

## TRUST

THIS TRUST AGREEMENT is by and between the Participating Members and the Trustees to enable the Participating Members to fund the costs of Workers' Compensation Insurance through a self-insurance program.

NOW, THEREFORE, the parties agree as follows:

### Article I

#### General Duties of the Parties

##### Section 1.1 General Duties of the Participating Members:

The Participating Members shall each contribute a proportionate share of funds to be held in trust for the payment of workers' compensation insurance coverage.

The Participating Members shall also place on deposit with the Chairman of the Workers' Compensation Board (hereinafter referred to as "Chairman") such securities as the Chairman may deem necessary of the kind prescribed in Subdivisions 1, 2, 3, 4, and 5 and paragraph (a) of Subdivision 7 of Section 235 of the Banking Law, or the deposit of cash, or the filing of irrevocable letters of credit issued by a qualified banking institution as defined by rules promulgated by the Chairman or the filing of a bond of a surety company authorized to transact business in this state in an amount to be determined by the Chairman, or the posting and filing as aforesaid of a combination of such securities, cash, irrevocable letters of credit, and surety bond in an amount to be determined by the Chairman to secure their liability to pay the compensation provided pursuant to the Workers' Compensation Law.

##### Section 1.2 General Duties of Trustee(s):

The Trustees shall have legal title to all assets received by them hereunder which, together with the income and gains therefrom and additions thereto, shall constitute the Trust Fund. The Trustees shall control, manage, invest, and reinvest the Trust fund, collect the income thereof, and make payments therefrom, all as hereinafter provided.

## Article II

### Investment, Administration, and Disbursement of Trust Fund

#### Section 2.1 Investment:

The Trust Fund may be invested in any property, real, personal, or mixed, wherever situate, and whether or not productive of income, including without limitation, common and preferred stocks, bonds, notes, and debentures (including convertible stocks and securities but not including stock or securities of the Trustees, the Participating Members, or the approved claims management corporation of their respective affiliates), leaseholds, mortgages, certificates of deposit, demand or time deposits, shares of investment companies and mutual funds, interests in partnerships and trusts, insurance policies and contracts being limited to the classes or property in which trustees are authorized to invest trust funds by New York Law. Investments shall be so diversified as to minimize the risks of large losses unless under the circumstances it is clearly prudent not to do so in the sole judgment of the Trustees.

#### Section 2.2 Administrative Powers of Trustees:

The Trustees shall have power in its discretion:

- (a) To cause any investment to be registered and held in the name of one or more of its nominees, or one or more nominees of any system for the central handling of securities.
- (b) To collect and receive any and all money and other property due to the Trust Fund and to give full discharge therefore.
- (c) To settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Trust (other than the claims which are subject of the Trust) to commence or defend suits or legal proceedings to protect any interest of the Trust, and to represent the Trust in all suits or legal proceedings in any court or before any other body or tribunal.
- (d) Generally to do all acts, whether or not expressly authorized, which the Trustees may deem necessary or desirable for the protection of the Trust Fund.

**Section 2.3 Payments and Distribution from the Fund:**

The Trustees shall make such payments and distributions from the Trust Fund at such time or times and to such person or persons, including a paying agent or agents designated by the approved claims management corporation or the approved claims management corporation as paying agents, as the approved claims management corporation shall direct in writing. Any cash or property so paid or delivered to any paying agent shall be held in Trust by such payee until disbursed in accordance with the Trust. The approved claims management corporation shall direct such payment by the Trustees only for Workers' Compensation Claims.

The Trustees may make any distribution or payment required to be made by the Trust thereunder by mailing its check for the specified amount or delivering the specified property to the person to whom such distribution or payment is to be made at such address as may have been last furnished to the Trustees, or, if no such address shall have been so furnished, to such person in care of the approved claims management corporation, or (if so directed by the approved claims management corporation) by crediting the account of such person or by transferring funds to such person's account by bank wire or transfer.

**Section 2.4 Meetings of Trustees:**

- (a) At any meeting of the Trustees, a majority of the Trustees shall constitute a quorum. However, the lesser number when not constituting a quorum may adjourn the meeting from time to time until a quorum shall be present or represented.
- (b) The affirmative vote of a majority of the entire number of Trustees shall be necessary for the transaction of any item of business at any meeting of Trustees at which a quorum is present. Any resolution in writing signed by all of the Trustees shall be and constitute action by such Trustees to the effect therein expressed with the same force and effect as if the same had been duly passed by unanimous vote at a duly called meeting of Trustees.

### Article III

#### Section 3.1 Communication to Trustees:

Communications to the Trustees shall be sent to the Trustees' office or to such other address as the Trustees may specify. No communication shall be binding upon the Trust Fund or the Trustees until it is received by the Trustees.

#### Section 3.2 Advice of Counsel:

The Trustees may consult with any legal counsel with respect to the construction of this Agreement, their duties thereunder, or any act which they propose to make or omit.

#### Section 3.3 Miscellaneous:

The Trustees shall discharge their duties hereunder with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matter would use in the conduct of an enterprise of a like character and with like aims. The Trustees shall not be liable for any loss sustained by the Trust Fund by reason of the purchase, retention, sale, or exchange of any investment in good faith and in accordance with the provisions of this Agreement and of any applicable law.

