement disclosures in any of the 1998 – 2010 audited financial statements to indicate a liability for ULAE was reflected in the balance sheets. Mr. Fuller's response to L&M's inquiry pertaining to our belief no ULAE liability was recorded in any year during 1998 – 2010 indicates Mr. Fuller does not know what ULAE is. The requirement to record a liability for ULAE is specific to the insurance industry. As noted in report section "Financial Statement Auditor," L&M questions whether Fuller & LaFiura possessed the necessary industry expertise to perform OHI's financial statement audits. Based on the above, L&M believes a liability for ULAE was not reflected in OHI's 1998 – 2010 audited financial statements. Thus, L&M believes the claims liability balance reflected in the 1998 – 2010 financial statements was understated based upon a deemed omission of a liability for ULAE. Since the WCB's audited financial statements were purported to have been prepared under generally accepted accounting principles, L&M believes the WCB would have had no knowledge of the deemed omission of a liability for ULAE.

L&M could not calculate the potential claims liability understatement for each applicable year. However, some actuaries provide in their reports an estimate of ULAE equal to 5% of claims reserves (net of recoveries). Using 5% of the recorded claims liability to estimate the ULAE liability, L&M's calculations suggest the unrecorded ULAE was not significant until year-end 2006 when it would have been $82,000. For subsequent year-ends L&M estimated (using the same methodology) it to be $116,000 at 2007, $138,000 at 2008, $116,000 at 2009, and $167,000 at 2010.

If by some chance a liability for ULAE was reflected in the claims reserves balance on the audited financial statements, then the portion of the liability relating to the estimated amount to pay for claims incurred would be likewise reduced by the same amount, thereby creating either an initial deficiency, or a larger deficiency than already existed between the amounts recorded compared to the actuary's central estimate.

Milliman, Inc.

L&M posed a number of questions to Derek Jones, whom L&M noted as being a FCAS (Fellow of the Casualty Actuarial Society) and principal at Milliman. Mr. Jones was listed as one of the actuaries who prepared OHI's 2005 – 2010 actuary reports. Mr. Jones informed L&M (1) Milliman was independent with respect to Cody and OHI's Trustees, (2) no visible problems existed with the data received from Cody or CSI (the claims TPA) that led it to question the data's validity, (3) both Cody and CSI fully cooperated with its inquiries and information requests, (4) neither Cody or the Trustees ever pressured Milliman to modify its assumptions or methods so as to arrive at a lower claims reserves estimate, (5) no one from his company ever presented draft or final reports to the Trustees, and (6) of the 2006 – 2010 actuary reports, only the 2009 report included a change to the estimated claims reserves from the draft to the final. Mr. Jones informed us the 2009 estimated

claims reserve was decreased $92,000 from what was presented in the draft due to a modification made to the indemnity loss development pattern based on a legislative reform.

The Trustees and Administrator hired a second actuary (Aon Global) to calculate an estimate of the Trust's claims liability as of December 31, 2007 after Milliman had completed and issued its 2007 report. The information contained in the Trustee meeting minutes indicates that although the Trustees recognized Milliman had impressive credentials, a possibility existed its claim reserve estimates were too high. The Aon Global report identified a discounted central estimate very close (6% higher) to what was estimated by Milliman. The results of the second actuarial report were discussed at the August 21, 2008 Trustee meeting, which minutes state "the conclusion is that as actuaries go, Milliman's projections appear to be in the ballpark."

L&M hired the actuarial firm Casualty Actuarial Consultants, Inc. (CACI) to review OHI's 2004 – 2009 actuary reports prepared by Milliman, and provide an opinion relative to the methods used by Milliman to estimate the ultimate incurred losses and related claims reserve liability.

Some of the comments contained in CACI's report, by year, are:

2004

- "In all years, selected ultimate losses are less than indicated by the sole method used…Had the results of the B-F method been selected for each year, the selected estimated ultimate incurred losses would have been 24.8% greater ($1,637,375 vs. $1,311,675)."
- "Actuaries almost always employ at least two methods to estimate ultimate losses. No reason is offered for the lack of additional methods."
- "Overall, the report followed generally accepted actuarial procedures and the results were reasonable, with the exception of the use of only one method to estimate ultimate incurred losses."

2005

- "In all years, except 2004, selected estimated ultimate losses are less than indicated by any of the methods utilized. In 2004, selected ultimate losses equal the lowest of the three estimates…Had the lowest results of the three methods been selected for each year, the selected estimated ultimate incurred losses would have been 15.1% greater ($2,442,282 vs. $2,121,414)."
- "Selecting ultimate losses less than three different methods is unusual and warrants additional explanation."
- "The results were pushing the bounds of reasonableness given the apparent low selections."

2006

- "In the report, Milliman indicates that they learned from the OHI TPA that they had only been establishing case reserves reflecting 3-5 years of future payments rather than the expected ultimate exposure to loss."
- "The estimated ultimate losses in this report for 2005 and prior are $713,129, or 33.6%, greater than those in the prior report…Had the average of the three methods been selected at 12/31/05, the increase at 12/31/06 would have only been $281,255."
- "CACI questions why additional methods beyond the paid B-F method for 2005-2006 only were not employed, especially considering the apparent faulty data Milliman had received in the past."

- "Relying on one method for two of the years and no methods for the remaining years is not appropriate and not generally acceptable."

2007

- "The selections for 2004-2007 are all within the range of results of the three methods. This is definitely a more standard procedure. For 2003 and prior the selections are all less than the results of all the methods."
- "The change back to incorporating three methods into the analysis is a welcome one. However, given the uncertainty surrounding the incurred losses in the prior report, it would have been appropriate to include at least one method that relied on paid losses."
- "CACI would have liked to have seen at least one paid method incorporated into the report."

2008

- "Three methods are again utilized in the report, however, only one method is utilized for 2007-2008. Due to their immaturity, these years are subject to the most variation and could benefit most from additional methods. Given the past case reserving uncertainty, use of a paid method would have been appropriate."
- "CACI would have like to have seen at least one paid method incorporated into the report. Further, relying on a single method for the most recent two years is generally not appropriate."

2009

- "Three methods are again utilized in the report, however, only one method is utilized for 2007-2009. Due to their immaturity, these years are subject to the most variation and could benefit most from additional methods. Given the past case reserving uncertainty, use of a paid method would have been appropriate."
- "CACI would have like to have seen at least one paid method incorporated into the report. Further, relying on a single method for the most recent three years is generally not appropriate."

CACI summarized its findings by stating "The estimates contained in the six reviewed reports generally were within a range CACI would consider reasonable given the information Milliman had at the time of preparation. However, the reports as of 12/31/06 and prior definitely fell in the lower end of what would have been considered reasonable. Some of the selections in the earlier reports were significantly less than what was indicated by the methods utilized in the report…CACI does question some of the selections made throughout the various reports as these selections tended to cause the estimated loss reserves in the earlier reports to be undervalued…Overall, Milliman followed generally accepted actuarial procedures in all reports. The report as of 12/31/06, when the TPA reserving issues were first discovered, strayed furthest from the standard actuarial practices by relying on only one method for 2005-2006 and no methods for 2004 and prior. The subsequent large increase at 12/31/07 reinforces to the need for additional methods. Further, as mentioned above, reports as of 12/31/06 and prior were at the low end of what CACI would consider reasonable, as illustrated by three straight years of increases of at least 21.8%. It does appear the lack of understanding of the TPA reserving practices, which were non-standard, played a role in some of the early changes."

Adequacy of Reserves Established by Cody's Claims TPA

As previously noted, Cody subcontracted the claims administration services during the entire period it served as the administrator. CSI was the third party administrator used by Cody from July 1, 2002 through June 30, 2011. Cody was replaced by NCAComp on July 1, 2011 at the WCB's directive. NCAComp subsequently received information from Cody relative to the claims, and adjusted the estimated incurred losses for individual claims based on its professional judgment.

L&M obtained a loss run report from NCAComp that detailed the total incurred losses (paid as of that date and estimated amounts to be paid in the future) estimated by CSI as of June 30, 2011. This loss run reflected all accidents occurring on and before December 31, 2009 (the date OHI ceased active operations). L&M compared this to a similar loss run report relating to the same incurred losses estimated by NCAComp as of September 9, 2011, and noted the total unpaid estimated incurred losses on claims open as of June 30, 2011 increased by $4,721,000 (from CSI's estimate of $1,236,000 to NCAComp's estimate of $5,957,000), which is almost *five times higher* than estimated by CSI at June 30, 2011. Based on NCAComp's estimate, it appears CSI significantly under reserved for future claim liabilities.

As noted in report section "Claims Handling Procedures/Practices," L&M's third-party claims review specialist believed the case reserves as estimated by CSI as of June 30, 2011 on seven of the thirteen open claims reviewed were significantly understated. This finding further supports the conclusion reached in the paragraph above, namely CSI under reserved for future claim liabilities.

L&M's Conclusions

- L&M found no evidence in any of the Trustee meeting minutes obtained to indicate discussions occurred about what number to use within the actuarially calculated range to record at any year-end. Thus, the minutes appear to confirm what two Trustees told L&M, that is, the Trustees did not have input on the claims reserves balance recorded for any year-end. This conflicts with what three other Trustees and Cody told L&M, namely, the Trustees discussed and had input on the claims reserve balance to record at year-end. Accordingly, L&M could not determine what role, if any, the Trustees had in determining the claims reserves balance to record at each year-end.
- OHI recorded the claims reserve liability during 2004 – 2006 and 2008 - 2009 close to the actuarially calculated central estimate. For 2007, OHI recorded an amount close to the low end of the actuarially calculated range. According to L&M's calculations, the 2007 financial statements would have shown a $218,000 after tax loss for the 2007 year (rather than the $36,000 profit shown) if the claims reserves had been recorded equal to the central estimate. L&M believes at least part of the reason why the Trust changed its "loss pick" methodology for 2007 was a desire by Cody and/or the Trustees to present a profit after the significant $589,000 loss for 2006.
- L&M believes a liability for ULAE was not reflected in OHI's 1998 – 2010 financial statements. Based on our review of the Administration Agreement, a liability for ULAE existed for year-ends 1998 – 2010. Using 5% of the recorded claims liability to estimate the ULAE liability (consistent with how some actuaries calculate the ULAE liability), the unrecorded ULAE was not significant until 2006, when it would have been $82,000. For subsequent year-ends, L&M estimated (using the same methodology) the liability to be $116,000 at 2007, $138,000 at 2008, $116,000 at 2009, and $167,000 at 2010.
- An independent actuary firm hired by L&M (CACI) to review the actuary reports of Milliman (the actuary used by OHI) concluded the estimates contained within Milliman's

2004 – 2009 reports were generally within a reasonable range; however, the 2004 – 2006 reports fell in the lower end of what would have been considered reasonable. CACI also questioned some of the selections made throughout the reports since those selections tended to cause the estimated loss reserves in the earlier years to be undervalued.

- NCAComp's estimate of case basis reserves is $5,957,000, which is $4,721,000 or almost five times higher than CSI's comparable amount of $1,236,000 at June 30, 2011. Accordingly, it appears CSI's methods to estimate incurred losses yielded claim reserves that were significantly understated. A similar conclusion was reached by the third-party claims review company we hired to perform an examination of the claims handling process, since seven of the thirteen open claims in its sample were, in its opinion, significantly understated.

20. Member Deficit

As previously noted in the "Executive Summary" section of this report, each of OHI's members is jointly and severally liable for the deficits incurred by the Trust during the years it participated in the Trust. Joint and several liability is a legal obligation whereby an entity may be liable for the payment of an entire judgment even if it is only partially responsible for the losses and obligations. Payment of the entire judgment can be demanded from any or all of the parties held liable under this provision. The provision was expressly stated in the Trust and By-laws document and the Participation Agreement signed by all members of OHI.

Under a separate engagement with the WCB, L&M performed certain procedures to reconstruct and allocate the deficits incurred by OHI over the period of its active existence. The objective of that engagement was to assist the WCB compute each member's proportionate share of the cumulative deficit, which the WCB would subsequently use to support an additional assessment to the members.

As explained in OHI's "Deficit Reconstruction and 2012 Assessment" report, certain operating expenses incurred by OHI subsequent to August 31, 2011 were included in the calculation of the gross modified members' deficit in that report. These expenses related to the preparation of the August 31, 2011 financial statement audit and related actuary report, the forensic accounting services relative to the deficit reconstruction and allocation, an operational and performance review, and a claims review. The inclusion of these expenses increased the deficit by approximately $295,000 over the previously reported audited cumulative deficit. Finally, the $1,939,125 deferred income tax asset recognized relative to the future estimated income tax benefit of OHI's net operating loss carryforward was eliminated at the direction of the WCB since it does not result in cash to satisfy the Trust's obligations; rather, it will result in a reduction of future years' income taxes that would otherwise be due.

Additionally, as previously detailed in the report section titled "Assessments to Members," the $3,600,000 assessment issued to OHI's members in 2010 was deemed not fair and equitable to all members. Accordingly, the related assessment revenue has been eliminated in the calculation of OHI's gross modified members' deficit. All payments made by members on the $3,600,000 billed assessment were reflected as a reduction of the balance due from each member on the WCB's invoice to the members dated July 2, 2012.

Table 13 below details the reconstructed gross modified members' deficit of $8,273,275 by Trust year end. Please refer to L&M's "Deficit Reconstruction and 2012 Assessment" report dated May

24, 2012 for additional information regarding the methodology and assumptions used to compute the deficits identified in the table.

Table 13:

Year Ended December 31,	Gross Modified Members' Surplus (Deficit)
1998	$ 10,082
1999	13,119
2000	(227,086)
2001	(419,882)
2002	(895)
2003	92,279
2004	(862,872)
2005	(1,766,695)
2006	(430,092)
2007	(876,111)
2008	(1,291,815)
2009	(2,421,028)
Net modified deficit	(8,180,996)
Add back surplus year with open claims (2003)	(92,279)
Gross modified deficit	$ (8,273,275)

21. Claims Handling Procedures/Practices

The handling and processing of claims is an integral part of the administration process. As discussed in report section "Administration Fees," OHI's Service Agreement with Cody (in effect from October 21, 1997 through June 30, 2011) indicated Cody was responsible for all aspects of the claims handling process.

L&M engaged KBM Management, Inc. (KBM), a licensed employment benefit and risk management company that provides claim management quality assurance audits, to review a sample of OHI's claims files to determine the effectiveness of the overall claims handling process, including but not limited to whether: (1) claims were handled pursuant to Cody's established written policies and industry standards, (2) claims and related expenses paid were supported by written documentation, (3) benefits were paid timely and as prescribed by law, (4) Cody applied for reimbursement from the Second Injury Fund, and (5) the claims reserving procedures were reasonable based on known facts and circumstances.

KBM performed various procedures on 26 claims (13 open and 13 closed) totaling approximately $1,396,000 of total incurred claims expenses (indemnity, medical and other expenses), which represents 19% of OHI's pre ULAE and IBNR reallocated cumulative claims expense. KBM issued a quality assurance claim audit report relative to the procedures performed and conclusions reached. A copy of its report is included as Appendix 7.

Some of the positive comments, specific deficiencies noted and conclusions reached by KBM as a result of its audit are:

- In general, the claim files reviewed were organized and complete.

- Invoices to support expenditures could not be located in numerous instances. At best this could be the result of an incomplete transfer of data from Cody to NCAComp, or at worst suggest fraudulent payments.
- In general, Independent Medical Examinations (IME's) were timely and used appropriately; however, in one instance an IME indicated the claimant exhibited no disability or permanency as a result of his injury, but it appears CSI ignored those findings and instead offered the claimant a substantial settlement of $20,000.
- KBM noted the reserves established by CSI on seven of the thirteen open claims examined were significantly understated. L&M notes in report section "Establishment of Yearly Reserves on the Balance Sheet" that NCAComp increased OHI's total estimated case basis reserves on all OHI's open claims by $4,721,000; an increase of 382% over the amount previously set by CSI.
- One instance was noted where CSI timely filed for reimbursement under the Special Disability Fund (Section 15-8) of the New York State Workers' Compensation Law, but the claim was denied because CSI failed to obtain the required M&S statement (usually from the physician performing an IME) by the due date. KBM also noted seven instances where CSI filed an initial C-250 form for reimbursement under Section 15-8, but failed to file the prior medical records timely. Additionally, KBM noted three instances where prior injuries were noted in the medical reports, but C-250 forms for reimbursement under Section 15-8 were never filed. The potential cost to OHI resulting from these Section 15-8 issues could not be estimated by KBM at this time.
- KBM's sample included unsupported amounts paid to CSI totaling approximately $500. The checks failed to indicate what these payments represented. OHI's Service Agreement indicates that Cody is responsible for all claims handling tasks. Accordingly, it appears OHI should not have been charged and/or paid these fees separately since Cody was required to perform all claims handling services under the terms of the Service Agreement. As a result, KBM believes (as does L&M) that payments to CSI totaling $500 were improper as they amounted to OHI paying twice for the same service.
- In KBM's opinion, OHI had a very strong case under Section 44 of the New York State Workers' Compensation Law for one claim. This section of New York State Workers' Compensation Law gives an employer the right to apportion the loss to prior employers of the claimant in the same type of employment that caused the injury. CSI advised OHI that it would structure a proposed settlement to reserve their rights to pursue a reimbursement under Section 44; however, this never occurred. KBM estimated the cost to OHI from CSI's error was approximately $147,000.
- Two instances were noted in which CSI accepted claims where there was no medical evidence of causal relationship. The first claim did not contain any doctor's reports, while the second contained a medical report, but failed to indicate the claimant's ailment was work-related. The total amounts paid on these two claims were approximately $2,000 and $11,000, respectively.
- One instance was noted in which the claimant suffered an additional injury, but CSI failed to object to the medical bills or ongoing lost time. In KBM's opinion, this would have been a perfect opportunity to mitigate the exposure on this claim.
- KBM noted one instance in which a claimant received what appeared to be a large third party settlement; however, CSI never obtained the closing papers from the settlement to determine how much the claimant received. This information is important to have should the claimant ever attempt to reopen the file.
- Numerous (128) medical bills were paid subsequent to the 45 day window, a violation of New York State Workers' Compensation Law.

- Numerous (59) medical bills were not stamped with the date received. As a result, KBM could not determine if the bills had been paid subsequent to the 45 day window allowable by New York State Workers' Compensation Law.
- KBM noted 22 overpayments/duplicate payments to medical providers, seven indemnity overpayments to claimants, and three expense overpayments. According to KBM, none of these cases were remedied, which cost OHI approximately $22,000.

Finally, KBM concluded that the accuracy of CSI's claims processing system was below the industry average, which requires 95% procedural accuracy. The deficiencies found suggest a reduction in OHI's claims expense would have occurred had the claims been properly administered.

22. Security Deposits

Section 317.5 of the NYCRR (Section 315.3 of the NYCRR before January 31, 2001) requires group self-insurers to post a security deposit with the WCB's Chair in the form of securities, cash, a surety bond, or an irrevocable letter of credit in an amount specified by the WCB.

Cash or securities sent to the WCB as a security deposit, or assets securing (collateralizing) a surety bond or letter of credit, are excluded as an asset in the WCB's calculation of a fund's regulatory funding position (hereafter referred to as "equity ratio").

Based on data obtained from the WCB, information disclosed in OHI's 1998 - 2009 annual audited financial statements, and the Level I reviews performed by the WCB, OHI's security deposit requirement was met as follows:

- 1/1/98 through 12/9/02 – a $375,000 surety bond from Utica Mutual Insurance Company was issued to the WCB. A $94,000 letter of credit issued by Glens Falls National Bank collateralized the surety bond. The bank letter of credit was secured by $47,000 of OHI's investments.
- 12/10/02 through 2/14/05 – a $624,000 surety bond from Midwest Employers Casualty Company was issued to the WCB. A $156,000 letter of credit issued by Glens Falls National Bank collateralized the surety bond. The bank letter of credit was secured by $100,000 of OHI's investments.
- 2/15/05 through 12/31/07 – a $624,000 letter of credit issued by National Bank of Coxsackie to the WCB. The bank letter of credit was secured by $156,000 of OHI's investments.
- 1/1/08 through 6/30/08 – a $780,000 letter of credit issued by National Bank of Coxsackie to the WCB. L&M believes the bank letter of credit to have been secured by $156,000 of OHI's investments.
- 7/1/08 through 6/30/09 – a $858,000 letter of credit issued by National Bank of Coxsackie to the WCB. The bank letter of credit was secured by $156,000 of OHI's investments.
- 7/1/09 through 6/30/11 – a $936,000 letter of credit issued by National Bank of Coxsackie to the WCB. The bank letter of credit was secured by $156,000 of OHI's investments.

L&M obtained a memo from National Bank of Coxsackie to the president of Cody dated February 15, 2005 that indicated a prior promissory note and an assignment of deposit account agreement were being replaced with new ones included with the memo. L&M obtained the new $624,000 promissory note and assignment of deposit account agreement. Based on the above, it appears OHI

had executed a promissory note and assignment of deposit account agreement with the bank prior to 2005.

L&M also obtained a 2009 promissory note for $936,000 and assignment of deposit account agreement dated September 2, 2009. L&M believes the bank issued new agreements each time the letter of credit amount was increased.

The promissory note states any amount remitted by the bank under the letter of credit would be deemed e a loan made to OHI. The assignment of deposit account agreement states the bank has the right to take possession of any funds on deposit with the bank to satisfy a loan balance with OHI.

The National Bank of Coxsackie notified the WCB in a letter dated April 22, 2011 it had decided to not renew OHI's letter of credit after its current expiration date of June 30, 2011. OHI failed to provide the WCB with an acceptable security deposit to replace the expiring letter of credit. Accordingly, on April 29, 2011 the WCB sent what it believed to be all documents necessary to make a claim on the $936,000 letter of credit to National Bank of Coxsackie, and on May 2, 2011 received $936,000 on the letter of credit.

The National Bank of Coxsackie's remittance of $936,000 to the WCB under the letter of credit constituted a loan to the Trust in the same amount under the "Business Loan Agreement and Promissory Note" executed by OHI. The bank subsequently exercised its right of setoff against OHI's cash and investment account balances in accordance with the "Assignment of Deposit Account" executed with OHI, and accordingly, seized $491,965 of balances the Trust had on hand with the bank. This left an outstanding balance of $444,035 on the promissory note with the bank as of May 4, 2011.

The Trust recognized a $444,035 liability and $936,000 related expense in 2011. This expense will be offset by $936,000 of revenue OHI will recognize when the WCB remits the $936,000 it collected on the letter of credit to the Trust. The WCB remitted $344,244 during the eight months ended August 31, 2011 from the $936,000 it collected OHI's letter of credit, which OHI recorded as contribution revenue from the WCB. The WCB will send the additional $591,756 to OHI in the future to fund payments for claims.

L&M's outside legal counsel provided L&M with an opinion that stated the executed promissory note created a binding obligation between OHI and the National Bank of Coxsackie if the bank was ever required to make payment to the WCB under the letter of credit. Accordingly, OHI is legally obligated to the National Bank of Coxsackie for the $444,035 balance.

The WCB informed L&M it was not aware that a promissory note between the National Bank of Coxsackie and OHI had ever been executed whereby the bank could make a claim against the Trust for amounts in excess of the $156,000 of investments which secured the letter of credit. L&M located two documents from the National Bank of Coxsackie to the Chairman of the WCB dated January 1, 2008 and July 1, 2009, each of which was labeled as "IRREVOCABLE LETTER OF CREDIT NO. 2005-01 - AMENDED." Both documents state "Except as stated herein, this undertaking is not subject to any agreement, condition or qualification. The obligation of National Bank of Coxsackie under this Letter of Credit is the individual obligation of National Bank of Coxsackie and is in no way contingent upon reimbursement with respect thereto." The documents were with respect to the letters of credit for the years ended December 31, 2008 and June 30, 2010.

Neither the promissory notes nor the assignment of deposit account agreements between the bank and OHI were mentioned in either document. Thus, L&M believes it reasonable the WCB concluded that the extent of OHI's obligation to the bank in the event the letter of credit was called was limited to the $156,000 of investments which secured the letter of credit. The WCB also informed L&M that it would have evaluated the Trust differently during its annual Level I reviews had it been made aware of the existence of the promissory note.

The minutes from the May 27, 2010 Trustee meeting indicate one of OHI's Trustees also served on the Board of Directors of the National Bank of Coxsackie, the financial institution that issued the letters of credit from 2/15/05 – 5/2/11. The National Bank of Coxsackie's current web site lists that individual as a Director. We believe the Trustee's position at the bank may have created a potential conflict of interest with regard to the transactions between OHI and the bank.

L&M's Conclusions

- OHI met the NYCRR's security deposit requirement with a surety bond or a bank letter of credit.
- The WCB informed L&M it was not aware that a promissory note between the National Bank of Coxsackie and OHI had ever been executed whereby the bank could make a claim against the Trust for amounts in excess of the $156,000 of investments which secured the letter of credit. The existence of a promissory note was not mentioned in either of two documents from the National Bank of Coxsackie to the WCB dated January 1, 2008 and July 1, 2009, each of which was labeled as "IRREVOCABLE LETTER OF CREDIT NO. 2005-01 - AMENDED." The WCB also informed L&M that it would have evaluated the Trust differently in its annual Level I reviews had it been made aware that the promissory note existed.
- One of OHI's Trustees also served on the Board of Directors of the National Bank of Coxsackie, the financial institution that issued the letters of credit from 2/15/05 – 5/2/11. We believe the Trustee's position at the bank may have created a potential conflict of interest with regard to the transactions between OHI and the bank.

