



**ANDREW M. CUOMO**  
GOVERNOR

STATE OF NEW YORK  
WORKERS' COMPENSATION BOARD  
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**ROBERT E. BELOTEN**  
CHAIR

**June 30, 2011**

**Hand Delivered**

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

**Honorable Sheldon Silver  
Speaker  
New York State Assembly  
State Capitol Room 932  
Albany, New York 12248**

**Honorable Dean Skelos  
President Pro Tempore  
New York State Senate  
State Capitol Room 909  
Albany, New York 12227**

**Dear Gentlemen:**

**Legislation passed in 2011 requires the Workers' Compensation Board (Board) to prepare a semi-annual report to the Governor and Legislature regarding the status of the various insolvent group self insured trusts. The first report is due on this date June 30, 2011.**

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

**Sincerely,**

**Robert E. Beloten  
Chair  
New York State Workers' Compensation Board**

In accordance with Chapter 57 of the Workers' Compensation Laws of 2011, the Board is hereby reporting on the current status of all defaulted group trusts and the funding positions of currently active self insured employers. Such reports shall be continued until such time as the affected defaulted trusts have paid its obligations in full.

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

Detailed below are the total liabilities incurred by defaulted group self-insured trusts.

| Name of Insolvent Non-Municipal Group Self-Insured Trust                     | Date of Insolvency or Transition | Audited Financial Statement used for Forensic Deficit Reconstruction | Total Liabilities used for Forensic Deficit Reconstruction | Most Recently Approved Audited Financial Statement | Total Liability from Most Recently Audited Financial Statement |
|--|----------------------------------|--|--|--|--|
| Provider Agency Trust for Human Services** (PATH)                            | 03/01/2006                       | 12/31/2006   | \$ 20,267,000  | 12/31/2009   | \$ 25,801,000  |
| Manufacturing Industry WC Insurance Trust (NYMIT)                            | 03/31/2006                       | 12/31/2006   | \$ 10,636,000  | 12/31/2009   | \$ 12,024,000  |
| Manufacturing Self Insurance Trust (MSIT)                                    | 06/01/2007                       | 11/30/2008   | \$ 30,322,000  | 11/30/2010   | \$ 35,117,000  |
| Public Entity Trust of New York (PETNY)                                      | 01/15/2008                       | 12/31/2009   | \$ 7,480,000   | 12/31/2009   | \$ 6,274,000   |
| Healthcare Industry Trust of New York (HITNY)                                | 02/01/2008                       | 09/30/2008   | \$ 228,893,000   | 09/30/2010   | \$ 218,266,000   |
| Trade Industry WC Trust for Manufacturers (TRADE)                            | 05/16/2008                       | 12/31/2009   | \$ 24,982,000  | 12/31/2009   | \$ 24,982,000  |
| New York Healthcare Facilities WC Trust (HCF)                                | 07/31/2008                       | 12/31/2006   | \$ 36,741,000  | 12/31/2009   | \$ 34,840,000  |
| Wholesale and Retail WC Trust of New York (WRWCT)                            | 08/11/2008                       | 09/30/2009   | \$ 71,668,000  | 09/30/2009   | \$ 71,668,000  |
| Transportation Industry WC Trust (TRANSPORTATION)                            | 09/08/2008                       | 12/31/2009   | \$ 138,786,000   | 12/31/2009   | \$ 138,786,000   |
| Real Estate Management Trust of New York (REMTNY)                            | 12/03/2008                       | 12/31/2009   | \$ 6,143,000   | 12/31/2009   | \$ 6,143,000   |
| Builders Self Insurance Trust (BUILDERS)                                     | 05/07/2009                       | 03/31/2010   | \$ 18,161,000  | 09/30/2010   | \$ 16,791,000  |
| Retail and Wholesale Industry WC Self Insurance Trust (RWWCT)                | 05/29/2009                       | 12/31/2009   | \$ 6,293,000   | 12/31/2009   | \$ 6,293,000   |
| Healthcare Providers Self Insurance Trust (HCP)                              | 08/06/2009                       | 10/31/2009   | \$ 207,917,000   | 10/31/2009   | \$ 207,917,000   |
| New York State Cemeteries Trust (NYSCT)                                      | 12/30/2009                       | 01/31/2010   | \$ 2,894,000   | 01/31/2010   | \$ 2,894,000   |
| Elite Contractors Trust of New York (ELITE)                                  | 01/27/2010                       | 09/30/2009   | \$ 87,793,000  | 09/30/2009   | \$ 87,793,000  |
| <b>Total to 12/31/2010</b>   |                                  |  | <b>\$ 898,976,000</b>                                      |  | <b>\$ 895,589,000</b>  |
|  |                                  |  |  |  |  |
| Selective Safety Trust** (SELECTIVE)   | 03/12/2011                       | TBD  | \$ -   | 12/31/2009   | \$ 13,337,000  |
| Long Term Care Risk Management Group* (LONG TERM CARE)                       | 05/24/2011                       | TBD  | \$ -   | 12/31/2009   | \$ 15,731,302  |
| <b>Total 01/01/2011 through 06/30/2011</b>                                   |                                  |  | <b>\$ -</b>  |  | <b>\$ 29,068,302</b>   |
|  |                                  |  |  |  |  |
| <b>Total All Trusts</b>  |                                  |  | <b>\$ 898,976,000</b>                                      |  | <b>\$ 924,657,302</b>  |
|  |                                  |  |  |  |  |
| *Trust recently transitioned and Re-Reserving In Progress                    |                                  |  |  |  |  |
| ** The Claims Liability has been transferred via an Assumed Liability Policy |                                  |  |  |  |  |
| ^ Does not reflect residual amounts held by the WCB                          |                                  |  |  |  |  |