The Trustees' duties and obligations shall be limited to those expressly imposed upon it by this Agreement.

### Article IV

#### Taxes, Expenses and Compensation of Trustees

##### Section 4.1 Taxes:

The Trustees shall file all such federal and state tax returns or reports as are required of them. The Trustees shall deduct from and charge against the Trust Fund any taxes on the Trust Fund or the income thereof.

**Section 4.2 Expenses and Compensation:**

The Trustees shall pay from the Trust Fund, to the extent not otherwise paid, its reasonable expenses of management and administration of the Trust.

**Article V****Settlement of Accounts-Enforcement of Trust-Legal Proceedings****Section 5.1 Settlement of Accounts of Trustees:**

The Trustees shall keep full accounts of all their receipts and disbursements. The financial statements, books, and records with respect to the Trust Fund shall be open to inspection by any participating member at all reasonable times during business hours of the Trustees and may be audited not more frequently than once in each fiscal year by an independent certified public accountant.

Within sixty (60) days after the close of each year or any termination of the duties of the Trustees, the Trustees shall prepare, sign and mail to every participating member an account of its acts and transactions as Trustees hereunder. The account shall show the balance in the Trust Fund at the beginning of the period, current period contributions, and amount and nature of final payments, including a separate accounting for claims management, legal expense, claims paid, etc., and the Fund balance.

The Trustees shall have the right to apply at any time to a court of competent jurisdiction for judicial settlement of any account of the Trustees not previously settled. In any such action or proceeding, it shall be necessary to join as parties only the trustees (although the Trustees may also join such other parties as they may deem appropriate), and any judgment or decree entered therein shall be conclusive.

## Article VI

### Trustees

#### Section 6.1 Trustees:

The Board of Trustees shall at all times consist of a number of individuals not to exceed the number of members of the Trust, and in no event shall it exceed five (5).

Each Trustee after those originally elected shall hold office for a period of two (2) years; the Trustees shall be divided into three classes, respectively designated as Class A, Class B, and Class C and shall be composed of at least one (1) trustee. The term of office of the initial Class A Trustee shall expire at the next annual meeting of the members, the term of office of the initial Class B Trustee shall expire at the second annual meeting, and the term of office of the initial Class C Trustee shall expire at the third annual meeting.

At each annual meeting of the members, Trustees shall be elected to hold office until the expiration of the term of which each is elected and until a successor has been elected and qualified.

At each annual meeting, each member shall have one vote and the nominee(s) receiving the greatest number of votes shall be elected to the positions to be filled.

#### Section 6.2 Resignation of Trustees:

Any Trustee may resign at any time by filing with the Trustees and the Participating Members its written resignation. Such resignation shall take effect sixty (60) days from the date of such filing or upon election of a successor pursuant to Section 6.3, whichever shall first occur.

#### Section 6.3 Removal of Trustee:

The participating members, by a vote of the majority, may remove a Trustee at any time by delivering to the Trustee a written notice of its removal and an appointment of a Successor Trustee. Such removal shall not take effect prior to sixty (60) days from such delivery unless the Trustee agrees to an effective earlier date.

**Section 6.4 Election of Successor Trustee:**

A Successor Trustee shall be elected by a vote of the members, pursuant to Section 6.1. Upon election, the Successor Trustee shall execute an acceptance in writing, acknowledged in the same form as this Agreement.

All of the provisions set forth herein with respect to the Trustees shall relate to each successor with the same force and effect as if such successor had been originally named as trustee hereunder.

If a successor is not elected within sixty (60) days after the Trustee gives notice of its resignation pursuant to Section 6.2, the Trustees may apply to any court of competent jurisdiction for appointment of a successor.

**Section 6.5 Transfer of Fund to Successor:**

Upon the resignation or removal of the Trustee and election or appointment of a successor, and after final account of the Trustee has been settled as provided in Article V, the Trustee shall transfer and deliver the Trust Fund to such successor.

**Article VII****Section 7.1 Member Liability:**

All members participant in this Trust are deemed to be jointly and severally liable for all workers' compensation obligations incurred by the Trust.

An employer participating in the group self-insurance shall not be relieved from the liability for compensation prescribed by New York State Workers' Compensation Law except by the payment thereof by the group self-insurer or by itself. As between the employee and the group self-insurer, notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the group self-insurer.

The jurisdiction of the employer shall, for the purpose of this Agreement, be the jurisdiction of the group self-insurer and such group self-insurer shall in all things be bound by and subject to the orders, findings, decisions, and awards

rendered against the participating employer for the payment of compensation under the provisions of Chapter 67 of the Consolidated Laws.

The insolvency or bankruptcy of a participating employer shall not relieve the group self-insurer from the payment of compensation for injuries or death sustained by an employee during the time the employer was participant in such group self-insurance.

The group self-insurer shall promptly notify the Chairman, on a prescribed form, of the addition or termination of any participating employer or employers. Notice of termination of a participating employer shall not be effective until at least ten (10) days after notice of such termination, on prescribed form, has been either filed in the office of the Chairman or sent by certified or registered letter, return receipt requested, and also served in like manner upon the employer.