APPENDIX 1

OHI WORKERS' COMPENSATION TRUST AND
BY-LAWS
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ARTICLE I - NAME AND PURPOSES OF TRUST AND BY-LAWS

The Trust and By-Laws hereby created shall be known as the "OHI Workers' Compensation Trust" (the Trust and By-Laws shall hereinafter collectively be referred to as "Trust" or "By-Laws"). The purpose of the Trust is to create a nonprofit workers' compensation self-insurance trust organized under Subdivision 3-a of Section 50 of the Workers' Compensation Law of the State of New York in order for employers who are members of the Oil Heat Institute of Eastern New York ("OHI") involved in the heat, petroleum, propane, gasoline and related industries including the distribution and handling of petroleum products to (1) make available a self-insured workers' compensation program by pooling the risk of its members whereby the Members agree to be jointly and severally liable for the costs of the lawful obligations of employers as set forth under the Workers' Compensation Law and the rules and regulations of the Workers' Compensation Board; (2) to process, pay and defend claims of employees of employers who are members of the Trust and the Trust shall be bound by and subject to the orders, findings, decisions or awards rendered against its members for the payment of compensation under the Workers' Compensation Law. It is intended that this Trust shall operate pursuant to and in accordance with Subdivision 3-a of Section 50 of the Workers' Compensation Law of the State of New York and the rules and regulations of the Workers' Compensation Board. In addition, the trust agrees to pay any awards commuted under Section 27 of the Workers' Compensation Law; (3) establish, maintain, promote and enforce sound safety programs, so as to assist industry companies in protecting themselves from unwarranted losses; and (4) provide a cost-effective market in which industry companies may obtain Workers' compensation stop-loss insurance coverage. This constitutes the By-Laws of the Trust.

The Following terms shall have the meaning indicated below:

2.1 Administrator - The Administrator shall be Cody Management Services, Inc., which has been appointed by the Board of Trustees pursuant to Article VI of the By-Laws to carry out the policies established by the Board of Trustees and to provide directly or through subcontractors selected solely by the Administrator daily management of the Trust including managing claims handling responsibilities set forth in Section 2.2 and loss control

responsibilities set forth in Section 2.3

2.2 Claims Handling - The Administrator will directly or through subcontract to duly licensed subcontractors arrange to investigate and evaluate all workers' compensation claims incurred by Members, arrange for needed medical examinations and legal representation or representation by other licensed individual or entity at trust expense, to process checks on behalf of the Board of Trustees required for the payment of claims, and to provide loss reports for the Members and the Trustees. Claims handling practices shall be in accordance with and adhere to the requirements of the Workers' Compensation Board.

2.3 Safety Management - The Administrator shall establish a safety management committee, arrange safety workshops, work with each Member to reduce the frequency and severity of workers' compensation claims and to provide safety management information for the Members and the Trustees.

2.4 Participation and Indemnity Agreement - The Participation and Indemnity Agreement shall mean the individual Participation and Indemnity Agreement entered into between the Trust and a Member of the Trust, and, collectively, all such Participation and Indemnity Agreements as in effect from time to time.

2.5 Contribution - A Contribution shall be a payment to the Fund by a Member made in accordance with the By-Laws, the Participation and Indemnity Agreement, and any other rules or regulations pursuant thereto, including required premium payments and other payments to cover the costs of reinsurance or excess insurance, surety bonds, regulatory fees, loss control fees, assessments and administrative costs.

2.6 Fiscal Year - The Fiscal Year of the Trust shall end on the 31st day of December of each year, or such other date as may be determined from time to time by the Board of Trustees.

2.7 Fund - The Fund shall be the sum of all Contributions made by Members in accordance with this Trust and these By-Laws, the Participation and Indemnity Agreements, and any other rules or regulations pursuant thereto; all money, contracts, policies, and properties received by the Board of Trustees for the use and purposes set forth in ~~the~~ this Trust and these By-Laws, the Participation and Indemnity Agreements, and any rules or regulations pursuant thereto; and all income, gains, and other increments of any nature arising therefrom less any applicable costs and expenses.

2.8 Fund Year - The Fund Year shall be a period of twelve (12) consecutive months determined from time to time by the Board of Trustees. The Initial Fund Year shall begin on January 1st, 1998 at 12:01 a.m. and end on January 1st at 12:01 a.m., and each subsequent Fund Year shall begin on January 1st 12:01 a.m. and end on the following January 1st, 12:01 a.m., unless otherwise provided by the board of Trustees. A Fund Year may be a period of fewer than twelve (12) months if it is the first or last such year, or a year involving a change in the Fund Year.

2.9 Insurer - An Insurer shall mean any insurance company providing: (a) an insurance contract to the Trust, including, without limitation, any policy or policies that the Board of Trustees or the Administrator deems necessary, convenient or desirable for the proper operation or financial stability of the Fund; and/or (b) any benefit, direct or indirect, to any Member.

2.10 Member - A Member shall mean any industry company within the State of New York which: 1) has entered into a Participation and Indemnity Agreement with the Trust as shown by the records of the Administrator, 2) is a dues paid member of the Oil Heat Institute, and 3) has been accepted for membership pursuant to Section 3.2.

2.11 Founding Member - A Founding Member shall mean a Member who meets all of the following conditions: (a) The qualifications as set forth in Section 2.10 of these By-Laws,

and (b) the Member has provided start-up funds prior to December 1, 1997, and (c) the Member commences their workers' compensation and employer's liability coverage with the Trust by no later than the earlier of (i) the expiration of their current workers' compensation policy in effect on October 21, 1997 (provided such policy does not expire proir to 12:01A.M., January 1, 1998); or (ii) 12:01 A.M. October 21, 1998.

2.12 Charter Member - A Charter Member shall mean a Member who meets all of the following conditions: (a) the qualifications as set forth in Section 2.10 of these By-Laws, and (b) the Member commences their workers' compensation and employer's liablitiy coverage with the Trust no later than 12:01 A.M. October 21, 1998.

2.13 Refund or Credit Plan - A Refund or Credit Plan shall be a formula adopted by the Trustees which shall reflect the specific loss experience of the Fund overall and the loss experience of each Member. The Refund or Credit Plan shall govern the amount of Contributions paid by each Member to the Fund and the amount which may be returned to Members as surplus.

2.14 Trust - The Trust shall mean the OHI Workers' Compensation Trust and By-Laws hereunder established pursuant to and in accordance with Subdivision 3-a of Section 50 of the New York Workers' Compensation Law as amended from time to time or any successor statute. The Trust shall be known as the "OHI Workers' Compensation Trust".

2.15 Workers' Compensation Board - Shall mean the New York Workers' Compensation Board whether acting as a Board or through its Chair or designees.

ARTICLE III- MEMBERS

3.1 Number and Selection - The number of Members shall at no time be fewer than six (6). The Board of Trustees or the Administrator may accept new Members qualified pursuant to

Section 3.2, and may terminate memberships pursuant to Section 4.2.

3.2 Qualification - To be eligible for membership, an applicant must: (a) be an employer within the State of New York in the year in which application for membership in the Trust is made, and in each subsequent year of membership and be and maintain membership in the Oil Heat Institute at all times while a Member of the Trust; (b) complete and execute a Participation and Indemnity Agreement in which the applicant agrees to the joint and several obligations of membership in the Trust in the form approved by the Board of Trustees, and deliver such Agreement to the Board of Trustees or the Administrator; (c) meet such conditions as may be established and provide such information as may be deemed necessary, convenient or desirable by the Board of Trustees or by the Administrator (or an Insurer with the consent of the Board of Trustees), including, without limitation, underwriting criteria and information and is homogenous with the governing classification codes as established by the Board of Trustees (d) receive written acceptance of membership from the Board of Trustees or the Administrator; and (e) make any and all Contributions to the Fund and provide any financial securty required under the By-Laws, the Participation and Indemnity Agreement, and any other rules or regulations pursuant thereto.

3.3 Acceptance of Membership - Membership shall be effective upon acceptance of the applicable Participation and Indemnity Agreement by the Board of Trustees or the Administrator, and upon payment in good funds by the applicant of the Contribution for its initial Fund Year.

3.4 Effect of Membership - Upon acceptance of Membership, each Member shall be deemed to agree to be bound by the terms and provisions of this Trust and these By-Laws, the Participation and Indemnity Agreement, and any other rules, regulations or statutes pursuant thereto, including any rules and regulations required by an Insurer.

3.5 Rights of Members - In addition to such rights as are vested in them by law or the By-Laws, and such other rights as the Board of Trustees may designate, the Members shall have the right to coverage of their Workers' compensation and employer liability to the extent provided in the Participation and Indemnity Agreement and approved by the Board of Trustees, and to disposition of money in excess of the amount necessary to fund obligations, as approved from time to time by the Board of Trustees in accordance with Article VIII.

3.6 Tenure Status as a Member shall continue uninterrupted until terminated or withdrawn in accordance with Article IV.

3.7 Annual Meeting - An annual meeting of the Members of the Trust shall be held at such location within the State of New York as the Board of Trustees may designate, at 10:00 a.m. on the third Tuesday in March of each year or at some other time as may be designated by the Board of Trustees in a notice to Members. At such annual meeting, the Board of Trustees shall report to the Members on the operation of the Trust for the preceding Fiscal Year, and the Members may act on any matter brought before the meeting on which Members are entitled to act under the By-Laws, whether or not notice of any such matter was given prior to the time of the meeting.

3.8 Regular Meetings - Regular meetings of the Members of the Trust may be held at such places in the State of New York and at such times as the Members may determine.

3.9 Special Meetings - Special meetings of the Members of the Trust may be held at any time and at any place within the State of New York. Special meetings of the Members may be called by the Board of Trustees or the Administrator, and shall be called by the Secretary of the Board of Trustees (or, in the case of the death, incapacity or unavailability of the Secretary, by any Trustee) upon receipt of a written request for a special meeting signed by at least twenty-five percent (25%) of the Members, specifying the matter or matters to be considered at such meeting. Matters not specified in such request shall not be considered or

acted upon at such special meeting.

3.10 Call and Notice - (a) Regular Meetings - No call or notice shall be required for regular meetings of Members, provided that: (i) reasonable notice of the time and place of such meetings shall be given to new Members, specifying the purpose of regular meetings; and (ii) reasonable notice of a regular meeting shall be given to each Member if there is to be considered at the meeting contracts or transactions of the Trust with interested individuals, amendments to the By-Laws, or the appointment or removal of a Trustee. Reasonable notice of such meetings shall otherwise be given as required by law. (b) Annual and Special Meetings - Reasonable notice of the time, and place of any annual and special meetings of the Members shall be given to each Member. Such notice shall specify the matter or matters to be considered or acted upon at the meeting. Notice of any change of the date fixed in the By-Laws for the annual meeting of the Members shall be given to all members at least twenty (20) days before the new date set for such meeting. (c) Sufficient Notice - Except as otherwise expressly provided herein, notice to a Member shall be reasonable if notice sent by United States mail or overnight courier service at least ten (10) calendar days before the meeting, addressed to the last known address of the Member as shown by the records of the Trust, or upon approval by a majority of the Board of Trustees if notice is given in person or by telephone to a duly authorized representative of the Member at least twenty-four (24) hours before the meeting. (d) Waiver of Notice - Whenever notice of a meeting is required, such notice need not be given to any Member if a written waiver of notice, executed by a duly authorized representative of the Member before or after the meeting, is filed with the records of the meetings of the Members.

3.11 Action by Vote - Each Member shall have one (1) vote. Members shall be entitled to vote on the appointment and removal of Trustees, amendments to the By-Laws, termination of the Trust, and such other matters as the Board of Trustees may determine should be acted upon by the Members.

3.12 Proxies - Members may vote either in person or by proxy dated not more than thirty (30) days before the meeting named therein, which proxy shall be in writing, signed by the Member and filed with the Secretary of the Board of Trustees at or before the commencement of the meeting. Unless otherwise specifically limited by their terms, such proxies shall entitle the holders thereof to vote at any adjournment of the meeting, but the proxy shall terminate after the final adjournment of such meeting.

3.13 Quorum - Attendance at a meeting in person or by proxy by Members representing at least a majority of the Members of the Trust shall constitute a quorum for the meeting. When a quorum is present, a majority of the Members present in person or by proxy may decide any matter on which the Memhers may vote, unless the By-Laws requires a larger vote. Any meeting may be adjourned to such date or dates by a majority of the votes cast upon the question, whether or not a quorum continues to be present, and the meeting may be held as adjourned without further notice so long as the date, time and place to which the meeting is adjourned are announced before adjournment.

3.14 Action by Writing - Any action required or permitted to be taken at any meeting of Members may be taken without a meeting without prior notice and without a vote if: 1) the action is taken by written consent of all the number of Members having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all Members entitled to vote thereon were present and voted; 2) notice of such action is given to Members who did not consent to such action and 3) the written consent is filed with the records of the meetings of the Members. Such consents shall be treated for all purposes as a vote at a meeting.

3.15 Access to Records - Members shall permit the Board of Trustees and the Administrator reasonable access to their respective offices and to all records which reasonahly relate to the purposes and powers of the Trust. The Trust, through its Administrator and or Trustees

shall, at the request of a Member, provide without unreasonable delay to any person designated by the Member proof of any coverages provided by the Trust including any insurance or reinsurance, deductible levels and the maximum liability which the Trust retains.

3.16 Representation - Members shall agree to be represented by licensed hearing representatives or attorneys retained or employed by the Trust, by the Administrator or a subcontractor of the Administrator, or by an Insurer in connection with investigations, settlement discussions and all levels of litigation arising out of any claim made against a Member within the scope of Workers' compensation and employer's liability protection furnished by the Trust, and shall cooperate fully with any such representative or attorney.

ARTICLE IV - DEFAULT TERMINATION AND WITHDRAWAL OF MEMBERSHIP

4.1 Default - A Member shall be deemed to be in default upon occurrence of any one of the following events: (a) termination or cessation for any reason of its status as an employer within the State of New York or as a member of the Oil Heat Institute; (b) termination of or default by the Member under the Participation and Indemnity Agreement executed by the Member; (c) failure by the Member to make in good funds within the prescribed time any Contribution or payment of other charges required by the By-Laws, the Participation and Indemnity Agreement, or any rules or regulations thereto; (d) failure by the Member to continue to meet any criteria, including but not limited to the underwriting standards for Members; (e) failure of the Member to provide any information required by the Board of Trustees, the Administrator or an Insurer: (f) failure of the Member to cooperate with the Administrator, claims agents, loss control representatives, licensed hearing representatives or attorneys representing the Trust; (g) failure by the Member to reasonably comply with loss control recommendations of the Trust Safety Committee or of the Administrator; (h) failure by the Member to comply with any term of the Trust, By-Laws, the Participation and

Indemnity Agreement, or any rules or regulations pursuant thereto; (i) appointment of a trustee or conservator to manage the affairs of the Member, insolvency or voluntary or involuntary bankruptcy of the Member or assignment for the benefit of creditors; or (j) any action or conduct by the Member that is determined by the Board of Trustees or the Administrator to warrant termination of membership. Written Notice of a Default ("Notice of Default") shall be delivered to the Member by the Board of Trustees or the Administrator. If, within thirty (30) days following receipt of the Notice of Default, the Member corrects the condition giving rise to the default to the reasonable satisfaction of the Board of Trustees or the Administrator, the default shall be deemed corrected. If correction does not occur, all rights and privileges of the Member shall terminate in accordance with Section 4.2.

4.2 Termination of Membership - If a condition of default is not corrected by the Member, the Board of Trustees or the Administrator shall deliver written Notice of Termination ("Notice of Termination") to the Member and to the Workers' Compensation Board by registered mail, return receipt requested. All rights and privileges of membership, including Workers' compensation and employer's liability coverage, and all other benefits hereunder, shall terminate at the end of twenty (20) days following the date of mailing via registered mail, return receipt requested by the Member of such written Notice of Termination, but not less than ten (10) days after written Notice is filed with the Chair of the New York Workers'. Compensation Board. The date upon which coverage to such Member ceases shall be known as the "Termination Date". Once a Member has received Notice of Termination as prescribed herein, the Member shall not be empowered or authorized to attend any annual, regular, or special meeting of the Members, or to participate in or vote on any matter considered by the Members, whether at a meeting or by writing.

4.3 Withdrawal of Membership - Voluntary withdrawal of a Member from the membership shall be effected by providing the required written notice set forth below provided, however, that no Member may voluntarily withdraw prior to a period of twelve consecutive months of Membership. The Member shall submit written notice of

withdrawal to the Administrator and the Board of Trustees not less than 120 days prior to the date of withdrawal set forth in the notice. Failure to give such notice shall automatically extend the Members membership in the Trust and the Member's obligations under the By-Laws, the Participation and Indemnity Agreement, and any rules or regulations pursuant thereto, for another Fund Year, unless such withdrawal is approved by a majority vote of the Trustees then in office. The Trust shall file written Notice of Withdrawal ("Notice of Withdrawal") with the Workers' Compensation Board not less than ten (10) days in advance of the effective date of withdrawal.

ARTICLE V BOARD OF TRUSTEES

5.1 Number and Qualification-The Board of Trustees shall consist of seven (7) individuals elected by the Members of which six (6) Trustees must be employees of Members of the Trust. The seventh Trustee shall at all times be the principal paid executive of the Oil Heat Institute whose term shall coincide with his or her employment as the principal paid professional of OHI and, by virtue of these By-Laws is deemed to have been elected by the Members for such a term. At any time that said individual ceases to be the principal paid professional of OHI, his/her term on the Board of Trustees of the Trust shall terminate immediately and the seat shall be held in reserve for that individual's successor as the principal paid professional of OHI, who, upon their employment, shall immediately be deemed to have been elected by the Members as the seventh Trustee. The Members shall determine the number of Trustees to be elected. All Trustees shall be residents of the State of New York or officers of Trusts authorized to do business in the State of New York.

5.2 Appointment and Tenure - All members of the initial Board of Trustees shall serve for terms that expire as of the first annual meeting of the Trust next following completion of the first full Fund Year. The initial Board of Trustees shall be James Hart, Richard Slote, John Reichard, John Snyder, Thomas Keen, Robert Ottman and James Benton. At the first annual meeting of the Trust next following completion of the first full Fund Year, the

membership shall elect a Board of Trustees with staggered terms as follows: (a) Six of the seats on the Board of Trustees (not including the seventh seat reserved for the principal paid professional of OHI) shall be divided into three (3) groups, with the term of office of each Trustee being three (3) years and until his or her successor is elected and qualified, except that the terms of office of two candidates shall expire with the election and qualification of their successors at the second annual meeting of the Members; the terms of office of two candidates shall expire with the election and qualification of their successors at the third annual meeting of the Members; and the terms of office of two candidates shall expire with the election of their successors at the fourth annual meeting of the Members. Each Trustee shall hold office for his or her stated term or, if sooner, until he or she dies, resigns, is removed, or becomes disqualified. A Trustee may serve for an unlimited number of terms. (b) Election of Trustees - At each annual meeting of the Members, the Members shall elect from those properly nominated approximately one-third (1/3) of the Board of Trustees to replace those Trustees whose terms of office are expiring. Each Member shall have one (1) vote with respect to each position to be filled, and may not cumulate votes for one or more nominees. The nominee(s) receiving the greatest number of votes shall be elected to the position(s) to be filled. The Board of Trustees may elect a new Trustee from those properly nominated to eliminate a vacancy existing by reason of death, resignation, removal, or disqualification of a Trustee. A successor shall hold office for the unexpired term of his or her predecessor, or, if sooner, until he or she dies, resigns, is removed, or becomes disqualified. (c) Nomination of Trustees - Except for the first Annual Meeting following the completion of the first Fiscal Year, the Trustees shall create a Nominating Committee consisting of two Trustees whose Terms of office are not expiring at the next annual meeting and the Nominating Committee so comprised shall nominate individuals to serve as Trustees for consideration by Members at the Annual Meeting. For purposes of the first Annual Meeting following the completion of the first Fiscal Year, the Nominating Committe shall be comprised of the Administrator and the principal paid executive of OHI. Except for those individuals nominated by the Nominating Committee or for an individual to fill an unexpired term due to the death, resignation, removal, or disqualification of a Trustee, an individual

must be nominated in writing by not less than ten percent (10%) of the Members eligible at the forthcoming meeting. Such nomination must be delivered to the Board of Trustees not later than fifteen (15) days before the date of the meeting. The Nominating Committee shall notify the Members in writing within a reasonable period of time before the meeting of the number of Trustees to be elected, the nominees for such positions, and the number of Members eligible to vote at the meeting.

5.3 Qualification of Trustees - Any person elected or appointed as a Trustee shall accept such election or appointment by signing a written instrument, prepared and signed hy the Secretary of the Board of Trustees, setting forth the name of the person elected or appointed, the name of the person, if any, whom the person elected or appointed has replaced, and the date of such election or appointment. Such instrument shall become effective upon its filing with the records of the Trust. Such person shall then become a Trustee and shall be vested with title to the Trust property, jointly with the remaining or surviving Trustees, if any, without the necessity of any act or transfer or conveyance. Despite any vacancy or vacancies on the Board of Trustees, however caused and for whatever duration or number, the remaining or surviving Trustee(s) shall continue to exercise and discharge all of the powers, and duties hereby conferred or imposed upon the Trustees.

5.4 Organization of the Board of Trustees - The Trustees shall elect a Chairman and Vice Chairman of the Board of Trustees who must both be Trustees and both shall serve at the pleasure of the Board of Trustees. At any time that the Chairman cannot preside, the Vice Chairman shall preside in his or her stead and the Chairman, at his or her discretion may delegate such other duties to the Vice Chairman as the Chairman so chooses from time to time. The Trustees shall appoint the Administrator as Secretary of the Board of Trustees who shall serve at the pleasure of the Board of Trustees to perform such duties and functions as prescribed by law and the By-Laws. The Trustees shall appoint the principal paid executive of OHI as Treasurer of the Board of Trustees who shall serve at the pleasure of the Board of Trustees to perform such duties and functions as prescribed by law and the By-Laws.

5.5 Powers and Duties of the Trustees - The affairs of the Trust shall be managed by the Trustees, who shall have and may exercise all powers of the Trust, except those powers reserved to the Memhers by law or the By-Laws. The Board of Trustees shall have all powers necessary to enable it to carry out its duties, and its decisions upon all matters within the scope of its authority shall be final. Specifically, but not in limitation of the broad powers herein conferred, the Trustees shall have the power, pursuant to the Trust to: (a) adopt such rules and regulations including the revision of the Participation and Indemnification Agreement and the Bylaws, as they deem necessary, convenient or desirable in their sole discretion to effect any and all of the purposes for which the Trust is formed; (b) accept applications for membership, including establishment of underwriting and other criteria for qualifications of membership; (c) determine the amount of Contributions to be made to the Fund including the determination of the level of Contributions, administrative costs, assessments that may arise from the joint and several liability of each of the individual Members to liabilities of the Trust as set forth in the Participation and Indemnification Agreement, and the timing and form of payment of such Contrihutions; (d) administer and manage the Fund, including the investment and reinvestment of its assets in accordance with the standards established for fiduciaries pursaunt to EPTL §11-2.2 (e) approve the borrowing of funds from banks or other lenders as they deem necessary (subject to the approval, if necessary, of the Workers' Compensation Board) and to enforce the joint and several liability provisions to assure payment by the Trust of any such repayment obligations to lenders; (f) determine the distribution of money in excess of the amount necessary to fund all obligations of the Trust, including but not limited to sufficient contingency reserves and may designate use of trust funds as 'capitalization funds' to provide full or partial collateral for financial security requirements established by and with the approval of the Workers' Compensation Board and may use such funds as substitutes for individual Letters of Credit or other capital instruments that may have been provided individually by each Member at the time each Member joined the Trust; (g) adopt and issue rules, regulations, policies and procedures in connection with the payment of workers' compensation and employer liability claims and

losses incurred by Members, including establishment of reporting obligations and documentation requirements related to such claims, investigations procedures, and settlement guidelines; (h) purchase insurance or reinsurance, surety bonds, directors and officers liability insurance and other reasonable and prudent insurances as the Board may deem advisable from time to time.; and (i) determine the amount of financial security ("Financial Security") separate and apart from contributions, that each member shall deposit with the Trust as benficiary, said Financial Security to be in the form of either (a) cash; (b) letter of credit in form proscribed by or acceptable to the trustees; or (c) surety bond in form proscribed by or acceptable to the trustees.

5.6 Regular Meetings - Regular meetings of the Board of Trustees shall be held quarterly at such places and at such times as the Trustees may determine.

5.7 Special Meetings - Special meetings of the Board of Trustees may be held at any time and at any place when called by the Secretary of the Board of Trustees or by three or more Trustees.

5.8 Call and Notice - (a) Regular Meetings - No call or notice shall be required for regular meetings of the Board of Trustees, provided that: (i) reasonable notice of the times and places for regular meetings shall be given to new Trustees; and (ii) reasonable notice of a regular meeting shall be given to each Trustee if there is to be considered at the meeting contracts or transactions of the Trust with interested individuals. amendments to the By-Laws, the removal or suspension of a Trustee, or the default or termination of a Member. Reasonable notice of such meetings shall otherwise be given as required by law. (b) Special Meetings - Reasonable notice of the time and place of special meetings of the Board of Trustees shall be given to each Trustee. Such notice shall specify the purpose or purposes of such meeting. (c) Sufficient Notice - Except as otherwise expressly provided herein, notice to a Trustee shall be reasonable if notice sent by United States mail or overnight courier service at least forty-eight (48) hours before the meeting, addressed to the last known address

of the Trustee, or if notice is given in person or by telephone to the Trustee at least twenty-four (24) hours before the meeting. (d) Waiver of Notice - Whenever notice of a meeting is required, such notice need not be given to: (i) any Trustee if a written waiver of notice, executed by him or her (or his or her duly authorized representative), before or after the meeting, is filed with the records of the meeting; or (ii) any Trustee who attends the meeting without protesting prior to its commencement as to the lack of notice to him or her. A waiver of notice need not specify the purposes of the meeting unless such purposes were required to be specified in the notice of such meeting.

5.9 Action by Vote - When a quorum is present at any meeting, a majority of the Trustees present and voting shall decide any question, unless otherwise provided by law or the By-Laws.