The above table displays the cumulative deficit as set forth in the applicable deficit reconstruction and the current cumulative deficit as set forth in the most recent audited financial statement. The latter amounts reflect both increases to the cumulative deficit to account for any previously unreimbursed WCL §50(5)(g) funds as well as reductions in the cumulative deficit in the amount of payments by members on

deficit assessments received as of the date of the most recent audited financial statement. Additional reductions in the deficit are expected based upon the 2011 legislative changes to the NYS Assessments, as well as continued payments by members on deficit assessments, and will be reflected in a subsequent report.

**II. Qualified Non-Municipal Group Self-Insurers**

The status of the currently active groups is detailed below. The funding level indicated is based on 2009 results. The final 2010 results should be finalized prior to the December reporting cycle and will be updated accordingly.

| <b>Trust Name</b>   | <b>Funding Level</b> |
|---|----------------------|
| Associated Builders & Contractors Compensation Trust      | Fully Funded         |
| Baumann Self-Insurance Trust                              | 80-89% Funded        |
| Contractors Self-Insurance Trust Fund                     | Fully Funded         |
| Electrical Employers Self-Insurance Safety Plan           | Fully Funded         |
| ESTRA Self-Insurance Trust                                | Fully Funded         |
| Healthcare of New York Workers' Compensation Trust        | 80-89% Funded        |
| Healthcare Underwriters Mutual Risk Management Group      | 60-69% Funded        |
| Human Services Self-Insurance Trust Fund, The             | Fully Funded         |
| McGuire Group Trust                                       | 80-89% Funded        |
| New York Bus Operators Compensation Trust                 | 80-89% Funded        |
| New York Choice Self-Insurance Trust                      | Fully Funded         |
| New York College & University Risk Management Group       | Fully Funded         |
| New York Lumbermen's Insurance Trust                      | Fully Funded         |
| New York Operators Self-Insurance Trust                   | 80-89% Funded        |
| New York State Motor Truck Association Compensation Trust | 90-99% Funded        |
| Niagara Business Trust                                    | 90-99% Funded        |
| NYAHS Services, Inc. Self-Insurance Trust                 | 80-89% Funded        |
| Rochester General Health Systems                          | 80-89% Funded        |

|   |               |
|---|---------------|
| Workers' Compensation Trust a.k.a. ViaHealth    |               |
| Special Trades Contracting & Construction Trust | Fully Funded  |
| Western NY Hospital Risk Management Group       | 80-89% Funded |