#### **Section 7.2 Acceptance of New Members:**

Membership shall be effective upon acceptance by the Board of Trustees by a majority vote, acceptance by the Workers' Compensation Board, and payment by the applicant of any entry fee, if required, by the Board of Trustees.

#### **Section 7.3 Duration of Membership:**

Membership shall be continuous unless or until terminated or withdrawn, but under no circumstances shall a member rescind membership without written notice received one hundred twenty (120) days prior to anniversary date.

The Board of Trustees may terminate membership of any participating member upon the occurrence of any of the following:

1. Failure to abide by every term and condition of the Trust Agreement.
2. Failure to abide by any rule or regulation promulgated by the New York State Workers' Compensation Board.
3. Insolvency or bankruptcy of a participating member.
4. Failure to cooperate with any attorney, actuary, or claim agent involved with this Trust.
5. Failure to make timely payments to the Trust Fund. If payment is not received by the first of the month, the following will occur:



- a. A thirty (30) day notice of termination will be mailed to the Chief Executive Officer;
- b. If at the end of thirty (30) days payment is not received, a ten (10) day termination letter will be mailed;
- c. On the tenth day, coverage will cease.

Upon default by any member, the Trust reserves the right to collect, by civil action, the amount due and owing to the Trust.

Each and every participating member agrees to keep a true and accurate record of the number of employees and the wages paid, and the members also agrees to furnish, upon demand, a sworn statement of the same. Such record shall be open to inspection at any time and as often as may be necessary to verify the number of employees and the amount of payroll.

## Article VIII

### Section 8.1 Duration and Termination of Trust:

This Trust shall continue for such time as may be necessary to accomplish the purpose for which it was created, but it a revocable trust and may be terminated at any time by the participating members by a 75% vote. Notice of such termination shall be given to the trustees by an instrument in writing executed by 75% of the participating members.

Once the Trust's status as a group self-insurer under the Workers' Compensation Law is terminated, the securities or cash or the surety bond on deposit referred to herein shall remain in the custody of the Chairman for a period of at least twenty-six (26) months. At the expiration of such time or such further period as the Chairman may deem proper and warranted, he may accept in lieu thereof, and for the additional purpose of securing such further and future contingent liability as may arise from prior injuries to workers and be incurred by reason of any change in the condition of such workers warranting the Board making subsequent awards for payment of additional compensation, a policy of insurance furnished by the group self-insurer, its successors or assigns, or others carrying on or liquidating such self-insurance group. Such policy shall be in a form approved by the Superintendent of Insurance and issued by the state fund or any insurance company licensed to issue this class of insurance in this state.

**Section 8.2 Distribution Upon Termination:**

Upon Termination, the Trustees shall maintain a Termination Reserve Fund, in an amount to be determined pursuant to Workers' Compensation Law, to pay costs and claims which may arise from events which occurred during the period of the Energy and Transportation Workers Compensation Trust self-insurance program. While maintaining such Termination Reserve Fund, the Trustees shall possess all duties and powers specified in the Agreement. Upon termination of the Trust, the Trustees shall obtain a determination of the adequacy of the Fund balance as of the date of termination from an independent actuary, insurance company, or broker. Based upon such determination of adequacy, the Trustees shall take such action as may be appropriate under the circumstances concerning the disposition of the Trust Fund. The trustees shall have its final account settled, and after divesting itself of the assets of the Trust Fund, the Trustees shall be relieved from all further liability.

**Section 8.3 Amendment:**

By an instrument in writing delivered to the members executed pursuant to the order of the Trustees, the Trustees shall have the right at any time and from time to time to amend this Agreement in whole or in part except that the duties and responsibilities of the members shall not be increased without the members' written consent. Any such amendment shall become effective upon (a) delivery to the members of the written instrument of amendment and (b) endorsement by the members on such instrument of its receipt thereof, together with its consent thereto, if such consent is required. The Chairman of the Workers' Compensation Board must have a copy of any amendment filed to the Trust must be on notice for any and all filings.

**Article IX****Section 9.1 Counterparts:**

This Agreement may be executed and delivered in any number of counterparts, each of which, when so executed and delivered, shall be an original and all of such counterparts shall together constitute one and the same Agreement.

**Section 9.2 Governing Law:**

This Agreement and the Trust thereby created shall be construed and regulated by the Laws of the State of New York, except as such laws are superseded by Federal Law.

**Section 9.3 Authorization to Execute Documents:**

The approved claims management corporation or any Trustee will handle all servicing or preparation of forms.

**Article X****Section 10.1 Trust Acceptance:**

The Trustees and the participating members hereby accept the Trust herein created.

In witness whereof. The parties here have executed this instrument in duplicate this 28 day of March 1995.

**TRUSTEE:**

\_\_\_\_\_  
William Lanoue, Ambil Carriers, Inc.

**TRUSTEE:**

  
\_\_\_\_\_  
Dana Murphy, West Central Environmental Corp.

**Section 9.2 Governing Law:**

This Agreement and the Trust thereby created shall be construed and regulated by the Laws of the State of New York, except as such laws are superseded by Federal Law.