5.10 Quorum- At any meeting of the Trustees, a majority of the Trustees then in office shall constitute a quorum. Any meeting may be adjourned by a majority of the votes cast upon the question, whether or not a quorum is present, and the meeting may be determined to have been adjourned without further notice so long as the date, time and place to which the meeting is adjourned are announced before adjournment.

5.11 Action by Writing - Any action required or permitted to be taken at any meeting of the Trustees may be taken without a meeting if all Trustees consent to the action in writing, and the written consent is filed with the records of the meetings of the Trustees. Such consents shall be treated for all purposes as a vote at a meeting.

5.12 Telephone Meetings Permitted - Unless otherwise provided by law or the By-Laws members of the Board of Trustees may participate in a meeting of such Board by means of telephone conference or similar communications equipment through which all individuals participating in the meeting can hear the others at the same time. Participation by such means shall constitute presence in person at such meeting.

5.13 Reports of the Trustees - The Trustees shall, as soon as reasonably possible after the close of each Fiscal year, or more often if convenient to the Trustees, submit to the Members a written report of the operations of the Trust for such year.

5.14 Records of the Board of Trustees - All acts and determinations of the Board of Trustees shall be duly recorded by, or under the supervision of the Secretary of the Board of Trustees, and all such records, along with such other documents as may be necessary for the administration of the Trust, shall be preserved in the custody of the Administrator.

5.15 Committees - (a) The Trustees may elect or appoint one or more committees, and may delegate to any such committee or committees such powers as they deem necessary, convenient or desirable, provided that no committee shall create any financial liability for the Trust unless authorized by the Board of Trustees. Unless the Trustees otherwise designate, committees shall conduct their affairs in the same manner as is provided in the By-Laws for the Board of Trustees. The members of any committee shall remain in office at the pleasure of the Trustees. (b)(i) The Trustees shall establish a Trust Safety Committee for the purposes of carrying out a sound safety program designed to: (1) prevent occupational accidents and diseases (2) encourage every participating Member company to implement a sound safety program and internal safety committee; (3) make suggestions to reduce the cost of benefits to Members of the OHI Workers' Compensation Trust; (4) provide reports and information to the Board of Trustees when requested; (5) recommend new safety and loss prevention rules and regulations to the Trustees and (6) elicit methods to obtain cooperation in accident and loss prevention from all committee members and recommend to the Trustees that action be taken with regard to Members who have a consistently poor loss experience and fail to take corrective action.

5.16 Suspension or Removal of Trustees - A Trustee may be suspended or removed with or without cause by a majority vote of the Members.

5.17 Resignation of Trustee - Any Trustee may resign at any time by signing and delivering a written resignation to the Secretary of the Board of Trustees. Such resignation shall be effective upon receipt by the Secretary (unless specified to be effective at some later time). Such written resignation shall be filed with the records of the Trust.

5.18 No Bond, Inventory or Accounting - No Trustee named, elected, or appointed shall be obliged to give any bond or surety for the performance of any of his or her duties hereunder nor shall any such Trustee have any duty to file any inventory or accounting with any court, unless specifically ordercd to do so by a court of competent jurisdiction.

5.19 No Personal Liability of Trustees - The Trustees and the Administrator shall not be personally liable for any debt, liability or obligation of the Trust. All persons, Trusts or other entities extending credit to, contracting with, or having any claim against, the Trust, may look only to the funds and property of the Trust for the payment of any such contract or claim, or for the payment of any debt, damages, judgment or decree, or of any money that may otherwise become due or payable to them from the Trust.

5.20 Indemnification - Except as a Member may otherwise agree, the Trustees shall not be entitled to look to the Members personally for indemnification against any liability incurred by the Trustees or any number of them on behalf of the Trust, or to call upon the Members for the payment of any sum of money except for Contributions. Each Trustee shall be entitled to indemnity out of the Trust property against any and all liabilities so incurred by the Trustees on behalf of the Trust, including but not limited to liabilities in contract and in tort, and liabilities for damages, penalties, and fines, and compromises or settlements of such liabilities upon such terms as the Trustees shall determine.

ARTICLE VI - APPOINTMENT OF ADMINISTRATOR

6.1 Administrator - Cody Management Services, Inc. of 357 Bay Road, Suite 4, Queensbury,NY 12804 is hereby selected and appointed by the Trustees as the Administrator of the Trust. Such appointment shall begin on the date the By-Laws are executed, and shall remain in effect during the period Workers' compensation and employer's liability coverage is provided to the Memhers by the Trust. The Administrator will be remunerated by the Trust as established mutually by the Board of Trustees and the Administrator in an Administration Agreement. The duties and responsibilities of the Administrator or subcontractors selected solely by the Administrator shall include all daily management of the Trust.

6.2 Removal - The Trustees reserve the right by vote of two-thirds (2/3) of the Trustees then in office and in accordance with the provisions of the Administration Agreement to terminate an appointment made pursuant to this Article VI and to name a successor Administrator.

ARTICLE VII - COMPLIANCE WITH ENABLING LAW

The Board of Trustees shall cause the Trust to comply with the provisions of the Enabling Law, and, unless said provisions are amended or deleted, shall not: (a) permit the Trust to extend credit to individual Members of the Trust for payment of a Contribution, except pursuant to a payment plan or plans approved by the Trustees or (b) borrow any money from the Trust, or in the name of the Trust, except in the ordinary course of business, without first, if neccesary, advising the Workers' Compensation Board of the nature and purpose of the loan, and obtaining the prior approval thereof.

ARTICLE VIII - REFUNDS, RESERVES AND DISTRIBUTIONS

8.1 Distribution of Surplus - Any surplus with respect to a Fund Year may be used by the Trustees to provide a return to Members in accordance with a Refund or Credit Plan adopted by the Board of Trustees. A surplus, if any, for a Fund Year shall be determined in accordance with the Refund or Credit Plan for such Fund Year. The Refund or Credit Plan may exclude as recipients of a return those Members whose loss experience for the Fund Year exceeded an amount or percentage specified in such Refund or Credit Plan or Members who have, subsequent to the Fund Year in question, voluntarily terminated their membership in the Trust. The Trustees may, instead of declaring a return, use all or a portion of the surplus with respect to a Fund Year to reduce the Contributions otherwise payable by the Members for subsequent Fund Year(s) or otherwise use the surpluses to be allocated to a different Fund Year.

8.2 Reserves - The provisions of Section 8.1 shall not prevent the Trustees from using all or a portion of the surplus in any Fund Year to increase the reserve and contingency funds of the Trust to amounts which the Trustees reasonably deem necessary or prudent.

8.3 Capitalization Funds - The provisions of Section 8.1 shall not prevent the Trustees from using portions of the surplus in any Fund Year to be utilized as full or partial collateral for procuring financial security requirements established by the Workers' Compensation Board.

8.4 Distribution on Termination or Liquidation of the Trust - In the event the Trust is terminated or liquidated, the Trustees, after payment of all liabilities of the Trust, or providing adequate security acceptable to the Workers' Compensation Board that all liabilities of the Trust will be paid, shall cause the remaining assets of the Trust to be converted to cash and distributed to the qualifying Members of the Trust (in accordance with Section 8.1) who were members at any time during the five (5) years in which the Trust provided benefits to its Members prior to such termination or liquidation and who did not

voluntarily terminate their membership in the Trust prior to a decision by the Trustees or the membership at large to terminate or liquidate the Trust. Such distribution shall be in percentages, calculated by dividing the Contributions paid to the Trust by each qualifying Member during such five (5) years by all such Contributions paid to the Trust by all qualifying Members during such period.

ARTICLE IX - CHECKS, NOTES, DRAFTS AND OTHER INSTRUMENTS

9.1 Checks, Notes and Drafts - Checks, notes, drafts, and other instruments for the payment of money out of the Trust, drawn by or endorsed in the names of the Trustees, may be signed by any individual or individuals, including but not limited to the Administrator or its officers or employees, to whom such power may at any time or from time to time be delegated by not less than a majority of the Trustees.

9.2 Other Instruments - Except as otherwise expressly provided herein, any deed, mortgage, lease, note, instrument, or other document may be executed, acknowledged, sealed, and delivered by any one of the Trustees in the name of and on behalf of the Trust and all of the Trustees, after approval hy the required number of Trustees.

ARTICLE X - SEAL

The Board of Trustees may adopt and modify the seal of the Trustees, which shall be valid for all purposes.

ARTICLE XI - AMENDMENT AND TERMINATION OF THE TRUST

These By-Laws may be altered, amended or repealed in whole or in part by vote of two-thirds (2/3) of the Trustees then in office, except with respect to any provision thereof which by law or the By-Laws requires action by Members or more than 2/3 of the

Trustees. Not later than the time of giving notice of the meeting of Members next following the amending or repealing by the Trustees of any by-law, notice thereof stating the substance of such change shall be given to all Members. The Members may alter, amend or repeal any by-laws adopted by the Trustees or otherwise, adopt, alter, amend or repeal any provision which by law, or the By-Laws requires action by the Members. At any time, two-thirds (2/3) or more of all of the Members of the Trust may, without the prior vote of the Trustees, or a majority of the Members voting at a meeting of the Members may, with the prior majority vote of all of the Trustees: (a) alter or amend, in whole or in part, the terms and provisions of the By-Laws: (b) remove any Trustee, or appoint one or more additional Trustees; or (c) terminate the Trust hereby created. Such action must be made by an instrument in writing, signed and acknowledged by the Secretary of the Board of Trustees and filed with the Workers' Compensation Board.

ARTICLE XII - CONSTRUCTION AND INTERPRETATION

12.1 Construction - In the construction hereof, whether or not so expressed. (a) words used in the singular or in the plural, respectively, include both the plural and singular; (b) words denoting a person or individuals include firms, associations, companies, trusts, and Trusts, unless a contrary intention is to be inferred from or required by the subject matter or context.

12.2 Compliance With Law - All the trusts, powers, and provisions herein contained shall take effect and be construed according to the internal laws of the State of New York applicable to contracts made and to be performed entirely therein.

12.3 Severability - In case any provision of this Trust shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof will not in any way be affected or impaired thereby.

ARTICLE XIII - EXECUTION AND ACCEPTANCE

13.1 Counterparts - The By-Laws may be executed in two or more counterparts by the parties hereto, each of which counterparts shall be deemed an original, and such counterparts shall constitute one and the same instrument which shall for all purposes be sufficiently evidenced by any such original counterpart.

13.2 Execution of Membership Agreement - Execution and delivery of a Participation and Indemnity Agreement approved and accepted by the Trustees or the Administrator shall cause the member to become a party to the By-Laws with the same force and effect as if the Member had hereunto affixed his, her, or its signature. Upon ceasing to be a Member of the Trust, such former Member shall cease to be a party hereto.

IN WITNESS WHEREOF, the OHI Workers' Compensation Trust has hereunto caused the By-Laws to be executed and sealed on its behalf.

OHI Workers' Compensation Trust:

Trustee

Trustee

Trustee

Trustee

Trustee

Trustee

Trustee

Administrator as Witness

APPENDIX 2

OHI WORKERS' COMPENSATION TRUST

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OHI
WORKERS' COMPENSATION TRUST

Participation & Indemnification Agreement

THIS AGREEMENT is entered into by and between the OHI Workers' Compensation Trust, a nonprofit workers' compensation self-insurance trust established October 21, 1997 under New York Statutes subdivision 3-a of Section 50 of the Workers' Compensation Law (the "Trust") and the undersigned employer located in the State of New York (the "Member").

WHEREAS, the Trust is applying to the New York Workers' Compensation for authority to operate as a nonprofit workers' compensation self-insurance trust and this Participation & Indemnification Agreement along with the By-Laws and other rules and regulations adopted by the trustees or membership from time to time constitutes the nonprofit trust workers' compensation insurance agreement of the Trust, and

WHEREAS, the Member is an employer within the State of New York and a member of the Oil Heat Institute of Eastern New York involved in the heat, petroleum, propane, gasoline and related industries including the distribution and handling of petroleum products and wishes to become a Member of the Trust to obtain coverage for workers' compensation benefits and employer's liability;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Trust and the Member agree as follows:

1. Condition Precedent to Effectiveness of Agreement - The terms and conditions of this Agreement are binding now but if the Trust does not receive from the Workers' Compensation Board operating authority as a workers' compensation self-insurance trust under the Enabling Law by March 1, 1998, the Member may cancel this Agreement.

2. Term - The initial term of this Agreement shall commence on or about January 1st, 1998 (the effective date being the same as set by the Workers' Compensation Board for operating authority of the Trust and shall continue in force from said date until January 1, 1999 and annually thereafter until terminated.

3. Definitions - Capitalized terms herein shall have the same meaning as in the Trust and By-Laws (hereinafter "Trust" or "By-Laws"), as it may be amended from time to time, unless the context clearly requires another meaning.

4. By-Laws, Rules, Regulations, Policies and Procedures - The Member agrees to abide by and be bound by the By-Laws, this Agreement and other rules, regulations, policies, procedures and definitions adopted by the Trustees and any state law or rules and regulations as may be

promulgated from time to time. The Member understands and acknowledges that the By-Laws of the Trust provide a wide range of rights and responsibilities for the Member and that, among other rights and responsibilities, the following are specifically enumerated herein: (a) the Board of Trustees are elected by the Members; (b) the Board of Trustees shall designate and appoint an Administrator and may grant the Administrator a power of attorney or other indicia of authority to accept service of process on behalf of the Trust and to act and bind the Trust and its members in all transactions to or arising out of the operation of the Trust as specifically directed by the Trustees; (c) the Board's right to replace the Administrator, to revoke the power of attorney of or amend the duties and obligations of the Administrator in accordance with the Administration Agreement; (d) a requirement that the Trust provide without unreasonable delay to any person designated by a Member proof of any coverages provided by the Trust including any insurance or reinsurance, deductible levels and the maximum liability which the Trust will retain, and (e)a requirement for joint and several liability for all Members of the Trust for any and all debts of the Trust.

5. Coverage - After the Member's application for coverage has been approved by the Trustees or the Administrator, the Trust agrees to provide the Member with workers' compensation and employer's liability coverage as set forth in the Bylaws and this Participation and Indemnification Agreement, with safety management services as described in Paragraph 10 of this Agreement, and with claims management services as described in Paragraph 11 of this Agreement. Such coverage shall be provided by risk pooling and insurance as provided for herein. The Member agrees to pay the Contributions and assessments in good funds as provided herein for such services and coverage, within 30 days of the receipt of an invoice.

6. Payroll Classification - The Member shall furnish to the Administrator, not less than thirty (30) days before coverage is to be provided, an estimate of the Member's annual payroll by workers' compensation job classifications. This estimate shall be adjusted by audit annually as of the end of each Fund Year to reflect the actual payroll of the Member from time to time during the Fund Year. The Member agrees to pay promptly any additional Contribution that results from this annual adjustment. If, following the annual adjustment, there exists money in excess of the amount necessary to fund all obligations of the Trust, including but not limited to adequate contingency reserves and reserves for incurred but not reported claims, for the Fund Year, such surplus shall be distributed in accordance with the provisions of Paragraph 13 and Schedule 3 of this Agreement. The Trust reserves the right to audit the payroll records and to review any accident or health records of the Member.

7. Contributions (a) The Member agrees to pay to the Trust Contributions computed in accordance with a Rating Plan, as amended from time to time, approved by the Trustees. A copy of the current Rating Plan is attached (Schedule 1); (b) The Trust shall establish a Payment Plan. The Board of Trustees reserves the right to amend the Payment Plan from time to time in their sole discretion, and the Member agrees to abide by and adhere to the provisions of the Payment Plan as the same may be amended. A copy of the current Payment Plan is attached as Schedule 2 and 2A; (c) The Member agrees to pay, on or before December 20, 1997, the Contribution for the initial Fund Year, commencing on January 1, 1998 (or thereafter as soon as approval is received by the Workers' Compensation Board) and ending January 1, 1999 as well as all remaining payments in the Initial Year as established in the Payment Plan. The member agrees to pay the Contribution for each

subsequent Fund Year, commencing on January 1st of each year and ending January 1st of the following year, on or before the first day of that Fund Year. If the Member becomes a member of the Trust on a date other than January 1st of a given year the Member agrees to pay on or before its first date of coverage, a pro rata share as determined by the Trustees of the Contribution for the Fund Year commencing on that date and ending on the following January 1st; (d) The Member acknowledges that there may be interim rate adjustments approved by the Trustees, in accordance with the By-Laws or the rules and regulations of the Trust, and agrees to pay additional Contributions resulting therefrom; (e) The Member agrees to execute necessary authorization forms permitting the Trust and its Administrator or designee to obtain information and data required in determining the experience rating modification of the Member. The Member authorizes the Trust and its Administrator or designee to arrange for the collection of experience rating data and calculate the experience rating modifications for all Members of the Trust; and (f) The Member understands that if the assets of the Trust are at any time insufficient to enable the Trust to discharge its legal liabilities including bank and/or other lender liabilities of the Trust as a whole and other obligations or to maintain reasonable and necessary reserves, the Trust may levy an assessment on the membership to make up the deficiency. The additional assessment to each Member shall be calculated on a pro-rata basis, in proportion to each Member's Contribution to the Trust for the Fund Year in which the assessment is made. The Member agrees to pay such additional assessment within the time specified by the Board of Trustees. In the event that a Member fails to pay any additional assessment, the remaining Members shall be jointly and severally responsible for making up the resulting deficiency, subject to the rights of the Trust and the membership as against the defaulting Member.

8. Late Payment Fee - If the Member is thirty (30) or more days late in making any payment in good funds, the Member agrees to pay the Trust a late payment fee of six percent (6%) of the amount of the overdue payment plus interest on the overdue payment at a rate equal to the prime interest rate quoted in the Money Rate Section of The Wall Street Journal plus three percent (3%). However, at no time shall the Member be obligated or required to pay interest on the overdue payment at a rate which could subject the Trust to either civil or criminal liability as a result of being in excess of the maximum rate which the Member is permitted by law to contract or agree to pay. If by the terms of this Agreement, the Member is at any time required or obligated to pay interest at a rate in excess of such maximum legal rate, the rate of interest under this Agreement shall be deemed to be immediately reduced to such maximum rate and interest payable thereunder shall be computed at such maximum rate and the portion of all prior interest payments in excess of such maximum rate set by law shall be applied and shall be deemed to have been payments in the reduction of the amount due the Trust by the Member. The Member further acknowledges that failure to make timely payments not only subjects them to the aforementioned late payment fees but, if uncorrected, may constitute a default condition under which the Trustees have the right to terminate the Member's membership in the Trust as set forth in the By-Laws.

9 Excess Insurance - The Trust agrees to maintain with a qualified underwriter excess insurance coverage as required by New York statute or Workers' Compensation Board regulations in amounts and at a cost approved by the Board of Trustees.

10. Administrator's Loss Control Responsibilities - The Trust, through its Administrator, shall

provide loss control and safety management programs to the Member, designed to assist the Member in following a plan which may result in reduced losses and costs resulting from employee accidents and illnesses covered by the New York Workers' Compensation Law. The Member agrees to cooperate in instituting and actively participating in any and all such safety management programs, including but not limited to injury prevention and safety programs to reduce or eliminate risk of employee injury and illness. The Member understands that failure to reasonably comply with loss control recommendations could lead to termination of the Member's membership in the Trust and coverage thereunder.

11. Administrator's Claims Management Responsibilities - (a) The Trust will authorize its Administrator (or subcontractor of the Administrator) on behalf of the Trust using the resources of the Trust to : (i) administer, investigate, adjust, settle, and pay all of the workers" compensation claims and such other liabilities as are defined in the certificate of coverage issued to the Member, after notice of injury or illness has been given and proof of liability has been established; (ii) prepare all required forms; and (iii) provide a defense if required; (b) The Trust, through its Administrator, shall carry on all negotiations with the injured employee or his or her attorney or other representative, and negotiate settlements; (c) If a personal appearance by an employee of the Member is necessary in any dispute, the expense of such appearance shall be paid for by the Member; (d) The Trust will authorize its Administrator, on behalf of the Trust to retain and supervise hearing representatives and legal counsel necessary for the prosecution or defense of any litigation on behalf of and at the expense of the Trust. The Member agrees to cooperate fully by supplying any information needed or helpful to defend such action; and (e) The Trust through its Administrator, agrees to provide quarterly to the Member a computer printout showing a statement of claims, claims status and claim payment report.

12. Reporting of Injuries - It is the responsibility of each employer to comply with and report all accidents and injuries to the New York Workers' Compensation Board and to the Administrator (or subcontractor of the Administrator). All injuries and work-related illnesses, no matter how insignificant in appearance, shall be reported immediately through appropriate channels to the Trust or its Administrator including all the information requested in the standard New York Workers' Compensation Board form C-2 "Employer's Report of Injury". In addition, the Member shall provide all necessary wage information in at least as much detail as requested.

13. Refund or Credit Plan - With advice of the Administrator and the approval of the New York Workers' Compensation Board, any surplus of the Trust resulting from overall loss experience shall be: (a) available as a return; or (b) taken into account in establishing the Contributions in subsequent years; or (c) used as a reserve; all in accordance with the Refund or Credit Plan adopted and amended from time to time by the Board of Trustees. A surplus, if any, for a Fund Year shall be determined in accordance with the Refund or Credit Plan in effect for such Fund Year. In no event shall a Member be entitled to any surplus refund or credit unless the Member is a member of the Trust for the entire Fund Year in which the surplus arose with the exception of a Member whose Initial Term began on a date other than January1st of the Fund Year for which any surplus refund or credit may apply. Payment of such refund shall be contingent on the Member's continued membership in the Trust after such Fund Year. A copy of the current Refund or Credit Plan is attached as Schedule 3.

14. Termination of Coverage and Membership - This Agreement and the Member's membership in the Trust and coverage thereunder may be terminated by the Board of Trustees for failure to comply with the terms of this Agreement or the By-Laws, or the rules or regulations of the Trust including, but not limited to, the failure to pay Contributions. Termination shall be in accordance with the terms and conditions of the By-Laws. In any such event, the Trust, through its Administrator, shall give written notice of termination to the Member. Termination shall be effective twent (20) days from the date of notice.

15. Withdrawal of Membership - The Member agrees to maintain its membership in the Trust for an initial period of at least twelve consecutive months (the "Initial Term"). The Member may withdraw its membership and coverage at the end of the Initial Term, or at any other time after the Initial Term, by giving the Administrator prior written notice of its intention to withdraw at least one hundred and twenty (120) days in advance of the intended date of withdrawal. A Member wishing to withdraw effective the last day of their twelfth consecutive month must still provide the one hundred and twenty day (120) written notice in advance of the intended date of withdrawal.

16. Release of Financial Security - Any financial security previously provided by a Member as proscribed in Section 5.5(i) of the By-Laws shall be released by the Trust to the withdrawing/terminated Member at the later of (a) twenty-six (26) months after the last day for which the Trust was responsible for providing workers' compensation and employer's liability coverage; or (b) two years after the date for which all claims of the withdrawing/terminated Member have been closed and settled in conjunction with the rules and regulations of the Worker's Compensation Board.

17. Non-Renewal of Membership - The Board of Trustees of the Trust or the Administrator, may refuse to renew the membership of any Member.

18. Default by Member - In the event this Agreement is terminated by the Trust upon the default of the Member as a result of the Member's failure to pay Contributions or assessments owed the Trust under this Agreement or the By-Laws or the rules or regulations of the Trust, the Member agrees to pay the Trust a late payment fee plus an additional interest charge on the overdue amount under the terms specified in Section 8 of this Agreement in addition to the unpaid amounts. In the event of a default by the Member, the Member shall not be entitled to any return which has not been refunded prior to the Termination Date (as that term is defined in the By-Laws) of the Trust.

19. Limit of Liability - The Trust and the Member agree to comply with the provisions of New York Statutes and the rules and regulations promulgated by the Workers' Compensation Board as from time to time amended and hereby agrees to defend, indemnify and hold harmless each other and every other Member of the Trust which executes and delivers to the Trust or its Administrator an agreement containing indemnity language similar to that contained in this Section 19, from and against any claim or damage arising from the noncompliance by the indemnitor with a provision of said New York Statutes, rules or regulations. The Trust and the Member further agree that, for the payment of any claim against the Trust, or the performance of any obligation of the Trust hereunder,

recourse shall be made solely to the assets and property of the Trust, and no officer or Trustee of the Trust, nor the Administrator (or subcontractors to the Administrator) shall be liable therefore. Although recourse for any and all payments of workers' compensation and employers' liability benefits covered by the Trust's certificate of coverage to a Member shall first be made to the Trust's assets (and not to the individual assets of any Member of the Trust), the Member understands, acknowledges and agrees that the Member is jointly and severally liable for the workers' compensation and employers' liability obligations of the Trust and its Members and any other financial obligations of the Trust which were incurred during the Member's period of membership in the Trust, irrespective of the subsequent termination of the member's membership in the Trust, the insolvency or bankruptcy of any Member of the Trust, or other facts or circumstances. Notwithstanding any other term of this Agreement. this Section 19 shall not be amended and this Section 19 shall survive termination of this Agreement and any termination of the Member's membership in the Trust.

20. Notice - All notices hereunder shall be in writing and shall be delivered or sent by registered or certified mail, postage prepaid, return receipt requested, to the Trust at the address of the Administrator set forth below, and to the Member at its address shown in the Trust's records.

OHI Workers' Compensation Trust
c/o Cody Management Services, Inc.
357 Bay Road, Suite 4
Queensbury, NY 12804

21. Reapplication - A Member which withdraws from the Trust or who fails to renew its membership in the Trust pursuant to the By-Laws of the Trust may reapply for membership in the Trust at any subsequent date.

22. Miscellaneous. (a) This writing constitutes the entire agreement of the parties and supersedes all prior negotiations, discussions, representations, understandings or agreements with respect to the subject matter hereof and may not be modified, amended or terminated except by a written agreement specifically referring to this Agreement signed by all of the parties hereto.

