

LEVEL IA REVIEW
OF THE
TRANSPORTATION INDUSTRY
WC TRUST
AS OF
DECEMBER 31, 2010

Prepared by:
The New York State Workers' Compensation Board
Office of Self Insurance
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A. Background of Transportation Industry WC Trust (TIWCT)

The Transportation Industry WC Trust (TIWCT) was formed on 12/27/2000 to provide Worker's Compensation coverage for businesses engaged in the transportation industry. The trust contracted with Consolidated Risk Management (CRM) to administer TIWCT under the direction of the Board of Trustees.

The initial four (4) years audited financial statements were received (12/31/2001-2004) and Level I Reviews were completed. WCB deemed that all four (4) years had no funding issues.

The 12/31/2005 audited financial statements were received in 2006 and the Level I Review was completed by WCB. Based on the results of the review, the trust was deemed underfunded. The WCB required the Trustees and management of TIWCT to meet with WCB officials to discuss the next steps for TIWCT.

During 2007, 12/31/2006 audited financial statements were received and a Level I Review was completed. The WCB deemed the trust underfunded. Based on this status, the WCB required the management of TIWCT to again meet with WCB officials to discuss the future of the trust.

During January of 2008, the WCB was informed that TIWCT did not have any active members. Since the trust must have active members to serve as trustees, the WCB notified all members that TIWCT would close effective 1/31/2008. Upon this termination, the WCB initiated the transition of TIWCT to the WCB. At the closing of the Trust, the WCB initiated the transition of TIWCT to the WCB contracted administrator, SAFE LLC. (SAFE) and the transition became effective on 09/08/2008.

A membership meeting was held on 07/27/2009 to discuss the present and future issues and obligations the members would face when a terminated trust is transitioned to the WCB.

On June 30, 2008, Workers Compensation Law (WCL) 50(3-a)(7)(b) was signed into law. This WCL required the WCB to levy an assessment on members of an insolvent group self-insurer within 120 days of insolvency. On 10/1/2008, based on the best available information at the time, the WCB assessed the members on 10/1/2008 a total of \$13,353,076. The payments made on this assessment were applied to the forensic assessment discussed in the next section.

B. Forensic Accounting Services

Upon the transition of TIWCT to the WCB, the WCB contracted with Bollam, Sheedy and Torani (BST) to provide the forensic accounting services for TIWCT. BST was contracted to ascertain the cause(s) for the termination of TIWCT by analyzing the following areas:

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a) **Operational, Performance and Claims Handling** as reported in the Forensic Program Audit report dated 5/22/2010. This report contains the analysis pertaining to the day to day operations and management performed on TIWCT 's behalf.

b) **Financial and Deficit Reconstruction** as reported in the Deficit Reconstruction and 2010 Assessment (2010 Deficit Assessment) report dated 07/12/2010, which includes the methodology for calculating the trust's deficit for each year with supporting tables and schedules. It also breaks down each member's pro-rata deficit.

The 2010 Deficit Assessment Report was made available on the WCB's TIWCT website. A Forensic Review membership meeting was held June 7, 2010, at which time, BST reviewed the reports detailing their findings and answered members' questions.

Once the reports were published, the WCB, with the assistance of SAFE, distributed the deficit assessment invoices based on the 2010 Deficit Assessment.¹ The per year allocation of the deficit as computed in the 2010 Deficit Assessment report dated 05/22/2010 is as follows:

Table B.1

Fiscal Year	2010 Deficit Assessment
12/31/2001	\$586,169
12/31/2002	\$3,002,501
12/31/2003	\$7,468,382
12/30/2004	\$16,259,976
12/31/2005	\$39,429,999
12/31/2006	\$41,600,841
12/31/2007	\$31,859,690
Total	\$140,207,558

The invoices distributed by SAFE included adjustments to the 2010 Deficit Assessment. These adjustments can vary depending on the history of each trust. The following table lists the adjustments relative to TIWCT and the total value to be collected.

¹ Please note that in April of 2011, legislation was implemented that will remove certain Workers' Compensation assessments from the deficit assessment which will reduce the overall deficit for this trust. At this time, these recalculations are not complete and the exact impact of this legislation is unknown.

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Table B.2		
2010 Assessment		\$140,207,558
Prior Accounts Receivable	2,148,176	
2004 Dividend Chargeback	175,000	
Payments made on Estimated Billing	(1,901,719)	
Interest- Non Payment on Estimated Billing	715,255	
Billing Dispute Adjustments	<u>(1,911,998)</u>	
Total Adjustments		<u>(775,285)</u>
Total to be Collected		<u>138,295,560</u>

C. Joint and Several Invoicing

Upon receipt of the 2010 Deficit Assessment Invoices dated 07/29/2010, the members of TIWCT were given a Deficit Assessment Contractual Agreement (DACA) and the following payment options, depending on the number of years that they participated in the trust:

Table C.1

Available Payment Options	
Term	Rate & Installment
Lump Sum Payment	Remit 95%(1 installment)
One (1) Year	0% interest(12 equal installments)
Two (2) Year	6.0% interest(24 equal installments)
Three (3) Year	6.5% interest(36 equal installments)
Four (4) Year	7.0% interest(48 equal installments)
Five (5) Year	7.5% interest(60 equal installments)
Hardship Application Request	Remit maximum year Monthly installment

Each member was required to sign the DACA, select a payment option and remit the respective payment with the DACA.