**Section 9.3 Authorization to Execute Documents:**

The approved claims management corporation or any Trustee will handle all servicing or preparation of forms.

**Article X****Section 10.1 Trust Acceptance:**

The Trustees and the participating members hereby accept the Trust herein created.

In witness whereof: The parties here have executed this instrument in duplicate this 15<sup>th</sup> day of April 1995.

**TRUSTEE:**

+ William Lanoue  
William Lanoue, Ambil Carriers, Inc.

**TRUSTEE:**

J. Dana Murphy, West Central Environmental Corp.

PARTICIPANT MEMBER:

Ambil Carriers, Inc.By: William Lanoue  
William Lanoue

STATE OF NEW YORK )

) ss:

COUNTY OF Suffolk )

On this 15<sup>th</sup> day of April 1995 before me personally appeared William Lanoue, to me personally known, who being by me duly sworn, did depose and say that he resides at WATER ST, that his is the President of Ambil Carriers, Inc., corporation described in, and which executed, the within Instrument, that he knows the deal corporation, that the seal affixed to said Instrument is such corporate seal, that is was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Francesmary A. Keely  
Notary Public  
My Commission Expires 11/4/95

PARTICIPANT MEMBER:

West Central Environmental Corp.

By:

Dana Murphy

STATE OF NEW YORK )

) ss:

COUNTY OF ALBANY )

On this 28th day of MARCH 1995 before me personally appeared JOSEPH D. MURPHY, to me personally known, who being by me duly sworn, did depose and say that he resides at NASSAU, N.Y., that his is the VICE PRESIDENT of WEST CENTRAL ENVIRONMENTAL CORP., corporation described in , and which executed, the within Instrument, that he knows the deal corporation , that the seal affixed to said Instrument is such corporate seal, that is was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

  
 Notary Public

SUSAN M. CUMMINGS  
 Notary Public, State of New York  
 No. 4986131  
 Qualified in Albany County  
 Commission Expires June 22, 1996

PARTICIPANT MEMBER: P. Thomas & Michael Cope dba Bestway Warehouse

By: Michael Cope

Michael T Cope

STATE OF NEW YORK )  
 ) ss:  
 COUNTY OF \_\_\_\_\_ )

On this 28<sup>th</sup> day of March, 1995 before me personally appeared Michael Cope, to me personally known, who being by me duly sworn, did depose and say that he resides at Grand Island, NY, that his is the Vice President of P. Thomas & Michael Cope dba Bestway Warehouse, corporation described in , and which executed, the within Instrument, that he knows the deal corporation , that the seal affixed to said Instrument is such corporate seal, that is was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

**ANTHONY A. COPE**  
 Notary Public, State of New York  
 Qualified in Erie County  
 My Commission Expires March 18, 1996  
Anthony A. Cope  
 Notary Public

PARTICIPANT MEMBER:

Economy Transport CorporationBy: Richard J. Herman Jr.  
Richard Herman HERMAN JrSTATE OF NEW YORK )  
 ) ss:  
COUNTY OF Monroe )

On this 16<sup>th</sup> day of April 1995 before me personally appeared Richard J. Herman, Jr., to me personally known, who being by me duly sworn, did depose and say that he resides at 15 Bellefleur Circle, Fairport, N.Y., that his is the Vice-President of Economy Transport Corporation, corporation described in, and which executed, the within Instrument, that he knows the deal corporation, that the seal affixed to said Instrument is such corporate seal, that is was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Virginia M. Gagliano  
Notary Public

VIRGINIA M. GAGLIANO  
Notary Public in the State of New York  
MONROE COUNTY, N. Y.  
Commission Expires March 30, 1996



PARTICIPANT MEMBER:

The Environmental Service Group (NY) Inc.By: Robert Lenhart

Robert Lenhart

As President

STATE OF NEW YORK )

COUNTY OF Wrie ) ss:

On this 24th day of March 1995 before me personally appeared Robert Lenhart, to me personally known, who being by me duly sworn, did depose and say that he resides at 2510 Davis Dr. Niagara Falls NY, that his is the President of The Environmental Service Group (NY) Inc., corporation described in , and which executed, the within Instrument, that he knows the deal corporation , that the seal affixed to said Instrument is such corporate seal, that is was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

  
 Notary Public

PAMELA M. ITALIA  
 Notary Public, State of New York  
 Qualified in Erie County  
 My Commission Expires March 20, 2000

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PARTICIPANT MEMBER:

KIT Transportation

By:

James Sterritt  
James Sterritt

STATE OF NEW YORK )

COUNTY OF Albany )

) ss:

On this 5th day of April 1995 before me personally appeared James Sterritt, to me personally known, who being by me duly sworn, did depose and say that he resides at Pittsfield Ma., that his is the President of KIT transportation, corporation described in , and which executed, the within Instrument, that he knows the deal corporation , that the seal affixed to said Instrument is such corporate seal, that is was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Margaret M. Espinosa  
Notary Public

MARGARET M. ESPINOSA  
Notary Public, State of New York  
No. 4878231

Qualified in Albany County  
My Commission Expires January 14, 1997

PARTICIPANT MEMBER:

~~Northeast Environmental Service, Inc.~~By: 

Jon Colin

JERSEY  
 STATE OF NEW ~~YORK~~ )  
 ) ss:  
 COUNTY OF UNION )

On this 24 day of March 1995 before me personally  
 appeared JON COLIN, to me personally known, who  
 being by me duly sworn, did depose and say that he resides at  
23 Meadow Ln Old Bridge, that his is the Treasurer of  
Northeast Env. Services, Inc., corporation described in, and  
 which executed, the within Instrument, that he knows the deal corporation, that  
 the seal affixed to said Instrument is such corporate seal, that is was so affixed by  
 order of the Board of Directors of said corporation, and that he signed his name  
 thereto by like order.

  
 Notary Public

EDWARD R. THOMAS  
 NOTARY PUBLIC OF NEW JERSEY  
 My Commission Expires April 25, 1995

PARTICIPANT MEMBER:

SORBELLO'S TWINS EXPRESS INC

By:

JOSEPH SORBELLO

STATE OF NEW YORK )  
 ) ss:  
 COUNTY OF Saratoga )

On this 15 day of April, 1995 before me personally  
 appeared Joseph J Sorbello, to me personally known, who  
 being by me duly sworn, did depose and say that he resides at  
Saratoga NY, that his is the President of  
Sorbello's Twins Express Inc, corporation described in, and  
 which executed, the within Instrument, that he knows the deal corporation, that  
 the seal affixed to said Instrument is such corporate seal, that is was so affixed by  
 order of the Board of Directors of said corporation, and that he signed his name  
 thereto by like order.

Raymond A. Kelly  
 Notary Public  
My Commission Expires 11/4/95

**Energy and Transport Workers' Compensation Trust  
Service Providers**

**Administrators:**           **First Cardinal Corporation**  
                                  **Executive Park East**  
                                  **Albany, NY 12203**  
                                  **(518) 435-1744**

**Claims Administrators:**   **Crawford & Company Inc.**  
                                  **Executive Park**  
                                  **Albany, NY 12203**  
                                  **(518) 489-8305**

**Energy and Transportation Workers' Compensation Trust  
Board of Trustees**

**Mr. William Lanaue  
Ambil Carriers Inc.  
11 Flamingo Lane  
Waterford, NY 12188**

**Mr. Joseph D. Murphy  
West Central Environmental Corp  
290 Watervliet-Shaker Road  
Colonie, NY 12212**

## APPENDIX 2

**AMENDED TRUST AGREEMENT  
OF TRANSPORTATION WORKERS' COMP TRUST**

THIS AMENDED TRUST AGREEMENT is made by and between the Participating Members and the Trustees of Transportation Workers' Comp Trust.

**RECITALS**

1. Transportation Workers' Comp Trust (the "Trust") was established pursuant to a Trust Agreement executed April 15, 1995 (the "Trust Agreement") to enable Participating Members to fund the costs of Workers' Compensation Insurance through a self-insurance program in accordance with Section 50(3-a) of the New York Workers' Compensation Law.

2. Section 8.3 of the Trust Agreement empowers the Trustees of the Trust to amend the Trust Agreement, in whole or in part.

3. The Trustees, in the exercise of their duties and responsibilities pursuant to the said Trust Agreement, now deem it advisable and necessary to amend the said Trust Agreement in its entirety, in order to provide for the more efficient and proper management and operation of the Trust, and for the furtherance of the purposes for which the Trust was formed.

NOW, THEREFORE, THE TRUST AGREEMENT IS AMENDED, IN ITS ENTIRETY, AS FOLLOWS:

**Article I - Formation**

**Section 1.1. Name.**

The name of the trust created hereunder is Transportation Workers' Comp Trust.

**Section 1.2. Purpose.**

The purpose of the Trust is to provide a group self-insurance program, as defined in and authorized by Section 50(3-a) of the New York Workers' Compensation Law, which program includes the establishment and management of a fund for the paying of Workers' Compensation benefits to the employees of the Participating Members in accordance with the Workers' Compensation Law.

## APPENDIX 2

**Article II - Participating Members****Section 2.1. Qualifications.**

All Participating Members of the Trust must: 1) be in a transportation industry that falls in one of the Standard Industrial Classification Codes set forth on Schedule A; 2) meet the homogeneity requirements of any regulations of the Workers' Compensation Board; and 3) meet any other requirements promulgated in the By-Laws or orders of the Trustees. The names of the Participating Members, as of the date hereof, are set forth on Schedule B appended hereto.

**Section 2.2. General Duties and Responsibilities.**

Participating Members shall each contribute a proportionate share of funds to be held in trust for the payment of Workers' Compensation Insurance benefits. Participating Members shall also deposit or pay their proportionate share of security as required by the Chairman of the Workers' Compensation Board pursuant to the Banking Law and/or regulations of the Workers' Compensation Board, in order to secure the payment of compensation benefits provided under the Workers' Compensation Law.