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

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

#### **COLLECTIONS FROM MEMBERS**

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

For those members that refuse to acknowledge any liability in connection with their participation in a GSIT, the Board commences a civil collection action against them in conjunction with the Office of the Attorney General. To date, the Board has commenced four such collection actions. Alternatively, the Board will file a default judgment against a member for the amount of the unpaid claims obligations arising out of the claims of the employees of that particular member. However, prior to doing so, the Board provides the member with a final opportunity (Final Demand) to otherwise enter into a repayment agreement, generally either a DACA or an MOU.

Finally, where the Board is in possession of sufficient information as to the ability to fully collect the pro rata share of the deficits from each member of a GSIT, the Board will issue a Tender Offer. The Tender Offer is a settlement offer from the Board to the members of a GSIT as a whole, whereby if a sufficient number of employers agree to repay their pro rata shares, as

adjusted by the Board to account for both insolvent former members and potential collections from third parties, the Tender Offer will become binding with the members receiving releases from the Board after the repayment of the amount as stated in the Tender Offer. To date, the contracted recoveries from these methods are as follows:

|                        |              |
|------------------------|--------------|
| NYMIT DACAs:           | \$3,660,223  |
| PATH DACAs:            | \$13,091,987 |
| HCF DACAs:             | \$7,389,242  |
| MSIT Tender Offer:     | \$14,200,000 |
| ELITE MOUs and DACAs:  | \$8,192,000  |
| HITNY MOUs and DACAs:  | \$26,933,000 |
| HCP MOUs and DACAs:    | \$21,822,000 |
| NYSCT MOUs and DACAs:  | \$630,000    |
| PETNY MOUs and DACAs:  | \$2,473,000  |
| REMTNY MOUs and DACAs: | \$460,000    |
| RWWCT MOUs and DACAs:  | \$652,000    |
| WRWCT MOUs and DACAs:  | \$5,708,000  |

Additionally, the Board has issued approximately 50 Final Notices to employers in five GSITs. Approximately 40 of these Final Notices have resulted in the employer agreeing to enter into a repayment arrangement. Eight judgments in the aggregate amount of approximately \$634,000 have been entered against employers to whom Final Notices were issued and who have as of yet refused to enter into a repayment arrangement.

### **THIRD PARTY ACTIONS**

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

To date the Board has commenced two such actions, one against Compensation Risk Managers and a number of related and affiliated entities and officers and directors relative to the 8 GSITs it managed seeking \$472 Million and one against the Hamilton Wharton Group and its principal relative to HCF seeking \$33 Million. Both matters are ongoing.

### **ALP's**

To date, only one commercial carrier has shown an interest in executing an ALP for the liabilities of an insolvent GSIT. The Board has effectuated the transfer of all liabilities of PATH to this carrier, thereby extinguishing all of the liabilities associated with PATH. The Board anticipates releasing a request for proposal in the future to generate interest from a larger number of carriers in order to better facilitate the execution of ALP policies on behalf of insolvent GSITs.

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

Currently the NYS Workers' Compensation Board has 427 active individual self-insured employers, consisting of 126 parent companies and 301 subsidiary companies. All 126 self-insured accounts (parents + subsidiaries) have fully posted the requisite security. The current listing of such employers is attached herein:

#### **Employers**

ABF Freight System, Inc.  
Albany International Corporation  
American Express Company  
Arnot-Ogden Medical Center  
Ascension Health  
Aspire of Western New York, Inc.  
Ball Corporation  
BJ's Wholesale Club, Inc.  
Bon Secours Health System, Inc.  
Brookdale Hospital Medical Center, The  
Brooklyn Bureau of Community Service  
Bush Industries, Inc.  
Carillon Nursing and Rehabilitation Center, LLC  
Cayuga Medical Center at Ithaca, Inc.  
CBS Corporation  
Champlain Valley Physicians Hospital Medical Center  
Climax Paperboard, Inc.