Due to a large member response at prior Forensic Review membership meetings, the WCB proposed an interim repayment option to TIWCT in attempt to reduce the amount currently paid by members, while covering the current cash need to cover benefit payments and administrative costs incurred by the trust. This proposed repayment option was called a Payment Based on Cash Flow. By offering this option, more time would be given in order

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to observe how the ultimate claims develop. This option would have been offered for an eighteen month (18) period.

These interim payments were to be made by the former members in lieu of making a full payment on their joint and several obligations for a set period. This is to allow the members more time to see how the claims develop, while ensuring that for the period of the agreement, cash flow burden will not be placed on the rest of the self insurance community. The members who chose to participate in this interim payment option would be required to sign a Cash Flow Memorandum of Understanding (CFMOU). In order to implement the CFMOU, the WCB needs a specific number of members to participate in order to cover the monthly expenses of the trust. Unfortunately, as of 12/31/2010, not enough members agreed to participate in the CFMOU and this repayment option was not implemented.²

As of 12/31/2010, TIWCT membership has not been able to cover the cost of the claims of their injured workers through participation in a repayment agreement. The table below illustrates as of 12/31/2010 the progress of these agreements.

Table C.2

Payment Options 12/31/2010	
DACA signed	3
CFMOU Signed	0
Paying, No signed agreement	56
Potential Credit	1
No Agreement, No Payment	487
Total Members Invoiced	547

² On June 1, 2011, a CFMOU was implemented and is now being offered to all TIWCT members. At the time of this report, the CFMOU is currently not covering the costs of TIWCT on a monthly basis due to low participation levels.

D. Change in Reserve Analysis (Current to Prior Year)

A major component of a GSIT's financial position is the accurate projection of the Claims Loss Reserve left to be paid. Depending upon the actuarial assumptions and development factors used to project the claims loss reserve, the actual reserve value may be different than the reserve as originally valued at the time of the 2010 Deficit Assessment. It is important to periodically take a retrospective look at each specific claim year, as the claims incurred in that year continue to develop, to ensure that the reserve estimates remain substantially similar to those forecasted at the time of the 2010 Deficit Assessment.

This analysis is provided to give a general idea of the projected overage or shortage assumed for the year under review. It is important to note that this analysis is contribution year specific and in the event of a shortage, joint and several liabilities will apply to members based on the contribution years the members participated. The actuarial reserve estimate is the actuary's undiscounted ultimate high estimate for the specific year.

Since the reserve for unpaid claims are estimates, the WCB will analyze the actuarial report submitted by SAFE. This analysis will determine whether the actuarial estimates used in the 2010 Deficit Assessment have developed adversely in a material manner.

The Claims Loss Reserve can fluctuate year to year. The ultimate outcome that is expected, is to have the Claims Loss Reserve decrease as the number of claims decrease. When the number of open claims decreases, but the Claims Loss Reserve increases, there can be various reasons for this outcome. The following are a few examples:

- a) Claim(s) may develop adversely in a particular year increasing the reserve.
- b) The older the claim the more expensive it becomes especially if the claimant has not returned to work.
- c) Upon the transition of a trust to the WCB, a more reasonable reserving methodology was implemented.

The WCB will analyze the actuarial method used to calculate the 2010 Deficit Assessment, for the period ending 12/31/2009, and the Actuarial report for the period ending 12/31/2010. In future reports, the WCB will also analyze the current year to the prior year and the assessment year and the current year.

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Year	Estimated Ultimate Incurred Losses Forensic Year 09#	Estimated Ultimate Incurred Losses Current year 10*	Change Ultimate Incurred Forensic(09) to Current(10)	Percent Change
2001	\$842,623	\$842,623	\$0	0.0%
2002	\$3,899,826	\$3,954,066	\$54,240	1.4%
2003	\$8,850,048	\$8,229,805	(\$620,243)	-7.0%
2004	\$16,800,023	\$14,473,678	(\$2,326,345)	-13.8%
2005	\$34,629,904	\$31,335,278	(\$3,294,626)	-9.5%
2006	\$39,652,055	\$32,369,150	(\$7,282,905)	-18.4%
2007	\$32,142,178	\$25,477,687	(\$6,664,491)	-20.7%
Total	\$136,816,657	\$116,682,287	(\$20,134,370)	-14.7%

*Reserve data per Appendix E Exhibit II, Page 51 of the 12/31/10 Actuarial report Dated 01/2011.