**Section 2.3. Participating Member Liability.**

All Participating Members are deemed to be jointly and severally liable for all Workers' Compensation obligations incurred by the Trust, as explicitly set forth in the Participation Agreement which is to be executed by each Participating Member. A Participating Member shall not be relieved from the liability for compensation prescribed by the Workers' Compensation Law, except by the payment thereof by the Trust. As between an employee and the Trust, notice to or knowledge of the occurrence of the injury on the part of the employer/Participating Member shall be deemed notice or knowledge, as the case may be, on the part of the Trust. The jurisdiction of the Participating Members shall, for the purpose of this Agreement, be the jurisdiction of the Trust, and the Trust shall in all things be bound by and subject to the orders, findings, decisions, and awards rendered against the Participating Members for the payment of compensation under the provisions of the Workers' Compensation Law. The insolvency or bankruptcy of a Participating Member shall not relieve the Trust from the payment of compensation for injuries or death sustained by an employee during the time the employer was a Participating Member.

**Section 2.4. New Members.**

An employer who meets the qualifications set forth in Section 2.1 above shall be accepted as a Participating Member upon the majority vote of the Trustees and the payment of any entry fee, if required.



## APPENDIX 2

**Section 2.5. Duration of Membership.**

Membership of a Participating Member shall be continuous until terminated or withdrawn. The Trustees may terminate membership of a Participating Member upon the occurrence of any of the following:

- a. Failure to abide by each term and condition of the Trust Agreement, including homogeneity and other qualification requirements.
- b. Failure to abide by any rule or regulation promulgated by the New York State Workers' Compensation Board and any other governing body.
- c. The filing of voluntary or involuntary bankruptcy, the filing for receivership, the assignment for the benefit of creditors, or any like act by or against a Participating Member.
- d. Failure to materially cooperate with any attorney, actuary or claim agent representing the Trust.
- e. Failure to make timely requisite payments to the Trust Fund after thirty (30) days notice to pay to the Participating Member, followed by a ten (10) day notice of termination.

A Participating Member may withdraw from membership upon written notice to the Trustees received at least one hundred-twenty (120) days prior to the anniversary date of such Participating Member's membership in the Trust.

**Section 2.6. Meetings.**

The Participating Members shall meet at least annually at a meeting called by the Trustees for the purpose of electing trustees and conducting such of their business as fixed by the Trustees, or as requested in writing by at least three (3) Participating Members.

**Article III - Investment of the Trust Fund****Section 3.1. Investments.**

The Trust Fund may be invested in any property, real, personal, or mixed, wherever situate, and whether or not productive of income, including, without limitation, common and preferred stocks, bonds, notes and debentures (including convertible stocks and securities, but not including stock or security of the Trustees, the Participating Members, or the approved claims management corporation, or their respective affiliates, or of any group, claims or third-party administrator), leaseholds, mortgages, certificates of deposit, demand or time deposits, share of investment

## APPENDIX 2

companies and mutual funds, interests in partnerships and trusts, insurance policies and contracts. All investments are limited to the classes of property in which trustees are authorized to invest trust funds by the laws of the State of New York, and all such investments must be consistent with the regulations set forth by the Chair of the Workers' Compensation Board. All investments shall be so diversified as to minimize the risks of large losses, unless, under the circumstances, it is clearly prudent not to do so in the judgment of the Trustees.

#### Article IV - Trustees:

##### Section 4.1. Trustees.

The Trust shall be managed by its Trustees, each member of which shall be at least eighteen (18) years of age, and shall be employed by a Participating Member.

##### Section 4.2. Number of Trustees.

The Trustees shall at all times consist of at least three (3) individuals. The number of Trustees may be increased by a two-thirds vote of the Trustees, but in no event shall it exceed five (5).

##### Section 4.3. Election and Terms of Trustees.

Each Trustee shall serve for a term of three (3) years, with annually-staggered terms so that at least one (1) Trustee is elected yearly. At each annual meeting of the members, Trustees shall be elected for existing vacancies, and such Trustees shall hold office until the expiration of the term for which such Trustee is elected, and until a successor has been elected and qualified. Each Participating Member shall have one (1) vote, and the nominee(s) receiving the greatest number of votes shall be elected to the position(s) to be filled. Notwithstanding the foregoing, the Trustees serving as of the date hereof shall continue to serve and hold terms of office until the second, third, and fourth annual meetings to be held following the date hereof, with the terms of such Trustees expiring in the order in which they first became Trustees.

##### Section 4.4. Vacancies.

Vacancies and newly created positions resulting from an increase in the number of Trustees will be filled by a majority of the Trustees then in office, and a Trustee elected to fill such vacancy shall be elected to serve for the unexpired term of such Trustee's predecessor.

##### Section 4.5. Removal/Resignation.

The Participating Members, by a vote of the majority of them at a meeting called for such purpose, or at an annual meeting, following written notice thereof, may remove a Trustee by delivering to the Trustee written notice of the removal and the appointment of a successor Trustee.

## APPENDIX 2

Such removal shall not take effect prior to sixty (60) days from such delivery, unless the Trustee agrees to an earlier effective date. A Trustee may resign at any time by filing with the Trustees and the Participating Members such Trustee's written resignation. Such resignation shall take effect sixty (60) days from the date of such filing or upon the election of a successor, whichever shall first occur.