(b) No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

(c) This Agreement shall be binding upon and inure to the benefit of each corporate party hereto, its successors and assigns, and each individual party hereto and his heirs, personal representatives, successors and assigns.

(d) The paragraph headings contained herein are for the purposes of convenience only and are not intended to define or limit the contents of said paragraphs.

(e) Each party hereto shall cooperate, shall take such further action and shall execute and deliver such further documents as may be reasonably requested by any other party in order to carry out the provisions and purposes of this Agreement.

(f) This Agreement may be executed in one or more counterparts, all of which

taken together shall be deemed an original.

(g) This Agreement and all amendments thereof shall be governed by and construed in accordance with the law of the State of New York applicahle to contracts made and to be performed entirely therein.

(h) Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration in Queensbury, New York, administered by the American Arbitration Association before one Arbitrator and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Notice of demand for arbitration shall be filed with the AAA within one (1) year after a dispute first arises.

(i) In case any provision of this agreement shall he held invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected or impaired thereby.

(j) The Trust shall hc cntitled to its attorneys fces and related costs in enforcing its rights or remedies hereunder.

23. Authorized Signatories - The undersigned represents that he/she is a duly authorized signatory for the Member employer listed below and has the authority to execute this Participation and Indemnification Agreement and can bind the Member to the terms and conditions contained herein.

ON THE BASIS OF THE FOREGOING, the undersigned applies for membership in the Trust and agrees to be bound hereby if accepted as a Member of the Trust.

_____
Name of Company

By: _____
Signature
Title
Address_____
_____

Witness:_____

This membership is accepted and the foregoing is agreed to on this _____ day of _____, 19____.

Cody Management Services, Inc.

By:_____
Administrator of the Trust
Address_____
_____

SCHEDULE 1

WORKERS' COMPENSATION TRUST

RATING PLAN FOR THE 1998-1999 FUND YEAR

The following plan will be used to develop Contributions for the Initial Fund Year (1998-99);

1. The Trust shall establish a rate table recommended by an independent actuary to develop the manual premium for each Member. ("Manual Premium")

2. In the initial Fund Year, the Trust shall apply each Member's Experience Rating Modification on file with the Workers' Compensation Board or apply a unity mod of 1.00 for those employers without an experience modification. In subsequent Fund Years, the Administrator shall select an independent rating bureau to develop a fair and consistent system of experience modifications to be applied so that each Member company's experience modification reflects the frequency and severity of claims costs it has contributed to the trust's overall losses for each Fund Year. Each Member's experience modification shall be applied to the manual premium to develop the standard premium for each Member ("Standard Premium").

3. Using the Member's Estimated Annual Premium on the Declaration Page of their current workers' compensation policy in place immediately prior to entering the Trust and based on comparable payrolls and classification codes their initial trust contribution shall not exceed a percentage amount as determined by the independent actuary ("actuary's percentage") of their current Estimated Annual Premium and the Member shall receive either a credit or debit added or subtracted from their "Standard Premium" calculated in step 2 above to arrive at an initial trust contribution equal to the actuary's percentage amount of their current Estimated Annual Premium ("Initial Trust Contribution"). Members who previously were in either a retrospective rated plan or other alternative insurance program will have their initial trust premium determined by the Administrator who shall use equivalent voluntary market rating plans as a basis to calculate a typical Estimated Annual Premium for a standard market policy and then shall proceed with the steps enumerated in Step 3 herein. At the discretion of the trustees, the debit or credit, defined as a percentage of the Standard Premium may be reduced or eliminated in subsequent years of the Trust based on recommendations from an independent actuary.

4. After completing Step 3, Founding Members shall have a 2% credit applied to the Initial Trust Contribution and Charter Member shall have 1% credit applied to the Initial Trust Contribution which shall then result in the calculation of the Estimated Trust Contribution ("Estimated Trust Contribution"). Members who are not Founding Members or Charter Members shall have their Initial Trust Contribution (step 3 above) he one and the same as their Estimated Trust Constribution.

5. In the event that a statutory benefit level change is approved by the New York Legislature or by the appropriate State Regulatory Agencies subsequent to the distributing of the proposed rate levels to Members, the Trustees reserve the right to amend the Rating Plan.

6. In the event that the Trust has a Net Loss for any Fund Year, the Trustees reserve the right to assess a surcharge on each Member's contribution for the subsequent Fund Year.

7. At the completion of the Initial Fund Year and all subsequent policy years, the Trust shall have independent auditors audit the payroll information of each Member and the Administrator shall recalucate steps one through four above to arrive at any final debits or credits owed to or due from each Member.

SCHEDULE 2

WORKERS' COMPENSATION TRUST

PAYMENT PLAN

The Payment Plan for the Initial Fund Year of the Trust commencing January 1st, 1998 shall be payment of 50% of the Contribution on or before December 15th, 1997, an additional 20% on or before March 31st, 1998, an additional 20% on or before June 30th 1998, and a final 10% on or before September 1st, 1998. Members who provide start-up funds prior to December 1, 1997 shall receive a credit equal to the paid start-up funds, said credit to be applied at the election of the Administrator to either of the next two regular payments due by the Member.

Prior to coverage commencing, Members shall deposit with the Administrator the required security in the form of either (a) cash, (b) letter of credit in the form approved by the trustees; or (c) surety bond in the form approved by the trustees. Prior to coverage commencing, new Members shall be Members of OHI.

The Payment Plan for subsequent Fund Years may be amended by Trustees, provided however that the proposed revisions of the Payment Plan have been reviewed and approved by both the Administrator and the Treasurer after consideration of the cash flow requirements of the trust for the proposed Fund Year.

If the Member is thirty (30) days or more late in making any payment in good funds, a late payment fee shall be immediately due and payable, as well as an interest charge, pursuant to Section 8 of this Agreement.

This Schedule 2 shall in no way impair the right of the Trustees to declare a Member in default, and pursue any and all remedies for non-payment by a Member pursuant to the terms of this Agreement and the By-Laws.

Prior to coverage commencing, Members shall provide to the trust the required Financial Security as set forth in Section 5.5(i) of the By-Laws.

The Trustees have determined it to be beneficial to the trust to reduce and or eliminate the cost to new members of any short rate penalties that might be assessed by the new member's previous workers' compensation carrier in the event that the new member terminated their previous policy prior to its expiration date. Upon the new member presenting the Administrator with written evidence of having been assessed a short rate penalty by their previous carrier, the Administrator may provide a partial or full credit, in keeping with other underwriting considerations, equal to the amount of the short rate penalty, said credit to be applied at the election of the Administrator, to either of the next two regular payments due by the new Member of the trust.

OHI WORKERS' COMPENSATION
TRUST

SCHEDULE 2A
PAYMENT PLAN FOR MEMBERS JOINING OTHER THAN FOR
A COMPLETED FUND YEAR

Members joining other than for a complete fund year, shall have their first year premiums pro-rated as set froth in Section 7(c) of this Participation and Indemnification Agreement and the Payment Plan with respect to that pro-rated premium shall be as governed by this Schedule 2A instead of as outlined in the first paragraph of Schedule 2:

Enrollment Month (of Fund Year)	1st	2nd	3rd	4th	5th	6th	7th to 12th	
Payment Pct. Due.	50%			20%		20%	10%	(4th paym't due 9th mth)
			50%			25%		25%(3rd paym't due 9th mth)
				50%			25%	25%(3rd paym't due 9th mth)
					50%		25%	25%(3rd paym't due 9th mth)
						50%		50%(2nd paym't due 9th mth)
							50%	50%(2nd paym't due 9th mth)
								100%(All due in one paym't)

Except for the above stated schedule of payments, all other provisions of Schedule 2 shall apply to members joining other than for a complete fund year.

SCHEDULE 3

WORKERS' COMPENSATION TRUST

REFUND OR CREDIT PLAN

For the Fund year 1998-1999 and, Unless Modified, for Subsequent Years

The Surplus for any Fund Year shall first be recommended by an independent actuary for the Trust and shall be equal to the market value of assets less the present value of liabilities, less reserves for incurred but not reported claims, and less the contingency reserves for that Fund Year, if any.

With advice from the Administrator and the aforementioned actuary and approval from the Workers' Compensation Board, in necessary, the Board of Trustees of the OHI Workers' Compensation Trust will, after the end of each Fund Year, determine the total Surplus available either for distribution to the Members of the Trust as a return, or to be taken into account in establishing the Contribution for subsequent years, or to be used for additional reserves or for capitalization requirements that may be established by the Workers' Compensation Board from time to time or for other purposes to preserve and promote the solvency of the Trust.

In order to participate in the distribution of the Surplus either as a return or as a credit towards subsequent contributions, a Member must have continued to be a Member to the end of the Fund Year, must have continued uninterrupted membership in the Trust through to the time of any Surplus distribution and must have incurred aggregate losses applicable to the Fund Year no greater than 60% of the Contributions paid by the Member during the same Fund Year. In order for a Surplus to be taken into account in establishing a Member's Contribution for subsequent Fund Years, the Member must have contributed to the Surplus in the Fund Year to which the Surplus arose. Any Member who voluntarily withdraws membership in the Trust or whose membership is terminated by the Trustees waives any rights to Surplus refunds or credits that may subsequently be distributed for policy years in which that Member was in the trust. Members can expect to receive a distribution from the Surplus as a return, if any, no earlier than two years after the end of the Fund Year or as otherwise directed by state regulations and law. The Surplus will be allocated to each Member for purposes of a return or the establishment of a subsequent year's Contribution on the basis of the sum of the Contributions for the Fund Year of each Member of the Trust compared with the Contribution for the same Fund Year of all other Members.

Finanical Security provided by a Member which is separate and apart from contributions shall not be considered as part of the surplus and shall not be released or refunded to a Member except as provided for in Section 16 of this Agreement.

APPENDIX 2

12/97

SCHEDULE 4

WORKERS' COMPENSATION TRUST

UNDERWRITING CRITERIA

1. Any prospective Member of the trust must be a fully paid Member of the Oil Heat Institute (OHI) in accordance with membership criteria of OHI.

2. Prospective Members must demonstrate a loss history satisfactory to the Trustees or its Administrator and the following Underwriting Criteria shall be used as general guidelines. However, the Trustees and/or the Administrator reserve the right to refuse trust Membership to any applicant.

A. Credit experience mod's (below 1.0) will generally qualify for the Trust except that negative trending may be the basis for disqualifying a prospective Member.

B. Experience mod's between 1.0 and 1.2 will generally qualify for the Trust except that negative trending or a high frequency of claims (as opposed to "shock losses") may be the basis for disqualifying a prospective Member.

C. Experience mod's above 1.2 may or may not qualify based on a variety of underwriting issues including, loss trending, the degree to which "shock losses" have contributed to a high mod (more favorable than high frequency of claims), the commitment by management to safety programs both historically and in the future and other considerations of underwriting that the Administrator and/or the Trustees deem pertinent.

3. Prospective Members must demonstrate that either a significant portion of their payroll, their manual premium or their number of employees are homogeneous with one or more of the governing classification codes ("governing codes") of the Trust. The initial governing codes include 5183/5193, 7219, 7502, 8006/8033, 8350/8353, and 8380/8381.

4. These Underwriting Criteria may be amended by the Trustees from time to time.

APPENDIX 3

OHI Workers' Compensation Trust

Selected Information for OHI's Board of Trustees

Trustee Name Company Membership Term	Trustee Term
A. Joseph Alonzo, Jr. Wever Petroleum, Inc. Wever Car Wash, Inc. Group Member: 10/31/98 - 12/31/09	10/25/00 - 6/30/11
B. Jim Benton Executive Director of the Oil Heat Institute of Eastern New York Group Member: Not Applicable	10/21/97 - 7/27/00 (or prior)
C. Robert Eldredge J & R Eldredge, Inc. Group Member: 1/1/98 - 12/31/09	6/20/01 - 6/30/11
D. James Hart Hart's Fuel Service, Inc. Group Member: 1/1/98 - 12/31/09	10/21/97 - 6/30/11
E. Joan Hastings Hastings-Fisher Energy Company, Inc. Group Member: 3/1/99 - 12/31/09	6/7/99 - 6/30/11
F. Thomas Keen Bigelows Oil Service, Inc. Group Member: 1/1/98 - 10/1/01	10/21/97 - 6/19/01
G. Robert Ottman - Chairman: mid-1999 to 6/30/11 Ottman & Enders, Inc. Group Member: 1/1/98 - 12/31/09	10/21/97 - 6/30/11
H. Donald Persico Persico Oil Company, Inc. Persico True Value Hardware, Inc. Group Member: 1/1/98 - 12/31/09	10/27/99 - 6/30/11
I. John Reichard - Chairman through mid-1999 Hastings & Company, Inc. Group Member: 1/1/98 - 12/31/99	10/21/97 - 9/3/99
J. Richard Slote **- See Last Footnote Below** The King Service, Inc. Group Member: N/A	10/21/97 - 1/30/1998
K. John Snyder Snyder Fuel Service, Inc. Group Member: 1/1/98 - 12/31/09	10/21/97 - 6/7/99

Footnotes:

- The above information was compiled from various information obtained from the WCB and other sources. While conflicting term information occasionally existed within the documents obtained, we believe this listing can be considered a reasonably accurate depiction of the individuals that served on OHI's Board of Trustees and their terms of service.

- The Trust was legally formed on 10/21/97, but did not begin formal operations until 1/1/98. This listing uses the legal formation date as the beginning service date for those Trustees that signed the Trust document and By-laws.

- Richard Slote signed the Trust document and By-laws; however, his Company never participated in the Trust. The original Trust Document and By-laws specified that six out of the seven Trustees had to be employees of a participating member while the seventh must be the "principal paid executive of the Oil Heat Institute." Mr. Slote's company/employer never became a member, and it is unclear to L&M the legal ramifications, if any, related to the duties he performed while acting in the capcity of an OHI Trustee, including his execution of the Trust document and By-laws in October 1997.

OHI

WORKERS' COMPENSATION TRUST

ADMINISTRATION AGREEMENT

THIS AGREEMENT is entered into as of October 21, 1997, by and between the OHI Workers' Compensation Trust, a workers' compensation self-insurance trust established October 21, 1997 (the "Trust"), and Cody Management Services, Inc. of 371 Bay Road, Suite 4, Queensbury, NY 12804 (The "Administrator").

WITNESSETH

WHEREAS, the Trust is applying for authority from the New York Workers' Compensation Board to operate as a workers' compensation self-insurance trust in accordance with Subdivision 3 of Section 50 of the New York Workers' Compensation Law; and

WHEREAS, in accordance with the terms and provisions of Article VI of the By-laws dated October 21, 1997 (the "Trust and By-Laws"), the Trustees have heretofore appointed Cody Management Services, Inc. as Administrator of the Trust and further recognize that Cody Management Services, Inc. has been serving in the capacity of Acting Administrator during the previous twelve months having expended time and labor beyond the level for which it has been compensated; and

WHEREAS, the parties hereto desire to set forth the conditions under which Cody Management Services, Inc. shall serve as Administrator of the Trust;

NOW, THEREFORE in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Trust and Cody Management Services, Inc. agree as follows:

I. TERM

(a) Cody Management Services, Inc. shall serve as Administrator of the Trust commencing October 21, 1997 through and including October 20, 2007, (the "Term"): provided, however, that this agreement shall be automatically renewed and extended for successive ten (10) year periods commencing October 21, 2007, unless

either the Trust or Cody Management Services, Inc. shall give the other party one hundred and twenty (120) days written notice prior to the expiration of the Term (as hereafter renewed and extended, if applicable) of its intention to terminate this agreement.

(b) Notwithstanding the foregoing, this Agreement may be terminated by the Trust prior to the expiration of the Term for "cause" in accordance with conditions and procedures set forth in this Paragraph 1 (b). The term "cause" shall mean the good faith determination by a two-thirds majority vote of the Trustees that Cody Management Services, Inc. has continuously and deliberately failed to perform its duties, responsibilities and/or obligations under this Agreement (the "Obligations"). The Trustees must give Cody Management Services, Inc. written notice (the "Notice") specifying what actions they believe reflect the Cody Management Services, Inc.' continuous and deliberate failure to perform such obligations. The Notice shall provide Cody Management Services, Inc. with a ninety (90) day period from the date of the Notice in which to satisfy its obligations (the "Cure Period"). This Agreement may be terminated for "cause" only in the event that, within thirty (30) days of the expiration of the Cure Period, the Trustees make a further good faith determination by a two-thirds majority vote that Cody Management Services, Inc. has failed to satisfy its duties or obligations under this Agreement. In the event of Termination of this Agreement, Cody Management Services, Inc. shall deliver to the Trustees copies of Trust related data and records no later than the Termination date and shall thereafter have no continuing obligations under this Agreement beyond the Termination date.

2. <u>Administrators Responsibilities</u>

In accordance with the terms of the Trust and By-Laws, Cody Management Services, Inc. shall have the power and duty to directly provide or arrange through a subcontracted Service Agent(s) to provide all of the following services and responsibilities :

(a) Provide guidance to the Trustees on policy issues including, but not limited to membership criteria, fund reserve, contribution levels, proper risk management practices or other policies effecting the overall management of the Trust and shall serve in the position of Secretary of the Board of Trustees with respect to responsibilities of the Secretary as defined in the Trust By-Laws.

(b) Manage the daily operations of the Trust in the capacity of the Chief Executive Officer and, to the extent consistent with the terms and provisions of this Agreement, carry out the policies established by the Trustees of the Trust and to act for and bind the Trust and its members in all transactions relating to or arising out of the operation of the Trust as specifically directed by the Trustees.

(c) Investigate, review, negotiate, adjust, settle and/or arrange at trust expense for the litigation of all workers' compensation claims brought by the Members' employees; issue and process checks required for the payment of claims and other operating expenses; establish and maintain reserves for the payment of claims; arrange for medical examinations; maintain appropriate claims' files; and prepare quarterly loss reports outlining the Trust's payments, reserves and such other information as may be deemed necessary or appropriate by the Trustees.

(d) Develop and conduct loss prevention, safety and risk management programs for the purpose of reducing the frequency and severity of potential losses.

(e) Organize, coordinate and direct the marketing of the Trust and its workers' compensation self-insurance program and products to qualified prospective members (collectively, the "Marketing Services").

(f) Administer and manage the "short-term" funds of the Trust in accordance with the terms and provisions of the Trust and By-Laws, said "short-term" funds to be defined as that amount of funds in the discretion of the Administrator needed to cover anticipated expenses of the trust for any six month period of time. The parties agree that any checks a) written in the amount of $10,000 (ten thousand dollars) or more, or b) any checks made payable to the Administrator regardless of the amount shall require an authorized signature of a member of the Board of Trustees. At any given point in time, the Administrator may identify "long term" funds of the Trust to place in the care and custody of the Trustees for their investment in accordance with the provision of the Bylaws, said "long term" funds to be defined as any funds in the discretion of the Administrator not needed to cover anticipated expenses of the trust for the ensuing six month period of time. The Administrator shall receive monthly statements from any investment management firm or party selected by the Trustees for purposes of investing "long term" funds so as to facilitate the Administrator's maintenance of proper financial accounting records for the Trust.

(g) Bill and charge each Member for requisite annual contributions to the Trust and provide collection services as needed and arrange for audit adjustments on behalf of the Trust.

(h) Assist the Trust in its development of a trust-wide safety committee.

(i) Obtain information from each member of the Trust (the "Members") in order to arrange, at trust expense, for promulgation of experience modifications.

(j) Prepare and review all applications, forms and related documentation necessary to underwrite a prospective member;

(k) Retain at trust expense and supervise legal counsel necessary for

administrative purposes and for the prosecution or defense of any litigation, arbitration or other administrative or judicial proceedings on behalf of the Trust;

(l) Retain at trust expense and supervise independent investigative services for purposes of determining the legitimacy of a claim on behalf of the Trust;

(m) Retain at trust expense independent actuarial, accounting and financial auditing and payroll auditing services as necessary for purposes of financial reviews on behalf of the Trust, and

(n) Pursue at trust expense through excess/surplus brokers the placement of excess insurance (reinsurance) as required by the Workers' Compensation Board as well as any other insurance requested by the Trustees such as Directors & Officers Liability insurance on behalf of the Trust.

(o) Represent the Trust with respect to administrative and regulatory matters with the Self-Insurance Office of the Workers' Compensation Board as the authorized official of the employer group.

3. Independent Contractor Status

Cody Management Services, Inc. shall be considered an independent contractor of the Trust for all purposes whatsoever. Cody Management Services, Inc. reserves the right, in its sole discretion, to assign or subcontract the performance of its duties under this Agreement to such third parties as it may select or as may otherwise be required by statute or regulations, without the necessity of the Trust's prior approval; provided, however, that such assignment or subcontracting shall not relieve Cody Management Services, Inc. of its obligations to the Trust hereunder.

4. Limitations

It is expressly agreed and understood that Cody Management Services, Inc. shall not act as or be deemed an insurer for the Trust, and this Agreement shall not be considered or construed as an insurance policy, insurance contract or agreement of indemnity. Under no circumstances shall Cody Management Services, Inc. or its subcontractors be financially responsible for the payment of claims against the Trust or its Members. In no event shall Cody Management Services, Inc. or its subcontractors be liable to the Trust or its Members for any indirect, special, consequential or punitive damages.

5. Proprietary Rights

(a) All systems ("Systems") created or utilized by Cody Management Services, Inc. in the performance of its duties under this Agreement shall belong to, and shall remain as the sole property of, Cody Management Services, Inc.. The Trust shall have no ownership interest or other proprietary right to such systems. For purposes of this paragraph the term "systems" shall include, but is not limited to, computer programs, computer equipment, procedures, documentation and internal reports of Cody Management Services, Inc..

(b) Notwithstanding the foregoing, during the Term the Trust shall have the right of access to, and may make copies of, information generated by the Administrator relating to (i) workers' compensation claims made by the member's employees; (ii) expenses and revenues of the Trust, and (iii) actuarial matters of the Trust. All data and records are the property of the Trust during and after the Term.

6. Amount of Compensation

In consideration of the services rendered by Cody Management Services, Inc. hereunder, the Trust shall pay Cody Management Services, Inc. the following fees: As compensation for the Administration Services provided by Cody Management Services, Inc., the Trust shall pay Cody Management Services, Inc. an initial "Administration fee" sum equal to ninety-six cents per one hundred dollars of workers compensation related payroll ($0.96/$100) of the aggregate of each Members workers compensation related payroll (the total payroll for each Member utilized for calculating that member's contribution to the Trust). The initial Administration fee rate per one hundred dollars payroll shall increase at the commencement of the third Fund Year to $1.00 (one dollar); the fifth Fund Year to $1.04 (one dollar and four cents)and the seventh Fund Year to $1.09 (one dollar and nine cents). Upon year end payroll audits, for each policy year, any debits or credits based on each member's payroll adjustments shall be calculated relative to the Administrative Fee earned and the resulting adjustment payments shall be made by the appropriate party within forty five days of the final premium and payroll audit. In addition, the Trust acknowledges that for the entire initial and any extended terms of this Agreement, Cody Management Services, Inc. is the Trust's "Broker of Record" for insurances acquired by trustees in the name of the Trust itself and/or Cody Management Services, Inc. at its sole discretion may designates other Brokers of Record as may be required by statute for insurances required for the Trust and Cody Management Services, Inc. may be entitled to and may receive a separate commission paid by insurers or other brokers for placing excess, director's and officers liability and other insurances requested by the Trustees from time to time on behalf of the Trust.

7. Payment of Compensation

The Administration Fee shall be payable by the Trust to Cody Management Services, Inc. within thirty (30) days of the Trust's receipt of the contributions made by each Member.

8. General

(a) This Agreement supersedes any and all prior oral or written understandings of the parties with respect to the subject matter herein, and may be amended, changed or modified only by a written instrument signed by both Cody Management Services, Inc. and the Trust. This Administration Agreement may be executed in two or more counterparts by the parties hereto, each of which counterparts shall be deemed an original, and such counterparts shall constitute one and the same instrument which shall for all purposes be sufficiently evidenced by any such original counterpart.

(b) This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York applicable to contracts made and to be performed entirely therein.

(c) The parties agree that any disputes, alleged breaches of contract or other actions against the other party shall be exclusively carried out within the rules and procedures of the American Arbitration Association ("AAA") under its "fast-track" rules and any rulings and decisions by that process shall be final and binding and the decision of arbitration shall be enforceable, if necessary, within any state/federal court of competent jurisdiction. Both parties agree to the following guidelines to be used by the AAA in arbitrating any disputes that arise out of this Agreement: i) A single Arbitrator shall hear the dispute. The Arbitrator shall be vested with complete authority for determining a final and binding arbitration on the contract dispute;(ii) the venue shall be Glens Falls, New York or any other venue within New York selected by the Arbitrator; and iii) in addition to any judgments awarded and decisions rendered, the Arbitrator may apportion any non-attorney costs including filing fees and costs of the Arbitrator as part of any judgments but may not apportion the costs of any attorneys or other related legal professional assistance including expert witnesses borne by either party. Each party shall be responsible for their attorneys fees and related professional legal assistance including expert witnesses without reimbursement from the other party.

IN WITNESS WHEREOF, the Trust and the Administrator have executed this Agreement as of the day and year first written above.

OHI WORKERS'
COMPENSATION TRUST

By:

Trustee _____ Trustee _____

Trustee _____ Trustee _____

Trustee _____ Trustee _____

Trustee _____

CODY MANAGEMENT SERVICES, INC.