Columbia University N.Y., Trustees of  
Consolidated Edison Company of New York, Inc.  
Cornell University  
Costco Wholesale Corporation  
Crouse Health Hospital, Inc.  
Cummins Inc.  
Curtis Niagara LLC  
DCH Auto Group (USA) Inc.  
DePaul Group, Inc.  
DHL Holdings (USA), Inc.  
Dolgencorp of New York, Inc.  
E. I. du Pont de Nemours and Company  
Eastman Kodak Company  
Entergy Nuclear Operations, Inc.  
ESCO Turbine Technologies - Syracuse, Inc.  
Federal Express Corporation  
FedEx Freight, Inc.  
FedEx Ground Package System, Inc.  
Finger Lakes Regional Health System, Inc.  
Ford Motor Company  
Fulton Boiler Works, Inc.  
Fulton Group N.A., Inc.  
Gannett Co., Inc.  
General Motors, LLC  
Gleason Works, The  
Golub Corporation, The  
Great Atlantic & Pacific Tea Co., Inc., The  
Hannaford Bros., Co.  
Harden Furniture, Inc.  
HealthStar Network, Inc.  
Herr Foods Incorporated  
Highland Hospital of Rochester  
Hillside Family of Agencies

Hilton Worldwide, Inc.  
Hollingsworth & Vose Company  
International Paper Company  
John D. Brush & Co., Inc.  
KeyCorp  
Kistner Concrete Products, Inc.  
Knight Transportation Inc.  
Krasdale Foods, Inc.  
L. & J.G. Stickley, Inc.  
Lenox Hill Hospital  
Leprino Foods Co.  
Lifetime Healthcare Inc.  
Limited Brands Inc.  
Lowe's Home Centers, Inc.  
Luvata Buffalo, Inc.  
Macy's, Inc.  
Marriott International Inc.  
McWane Inc.  
MeadWestvaco Corporation  
Memorial Sloan-Kettering Cancer Center  
Metropolitan Museum of Art, The  
National Fuel Gas Company  
National Grid USA  
New Era Cap Co., Inc.  
New York Black Car Operators Injury Comp. Fund,  
Inc.  
Nordstrom, Inc.  
Northeast Health, Inc.  
NYSARC Inc. Chautauqua County Chapter  
NYU Hospitals Center  
O-AT-KA Milk Cooperative, Incorporated  
Oldcastle, Inc.  
Oneida Ltd.



Orange & Rockland Utilities, Inc.  
Oswego Hospital  
Our Lady of Lourdes Memorial Hospital, Inc.  
Our Lady of Victory Homes of Charity, Inc.  
Owens-Corning  
Owens-Illinois Inc.  
Parker Hannifin Corporation  
Pathmark Stores, Inc.  
People, Inc.  
Queens Borough Public Library  
Raymond Corporation, The  
Rochester Institute of Technology  
Rockefeller University, The  
Rosina Food Products, Inc.  
Roswell Park Cancer Institute Corporation  
Saint-Gobain Abrasives, Inc.  
Samaritan Medical Center  
Samaritan-Keep Nursing Home, Inc.  
Sherwin-Williams Company, The  
Shop Vac Corporation  
Shopwell, Inc.  
SKF USA, Inc.  
St. Barnabas Community Enterprises, Inc.  
St. Joseph's Health System, Inc.  
St. Joseph's Hospital Health Center  
St. Mary's Hospital at Amsterdam  
Stanley Black & Decker, Inc.  
Starbucks Corporation  
Stewart's Shops Corp.  
Swift Transportation Co., LLC  
Syracuse University  
Target Corporation  
Unifrax I LLC

United Airlines Inc.  
University of Rochester  
Upstate Niagara Cooperative, Inc.  
Viacom, Inc.  
Visiting Nurse Service of New York  
Wal-Mart Associates, Inc.  
Washington Mills Electro Minerals Corporation  
Wegmans Food Markets, Inc.  
Wendy's International, Inc.  
White Castle System, Inc.  
White Rose, Inc.