**Section 4.6. Compensation of Trustees.**

The Trustees shall not be compensated for their services, but shall be reimbursed from the Trust Fund for their reasonable expenses incurred in the performance of their duties. Nothing contained herein shall prevent the Trustees from engaging a Trustee to perform compensated work for the Trust, provided that such Trustee involved does not vote on the decision to engage.

**Section 4.7. General Duties and Powers.**

The Trustees shall have legal title to all assets received by them which, together with the income and gains therefrom, shall constitute the Trust. The Trustees shall control, manage, invest, and reinvest the Trust Fund, collect the income thereof, and make payments therefrom, and shall have the further administrative powers, in their discretion:

- a. to cause any investment to be registered and held in the name of one or more of its nominees, or one or more nominees of any system, for the central handling of securities;
- b. to collect and receive any and all money and other property due to the Trust, and to give full discharge therefor;
- c. to settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Trust (other than claims which are the subject of the Trust), to commence or defend suits or legal proceedings to protect any interest of the Trust, and to represent the Trust in all suits or legal proceedings in any court or before any other body or tribunal;
- d. to borrow money for any Trust purpose on terms and conditions deemed appropriate by the Trustees, provided that the Trustees deem such action to be for the best interests of the Trust, and to pledge or otherwise encumber Trust assets for the repayment of such indebtedness; and
- e. to generally do all acts, whether or not expressly authorized, which the Trustees may deem necessary or desirable for the protection of the Trust, consistent with applicable law and those regulations promulgated by the Chair of the Workers' Compensation Board.

## APPENDIX 2

**Section 4.8. Payments and Distributions from the Trust Fund.**

The Trustees shall make such payments and distributions from the Trust at such time or times, and to such person or persons, including a paying agent or agents designated by any fund administrator, by any group, claims, or third-party administrator as paying agent, as such administrator shall direct in writing. Any cash or property so paid or delivered to any paying agent shall be held in trust by such payee until disbursed in accordance with the Trust. Such administrator shall direct such payment by the Trustees only for Workers' Compensation-related expenses.

The Trustees may make any distribution or payment required to be made by the Trust by mailing its check for the specified amount or delivering the specified property to the person to whom such distribution or payment is to be made at such address as may have been last furnished to the Trustees, or, if no such address shall have been so furnished, to such person in care of the claims, group, or third-party administrator, or, if so directed by such administrator, by crediting the amount of such person's account or by transferring funds to such person's account by wire or transfer.

**Section 4.9. Settlement of Accounts/Enforcement of Trust/Legal Proceedings**

The Trustees shall keep full accounts of their receipts and disbursements. The financial statements, books and records with respect to the Trust shall be open to inspection by any Participating Member at all reasonable times during business hours of the Trustees, and may be audited each fiscal year by an independent certified public accountant. The Trustees shall ensure that all financial, actuarial, and other reports required by the Chair of the Workers' Compensation Board are complete and accurate and are submitted in a timely manner.

Within sixty (60) days after the close of each year or any termination of the duties of the Trustees, the Trustees shall prepare, sign and mail to every Participating Member an account of their acts and transactions as Trustees hereunder. The account shall show the balance in the Trust Fund at the beginning of the period, current period contribution, and amount of and nature of final payments, including a separate accounting for claims management, legal expenses, claims paid, etc., and the Fund balance.

The Trustees shall have the right to apply at any time to a court of competent jurisdiction for judicial settlement of any account of the Trustees not previously settled. In any such action or proceeding, it shall be necessary to join as parties only the Trustees (although the Trustees may also join such other parties as they may deem appropriate), and any judgment or decree entered therein shall be conclusive.

**Section 4.10. Meetings of Trustees.**

At any meeting of the Trustees, a majority of the Trustees shall constitute a quorum. However, the lesser number when not constituting a quorum may adjourn the meeting from time to time until a quorum shall be present or represented. The affirmative vote of a majority of the entire

## APPENDIX 2

number of Trustees shall be necessary for the transaction of any item of business at any meeting of the Trustees at which a quorum is present. Any resolution, in writing, signed by all of the Trustees, shall be and constitute action by such Trustees to the effect therein expressed with the same force and effect as if the same had been duly passed by unanimous vote at a duly called meeting of Trustees.

#### Section 4.11. Indemnification.

The Participating Members and the Trust shall indemnify, defend, and hold harmless the Trustees from and against any and all damages, losses, claims, actions, suits, penalties, liability, costs, or expenses arising out of, or relating to, the performance of their obligations and responsibilities hereunder, so long as such Trustees' actions are consistent with, and in discharge of, their obligations and responsibilities, except only in the case of gross or willful negligence or intentional wrongdoing. The Trustees are authorized to purchase insurance on behalf of the Participating Members and the Trust for the indemnification provided for herein.

#### Section 4.12. Miscellaneous.

Communications to the Trustees shall be sent to the Trustees' office or to such other address as the Trustees may specify. No communication shall be binding upon this Trust or the Trustees until it is received by the Trustees.