By: _____

Title: PRESIDENT

AMENDMENT TO
ADMINISTRATION AGREEMENT

THE AGREEMENT entered into as of October 21, 1997, by and between the OHI Workers Compensation Trust, a workers' compensation self-insurance trust established October 21, 1997 (the "Trust"), and Cody Management Services, Inc. of 371 Bay Road, Suite 4, Queensbury, NY 12804 (The "Administrator") is hereby amended as of December 1, 1999 by mutual written consent of the parties as follows:

1) Section 1 ' Term' is amended by having all references in Section 1(a) to the date 'October 21, 2007' being changed to read 'October 21, 2009'.

2) Section 6 ' Compensation' is renamed 'Section 6 (a)' in its entirety.

3) The sentence in the newly renamed Section 6(a) which currently ends with the phrase "... and the seventh year to $1.09 (one dollar and nine cents)" shall have added afterwards the following continuation:

"... and the tenth year $1.14 (one dollar and fourteen cents). In each fund year, the calculations utilizing the rate per payroll method shall be utilized to determine the management fee due and payable to the Administrator. In the event that said management fees resulting from such calculations, when taken as a percentage of audited premium exceed 23% (twenty three percent), then the maximum fees due and payable to the Administrator shall be 23% (twenty three percent) of audited premium for that fund year. In the event that the management fees resulting from such rate per payroll calculations, when taken as a percentage of audited premium are less than 21% (twenty one percent), then the minimum fees due and payable to the Administrator shall be 21% (twenty one percent) of audited premium except that the managment fees due and payable shall not be less than $62,000 (sixty two thousand dollars) for any fund year."

4) A new Section 6(b) shall be added as follows:

"Section 6(b) - Separate from the management fees specified in Section 6(a), the Trust shall pay to the Administrator a 7% (seven percent) brokerage commission on audited trust premium for (i) the Fund Year commencing January 1, 2000 and subsequent fund years covered by the Term of this agreement and (ii) any new trust memberships who join the trust between December 1 and December 31, 1999. Estimated commissions shall be paid on the same payment schedule as the estimated premium schedule for trust members and shall be subject to final audited premium calculations. The Administrator, at its sole discretion, may retain all or a portion of this brokerage commission and or use any portion of this commission to retain the services of other brokers provided, however, that the Administrator shall pay a 3% (three percent) commission to any Brokers of Record filed with the trust for ongoing trust members who initially joined the trust prior to 12/1/99."

IN WITNESS WHEREOF, the Trust and the Administrator have executed this Amendment to the Administration Agreement as of the day and year first written above.

OHI WORKERS'
COMPENSATION TRUST

By:

Trustee Robert L. Ottman

CODY MANAGEMENT SERVICES, INC.

By: _____

Title: President

IN WITNESS WHEREOF, the Trust and the Administrator have executed this Amendment to the Administration Agreement as of the day and year first written above.

OHI WORKERS'
COMPENSATION TRUST

By:

Trustee

CODY MANAGEMENT SERVICES, INC.

By:

Title: President

IN WITNESS WHEREOF, the Trust and the Administrator have executed this Amendment to the Administration Agreement as of the day and year first written above.

OHI WORKERS'
COMPENSATION TRUST

By:

Trustee

CODY MANAGEMENT SERVICES, INC.

By:

Title: President

IN WITNESS WHEREOF, the Trust and the Administrator have executed this Amendment to the Administration Agreement as of the day and year first written above.

OHI WORKERS'
COMPENSATION TRUST

By:

Trustee James A. Hart (HART)

CODY MANAGEMENT SERVICES, INC.

By:

Title: President

IN WITNESS WHEREOF, the Trust and the Administrator have executed this Amendment to the Administration Agreement as of the day and year first written above.

OHI WORKERS'
COMPENSATION TRUST

By:

Trustee _____

CODY MANAGEMENT SERVICES, INC.

By: _____

Title: President

IN WITNESS WHEREOF, the Trust and the Administrator have executed this Amendment to the Administration Agreement as of the day and year first written above.

OHI WORKERS'
COMPENSATION TRUST

By:

Trustee _____

CODY MANAGEMENT SERVICES, INC.

By: _____

Title: President

AMENDMENT TO
ADMINISTRATION AGREEMENT

THE AGREEMENT entered into as of October 21, 1997, by and between the OHI Workers Compensation Trust, a workers' compensation self-insurance trust established October 21, 1997 (the "Trust"), and Cody Management Services, Inc. of 357 Bay Road, Suite 4, Queensbury, NY 12804 (The "Administrator") is hereby amended as of August 20, 2003 by mutual written consent of the parties as follows:

1) Section 1 ' Term' is amended by having all references in Section 1(a) to the date 'October 21, 2007' being changed to read 'December 31, 2019.

2) Section 6 ' Compensation' is renamed 'Section 6 (a)' in its entirety.

3) The sentence in the newly renamed Section 6(a) which currently ends with the phrase "... and the seventh year to $1.09 (one dollar and nine cents)" shall have added afterwards the following continuation:

"... and the tenth year $1.14 (one dollar and fourteen cents), the fourteenth year $1.21 (one dollar and twenty one cents), and the seventeenth year $1.26 (one dollar and twenty six cents). In each fund year, the calculations utilizing the rate per payroll method shall be utilized to determine the management fee due and payable to the Administrator subject to the following maximum and minimum caps. (a) On the first one million dollars of audited premium each fund year, the maximum management fee is 23% (twenty three percent) and the minimum management fee is 21% (twenty one percent); (b) on all audited premium each fund year above the initial one million dollars, the maximum management fee is 18% (eighteen percent) and the minimum management fee is 16% (sixteen percent) except that the minimum management fees due and payable shall not be less than $62,000 (sixty two thousand dollars) for any fund year."

4) A new Section 6(b) shall be added as follows:

"Section 6(b) - Separate from the management fees specified in Section 6(a), the Trust shall pay to the Administrator a 7% (seven percent) brokerage commission on audited trust premium. Estimated commissions shall be paid on the same payment schedule as the estimated premium schedule for trust members and shall be subject to final audited premium calculations. The Administrator, at its sole discretion, may retain all or a portion of this brokerage commission and or use any portion of this commission to retain the services of other brokers provided, however, that the Administrator shall pay a 3% (three percent) commission to any Brokers of Record filed with the trust for ongoing trust members who initially joined the trust prior to 12/1/99."

IN WITNESS WHEREOF, the Trust and the Administrator have executed this Amendment to the Administration Agreement as of the day and year first written above.

OHI WORKERS'
COMPENSATION TRUST

By:

ROBERT L. OTTMAN

Trustee Robert L. Ottman 8-20-03

CODY MANAGEMENT SERVICES, INC.

By: _____

Title: President 8/20/03

IN WITNESS WHEREOF, the Trust and the Administrator have executed this Amendment to the Administration Agreement as of the day and year first written above.

OHI WORKERS'
COMPENSATION TRUST

By: Joan L Hasty

Trustee 8/20/13

CODY MANAGEMENT SERVICES, INC.

By: _____

Title: President 8/20/13

IN WITNESS WHEREOF, the Trust and the Administrator have executed this Amendment to the Administration Agreement as of the day and year first written above.

OHI WORKERS'
COMPENSATION TRUST

By: 8/20/03

Trustee_____

CODY MANAGEMENT SERVICES, INC.

By:_____

Title: President 8/23/03

IN WITNESS WHEREOF, the Trust and the Administrator have executed this Amendment to the Administration Agreement as of the day and year first written above.

OHI WORKERS'
COMPENSATION TRUST

By:

Trustee Robert Eldredge 8/22/03

CODY MANAGEMENT SERVICES, INC.

By: 8/20/03

Title: President

IN WITNESS WHEREOF, the Trust and the Administrator have executed this Amendment to the Administration Agreement as of the day and year first written above.

OHI WORKERS'
COMPENSATION TRUST

By:

Trustee _____ 8-22-03

CODY MANAGEMENT SERVICES, INC.

By: _____ 8/20/03

Title: President

IN WITNESS WHEREOF, the Trust and the Administrator have executed this Amendment to the Administration Agreement as of the day and year first written above.

OHI WORKERS'
COMPENSATION TRUST

By:

James A. Hart

Trustee James R. [illegible] 08/20/03

CODY MANAGEMENT SERVICES, INC.

By: _____

Title: President 8/20/03

AMENDMENT TO

ADMINISTRATION AGREEMENT

THE AGREEMENT entered into as of October 21, 1997, by and between the OHI Workers Compensation Trust, a workers' compensation self-insurance trust established October 21, 1997 (the "Trust"), and Cody Management Services, Inc. of 357 Bay Road, Suite 4, Queensbury, NY 12804 (The "Administrator") and subsequently amended on December 1, 1999 and August 23, 2003 is hereby amended as of February 26, 2009 by mutual written consent of the parties as follows:

WHEREAS the parties are desirous of reducing administrative expenses and and clarifying administrative fees in the event the trustees decide to commence a 'runoff' (hereafter 'runoff' meaning that time frame during which no ongoing workers compensation coverage is provided for members but the trust is administering ongoing claim and other financial obligations prior to dissolution of the trust), the parties agree:

1) The existing administrative fees set forth in Section 6(a) shall be reduced by a further 10% provided, however, resulting fees shall not be less than the existing minimum caps. In addition, the current broker of record commission of 7% currently shared with other brokers in Section 6(b) shall be reduced to 6% and the 1 % reduction passed on to participating brokers as deemed by the Administrator.

2) In the event the trustees designate a specific date to end ongoing coverage and begin a 'runoff' period, the administrative fees set forth in Section 6(a) as amended shall be replaced as follows: (a) during the first 2 year runoff period at $60,000 per quarter for 8 consecutive quarters. (b) During the 7th quarter of the runoff, the parties shall negotiate administrative fees to commence the 3rd year of the runoff.

3) Quarterly runoff fee payment dates shall be January 1st, April 1st, July 1st and October 1stand will commence on the closest quarterly payment date to commencement of the runoff. Debits/credits in administrative fees and commissions arising from payroll audits prior to runoff shall still apply. Commencing 1/1/2011 and thereafter, the runoff administrative fees will be cumulatively adjusted for inflation by the annual Consumer Price Index of the previous year(s).

RECEIVED
WORKERS' COMPENSATION
MAR 11 2009
SELF INSURANCE OFFICE

IN WITNESS WHEREOF, the Trust and the Administrator have executed this Amendment to the Administration Agreement as of the day and year first written above.

OHI WORKERS' COMPENSATION TRUST

By:

Trustee James G. HATHART Date 03/02/09

CODY MANAGEMENT SERVICES, INC.

By:

Title: President Date 2/27/09

RECEIVED
WORKERS' COMPENSATION
MAR 11 2009
SELF INSURANCE OFFICE

IN WITNESS WHEREOF, the Trust and the Administrator have executed this Amendment to the Administration Agreement as of the day and year first written above.

OHI WORKERS' COMPENSATION TRUST

By:

Trustee _____ Date 2-28-09

CODY MANAGEMENT SERVICES, INC.

By: _____

Title: President Date 2/27/09

RECEIVED
WORKERS' COMPENSATION
MAR 11 2009
SELF INSURANCE OFFICE

IN WITNESS WHEREOF, the Trust and the Administrator have executed this Amendment to the Administration Agreement as of the day and year first written above.

OHI WORKERS' COMPENSATION TRUST

By:

Trustee _____ Date 3/2/09

CODY MANAGEMENT SERVICES, INC.

By: _____

Title: President Date 2/27/09

RECEIVED
WORKERS' COMPENSATION
MAR 11 2009
SELF INSURANCE OFFICE

IN WITNESS WHEREOF, the Trust and the Administrator have executed this Amendment to the Administration Agreement as of the day and year first written above.

OHI WORKERS' COMPENSATION TRUST

By:

Trustee Robert Eldredge Date 3/2/09

CODY MANAGEMENT SERVICES, INC.

By:

Title: President Date 2/27/09

RECEIVED
WORKERS' COMPENSATION
MAR 11 2009
SELF INSURANCE OFFICE

IN WITNESS WHEREOF, the Trust and the Administrator have executed this Amendment to the Administration Agreement as of the day and year first written above.

OHI WORKERS' COMPENSATION TRUST

By:

Trustee _____ Date 3/1/09

CODY MANAGEMENT SERVICES, INC.

By: _____

Title: President Date 2/27/09

RECEIVED
WORKERS' COMPENSATION
MAR 11 2009
SELF INSURANCE OFFICE

IN WITNESS WHEREOF, the Trust and the Administrator have executed this Amendment to the Administration Agreement as of the day and year first written above.

OHI WORKERS' COMPENSATION TRUST

By:

Trustee Robert L. Ottaway Date 3-9-09

CODY MANAGEMENT SERVICES, INC.

By:

Title: President Date 2/27/09

RECEIVED
WORKERS' COMPENSATION
MAR 11 2009
SELF INSURANCE OFFICE

OHI WORKERS' COMPENSATION TRUST

RESOLUTION AMENDING ADMINISTRATION AGREEMENT

WHEREAS the cost of reinsurance throughout the United States has increased astronomically since the terrorist events of September 11, 2001 including a 300% increase in such costs to our Trust; and

WHEREAS Cody Management Services, Inc as Administrators of the Trust have voluntarily brought to the Trustees a proposal to reduce their management fees as a means to assist the Trust in offsetting a portion of these increased reinsurance costs in return for the Trust extending the term of the Administration Agreement through 2019; and

WHEREAS the trustees are well satisfied with the professionalism, integrity and breadth and depth of services provided by the Administrator for the past seven years and are comfortable in extending the Term of the Agreement at this time; and

WHEREAS the proposed Amendment to the Administration Agreement preserves the important concept of a payroll based management fee which relates to 'scale of organization' served while at the same time providing maximum and minimum caps that will result in significant savings to the Trust in years to come;

NOW THEREFOR BE IT RESOLVED that the Trustees support the Amendment to the Administration Agreement reviewed in Executive Session at its August 20, 2003 Trustee Meeting and hereby authorize each Trustee to execute said Amendment to the Administration Agreement.

Approved 8/20/03

SERVICE AGREEMENT

This sets forth the Service Agreement made as of January 1, 2001 by and between Cody Management Services, Inc., of 357 Bay Road, Suite # 4, Queensbury, NY 12804 hereinafter referred to as "CMS" and CSI, Inc. of 29 Avenue 'C' - Suite 4, Saratoga Springs, NY 12866, hereafter "CSI".

Recitals :

WHEREAS CMS serves as Administrator for the OHI Workers' Compensation Trust, a New York self insurance group (W558555), hereafter the 'Trust', and

WHEREAS CMS desires to retain CSI as a subcontractor to CMS to provide loss control services for the Trust,

NOW THEREFORE BE IT RESOLVED that the two parties agree as follows:

Section I: Covered Programs

a) OHI Workers' Compensation Trust

Section II: Services Provided by CSI

a) CSI will act as a technical safety resource for trust members via telephone.

b) CSI shall identify and recommend resources, articles, safety equipment etc that may be of help to trust members. CSI shall maintain a library of appropriate safety videos and publicize its availability to trust members and upon request from a trust member circulate for temporary viewing any safety videos it may have. The trust shall bear the cost of purchasing the videos with prior approval of CMS.

c) Publish/distribute to each trust member 4 quarterly safety newsletters each year.

d) When requested by CMS, CSI will attend one meeting of the Board of Trustees or of Members each year for each covered program to discuss the safety program.

e) Upon the request of CMS, CSI shall conduct an on-site safety safety survey of a trust member to include meeting with principals and any safety management employees of the trust member and/ or safety committees of the trust member. CSI shall thereafter produce a written report to the insured with written recommendations for safety improvements (with copies to CMS). These surveys are intended for those insureds who have experienced higher than normal levels of claims compared to other trust members. CSI shall monitor OHIWCT member compliance with the safety recommendations and will do oral and written follow-ups with each insured after 90 days and report the overall

level of compliance to CMS. In addition to actual on-site visits, this agreement anticipates and compensates CSI for the time necessary to prepare for and follow-up such visits.

f) Upon the request of CMS, CSI shall conduct safety seminars on loss control subjects of interest to the trust members and/or CMS. The costs for meeting rooms, meals during the seminar or rented audio visual equipment shall be borne by the trust(s).

Section III: Fees and Payment Schedule

CMS agrees to pay CSI in the amounts and payment schedules as follows:

(a) For duties in Section II a,b,c and d, $250 per quarter paid on January 15th, April 15th, July 15th and October 15th.

(b) For duties in Section II e, $175 per site visit for accounts within 60 miles of Albany, NY said fee to include compensation for any prepartion time and for the 90 day follow up. For accounts beyond 60 miles of Albany, CMS and CSI shall agree to a fixed amount for CSI's professional time with some compensation for hours of travel. In addition to the fixed amount, CMS shall also pay a) mileage at 33 cents per mile or b) alternatively other modes of travel with prior approval from CMS. CSI will include an invoice with the copy of the written recommendations, payable by CMS within 15 business days of receipt.

(c) For duties in Section II f, $400 for each safety seminar provided by CSI within 60 miles of Albany, NY, said seminars to run approximately three hours in duration or $250 for seminars that run for an hour and a half or less. This fee covers the planning and preparation time as well as the actual conduct of the seminar by CSI. Meeting room rental and any audio/visual/video equipment rental costs shall be borne by the trust(s). For seminars beyond 60 miles from Albany, NY, CMS and CSI shall agree to a fixed amount for CSI's professional time with some compensation for hours of travel. In addition to the fixed amount, CMS shall also pay a) mileage at 33 cents per mile or b) alternatively other modes of travel with prior approval from CMS.

Section IV: Term

a) Either party may terminate this agreement for any reason with 30 days written notice. The termination of this agreement by CMS with respect to any one trust shall not, in and of itself, terminate the agreement with respect to any other trust(s). In addition, this agreement may be terminated with respect to any trust(s) by actions of an arbitrator as set forth in Section VII. The 'non-compete' provisions of this Agreement (Section IX) shall survive any termination date and shall remain in effect as provided for in Section IX.

b) In the event the Agreement is terminated with respect to a given trust, the parties shall agree on any outstanding payments that may be due by CMS for work completed as

of the date of termination and under no cicrcumstances shall CMS be responsible for payment of work not yet completed by CSI for a trust terminated under this Agreement.

Section V: File Ownership

All loss control, loss run, underwriting files and videos of the trust members are the property of CMS and/or the trust and CSI shall provide copies to CMS of all pertinent correspondence, reports or other relevant materials with respect to any trust member. In the event of a termination of this agreement, the loss control and underwriting files shall be delivered by CSI to the office of CMS or any other party designated by CMS within 7 calendar days after receipt of a written request for said files from CMS. CSI agrees that such files shall be in an organized, legible and separated condition so as to enable CMS or a party designated by CMS to continue a loss control program with minimal delay.

Section VI: Assignment

This agreement may be assigned by either party without written agreement or consent of the other party provided however that if the 'assigned' party fails to uphold its obligations under this agreement, the other party may seek redress under the arbitration provisions of this agreement, said redress to include termination of the agreement or any other reasonable solutions determined by the arbitrator.

Section VII: Arbitration

(a) If upon a party's substantial breach of the Agreement, the non-breaching party notifies the other of such breach in writing and if the breach is not corrected within thirty (30) days, then the non-breaching party may file an action with the American Arbitration Association (hereafter "AAA") within guidelines set forth in Section VII(b) below. The parties agree that any disputes, alleged breaches of contract or other actions against the other party shall be exclusively carried out within the rules and procedures of the AAA and any ruling and decisions by that process shall be final and binding and without recourse of appeal to any state or federal court and the decision of arbitration shall be enforceable, if necessary, within any state/federal court of competent jurisdiction.

b) Both parties agree to the following guidelines to be used by the AAA in arbitrating any disputes that arise out of this Agreement:

i) A single Arbitrator shall be unilaterally named by the AAA without input from either party as to the selection of an Arbitrator (in order to expedite the process) within fifteen (15) days of written request by the party filing an action. The Arbitrator shall be vested with complete authority for determining a final and binding arbitration on the contract dispute.

ii) The first choice venue shall be Queensbury, New York or, secondly, any other convenient location in the State of New York determined by the Arbitrator.

iii)The Arbitrator shall attempt to hold any hearings within thirty (30) days of accepting the assignment and will, to the extent practical, limit any requests for delay by either party in order to facilitate an expeditious and speedy resolution of the conflict.

iv) In addition to any judgments awarded and decisions rendered, the Arbitrator may apportion any non-attorney costs including filing fees and costs of the Arbitrator as part of any judgments but may not apportion the costs of any attorneys or other related legal professional assistance including expert witnesses borne by either party. Each party shall be responsible for their attorneys fees and related professional legal assistance including expert witnesses without reimbursement from the other party.

v) The Arbitrator may terminate the Agreement with or without judgments awarded as part of any decision rendered.

Section VIII: Governing Law

This agreement shall be governed by the Laws of the State of New York and constitutes the entire agreement between the parties. Changes or amendments must be made in writing and signed by both parties. In the event any court, governmental agency or binding arbitrator shall declare any part of this agreement void or unenforceable, the remaining provisions of the agreement shall continue to be in full force and effect and binding on the parties if capable of suitable performance by both parties. In the event performance becomes impossible by either party or the assigns of either party as determined by an arbitrator, this agreement shall terminate as of the date of such action in the same manner as the expiration thereof. In such event, the payment due CSI shall be pro rated as of the date of the aforesaid action of arbitration or governmental action.

Section IX: Non-compete

Recognizing that CSI is providing a subcontractor role on behalf of CMS with respect to certain services for covered program Trusts (as listed in Section I(a)), CSI pledges and agrees not to, without the prior written consent of CMS, directly or through any third party provide either a covered program Trust as a whole or the individual members of any covered program Trusts any a) loss control and underwriting services as set forth in Section II and b) any workers compensation insurance or self insurance products or programs and or any administrative or management services that CMS may provide these covered program Trusts or their individual members both during the term of the Agreement and for a three year period beyond the expiration dateor termination date of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed and sealed by their proper officers thereunto duly authorized on the day and year first above written.

Cody Management Services, Inc.

By: _____

Title: President

Date: 1/4/01

CSI, Inc.

By: Jeffrey D. Gutcridge

Title: President

Date: 1-8-01

Amendment to Service Agreement

The Service Agreement dated January 1, 2001 by and between Cody Management Services, Inc. of 357 Bay Road Suite #4, Queensbury, NY 12804 (CMS) and Claims Services, Inc. of 29 Avenue 'C'- Suite 4, Saratoga Springs, NY 12866 (CSI) is hereby amended as follows:

Section III: The quarterly fees set forth in Section III (a) are hereby increased to $500 per quarter for services commencing July 1, 2004 for a one year period and further increased to $625 for services commencing July 1, 2005 for the next two full service years.

Section IV: The term of this agreement set forth in Section IV(a) is extended to July 1, 2007 subject to the right of either party to terminate the agreement for any reason with 30 days written notice.

Cody Management Services, Inc.
David I. Harvey, Pres.

6/22/04
Date

Jeffrey D. Guttridge
Claims Services, Inc.
Jeffrey D. Guttridge, Pres.

06-23-2004
Date

Amendment to Service Agreement

The Service Agreement for safety and loss control dated July 1, 2001 by and between Cody Management Services, Inc. of 357 Bay Road Suite #4, Queensbury, NY 12804 (CMS) and Claims Services, Inc. of 29 Avenue 'C'- Suite 4, Saratoga Springs, NY 12866 (CSI) and further amended effective July 1, 2004 is hereby extended for a one year period under the same terms and conditions.

Cody Management Services, Inc.
David I. Harvey, Pres.

Date 6/14/07

Linda M Guttridge
Claims Services, Inc.
Linda Guttridge, Pres.

Date 06/20/07

Amendment to Service Agreement

The Service Agreement for safety and loss control dated July 1, 2001 by and between Cody Management Services, Inc. of 357 Bay Road Suite #4, Queensbury, NY 12804 (CMS) and Claims Services, Inc. of 29 Avenue 'C'- Suite 4, Saratoga Springs, NY 12866 (CSI) and amended from time to time is hereby further amended as follows:

1) The parties note that the postal delivery address for Claims Services, Inc. has been changed to 15 Maple Dell, Suite 4, Saratoga Springs, NY 12866;
2) The term of this agreement is extended for three years for the period 7/1/08-6/30/11;
3) CSI shall provide a safety professional approved by CMS to serve as Safety Officer of the OHI Workers' Compensation Trust.
4) The fees in Section III(a) shall be $550 per quarter and shall include three member safety visits and follow up reports (as described in III(b)) per year by the CSI safety professional at no cost to CMS. The fees in Section III(b) shall only apply to member safety visits beyond the initial three each year.

All other terms and conditions remain unchanged.

Cody Management Services, Inc.
David I. Harvey, Pres.

6/25/08
Date

Linda M Guttridge

Claims Services, Inc.
Linda Guttridge, Pres.

6/27/08
Date

SERVICE AGREEMENT

This sets forth the Service Agreement made as of July 1 ,2002 by and between Cody Management Services, Inc., of 357 Bay Road, Suite 4, Queensbury, NY 12804 hereinafter referred to as "CODY MGMT" and CSI, Inc. of 29 Avenue 'C' - Suite 4, Saratoga Springs, NY 12866, hereafter "CSI".

Recitals

WHEREAS CODY MGMT is the Administrator of the OHI Workers' Compensation Trust of 357 Bay Road, Suite 4, Queensbury, NY 12804, a state approved workers' compensation self insurance group (W558555) hereafter the 'TRUST', and

WHEREAS CODY MGMT desires to retain CSI to Administer the claims adjusting (or handling) services of the TRUST, and

WHEREAS CSI warrants that it has any and all necessary licenses to perform its functions herein as established by state authorities of the State of New York and CSI warrants that it shall maintain any required licenses and meet state requirements during the term of this agreement and will immediately notify CODY MGMT in the event that CSI has any such licenses revoked, lapsed or otherwise impaired this being material to the performance of their duties under this agreement,

NOW THEREFORE BE IT RESOLVED that the two parties in consideration of the mutual covenants herein contained agree as follows:

Section 1: That CSI will provide the following claims adjusting services to CODY MGMT and to members participating in the TRUST:

A. Review all incidents of reported employee lost time injuries or illnesses arising out of and in the course of employment including contact by telephone with all employees involved in any claim. Said telephone contact shall take place within one business day of receipt of a complete notice of accident.