#Reserve data per Appendix E Exhibit II, Page 52 of the 12/31/2009 Actuarial report Dated June 2010.

Year	Total Reported Claims 12/31/2009	Total Reported Claims 12/31/2010	Total Reported Claims Difference	LTD Closed Claims 12/31/2009	LTD Closed Claims 12/31/2010	Closed Claims Difference	Remaining Open Claims 12/31/2009	Remaining Open Claims 12/31/2010	Open Claims Difference
12/31/2001	44	44	0	41	42	1	3	2	(1)
12/31/2002	151	151	0	142	143	1	9	8	(1)
12/31/2003	397	398	1	366	379	13	31	19	(12)
12/30/2004	780	780	0	724	745	21	56	35	(21)
12/31/2005	814	814	0	719	755	36	95	59	(36)
12/31/2006	799	799	0	663	713	50	136	86	(50)
12/31/2007	707	708	1	560	631	71	147	77	(70)
Total	3,692	3,694	2	3,215	3,408	193	477	286	(191)

Claims Data supplied by SAFE LLC

Observations:

- a) From Table D.1 - The Net Ultimate Incurred decreased by \$20,134,370 representing a 14.7% decrease.
- b) From Table D.2 - The Total Open Claims decreased by 191 claims, representing a 40% decrease. Two (2) additional claims were added during the year.

E. Payment Analysis as of 12/31/2010

It is the responsibility of the WCB, with the assistance of SAFE, to analyze by year, the collections of the 2010 Deficit Assessment. Since the collection process is in the beginning stages it is too early to make any conclusions concerning payments.

In the previous section we have reported in Table C.2 the options members have chosen. The table below will illustrate the 2010 Deficit Assessment associated with each option.

Payment option	Number of Members	Total Billings
DACA signed	3	\$ 16,848
CFMOU Signed	0	\$ -
Paying, No signed agreement	56	\$ 45,531,819
Potential Credits	1	\$ (130)
No Agreement, No Payment	487	\$ 92,747,024
Total Members Invoiced	547	\$ 138,295,561

As discussed in Section C above, the majority of the membership of TIWCT has not committed to a repayment agreement with the WCB. The WCB continues to strive for a solution to this impasse.

The WCB will refer any member to the Office of Attorney General (OAG) that has not signed either the CFMOU or the DACA. Additionally, the WCB will be filing Section 26 judgments against those members of TIWCT who have not paid their deficit assessment and have had claims paid by the Board for their own injured workers. Since the process is in the early stages, at this time, the total number of members that will be referred to the OAG or have Section 26 judgments entered against them cannot be determined. However, if there a large portion of the membership that does not begin paying on the 2010 Assessment, it may result in their allocation being deemed uncollectible and this could cause a potential reallocation to the remaining members under the provisions of joint and several liability.

Table E.2 illustrates the amounts invoiced, collection by year, remaining balance by year and percentage of total invoiced by year.

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Table E.2

Payment Analysis as of 12/31/2010								
	Total	2007	2006	2005	2004	2003	2002	2001
Total to be collected	138,295,560	31,425,222	41,033,534	38,892,296	16,038,240	7,366,536	2,961,556	578,175
Collections, per SAFE as of 12/31/10	231,104	52,514	68,571	64,992	26,801	12,310	4,949	966
Balance Remaining	138,064,456	31,372,708	40,964,963	38,827,303	16,011,439	7,354,226	2,956,607	577,209
Percentage of deficit collected by Year 12/31/10	0.17%	0.17%	0.17%	0.17%	0.17%	0.17%	0.17%	0.17%

Observations:

- a) The table shows that \$231,101 has been collected through 12/31/2010.
- b) Table E.2 also illustrates the percent of the assessment collected per year. This percentage, as collections continue, can identify a deficit year that may develop adversely concerning joint and several liabilities. Since the WCB has collected only six (6) months of data it is premature to form specific observations.

F. Conclusions

The purpose of this report is to analyze the need for joint and several liability reallocations. The two components which could cause such a reallocation are a material change in the Claims Loss Reserves and the success of the collections of the 2010 Deficit Assessment from the members of TIWCT.

Since the 2010 Deficit Assessment was issued less than year ago and the majority of the membership has not committed to sign any repayment agreements, WCB cannot draw any overall conclusions about the collection process until it has time to mature. WCB can state that if the collection efforts cannot be rectified, the non-paying members will be referred to OAG. If the referrals to the OAG do not have a positive outcome, there will likely be further joint and several reallocations.

The Claims Loss Reserves have moved in the optimal direction. The claims and reserves have decreased in a positive way. Therefore, at this time, the WCB believes that the 2010 Deficit Assessment continues to be reasonable.