B. Process all cases arising out of employment in accordance with the New York Workers Compensation Law and other applicable statutory law or case law. Processing will be limited to:

(i) Determining whether or not the injuries are compensable;
(ii) Investigating claims internally through routine and customary methods;and
(iii) Satisfying the requirements of the New York Workers Compensation Law and other applicable statutory law, case law and rules and regulations governing the reporting and notification of claims including notification to CODY MGMT as necesary and proper.

C. Process and sign checks on behalf of the TRUST to allow claim payments within the requirements of law. CSI shall provide to CODY MGMT's designated bank timely financial information for check reconciliation and other administrative services and will provide CODY MGMT monthly accounting on checks issued and other financial reports as mutually agreed or as required by state regulators.

D. Establishment of estimates of future payments on outstanding claims (reserves). Assist in the maintenance of reserves established on a current basis through periodic review.

E. Assist any hearing representatives or attorneys in preparation for all hearings before the Workers Compensation Board.

F. Review of the status of all disabled employees on a regularly scheduled basis in order to arrange a consulting medical examination when necessary.

G. Determine the availability and the making of necessary applications to obtain payment or reimbursement for Members of the TRUST from the New York Second Injury Fund and/or from any excess reinsurers.

H. Prepare and file all forms with respect to claims adjusting issues required of self-insurers by Workers Compensation Law and other applicable statutory and case law.

I. Maintain a claim file on each reported claim, which shall be the sole and exclusive property of CODY MGMT and/or the TRUST.

J. Prepare monthly and quarterly aggregate inception to date Loss Reports and quarterly individual account inception to date Loss Reports, delineating medical and indemnity payments and reserves on claims and assist CODY MGMT in the preparation of claims related reports for presentation to actuaries, excess reinsurers or the TRUST's Board of Trustees. CODY MGMT shall approve the form of any such reports.

K. Review all claims to identify questionable claims or avoidable incidents and highlight these for CODY MGMT in monthly/quarterly reports as appropriate.

L. Provide each claim file with a written chronology for all lost time claims and all actions with respect to the claim.

M. Monitor all treatment programs recommended to injured employees by their physicians or other health care providers which are covered by Workers Comensation Law.

N. Report to any specific excess insurer(s) or annual aggregate excess insurer(s) notice of any claim that is or may be required to be reported to such excess insurers.

O. Assist CODY MGMT in establishing a budget with respect to claims adjusting costs and case reserving for the TRUST.

P. Provide a CSI representative at no cost to participate in each quarterly Board of Trustees meeting if so required by CODY MGMT to discuss management reports or other claims related issues.

Q. Provide at no additional cost a telephone contact to each Member within 10 days (ten days) of that member joining the TRUST for introduction and basic explanation of claims process along with the issuance of a CODY MGMT approved 'Claims Kit. Further, from time to time, CSI may forward claims related informational correspondence to TRUST Members at the request of CODY MGMT.

R. For 'Incident Only's, CSI shall follow up each Incident Only (a) with the Employer upon receipt and, (b) approximately 60 days thereafter CSI shall contact the Employer to confirm the status of said event. CSI may upgrade the event to the status of a claim at any time CSI deems it appropriate.

Section 2. The term of this agreement shall be annually commencing January 1, 2001 at 12:01 A.M. and shall automatically renew for each succeeding year on the anniversary date of the issuance of operating authority except that either party may terminate this agreement by giving the other party written notice of the intent not to renew at least ninety days (90 days) prior to the start of the next agreement year.

3. CODY MGMT agrees to pay CSI for the services rendered as outlined herein as follows: $95 per 'Medical Only' claims, $425 per 'Indemnity' claim (including related medical payments) and $30 for each Incident Only. These payments are deemed to be 'for the life of the claim' and CODY MGMT shall not be liable for further payments to CSI for services rendered on any given claim except as hereafter described in this Section 3.In the event that an Incident Only is subsequently changed to a claim status (either Medical Only or Indemnity), CODY MGMT shall then pay the difference between any prior amount paid for that Incident Only or Medical Only and the scheduled rate of the new claim status. Conversely, if a claim status is changed (e.g. from Indemnity to Medical Only/Incident Only or from Medical Only to Incident Only) CSI shall provide a corresponding credit to CODY MGMT for previous amounts paid.

Payments will be made on a quarterly basis. Within five working days after receipt of the loss runs for the month ending any given quarter, the two parties shall review their mutual records and make any necessary credit/debit adjustments as may arise. Upon agreement, CODY MGMT shall make payment within five days thereafter.

Section 4. In connection with all hearings and court appeals authorized by CODY MGMT, payment will be made from the funds of the TRUST for hearing representative fees, attorney fees, Independent Medical Examinations, sworn statements of witnesses and other disbursements and related expenses.

Section 5. CODY MGMT is responsible for authorizing payment of TRUST funds, if any, for Worker's Compensation Board Assessments or other state mandated payments. CSI will complete all forms required and advise CODY MGMT of proper payment.

Section 6. CODY MGMT agrees to arrange for provision of sufficient TRUST funding by Members of the TRUST to meet payment of all claims as they arise under the TRUST. CSI will notify CODY MGMT of the amount needed to fund payments and CODY MGMT agrees to arrange for Members of the TRUST to promptly provide required funds to the account utilized by CSI for the payment of claims. Member contributions to the account will be used only for the payment of claims and other administrative expenses determined solely by CODY MGMT or Trustees of the TRUST.

Section 7. Payment of claims by CSI will be made directly to the appropriate TRUST participant, beneficiary or provider of services by TRUST instrument drawn by CSI on the TRUST account. In the event that Member contributions are insufficient to cover payment of such claims, CSI will notify CODY MGMT orally or in writing. Immediately upon such notification, CODY MGMT will arrange for deposit of additional TRUST contributions in the TRUST account as necessary to cover all currently payable claims and expenses.

Section 8. CSI shall indemnify, defend and hold CODY MGMT and TRUST and CODY MGMT's and TRUST's directors, officers and any attorneys harmless from and against any and all damages, losses, costs and expenses incurred by CODY MGMT or the TRUST due to any negligent or willful act or omission by CSI.

Section 9. CODY MGMT agrees to defend and hold CSI harmless from and against any and all damages, losses, costs and expenses incurred by CSI due to any negligent or willful act or omission of CODY MGMT and CODY MGMT's directors, officers and attorneys in the execution of this agreement.

MISCELLANEOUS TERMS

Section 10. All claim files for employees of the TRUST Members are the property of CODY MGMT and/or the TRUST. In the event of a termination of this agreement, the claim files shall be delivered by CSI to the office of CODY MGMT or any other party designated by CODY MGMT within 72 hours after receipt of a written request for said files from CODY MGMT. CSI agrees that such files shall be in an organized, legible and separated

condition so as to enable CODY MGMT or a party designated by CODY MGMT to continue the processing of claims with minimal delay.

Section 11. This agreement may be assigned by either party without written agreement or consent of the other party provided however that if the assigned party fails to uphold its obligations under this agreement, the other party may seek redress under the arbitration provisions of this agreement, said redress to include termination of the agreement or any other reasonable solutions determined by the arbitrator.

Section 12. It is agreed that CSI shall handle all claim functions. Both parties acknowledge that neither party is an insurer for any purpose and the obligation to fund claim payments is the responsibility of the Members of the TRUST and not CSI nor CODY MGMT. Furthermore, CODY MGMT acknowledges that CSI's obligation to make claims payments arises solely pursuant to this agreement and only in the event that CODY MGMT arranges for the provision of sufficient funds of the TRUST by TRUST Members to cover the cost of claims related payments.

Section 13. At all times during the term of this agreement, CSI shall be an independent contractor, acting on behalf of CODY MGMT and no relationship or partners as well as employer/employee is created hereby.

Section 14. TRUST records and other TRUST documents will be available for inspection by CODY MGMT, upon reasonable notice, during normal business hours. Seventy five (75) days after termination of this agreement, and after payment of all outstanding fees, CODY MGMT may remove and CSI may require CODY MGMT remove, all hard copy TRUST records and other TRUST documents except as otherwise specified in Section 10 of this agreement. At all times, CSI shall treat TRUST documents and records as confidential and shall not disclose to other parties except (a) as required for normal and customary payment of claims, (b) as required by law, and (c) as otherwise specifically directed by CODY MGMT. CODY MGMT has no rights in or to programming, electronic records and other materials utilized for the processing of any payment of claims, and CODY MGMT may not remove any such materials.

Section 15. CSI will not be liable to make payments of claims in excess of TRUST contributions. CSI will not be liable for any consequential damages arising from any act or omission in connection with this agreement nor will CSI be liable or responsible for reimbursement to CODY MGMT or to the TRUST for any payment made on behalf of a former participant unless CSI has been notified of termination of participation at least ten days (10) prior to date check was issued.

Section 16. (a)If upon a party's substantial breach of the Agreement, the non-breaching party notifies the other of such breach in writing and if the breach is not corrected within thirty (30) days (except for late payment of fee or commission revenues in which case the breach must be rectified within fifteen (15) calendar days), then the non-breaching party may file an action with

the American Arbitration Association (hereafter "AAA") within their 'fast track' program including guidelines as set forth in Section 16(b) below. The parties agree that any disputes, alleged breaches of contract or other actions against the other party shall be exclusively carried out within the rules and procedures of the AAA and any rulings and decisions by that process shall be final and binding and without recourse of appeal to any state or federal court and the decision of arbitration shall be enforceable, if necessary, within any state/federal court of competent jurisdiction.

b) Both parties agree to the following guidelines to be used by the AAA in arbitrating any disputes that arise out of this Agreement:

i) A single Arbitrator shall be unilaterally named by the AAA without input from either party as to the selection of an Arbitrator (in order to expedite the process) within, if possible, fifteen (15) days of written request by the party filing an action. The Arbitrator shall be vested with complete authority for determining a final and binding arbitration on the contract dispute.

ii)The first choice venue shall be Glens Falls, New York or, secondly, any other convenient location determined by the Arbitrator.

iii)The Arbitrator shall attempt to hold any hearings within thirty (30) days of accepting the assignment and will, to the extent practical, limit any requests for delay by either party in order to facilitate an expeditious and speedy resolution of the conflict.

iv) In addition to any judgments awarded and decisions rendered, the Arbitrator may apportion any non-attorney costs including filing fees and costs of the Arbitrator as part of any judgments but may not apportion the costs of any attorneys or other related legal professional assistance including expert witnesses borne by either party. Each party shall be responsible for their attorneys fees and related professional legal assistance including expert witnesses without reimbursement from the other party.

Section 17. This agreement shall be governed by the Laws of the State of New York and constitutes the entire agreement between the parties. Changes or amendments must be made in writing and signed by both parties. In the event any court, governmental agency or binding arbitrator shall declare any part of this agreement void or unenforceable, the remaining provisions of the agreement shall continue to be in full force and effect and binding on the parties if cCSIble of suitable performance by both parties. In the event performance becomes impossible by either party or the assigns of either party as determined by an arbitrator, this agreement shall terminate as of the date of such action in the same manner as the expiration thereof. In such event, the payment due CSI shall be pro rated as of the date of the aforesaid action of arbitration or governmental action.

Section 18. Recognizing that CSI is providing a subcontractor role on behalf of CODY MGMT with respect to certain services for covered Trusts, CSI pledges and agrees not to, without the prior written consent of CODY MGMT, directly or through any third party provide either a covered Trust as a whole or the individual members of any covered Trusts

any workers compensation insurance or self insurance products or programs and or any administrative or management services that CODY MGMT may provide these covered Trusts or their individual members both during the term of the Agreement and for a two year period after termination of either the entire Agreement or termination of the Agreement with respect to any one particular Trust.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed and sealed by their proper officers thereunto duly authorized on the day and year first above written.

Cody Management Services, Inc.

By: _____

Title: Pres.

Date: 7/1/02

CSI, Inc.

By: Jeffrey D. Gutteridge

Title: Pres.

Date: 7-1-02

AMENDMENT TO

SERVICE AGREEMENT

The Service Agreement dated July 1 ,2002 by and between Cody Management Services, Inc., of 357 Bay Road, Suite 4, Queensbury, NY 12804 hereinafter referred to as "CODY MGMT" and CSI, Inc. of 29 Avenue 'C' - Suite 4, Saratoga Springs, NY 12866, hereafter "CSI" is hereby amended July 2, 2002 as follows:

1. Effective Six Months after the first day of service provided by CSI, the payment amounts listed in Section 3 of the Agreement shall be amended for a three year period as follows: $475 per 'Indemnity' claim (including related medical payments), $110 per 'Medical Only'. The $30 fee per 'Incident Only' shall remain as is.

Cody Management Services, Inc.

By: _____

Title: Pres.

Date: 7/2/02

CSI, Inc.

By: Jeffrey D. Hutteridge

Title: Pres

Date: 7-2-02

AMENDMENT TO

SERVICE AGREEMENT

The Service Agreement dated July 1 ,2002 by and between Cody Management Services, Inc., of 357 Bay Road, Suite 4, Queensbury, NY 12804 hereinafter referred to as "CODY MGMT" and CSI, Inc. of 29 Avenue 'C' - Suite 4, Saratoga Springs, NY 12866, hereafter "CSI" is hereby amended May 13, 2003 as follows:

1. Effective Six Months after the first day of service provided by CSI, the payment amounts listed in Section 3 of the Agreement shall be amended for a three year period as follows: $475 per 'Indemnity' claim (including related medical payments), $110 per 'Medical Only'. The $30 fee per 'Incident Only' shall remain as is.
2. Effective July 1, 2003 CODY MGMT agrees to pay CSI an additional Administrative Fee of $250 per quarter in excess of the fee schedule in item # 1 above to defray a variety of administrative support costs incurred by CSI.

Cody Management Services, Inc.

By: _____

Title: Pres.

Date: 5/13/03

CSI, Inc.

By: Jeffrey D. Guttenberg

Title: President

Date: 05-13-2003

Amendment to Service Agreement

The Service Agreement for claims administration dated July 1, 2002 by and between Cody Management Services, Inc. of 357 Bay Road Suite #4, Queensbury, NY 12804 (CMS) and Claims Services, Inc. of 29 Avenue 'C'- Suite 4, Saratoga Springs, NY 12866 (CSI) and further amended effective July 1, 2004 is hereby extended for a one year period under the same terms and conditions.

Cody Management Services, Inc.
David I. Harvey, Pres.

6/14/07
Date

Linda M. Guttridge
Claims Services, Inc.
Linda Guttridge, Pres.

06/20/07
Date

Amendment to Service Agreement

The Service Agreement for claims administration dated July 1, 2002 by and between Cody Management Services, Inc. of 357 Bay Road Suite #4, Queensbury, NY 12804 (CMS) and Claims Services, Inc. of 29 Avenue 'C'- Suite 4, Saratoga Springs, NY 12866 (CSI) and amended from time to time is hereby further amended as follows:

1) The parties note that the postal delivery address for Claims Services, Inc has been changed to 15 Maple Dell, Suite 4, Saratoga Springs, NY 12866;
2) The term of the agreement is extended for three years for the period 7/1/08-6/30/11;
3) Section 2. The fee schedule in Section 2 is revised for the extended 3 year period as follows: Medical Only claims $140; Indemnity claims $605 and Incident Only's $35.
4) The administrative fee established by amendment (in addition to the fees due under Section 2 (including amendments)) is hereby reduced to $250 per quarter for the three year extension period 7/1/08-6/30/11.

All other terms and conditions remain unchanged.

Cody Management Services, Inc.
David I. Harvey, Pres.

6/25/08
Date

Claims Services, Inc.
Linda Guttridge, Pres.

6/27/08
Date

Amendment to Service Agreement

The Service Agreement for claims administration dated July 1, 2002 by and between Cody Management Services, Inc. of 357 Bay Road Suite #4, Queensbury, NY 12804 (CMS) and Claims Services, Inc. of 29 Avenue 'C'- Suite 4, Saratoga Springs, NY 12866 (CSI) and amended from time to time is hereby further amended as follows:

1) The term of the agreement is extended to 6/30/12.
2) The administrative fee established by amendment (in addition to the fees due under Section 2 (including amendments)) is hereby increased to $750 per quarter commencing April 1, 2009 and CSI acknowledges and reconfirms the existing contract terms and conditions that the per claim fee schedule represents the sole payments due and payable by CMS for each claim for CSI's 'life of the claim' adjusting/handling duties

All other terms and conditions remain unchanged.

Cody Management Services, Inc.
David I. Harvey, Pres.

2/11/09
Date

Claims Services, Inc.
Linda Guttridge, Pres.

2/18/09
Date

Amendment to Service Agreement

The Service Agreement for claims administration dated July 1, 2002 by and between Cody Management Services, Inc. of 357 Bay Road Suite #4, Queensbury, NY 12804 (CMS) and Claims Services, Inc. of 29 Avenue 'C'- Suite 4, Saratoga Springs, NY 12866 (CSI) and amended from time to time is hereby further amended as follows:

1) Whereas CMS is desirous of assisting CSI in a strictly voluntary fashion by generating a predictable quarterly cash flow for CSI especially in light of reduced claims activity from the OHI WCT program, CMS will make a good faith effort to assure a $2,000 quarterly payment to CSI as follows:
   a) CSI will generate its quarterly invoice according to the existing contract terms and conditions;
   b) CMS may at its sole option add an additional 'Voluntary Overage Payment' (hereafter 'VOP') to the CSI invoice amount to equal a total payment of $2,000 (the CSI invoice and the 'VOP' combined).
   c) All cumulative VOPs may at any time be utilized by CMS as credits against all future CSI invoices.
   d) CMS has no obligation whatsoever to make any VOPs at any time and may unilaterally cease VOPs at its discretion.

2) All other terms and conditions remain unchanged.

Cody Management Services, Inc.
David I. Harvey, Pres.

8/13/10
Date

Linda M Guttridge
Claims Services, Inc.
Linda Guttridge, Pres.

8/17/10
Date

APPENDIX 7

OHI WORKERS' COMPENSATION TRUST

QUALITY ASSURANCE CLAIM AUDIT

November 2011

Prepared by

KBM MANAGEMENT, INC.

5860 Heritage Landing Drive
East Syracuse, NY 13057

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AUDIT OVERVIEW

KBM Management, Inc. audited compensation claims processed on behalf of OHI Workers' Compensation Trust (OHI) dating back to the origin of the Trust. Claims were processed by APA Partners, Inc. (APA) from the inception of the Trust, until 6/30/02; Cody then hired Claim Services, Inc (CSI) to administer the claims on its behalf from 7/1/02 until the time they were transferred to NCAComp, Inc. (NCA) on 07/01/11, where the audit field work was performed. The claim audit priorities were to evaluate and express opinions on the performance of APA and CSI.

The audit examination includes a sample of claimants' files processed while under the authority of APA and CSI with dates of injury from 5/14/01 through 12/18/09. However, there was only one file reviewed that was processed while under the authority of APA. Unfortunately, there was not enough information contained in that file to complete a thorough review of their performance (RC4).

The transfer of claim information from the prior administrators to NCA created many unforeseen challenges. The majority of the claim files were generally organized and complete. However, since these are paper files a significant amount of time was spent retrieving file data for further review.

Twenty open and twenty closed files were originally selected for audit, but due to budget constraints, only thirteen open files and thirteen closed files were audited. The claims represented $1,395,870.24 in payment/reserves during the audit period. Even this limited file selection provided great insight into CSI's transaction processing and reserving techniques and revealed the findings detailed throughout this audit report.

This audit report provides a description of the significant areas of concern and details of the claims that were audited. All written or verbal discussions of the files are referenced by the audit sequence number to maintain the confidentiality of the claimant.

CLAIM FILING TIMELINES

The New York State Workers' Compensation Board (WCB) publishes the following explanation of the Workers' Compensation system. The Administrator's practices and policies have been compared to this information with any inconsistencies being noted within this report.

Immediate: The worker obtains the necessary medical treatment and notifies his/her supervisor about the accident and how it occurred. The employee notifies the employer of the accident in writing, as soon as possible, but within 30 days. The employee who has lost time from work files a claim with the WCB on Form C-3 by mailing the form to the appropriate Workers' Compensation District Office. This must be done within two years of the accident or within two years after the employee knew or should have known that the injury was related to employment.

Within 48 hours of the accident: The doctor completes a preliminary medical report on Form C-4 and mails it to the appropriate Workers' Compensation District Office. Copies must also be sent to the employer or its insurance carrier, the injured worker, and his/her representative, if any.

Within 10 days of notification of the accident: The employer reports the injury to the WCB and the insurance company on Form C-2.

Within 14 days of receipt of Form C-2: The insurer provides the injured worker with a written statement of his/her rights under the law using

Form C-430S. This must be done within 14 days after receipt of the C-2 from the employer or with the first check, whichever is earlier.

Within 15 days of initial treatment: The doctor completes a 15-day report of the injury and treatment on Form C-4 and mails it to the Workers' Compensation District Office.

Within 18 days of receipt of Form C-2: The insurer begins the payment of benefits if lost time exceeds seven days. If the claim is being disputed, the insurer must inform the WCB (and the claimant and his/her representative, if any). If payment is not being made for specific reasons stated on the notice, (e.g. that there is no lost time or that the duration of the disability is less than the 7-day waiting period), the insurer must also notify all the parties.

The insurer files Form C-6, C-7, or C-9 with the WCB indicating either that payment has begun or the reasons why payments are not being made. If the employee does not notify the employer timely, this notice may be filed within 10 days of learning of the accident.

Every 2 weeks: The insurer continues to make payments of benefits to the injured employee (if the case is not being disputed). The carrier must notify the WCB on Form C-8 when compensation is stopped or modified.

Every 45 days: The doctor submits progress reports on Form C-4 to the WCB.

After 8 weeks: The insurer considers the necessity of rehabilitation treatment for the injured employee.

STOP-LOSS INSURANCE

Employers who choose to self-fund their Workers' Compensation insurance are able to limit the potential risk through the purchase of stop-loss insurance. Stop-loss insurance is defined as a contract

established between a self-insured group and an insurance carrier providing coverage when claims (specific and/or aggregate) exceed a specified dollar amount over a specified period of time.

"Specific" stop-loss insurance limits an employer's risk on individual catastrophic claims by establishing a maximum liability for covered employees/retirees. The employer is only responsible for the payment of individual's claims up to the specific stop-loss attachment point or deductible (SIR). In general, these deductibles range from $200,000 to $500,000 for a medium-sized employer. Once claims costs have exceeded this deductible, the carrier will reimburse the employer for all additional claims costs.

During the period audited, OHI had specific stop-loss coverage with deductibles of $200,000 to $400,000. The stop-loss insurance carrier required notification of potential claims for specific diagnoses or once reserves were established that would exceed the deductible. Failure to notify the stop-loss carrier could potentially result in denial of the claim.

None of the files reviewed had reached or exceeded the stop-loss deductible, therefore no reimbursements were due at the time the audit was completed.

INDEPENDENT MEDICAL EXAMS (IME)

An important tool in the administration of Workers' Compensation cases is the independent medical exam (IME). The IME is initially requested by the administrator to establish or refute causal relationship, degree of disability and necessary medical treatment of an injury or illness. Subsequent periodic IME's may be ordered to determine if a worker has reached maximum medical improvement

from treatment or if an injury will result in a schedule loss of use or a permanent disability (partial or total).

CSI used IME's appropriately and timely most of the time. There was one instance noted wherein they obtained the IME but did not utilize the findings to their advantage (RC9). The IME advised the claimant exhibited no disability and no permanency as a result of his injury; however, they ignored those findings and offered the claimant a substantial settlement.

SECOND INJURY FUND OPPORTUNITIES

Prior to recent changes in the NYSWCL (indicated below), if an injured worker had suffered previous injuries or illnesses that resulted in a permanent impairment, the carrier/self-insured employer could file a C-250 seeking financial relief through the Special Disability Fund, Section 15-(8)(d) of the NYSWCL. This form cites the prior impairments and must be filed within 104 weeks of death or disability or within 52 weeks of the filing of a claim. NYSWCL Section 15-(8)(f) extends this time in cases that are reopened after being closed without a finding of permanency. Under this clause, a C-250 is timely if filed before a finding of permanency has been made. If after filing the C-250, along with the medical records to substantiate the claim, Special Funds accepts the case and the claimant is found to have a permanent partial disability (PPD) it limits the present employer's liability to the first 260 weeks of indemnity and medical payments. If the claimant is found to have a permanent total disability (PTD) there is no relief under this section of the law.

As a result of a change to NYSWCL, no carrier or employer may file a claim for reimbursement from the Second Injury Fund for an injury or illness with a date of accident or date of disablement on or after July 1,

2007. Carriers and employers have been precluded from filing claims for reimbursement from the Special Disability Fund subsequent to July 1, 2010, and in addition, no written submissions or evidence in support of such a claim may be submitted after that date.

CSI filed C-250's on eight files but did not complete the process. On one file (RO2) it appears they completed almost everything but did not pursue a concession with Special Funds. NCA was starting the process when they took over the account; however, the claimant passed away before it could be completed. On the seven remaining files (RO7, RO8, RO9, RC7, RC8, RC11 and RC14), the C-250 was filed but they did not file the prior medical records before the 7/1/10 deadline; therefore, nothing can be done with those claims at this juncture. There were three other claims wherein prior injuries were noted in the medical reports; however, CSI did not file a C-250 on those files (RO5, RC13 and RC15).

CLAIM DETAIL

Please note that the "Amount Reserved" is the total reserve at the time the files were transferred from CSI to NCA. The "Amount Paid" is the total paid at the time the file was audited.

Open Claims

File #RO2 Date of injury: 11/23/04

Amount Reserved: $ 14,810.16
Amount Paid: $108,732.76
KBM's estimate: $ 43,869.49

- ANCR: low back
- This file was under-reserved for the known exposure. At the time of transfer to NCA the indemnity reserve had a balance of 23 weeks of benefits remaining. If the claimant had not died from an unrelated cancer this claimant most likely would have been classified with a permanent partial injury. There was no indication in the file that the CSI adjuster was aware the claimant had cancer.

- CSI filed a C-250 with the proper prior medical records but they did not obtain an M & S statement from the IME doctor to solidify their case. However, they did have an apportionment opinion which they may have been able to use in place of the M & S statement. They did not follow through on this avenue of reimbursement. Please note; NCA was going to pursue relief under Section 15-8 but the claimant passed away 6.8 weeks prior to the file reaching the 260 week retention period.
- Several C-8/8.6's filed by CSI showed an overpayment to the claimant; however, they did not put a note on the form securing the Trust's right to take a credit on the overpayment from future awards. The total overpayment at the time of the claimant's death was $443.58. CSI should have secured approval from the Judge at one of the previous hearings to deduct $10-$20 per week from the claimant's ongoing payments to satisfy this overpayment, or alternatively, they could have contacted his attorney directly and made the same arrangements with him/her.
- A reimbursement in the amount of $303.81 was received from Guthrie Clinic for a duplicate payment for service on 3/10/05. Both payments are listed on the check register, but the reimbursement <u>does not</u> show up on the check register.
- A reimbursement in the amount of $901.86 was received from Excellus Health Plan for bills that were paid but not owed for various dates of service and various doctors. This reimbursement <u>does not</u> show up on the check register. However, we also do not see the original payment to Excellus on the check register either. Additionally, we located a letter in the file regarding a check being returned to CSI for another payment they made to Excellus in the amount of $406.65 that also does not show up on the check register as a voided check.
- A reimbursement in the amount of $173.62 was received from Peak Performance for a duplicate payment of 3 dates of service in April 2005; however, the exact dates were not listed on the check.
- A medical bill for David E. Kammerman, MD for service on 10/07/05 was overpaid by CSI. The total amount paid was $12.00, while the total amount owed was $0.00, resulting in an overpayment of $12.00. This bill was part of a larger bill for nerve conduction studies that was paid through One Call Medical.
- Four medical bills for Chiropractic Associates (Binghamton office) for service on 10/16/06, 10/17/06, 10/18/06 and 11/28/06 were overpaid by CSI. The total amount paid was

$158.56, while the total amount owed was $108.44, resulting in an overpayment of $50.12.

- A medical bill for Chiropractic Associates (Vestal office) for service on 7/22/05 was overpaid by CSI. The total amount paid was $258.89, while the total amount owed was $25.89, resulting in an overpayment of $225.00. The doctor billed for a regular office visit as well as a disability examination; however, the notes included with the bill do not support the additional code/charge.
- A medical bill for Chiropractic Associates (Vestal office) for service on 7/11/05 was overpaid by CSI. The total amount paid was $60.89, while the total amount owed was $25.89, resulting in an overpayment of $35.00. The doctor charged a $35.00 fee for supplies but did not identify the item or include a copy of his invoice as required.
- A medical bill for Chiropractic Associates (Vestal office) for service on 6/23/05 was overpaid by CSI. The total amount paid was $87.81, while the total amount owed was $42.05, resulting in an overpayment of $45.76. The doctor utilized CPT codes that are not allowed under the NYS WC fee schedule for chiropractors.
- A medical bill for Chiropractic Associates (Binghamton office) for service on 12/28/10 was overpaid by CSI. The total amount paid was $40.40, while the total amount owed was $21.25, resulting in an overpayment of $19.15.
- CSI charged $64.49 in expense fees to this file. There is no indication on the checks what these fees represent, and there were no bills in the files that correspond to the fees charged.
- CSI paid a bill for One Call Medical under expense that should have been paid under medical as this was for a medical test.
- Fifty four bills were paid by CSI within forty five days of the dates received.
- Nine bills were paid by CSI in excess of forty five days of the dates received.
- One bill located in the file could not be matched to a check.
- Four checks issued could not be matched to a bill in the file.
- Eleven bills did not contain a received date; therefore, it could not be determined if they were paid within forty five days of the date received.

File #RO3 Date of injury: 12/06/04

Amount Reserved: $ 44,997.84
Amount Paid: $136,961.79
KBM's estimate: $ 20,000.00

- ODNCR: both shoulders

- This file was initially controverted because the claimant quit his job without filing a claim. The claim was litigated and the claimant won. The file was established as an occupational injury to both shoulders.
- The file is currently over-reserved as the claimant has been paid in excess of the SLU opinions of both the IME doctor (20% to the right arm and 25% to the left arm) as well as his own physician (25% to each arm). They are currently considering closing the case with a small Section 32 settlement to close all future liability with regard to the medical side of this claim, which is a very good idea. If this isn't done, the claimant will likely attempt to obtain a PPD classification.
- A duplicate payment was made to Michael E. Elia, MD for service on 12/14/09 by CSI (1st check issued 1/13/10, 2nd check issued 2/8/10). The total amount paid was $305.84, while the total amount owed was $152.92, resulting in an overpayment of $152.92. CSI wrote a letter to Dr. Elia on 3/2/10 requesting a reimbursement of the overpayment but there is no record in the file that this was ever received.
- CSI charged $64.49 in expense fees to this file. There is no indication on the checks what these fees represent, and there were no bills in the files that correspond to the fees charged.
- Ninety nine bills were paid by CSI within forty five days of the dates received.
- Eight bills were paid by CSI in excess of forty five days of the dates received.
- One bill located in the file could not be matched to a check.
- Two checks issued could not be matched to a bill in the file.
- One bill did not contain a received date; therefore, it could not be determined if it was paid within forty five days of the date received.

File #RO5 Date of injury: 3/17/05

Amount Reserved: $ 4,687.71
Amount Paid: $15,247.50
KBM's estimate: $ 4,687.71

- ANCR: back
- The reserves are sufficient to bring them through a finding of Section 25-a, as long as the claimant stays with the current treatment regimen and does not suffer any further lost time.
- Two medical bills for Hamilton Orthopedic Services for service on 12/15/09-12/30/09 and 1/5/10 were overpaid by CSI. The total amount paid on the first bill was $141.14, while the total amount owed was $94.20, resulting in an overpayment of $46.94. The total amount paid on the second bill was $51.53,

while the total amount owed was $46.92, resulting in an overpayment of $4.61.

- CSI did not file a C-250 on this file although the first medical report indicates a prior left hand surgery and prior back problems.
- Sixty four bills were paid by CSI within forty five days of the dates received.
- Thirteen bills were paid by CSI in excess of forty five days of the dates received.
- One bill located in the file could not be matched to a check.
- Two bills did not contain a received date; therefore, it could not be determined if they were paid within forty five days of the dates received.

File #RO6 Date of injury: 8/12/05

Amount Reserved: $12,666.33
Amount Paid: $29,853.13
KBM's estimate: $42,518.56

- ANCR: back
- This file was under-reserved by CSI; the file should have been reserved for either a potential settlement or the life of the claimant.
- The claimant suffered a new injury in January 2011; however, CSI did not object to the medical bills or ongoing lost time citing the new injury. This would have been a perfect opportunity to mitigate the exposure on this claim.
- A medical bill for Glens Falls Hospital for service on 3/21/07 was overpaid by CSI. The total amount paid was $149.27, while the total amount owed was $61.46, resulting in an overpayment of $87.81. A refund was received for this overpayment.
- A reimbursement in the amount of $37.84 was received from Robert L Evans, MD indicating CSI made a duplicate payment for service on 6/14/07. CSI does not show that this date was overpaid; however, they kept the refund check anyway.
- CSI charged $64.49 in expense fees to this file. There is no indication on the checks what these fees represent, and there were no bills in the files that correspond to the fees charged.
- One hundred seven bills were paid by CSI within forty five days of the dates received.
- Fifteen bills were paid by CSI in excess of forty five days of the dates received.
- Three bills located in the file could not be matched to a check.
- Three bills did not contain a received date; therefore, it could not be determined if they were paid within forty five days of the dates received.

File #RO7 Date of injury: 2/22/06

Amount Reserved: $ 60,607.07
Amount Paid: $130,289.01
KBM's estimate: $341,210.47

- ANCR: back, right knee, side, arms and elbow
- This file was under-reserved by CSI; their last reserve increase was for 3 years. When the claimant was approached about settlement he indicated he would settle the case for $1 million dollars. This file should have been reserved for the life of the claimant at that time.
- CSI filed a C-250; however, they did not follow through with filing the necessary prior medical records needed to pursue a finding of Section 15-8. This had to be completed prior to the 7/1/10 deadline.
- CSI lost $128.75 in savings on United Medical Equipment bills by not paying them by the "discount deadline". United Medical Equipment offers a discount if their bills are paid within a certain time period, after which the price increases. One of the bills paid was actually paid prior to the deadline; however, CSI mistakenly paid the full amount for service on 3/22/10. The total amount paid was $69.48, while the total amount owed was $55.59, resulting in an overpayment of $13.89 (this amount is included in the total above).
- CSI charged $64.49 in expense fees to this file. There is no indication on the checks what these fees represent, and there were no bills in the files that correspond to the fees charged.
- Ninety five bills were paid by CSI within forty five days of the dates received.
- Eighteen bills were paid by CSI in excess of forty five days of the dates received.
- One check issued could not be matched to a bill in the file.
- Three bills did not contain a received date; therefore, it could not be determined if they were paid within forty five days of the dates received.

File #RO8 Date of injury: 3/3/06

Amount Reserved: $ 6,606.98
Amount Paid: $38,546.91
KBM's estimate: $81,614.40

- ANCR: back
- This file was under-reserved by CSI. The last Notice of Decision indicated that awards were without prejudice to possible apportionment. In addition, their IME doctor stated that 60% of his disability was related to this claim; therefore, it is reasonable

to assume that some apportionment will be assigned to this case. Another important factor is that the companion file occurred after the PPD caps were put into place; therefore, his indemnity benefits have limits on that file, but in this case they do not. KBM's estimate is for a potential settlement as the notes indicate that the claimant is interested in pursuing this avenue.

- CSI filed a C-250; however, they did not follow through with filing the necessary prior medical records needed to pursue a finding of Section 15-8. This had to be completed prior to the 7/1/10 deadline.
- There were several C-8/8.6's filed on this case showing an overpayment on the file. CSI did not note on the C-8/8.6 that they were reserving the right to a credit for the overpayment from future awards. The current overpayment on this file is $709.93.
- Three medical bills for Slocum Dickson Medical Group for service on 12/20/06, 12/22/06 and 12/27/06 were overpaid by CSI. The total amount paid was $182.00, while the total amount owed was $148.80, resulting in an overpayment of $33.20.
- A bill for J. H. Burnash for services rendered on 12/15/09-1/28/10 was paid on this file in error by CSI (the claimant has another file with the same employer). The total overpayment was $265.00.
- A bill for Wolf, Goodrich & Goldman for services rendered on 11/15/10 was paid on this file in error by CSI (the claimant has another file with the same employer). The total overpayment was $684.47.
- A bill for Wolf, Goodrich & Goldman for services rendered on 10/9/08 should have been paid on this file; however, it was mistakenly paid on the other file the claimant has with the same employer. The total underpayment was $109.90.
- Fifty five bills were paid by CSI within forty five days of the dates received.
- One bill was paid by CSI in excess of forty five days of the date received.
- One bill located in the file could not be matched to a check.
- Four checks issued could not be matched to a bill in the file.
- One bill did not contain a received date; therefore, it could not be determined if it was paid within forty five days of the date received.

File #RO9 Date of injury: 3/13/07

Amount Reserved:	$ 2,670.23
Amount Paid:	$39,005.23
KBM's estimate:	$ 2,670.23

- ANCR: left shoulder
- The reserves are sufficient on this file to bring it to a finding of Section 25-a. The claimant was awarded a 10% SLU of the left arm; however, she continues to treat every 6 months.
- CSI filed a C-250; however, they did not follow through with filing the necessary prior medical records needed to pursue a finding of Section 15-8. This had to be completed prior to the 7/1/10 deadline.
- There were several C-8/8.6's filed on this case showing an overpayment on the file. CSI did not note on the C-8/8.6 that they were reserving the right to a credit for the overpayment from future awards. Current overpayment on this file is $12,212.90. This overpayment first showed up on the 10/24/07 C-8/8.6; at that time it was only $549.03. It does not appear that CSI made any attempts to recoup any of the monies by deducting $10-$20 per week from the claimant's ongoing payments. This is a common occurrence when paying reduced earnings as the rate changes frequently and there are never any issues with deducting small amounts to recoup any overpayments that may occur.
- A reimbursement in the amount of $655.38 was received from Third Party Solutions for a bill that CSI paid to them that was actually owed to a Stone River Pharmacy for services rendered on 4/30/07 & 7/3/07.
- A reimbursement in the amount of $147.72 was received from Zurich American Insurance Co. for an overpayment made by CSI on disability payments. This file was initially controverted; therefore, the claimant was able to obtain payment through disability until the case was adjudicated.
- CSI charged $32.53 in expense fees to this file. There is no indication on the checks what these fees represent, and there were no bills in the files that correspond to the fees charged.
- Sixty six bills were paid by CSI within forty five days of the dates received.
- Four bills were paid by CSI in excess of forty five days of the dates received.
- Five bills located in the file could not be matched to a check.
- Three checks issued could not be matched to a bill in the file.
- Three bills did not contain a received date; therefore, it could not be determined if they were paid within forty five days of the dates received.

File #RO10 Date of injury: 11/15/07

Amount Reserved:	$17,764.40
Amount Paid:	$55,106.00
KBM's estimate:	$98,415.91

- ANCR: back
- This file was under-reserved by CSI. The last time they increased the reserves was in January 2010; at that time the medical reports indicated the claimant had a 75% disability but was able to RTW with restrictions. CSI should have either put reserves on the file for a potential settlement, or for 50% of the PPD cap. They should have also made attempts to return the claimant to some type of employment (as NCA did when they took over the file).
- There was an overpayment of indemnity due to a mistake by CSI on the C-8/8.6 filed on 4/23/08. CSI should have reduced the claimant's rate as of 3/5/08, the date of the IME that changed the claimant's degree of disability; however, they used 4/9/08 as the date his disability status changed thereby losing 5 weeks of reduced rates and overpaying the claimant $970.30. Because of CSI's mistake, the Judge confirmed awards per the 4/23/08 C-8/8.6, instead of showing the proper date the claimant's disability status changed and showing an overpayment to the claimant.
- CSI charged $64.53 in expense fees to this file. There is no indication on the checks what these fees represent, and there were no bills in the files that correspond to the fees charged.
- Fifty one bills were paid by CSI within forty five days of the dates received.
- Six bills were paid by CSI in excess of forty five days of the dates received.
- One bill located in the file could not be matched to a check.
- Two checks issued could not be matched to a bill in the file.
- Six bills did not contain a received date; therefore, it could not be determined if they were paid within forty five days of the dates received.

File #RO13 Date of injury: 9/15/08

Amount Reserved:	$43,808.07
Amount Paid:	$ 6,559.61
KBM's estimate:	$43,808.07

- ANCR: right elbow
- The reserves set by CSI were sufficient for the anticipated exposure on this file.
- Unnecessary legal fees were incurred on this file in the amount of $500. The CSI adjuster advised the attorney handling the file on their behalf to cancel depositions that were scheduled on the file. There was an issue with regard to further surgery, which was the issue of the depositions. The CSI adjuster advised the

attorney she was going to authorize the surgery, but it appears the attorney did not cancel them. Therefore, CSI shouldn't have paid this bill.

- Eleven bills were paid by CSI within forty five days of the dates received.
- Five bills were paid by CSI in excess of forty five days of the dates received.
- One check issued could not be matched to a bill in the file.

File #RO14 Date of injury: 11/6/08

Amount Reserved: $17,347.97
Amount Paid: $64,066.66
KBM's estimate: $37,873.34

- ANCR: left elbow
- This file was under-reserved by CSI. The claimant requires a second surgery on the elbow/arm as he is still having issues with it. If he did not have a pending third party settlement we would recommend setting the reserves for the PPD cap.
- There were several C-8/8.6's filed on this case showing an overpayment on the file. CSI did not note on the C-8/8.6 that they were reserving the right to a credit for the overpayment from future awards. There is currently no overpayment on this file as NCA absorbed it when there was a recent increase in the claimant's weekly rate. The overpayment first showed up on the 3/12/09 C-8/8.6; at that time it was $730.32. The last C-8/8.6 filed by CSI on 6/28/11 indicated an overpayment of $467.45. It does not appear that CSI made any attempts to recoup any of the monies by deducting $10-$20 per week from the claimant's ongoing payments.
- CSI charged $64.49 in expense fees to this file. There is no indication on the checks what these fees represent, and there were no bills in the files that correspond to the fees charged.
- Nineteen bills were paid by CSI within forty five days of the dates received.
- Five bills were paid by CSI in excess of forty five days of the dates received.
- Two checks issued could not be matched to a bill in the file.
- Two bills did not contain a received date; therefore, it could not be determined if they were paid within forty five days of the dates received.

File #RO16 Date of injury: 2/17/09

Amount Reserved: $19,470.09
Amount Paid: $38,581.37
KBM's estimate: $18,618.63

- ANCR: left foot
- This file was properly reserved by CSI for just over a 35% SLU of the left foot. Due to the extensive damage to the claimant's foot and the need to amputate one of his toes this is not a high SLU. (The difference between KBM's estimate and CSI's reserve is further medical bills have been paid on the file since CSI's estimate was set).
- CSI filled out the C-669 improperly; they marked box 16: "The claim is not disputed. Payment has not begun for the following reason: c: possible schedule loss or disfigurement, but no loss of time from work at regular wages beyond 7 days". The problem with this is they filed a C-8/8.6 the same day showing the claimant had lost 1.6 weeks from work and they paid him for it.
- CSI charged $16.53 in expense fees to this file. There is no indication on the checks what these fees represent, and there were no bills in the files that correspond to the fees charged.
- Fifty five bills were paid by CSI within forty five days of the dates received.
- Nine bills were paid by CSI in excess of forty five days of the dates received.
- Two bills did not contain a received date; therefore, it could not be determined if they were paid within forty five days of the dates received.

File #RO18 Date of injury: 11/26/09

Amount Reserved: $26,319.11
Amount Paid: $12,380.89
KBM's estimate: $25,399.10

- ANCR: right elbow
- CSI had this file reserved for just over 15% SLU of the right arm, which is sufficient for the exposure.
- CSI was assessed a penalty of $50 for failure to file a form timely (C-669). They attempted to object to this penalty indicating that they filed it timely; however, they did not have the proper proof of mailing to defend their position. CSI did not pay this penalty from the claim file funds.
- There were several C-8/8.6's filed on this case showing an overpayment on the file. CSI did not note on the C-8/8.6 that they were reserving the right to a credit for the overpayment from future awards. The overpayment first showed up on the 12/29/10 C-8/8.6; at that time it was $1,200.00. The last C-8/8.6 filed by CSI on 1/27/11 indicated an overpayment of $1,026.97. It does not appear that CSI made any attempts to recoup any of the monies by deducting $10-$20 per week from

the claimant's ongoing payments. The current overpayment per the 7/13/11 C-8/8.6 filed by NCA is $675.84. NCA did note on their C-8/8.6: "carrier to credit overpayment against any future awards".

- CSI charged $16.00 in expense fees to this file. There is no indication on the checks what these fees represent, and there were no bills in the files that correspond to the fees charged.
- Thirteen bills were paid by CSI within forty five days of the dates received.
- One bill located in the file could not be matched to a check.
- Two bills did not contain a received date; therefore, it could not be determined if they were paid within forty five days of the dates received.

File #RO19 Date of injury: 12/18/09

Amount Reserved: $17,779.14
Amount Paid: $25,322.49
KBM's estimate: $37,701.60

- ANCR: back
- This file was under-reserved by CSI. This file should have been reserved for settlement or 50% of the PPD cap as the claimant has now been OOW for 2 years.
- CSI paid a medical bill to Glens Falls Hospital for treatment that was not causally related to the compensable injury. The total overpayment was $16.44.
- There were several C-8/8.6's filed on this case showing an overpayment on the file. CSI did not note on the C-8/8.6 that they were reserving the right to a credit for the overpayment from future awards. The overpayment first showed up on the 2/2/10 C-8/8.6; at that time it was $694.02. The last C-8/8.6 filed by CSI on 8/9/10 indicated an overpayment of $585.54. It does not appear that CSI made any attempts to recoup any of the monies by deducting $10-$20 per week from the claimant's ongoing payments. The overpayment began from paying the claimant the wrong rate until they received his actual payroll.
- CSI charged $16.00 in expense fees to this file. There is no indication on the checks what these fees represent, and there were no bills in the files that correspond to the fees charged.
- Seventeen bills were paid by CSI within forty five days of the dates received.
- Two bills were paid by CSI in excess of forty five days of the dates received.
- Four bills did not contain a received date; therefore, it could not be determined if they were paid within forty five days of the dates received.

Closed Claims

File #RC4 Date of Injury: 5/14/01 Amount Reserved: $ .00
Amount Paid: $1,192.41

- ANCR: back
- This file was closed in 2002 after a small period of lost time and minimal medical treatment. The claimant suffered a new injury with a new employer on 3/28/08. The medical bill for that claim was mistakenly filed on this claim. CSI filed a C8.1 on that bill, which was found in their favor, and the file was once again closed on the prior findings.
- This file was so old that they did not record the medical payments separately upon transfer; there was just one entry marked payable to the claimant. Therefore, we are unable to audit the timeliness of the bill payments on this file.

File #RC7 Date of Injury: 1/27/03 Amount Reserved: $ .00
Amount Paid: $14,893.05

- ANCR: back
- This file closed once the claimant's chiropractic treatment ended.
- CSI filed a C-250; however, they did not follow through with filing the necessary prior medical records needed to pursue a finding of Section 15-8. This had to be completed prior to the 7/1/10 deadline.
- Fifty nine bills were paid by CSI within forty five days of the dates received.
- One bill was paid by CSI in excess of forty five days of the date received.
- Four bills did not contain a received date; therefore, it could not be determined if they were paid within forty five days of the dates received.

File #RC8 Date of Injury: 9/16/03 Amount Reserved: $ .00
Amount Paid: $28,614.90

- ANCR: right wrist
- This file was closed after the claimant received a 48.75% SLU of the right hand. He was also entitled to an additional 22.6 weeks of benefits due to protracted healing.
- The claimant received what appears to be a large third party settlement as a result of this injury (the original offer was $775,000); this file received a reimbursement of $52,513.22.

However, CSI never obtained the closing papers from that settlement; therefore, there is no way to know exactly how much he received. This is very important information to have in the file in the event the claimant ever attempts to reopen the file in the future, as you need to know what his net settlement was, to know the amount of your holiday. In fact, 2 ½ years after he received his SLU award he began treatment again. The doctor, at that time, stated he required further surgery. There is also no record of this settlement in the WCB file.

- CSI filed a C-250; however, they did not follow through with filing the necessary prior medical records needed to pursue a finding of Section 15-8. This had to be completed prior to the 7/1/10 deadline.
- CSI paid a medical bill to Wilson Orthopedics for service on 11/12/08. This bill should not have been paid as this service occurred after the third party settlement was complete and they were on a holiday. The total amount paid was $201.23, while the total amount owed was $0.00, resulting in an overpayment of $201.23.
- A medical bill for Sherry Husney & Associates for service from 4/13/04 through 4/15/04 was overpaid by CSI. The total amount paid was $179.41, while the total amount owed was $165.55, resulting in an overpayment of $13.86.
- A duplicate indemnity payment was made for the period 5/24/04-6/7/04; the checks were issued on 5/27/04. This money was recouped at the time the SLU award was paid.
- There were several C-8/8.6's filed on this case showing an overpayment on the file. CSI did not note on the C-8/8.6 that they were reserving the right to a credit for the overpayment from future awards. The overpayment first showed up on the 4/15/04 C-8/8.6; at that time it was $100. The last C-8/8.6 showing an overpayment filed by CSI on 6/24/05 indicated an overpayment of $1,736.23. It does not appear that CSI made any attempts to recoup any of the monies by deducting $10-$20 per week from the claimant's ongoing payments. The overpayment was finally recouped at the time the SLU award was paid because the attorney handling the case noted the overpayment on the C-8/8.6 and brought it to the attention of the Judge.
- Thirty eight bills were paid by CSI within forty five days of the dates received.
- One bill was paid by CSI in excess of forty five days of the date received.

- Two bills did not contain a received date; therefore, it could not be determined if they were paid within forty five days of the dates received.

File #RC9 Date of Injury: 12/11/03 Amount Reserved: $ .00
Amount Paid: $45,029.55

- ANCR: low back and left leg
- This file originally closed when the claimant settled his third party claim in 2005. His net settlement was $8,100.30; this file also received $8,100.30 as its share of that settlement. The file was then re-opened in 2007 to finalize the case with a Section 32 settlement in the amount of $20,000; this will be discussed further below.
- It is KBM's opinion that the $20,000 settlement on this file was too high and not necessary. CSI obtained an IME opinion which indicated that the claimant was working full time and did not exhibit any signs of a disability and/or permanency as a result of this injury. Furthermore, the claimant never submitted medical evidence of an ongoing disability, which he would have had to do to reopen his claim once the holiday ran out.
- There were several C-8/8.6's filed on this case showing an overpayment on the file. CSI did not note on the C-8/8.6 that they were reserving the right to a credit for the overpayment from future awards. The overpayment first showed up on the 6/2/04 C-8/8.6; at that time it was $233.69. The last C-8/8.6 showing an overpayment filed by CSI on 6/24/05 indicated an overpayment of $506.67. It does not appear that CSI made any attempts to recoup any of the monies by deducting $10-$20 per week from the claimant's ongoing payments. Furthermore, the last C-8/8.6 filed on this case by CSI showed only the Section 32 settlement. All C-8/8.6's filed on a case should show the complete payment history on the file from beginning to end.
- Several medical bills for Mid Manhattan Medical for services from 6/2/05 through 10/6/05 were overpaid by CSI. The total amount paid was $2,225.12, while the total amount owed was $482.91, resulting in an overpayment of $1,742.21. CSI filed C-8.1's on these bills which were found in their favor and for some unknown reason they paid them.
- Eighteen bills were paid by CSI within forty five days of the dates received.
- One bill did not contain a received date; therefore, it could not be determined if it was paid within forty five days of the date received.

File #RC11 Date of Injury: 2/21/05 Amount Reserved: $ .00
Amount Paid: $12,647.49

- ANCR: knees
- This file closed after the claimant advised CSI that he would not be making a claim for permanency as his "knees were working fine."
- CSI filed a C-250; however, they did not follow through with filing the necessary prior medical records needed to pursue a finding of Section 15-8.
- Eleven bills were paid by CSI within forty five days of the dates received.

File #RC12 Date of Injury: 12/19/05 Amount Reserved: $ .00
Amount Paid: $1,775.84

- ANCR: left foot
- This file was closed as the claimant did not pursue a permanency opinion.
- A medical bill for Charles Dwyer PT for service on 3/28/06 was overpaid by CSI. The total amount paid was $91.40, while the total amount owed was $83.70, resulting in an overpayment of $7.70.
- A medical bill for Orthopedic Assoc for service from 4/4/06 through 5/18/06 was overpaid by CSI. The total amount paid was $496.00, while the total amount owed was $347.20, resulting in an overpayment of $148.80.
- Ten bills were paid by CSI within forty five days of the dates received.

File #RC13 Date of Injury: 3/21/06 Amount Reserved: $ .00
Amount Paid: $5,020.13

- ANCR: back
- This file was closed after the claimant completed treatment and returned to work full time, full duty.
- CSI should have filed a protective C-250 on this claim as the claimant had a significant prior back injury with surgery.
- Eight bills were paid by CSI within forty five days of the dates received.

File #RC14 Date of Injury: 8/23/06 Amount Reserved: $ 11,436.84
Amount Paid: $196,169.91
KBM Estimate: $ .00

- ANCR: knees

- This file was over-reserved by CSI as the claimant settled the indemnity portion of the claim and was no longer treating for his injury. NCA closed the file after it was transferred to them. The Section 32 settlement reserved the right to reopen the claim for Section 25-a if in fact the claimant begins treatment again because the Section 32 agreement stated that they were basing the award on 50% SLU of each leg. However, the notes in this file are incorrect with regard to the date the file will be eligible for 25-a (notes indicate 10/28/13). Because the indemnity portion of the claim was closed, the claim will become eligible for transfer of liability to Special Funds under Section 25-a 3 years after the last payment of awards. However, the last payment of awards for purposes of Section 25-a is not considered the date the lump sum award was paid as part of the Section 32 agreement. It is the award that is allocated based upon the SLU award (50% to each leg). Therefore, the date at which Section 25-a would apply is based upon the overall lump settlement, allocated at $400.00 per week (8/14/2016).
- CSI obtained all the information needed to pursue a claim under Section 44. This would have afforded them the opportunity to apportion the claim to his prior employers and mitigate the exposure to this file. The employment history obtained from the claimant shows 3 other employers wherein he performed the same type of work. Typically, the apportionment is based upon the number of years at each employer. He was with the 1st for 5 years, the 2nd for 5 years, the 3rd for 10 years and the last employer for 6 years. Therefore, the 3rd employer would have had the largest percentage of apportionment. CSI advised OHI that they would build something in the Section 32 agreement to reserve their rights to pursue reimbursement under Section 44, but this was not done. The estimated loss to the Trust, based on 23.08% (6 of 26 years working in the same type of business) of the total paid is $147,147.28 (indemnity $88,611.84, medical $58,535.44).
- CSI filed a C-250; however, they did not follow through with filing the necessary prior medical records needed to pursue a finding of Section 15-8. In addition, they withdrew the C-250 as a condition of the Section 32 settlement agreement.
- A medical bill for Genesee Orthopedic & Hand for service on 7/27/09 was overpaid by CSI. The total amount paid was $644.93, while the total amount owed was $383.38, resulting in an overpayment of $261.55.
- A bill for mileage and transportation for the claimant for services from 6/8/10 through 8/30/10 was overpaid by CSI. The total amount paid was $51.00, while the total amount owed was

$25.50, resulting in an overpayment of $25.50. They paid mileage to the claimant's attorney's office which is not a reimbursable expense.

- CSI charged $48.49 in expense fees to this file. There is no indication on the checks what these fees represent, and there were no bills in the files that correspond to the fees charged.
- Fifty four bills were paid by CSI within forty five days of the dates received.
- Twenty two bills were paid by CSI in excess of forty five days of the dates received.
- Eight bills did not contain a received date; therefore, it could not be determined if they were paid within forty five days of the dates received.

File #RC15 Date of Injury: 6/28/07 Amount Reserved: $ .00
Amount Paid: $43,493.03

- ANCR: face, right hand and right knee
- This file closed with a 27.5% SLU of the right leg.
- CSI should have questioned the causal relationship of the right leg and right wrist to this claim. When the claimant fell, he landed on the left side of his face and did not complain of pain in his knee or wrist until a full month after the accident occurred. He was specifically asked if he had any other symptoms or problems other than the facial fracture, as a result of the fall. He denied any other problems. This man was morbidly obese (5'10", 340#), which could explain the knee problem. In addition, he had a prior injury to the same knee.
- There was a C-8/8.6 filed on 12/3/08 showing an overpayment of $480. CSI did not note on the C-8/8.6 that they were reserving the right to a credit for the overpayment from future awards. The overpayment was absorbed at the time the SLU award was paid.
- CSI should have filed a protective C-250 on this file. The claimant had a prior injury to the right knee as well as a prior head injury.
- CSI charged $16.00 in expense fees to this file. There is no indication on the checks what these fees represent, and there were no bills in the files that correspond to the fees charged.
- Twenty bills were paid by CSI within forty five days of the dates received.
- Five bills were paid by CSI in excess of forty five days of the dates received.

- One bill did not contain a received date; therefore, it could not be determined if it was paid within forty five days of the date received.

File #RC16 Date of Injury: 1/23/08 Amount Reserved: $ .00
Amount Paid: $2,232.79

- ANCR: right wrist
- There were no doctor's reports located in the paper file or in the eCase file for this case. CSI should never have paid lost time wages or authorized physical therapy without having a medical report showing causal relationship of the symptoms he exhibited to the job he did for the insured.
- The WCB issued a Notice of Indexing requesting a C-2, C-669 and a medical report on 2/21/08. CSI never furnished any of these reports. This left the Trust open to potential penalties for not filing required forms.
- Because of the fact that there was no doctor's report ordering the physical therapy for this injury, CSI should not have approved the treatment. Therefore, there is an overpayment of $570.31 for the total paid for this treatment.
- There is also an overpayment of indemnity in the amount of $1,656.69, because by law, you have to be taken OOW by a physician to be eligible for wage loss benefits under NYSWCL. An OOW note was located in the file; however, it was written by the physical therapist. That specialty is not authorized to take someone out of work.
- Two bills were paid by CSI within forty five days of the dates received.
- One bill did not contain a received date; therefore, it could not be determined if it was paid within forty five days of the date received.

File #RC18 Date of Injury: 1/5/09 Amount Reserved: $ .00
Amount Paid: $8,965.75

- ANCR: back, hip and right wrist
- This file closed when the claimant ceased treatment as there was no lost time involved and no permanency was anticipated with this injury.
- A medical bill for Albany Multi-Medical Group for services from 5/13/09 through 6/1/09 was overpaid by CSI. The total amount paid was $888.30, while the total amount owed was $729.25, resulting in an overpayment of $159.05.

- A medical bill for Albany Multi-Medical Group for services from 10/1/10 through 10/8/10 was overpaid by CSI. The total amount paid was $162.00, while the total amount owed was $148.80, resulting in an overpayment of $13.20.
- CSI mistakenly paid for a prescription that was not causally related to this injury. Once they realized the mistake, they began filing C-8.1's on the bills for this medication, which they won. However, prior to realizing the mistake they paid for 11 prescriptions for a total overpayment of $1,108.03.
- Twenty bills were paid by CSI within forty five days of the dates received.
- Two bills were paid by CSI in excess of forty five days of the dates received.
- Two bills did not contain a received date; therefore, it could not be determined if they were paid within forty five days of the dates received.

File #RC19 Date of Injury: 1/15/09 Amount Reserved: $ .00
Amount Paid: $11,124.72

- ANCR: chest pain without prejudice to a more specific diagnosis
- This file never should have been accepted as there is no clear causal relationship of the claimant's symptoms to a job related incident. The WCB was not even sure what to put as the ANCR. At one point they listed it as "anxiety?". This was based on a medical report that had anxiety listed as the diagnosis. CSI listed the injury as a possible heart attack, although the claimant was never diagnosed with a heart attack or a heart related event. The initial medical report stated the claimant had a self described panic attack after having an argument with his employer. A simple argument with an employer would not constitute a work related injury.
- Based on the fact that this claim should have been denied, there is an overpayment of $5,362.45 in indemnity and $5,092.82 in medical.
- Seven bills were paid by CSI within forty five days of the dates received.

File #RC20 Date of Injury: 8/6/09 Amount Reserved: $ .00
Amount Paid: $23,085.38

- ANCR: right knee
- This file closed with a 8.5% SLU of the right leg.
- Six bills were paid by CSI within forty five days of the dates received.

- Two bills were paid by CSI in excess of forty five days of the dates received.

CONCLUSION ON RESERVES

Our audit included an evaluation of the reserves on all thirteen open files for the known exposure. It is very important for accounting and other reporting purposes to continually update reserves to reflect the most current information available.

Of the thirteen open claims reviewed, it was determined that five of the files had reasonable reserves for the known exposure (RO5, RO9, RO13, RO16 and RO18). Of the remaining eight open files, one file had high reserves (RO3) and seven files we consider low for the known exposure (RO2, RO6, RO7, RO8, RO10, RO14 and RO19).

There was also one closed file that we reviewed, RC14, which was still open with reserves at the time it was transferred from CSI to NCA. A review of the file indicates it was over-reserved at the time of transfer as the indemnity portion of the file had already been settled with a Section 32 settlement and the claimant had ceased medical treatment. Therefore, the file should have been closed.

OTHER CONCLUSIONS

Based on the audited claims, CSI failed to provide a minimum level of claims processing service on behalf of OHI. Industry averages require 95% procedural accuracy; we show that they only processed 81.34% of the medical bills within 45 days of receipt. The deficiencies described in this report involve overall claim management, undocumented payments, late payments and poor transfer of information.

Due to our limited file sample, we are unable to project an estimated loss under CSI; however, of the twenty six (26) claims reviewed, thirteen (13) contained several financial errors (indemnity overpayments: $20,000.00 (this figure does not include the overpayments noted on the C-8/8.6's or the two files noted below that were paid without medical evidence showing causal relationship), medical overpayments: $4,451.02 (this figure does not include the two files noted below that were paid without medical evidence showing

causal relationship), expense overpayments: $1,449.47) and one (1) contained penalties ($50) suggesting significant reduction in Trust expense had it been properly administered.

KBM also noted on twelve of the twenty six files that were reviewed there were unknown expense charges for CSI ($532.53). We were unable to locate bills for any of these charges, and per our review of the contract dated 7/1/02, as well as amendments dated 6/22/04 6/27/08, 2/11/09 and 8/13/10, it does not appear that they should be charging additional fees.

KBM also noted on ten (10) files that there were multiple C-8/8.6's that showed an overpayment to the claimant; however, CSI did not note on the form that they were reserving the right to take a credit against the overpayment from future awards. They also did not deduct money from the claimant's ongoing awards to recoup the overpayment, which is routinely done. They were able to recoup the overpayment at the time the SLU award was paid on two of the files (RC8 and RC15). NCA was able to recoup the overpayment on one file (RO14) after they took over the handling of the files (due to an increase in the claimant's rate), and they have substantially reduced another overpayment (RO18). Of the five remaining files, RO2 has an overpayment of $443.58 and the claimant is deceased; therefore, there is no possibility of recouping that overpayment since there will be no continuing awards. RO8 and RO19 both have a possibility of recouping the overpayment in the future as they both have ongoing payments. RO9 has the largest overpayment with no hope of recouping unless the claimant has a significant increase in her SLU percentage which would only occur if she underwent further surgery. With file RO10, they made a mistake with the date the claimant's degree of disability changed, thereby overpaying him for five weeks. And the last file, RC9, was closed with a settlement (please refer to page 21 for complete details), and this overpayment should have been discussed at the time of the settlement. Total outstanding overpayments at the time of audit were $16,104.76.

We also note two reimbursements that were noted in file RO2 but are not listed on the check register as reimbursements in the amounts of $303.81 and $901.86. There was also a letter in the same file referencing a check that was noted to have been voided that does not appear on the check register in the amount of $406.65.

OHI had a very strong case under Section 44 on file RC14. This section of the law gives the employer the right to apportion the loss to prior employers who have employed such employee in the employment to the nature of which the disease was due. CSI advised the employer that they would "build something in to the Section 32 agreement" to protect their rights to pursue this after the settlement was complete. This did not occur and the employer of record under the OHI Trust was locked in for the full value of the claim. The estimated loss to the Trust for this file is approximately $147,147.28 for indemnity and medical expenses.

CSI accepted two (2) claims wherein there was no medical evidence of causal relationship (RC16 and RC19). The total paid on the first claim was $2,323.79 and the second was $11,124.72.

Access to eCase, the WCB's online claim monitoring system, allowed further access to the claims being audited. Utilizing eCase allowed for quicker review of all Notices of Decision as well as the ability to look for specific medical reports and other New York State forms.

ACRONYMS AND DEFINITIONS:

Alive & well check – this is typically done annually on files that are receiving reimbursements from Special Funds. It is simply a face-to-face meeting to confirm the claimant is alive and receiving their checks timely.

ANCR – accident, notice, causal relationship

AWW – average weekly wage

C-4 – attending doctor's report and carrier/employer billing form

C-669 - Notice to Chair of Carrier's Action on Claim for Benefits - when this form should be filed

IF PAYMENT HAS BEGUN: on or before 18th day after disability, or within 10 days after employer first had knowledge of injury, whichever is greater.

IF PAYMENT HAS NOT BEGUN: no later than 25 days after the Board (WCB) has mailed a Notice of Indexing.

C-8.1 – Notice of Treatment Issue/Disputed Bill – this form is used when disputing ongoing treatment or a specific medical bill.

CCP – carrier continue payments

CMS – Center for Medicare Services

DOI – date of injury

DOS – date of service

DRG – inpatient hospital billing

EC-84 – Notice of Indexing – when the WCB is advised of a new claim either by the carrier or claimant, it will request forms that have not been filed yet. If these are not filed timely, the carrier is potentially subjected to penalties.

EE – employee

Employer liability / grave injury – an employer shall not be liable for contribution or indemnity to any third person based upon liability for injuries sustained by an employee acting within the scope of his or her employment for such employer unless such third person proves through competent medical evidence that such employee has sustained a "grave injury" which shall mean only one or more of the following: death, permanent and total loss of use or amputation of an arm, leg, and/or foot, loss of multiple fingers, loss of multiple toes, paraplegia or quadriplegia, total and permanent blindness, total and permanent deafness, loss of nose, loss of ear, permanent and severe facial disfigurement, loss of an index finger or an acquired injury to the brain caused by an external physical force resulting in permanent total disability.

Employer Request for Reimbursement – some employers continue to pay their employee's wages for a certain time period when they have been injured on the job. When this occurs, they should file a form with the WCB for reimbursement so, if and when, a judge issues an award to the claimant, the employer can be reimbursed.

Grave injury – see employer liability/grave injury

HP-1 – this form is filed by the doctor alleging a medical bill has not been paid timely or at all.

HP-2 – Health Provider Administration: Notice of Decision and Administrative Award under Section 13-4, 13-k, 13-i or 13-m. This form results from a doctor filing an HP-1 advising the WCB that their bill has not been paid or has not been paid timely. The carrier has the right to argue and present evidence that they have paid the bill. If they have not paid it, it is fined $50 and directed to pay the bill plus interest.

HOLIDAY **-** When a person is awarded money from a third party action the Workers' Compensation carrier/Third Party Administrator/Self Insured Employer is allowed to take a "holiday." This means they do not have to continue weekly payments (if the injured worker remains out of work due to his/her compensable injury at the time the third party settlement is finalized) or pay for medical treatment until the net recovery is used up. The only way the injured worker recovers further benefits under the Workers Compensation claim is if his/her medical expenses and/or lost time (removed from work for the compensable injury by a doctor) exceeds the net recovery. He/she would have to file a RFA-1 along with a C-27 from his/her doctor requesting a reopening of his/her case and would have to prove to the Judge that he/she had exceeded the net recovery and was still either disabled and/or in need of further medical treatment.

IME – Independent Medical Examination

M & S Statement – this statement is usually given by an IME physician, and usually states that due to a prior injury, the current injury/condition is materially and substantially greater than it would have been "but for" the prior medical condition/injury.

MSA – Medicare set-aside – when settling a claim, provisions must also be made for ongoing care as Medicare has stated they will no longer pay for medical treatment for a work related injury after settlement.

MVA – motor vehicle accident

NCLT – no compensable lost time

NYSWCL – New York State Workers' Compensation Law

NOD – Notice of Decision

ODNCR – occupational disease, notice, causal relationship

OOW – out of work

PFME – prima facie medical evidence

PPD – permanent partial disability

RFA-1 – Claimant's Request for Further Action – this form is filed by the claimant or the claimant's attorney to request a hearing when they have an issue they believe needs to be addressed by a judge (such as wages not being paid or not being paid properly, authorization for treatment, etc.).

RTW – return to work

SFCC – Special Funds Conservation Committee

SIR – self insured retention – the deductible on a stop-loss policy

SLU – schedule loss of use

TPD – temporary partial disability

TTD – temporary total disability

WCB – New York State Workers' Compensation Board

"ADMINISTRATIVE DECISION":

To provide a fair, timely, and efficient mechanism for processing uncontroverted claims involving minor injuries, uncontested issues within a claim, and certain penalties.

If the board determines that a case is suitable for administrative determination processing, a proposed decision shall be prepared and transmitted to the claimant, employer or its carrier, and any other party in interest. The proposed decision shall be dated the date it is transmitted. The parties shall also be informed of the date that the proposed decision becomes final, which shall be at least 30 days after the date it was transmitted by the Board (WCB).

Any party in interest may object to the proposed decision within 30 days of the date the proposed decision is transmitted by the Board (WCB). Any objection must state the reason for the objection and identify the issues to be resolved. If an objection is received by the Board (WCB) within such 30-day period, the proposed decision will not be made final and the case will be scheduled for conciliation processing or a hearing before a Workers' Compensation Law Judge, or may be modified, as may be appropriate.

"STEP RESERVING":

This is the practice of setting reserves a little bit at a time rather than reserving for "the most probable outcome".

This is not an issue at the beginning of the claim as the adjuster may not have all the facts; therefore, will set a reserve for 6-12 weeks and once they have the medical reports they can set the reserve properly.

This practice becomes an issue when the facts are known and the adjuster still does not reserve for the most probable outcome. A common example of this would be having an employee with an injury such as a fracture of an arm or leg. This type of injury would almost always result in a schedule loss of use award (SLU). Step reserving would result if the administrator set an indemnity reserve in this case for just 8 weeks of lost time rather than reserving the entire schedule loss of use award (a 10% SLU of an arm would be 31.2 weeks).

Another example would be when an employee's injury is deemed permanent and classified by the WCB with a permanent partial disability. If the claimant indicates they have no interest in settling their case, then the adjuster should reserve the file for the life of the claimant.

"PROTRACTED HEALING":

Protracted temporary total disability in connection with permanent partial disability (in this instance this would refer to SLU). In the case of a temporary total disability and permanent partial disability both resulting from the same injury if the TTD continues for a longer period than the number of weeks set forth in the schedule, the period of TTD in excess of such number of weeks shall be added to the compensation period. Example: an injury to the arm is given 32 weeks to recuperate, if the number of TTD weeks is 40 then an additional 8 weeks is added to the SLU award, 10% SLU of the arm is 31.2 weeks + 8 weeks of protracted healing, the total award would be 39.2 weeks.

"STIPULATED AGREEMENT"

This form is most often used to close a case with a schedule loss of use percentage that has been agreed to by all parties. By using this form the closing of the file can be expedited and funds can be provided to the claimant quicker.

"SECTION 14-6 – CONCURRENT WAGE REIMBURSEMENT"

NYSWCL provides that when an individual is concurrently employed and loses time and wages from both of said employments, that the individual is entitled to an increase in the average weekly wage that would equate to the total of all wages from all (covered) employments, from which he or she lost wages. Essentially, the Workers' Compensation insurance carrier is required to pay the additional lost wages pursuant to the total average weekly wage, and then seek reimbursement from Special Funds.

"Section 15-3(v)"

Section 15-3(v) allows a claimant with a greater than 50% SLU of a major member (i.e. hand, arm, leg or foot) to continue to receive benefits until he is "entitled to receive social security old age benefits". The claimant must also be enrolled in a rehabilitation program or there must be a finding that rehabilitation is not feasible. The main issue is whether the claimant is entitled to continue to receive benefits until age 65, or whether payments could be suspended when the claimant

first became eligible for social security old age benefits at a reduced rate at age 62.

"SECTION 25-a"

NYSWCL Section 25-a essentially provides that the Special Funds will undertake the administration and responsibility for the Workers' Compensation claims where

1. More than seven years has elapsed from the date of the injury or death and;
2. No more than three years has elapsed after the last payment of compensation, and;
3. In circumstances where the case has been "truly closed".

"SECTION 44"

NYSWCL Section 44 states: The total compensation due shall be recoverable from the employer who last employed the employee in the employment to the nature of which the disease was due and in which it was contracted. If, however, such disease, except silicosis or other dust disease and compressed air illness or its sequelae, was contracted while such employee was in the employment of a prior employer, the employer who is made liable for the total compensation as provided by this section, may appeal to the Board (WCB) for an apportionment of such compensation among the several employers who since the contraction of such disease shall have employed such employee in the employment to the nature of which the disease was due. Such apportionment shall be proportioned to the time such employee was employed in the service of such employers, and shall be determined only after a hearing, notice of the time and place of which shall have been given to every employer alleged to be liable for any portion of such compensation. If the board finds that any portion of such compensation is payable by an employer prior to the employer who is made liable for the total compensation as provided by this section, it shall make an award accordingly in favor of the last employer, and such award may be enforced in the same manner as an award for compensation.

"SECTION 32 SETTLEMENT AGREEMENT"

Statement of purpose. To encourage the parties in interest to enter into agreements settling upon and determining the compensation and other benefits due to the claimant or the claimant's dependents.

a. The parties in interest to a claim for compensation may settle upon and determine any and all issues and matters by agreement, in accordance with Section 32 of the Workers' Compensation Law, subject to the terms and conditions of this rule.
b. Any agreement submitted to the Board (WCB) for approval shall be on a form prescribed by the chair or, alternatively, contain the information prescribed by the chair.
c. The receipt of an agreement by the Board (WCB) for approval shall act as a stay on all related proceedings before the Board (WCB).
d. An agreement submitted pursuant to Section 32 of the Workers' Compensation Law shall not be binding on the parties in interest unless it is approved by the chair, a designee of the chair, a member of the Board (WCB), or a Workers' Compensation Law Judge. The agreement shall be approved unless it is determined that:
    1. the agreement is unfair, unconscionable, or improper as a matter of law; or
    2. the agreement is the result of an intentional misrepresentation of a material fact; or
    3. within 10 days of submission of the agreement, the Board (WCB) has received from any party in interest a written request that the agreement be disapproved by the Board (WCB).
e. The agreement shall be reviewed by the chair, a designee of the chair, a member of the Board (WCB), or a Workers' Compensation Law Judge, who will make a determination whether to approve or disapprove the agreement. The chair, designee of the chair, member of the Board (WCB), or Workers' Compensation Law Judge reviewing the agreement may approve or disapprove the agreement administratively, based on a review of the record before the Board (WCB), or may choose to schedule a meeting to question the parties about the agreement. If the agreement is reviewed administratively, the Board (WCB)

shall advise the parties in writing of the date the agreement shall be deemed submitted for the purposes of Section 32 of the Workers' Compensation Law and this section. If a meeting is scheduled to question the parties about the agreement, the agreement will be deemed submitted for the purposes of Section 32 of the Workers' Compensation Law and this section at such meeting. No agreement shall be approved for a period of 10 calendar days after submission to the Board (WCB).

f. The Board (WCB) will advise the parties of the approval or disapproval of all agreements by duly filing and serving a notice of approval or disapproval.
g. An agreement which is approved shall be final and conclusive on the parties in interest, and shall not be subject to review pursuant to section 23 of the Workers' Compensation Law. An agreement which is disapproved shall be subject to review pursuant to section 23 of the Workers' Compensation Law.
h. The carrier shall make payments of any award as required in the agreement within 10 days of the filing of the decision approving the agreement. If the carrier fails to make such payments, the carrier shall be subject to penalties pursuant to paragraph (f) of subdivision 3 of section 25 of the Workers' Compensation Law.
i. An agreement may provide for reasonable fees commensurate with the services rendered by the claimant's attorney or licensed representative. Whenever a fee is requested in excess of $450, the requested fee is to be made upon form OC-400.1 attached to the submitted agreement.
j. Any agreement submitted and approved pursuant to section 32 of the Workers' Compensation Law and this rule may be modified at any time by agreement of all parties in interest provided such modification is approved by the Board (WCB).