The Trustees may consult with any legal counsel, or with representatives of the Workers' Compensation Board, with respect to the construction of this Agreement, their duties hereunder, or any act which they propose to make or omit.

The Trustees shall discharge their duties hereunder with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like character and with like aims. The Trustees shall not be liable for any loss sustained by the Trust by reason of the purchase, retention, sale, or exchange of any investment in good faith and in accordance with the provisions of this Agreement and of any applicable law and regulations.

The Trustee's duties and obligations shall be limited to those expressly imposed upon it by this Agreement.

### Article V - Duration of Trust

#### Section 5.1. Duration and Termination.

This Trust shall continue for such time as may be necessary to accomplish the purposes for which it was created, but it is a revocable Trust and may be terminated at any time by a three-quarters (¾) concurrent vote of all of the Participating Members. Notice of such termination shall

## APPENDIX 2

be given to the Trustees by an instrument, in writing, executed by at least three-quarters (¾) of the Participating Members. Notice shall also be given to the Chair of the Workers' Compensation Board, as required by applicable law and regulation.

#### Section 5.2. Distribution Upon Termination.

Upon termination, the Trustees shall maintain a Termination Reserve Fund, in an amount to be determined by the Chair of the Worker's Compensation Board, to pay costs and claims which may arise from events which occur during the period of group self-insurance. While maintaining such Termination Reserve Fund, the Trustees shall possess all duties and powers specified in this Agreement. Upon termination of the Trust, the Trustees shall obtain a determination of the adequacy of the Fund balance as of the date of termination from an independent actuary, insurance company, or broker. Based upon such determination of adequacy, the Trustees shall take such action as may be appropriate under the circumstances concerning the disposition of the Trust. The Trustees shall have their final accounts settled, and, after divesting themselves of the assets of the Trust, the Trustees shall be relieved of all further responsibility for the Trust.

### Article VI - Amendment

By an instrument, in writing, delivered to the Members, executed pursuant to the Order of the Trustees, the Trustees shall have the right at any time, and from time to time, to amend this Agreement with the consent and approval of the Workers' Compensation Board, except that the duties and responsibility of the Participating Members shall not be increased without the approval thereof by at least two-thirds (2/3) of the Participating Members. Any such Amendment shall not become effective until: a) delivery to the Members of the written instrument of proposed amendment, b) endorsement by the Members on such instrument of receipt thereof, c) if required, the resolution of approval by the Participating Members, and d) approval by the Workers' Compensation Board. The Chair of the Workers' Compensation Board must receive a copy of any amended trust agreement, as well as amendments to any other filings required by applicable law or regulation.

### Article VII - Miscellaneous

#### Section 7.1. Counterparts.

This Agreement may be executed and delivered in any number of counterparts, each of which, when so executed and delivered, shall be an original, and all of such counterparts shall together constitute one and the same Agreement.

## APPENDIX 2

**Section 7.2. Governing Law.**

This Agreement and the Trust thereby created shall be construed and regulated by the laws of the State of New York, except as such laws are superseded by Federal Law.

**Section 7.3. Authorization to Execute Documents.**

The approved group, claims, or third-party administrator, or any Trustee, will handle all servicing or preparation of forms.

**Article VIII - Trust Acceptance**

This Amended Trust Agreement supercedes and replaces in its entirety the Trust Agreement and the Trustee and the Participating Members hereby acknowledge their acceptance of the Trust, as herein amended.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the 31<sup>st</sup> day of August, 2000.

TRUSTEES:

  
SCOTT T. EARL

  
J. DANA MURPHY

RECEIVED  
WORKERS COMPENSATION BOARD  
OCT 30 2001  
SELF INSURANCE OFFICE

## APPENDIX 2

STATE OF NEW YORK  
COUNTY OF ALBANY

SS.:

On the 31 day of AUGUST, 2000, before me, the undersigned, a notary public in and for said state, personally appeared SCOTT T. EARL, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides in CUSTER PARK NY; that said subscribing witness was present and saw said SCOTT T. EARL execute the same; and that said witness at the same time personally subscribed his/her name as a witness thereto.

  
Notary Public

STATE OF NEW YORK  
COUNTY OF ALBANY

SS.:

KATHERINE M. KLINKE  
NOTARY PUBLIC  
STATE OF NEW YORK  
QUALIFIED IN ALBANY COUNTY  
COMMISSION EXPIRES AUG. 9, 2001

On the 31 day of AUGUST, 2000, before me, the undersigned, a notary public in and for said state, personally appeared J. DANA MURPHY, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides in ALBANY NY; that said subscribing witness was present and saw said J. DANA MURPHY execute the same; and that said witness at the same time personally subscribed his/her name as a witness thereto.

  
Notary Public

KATHERINE M. KLINKE  
NOTARY PUBLIC  
STATE OF NEW YORK  
QUALIFIED IN ALBANY COUNTY  
COMMISSION EXPIRES AUG. 9, 2001

RECEIVED  
NOTARY COMMISSION BOARD  
OCT 30 2001  
CLERK'S OFFICE



## APPENDIX 2

## Schedule A

3273 Ready Mix Concrete  
4212 Local Trucking Without Storage  
4213 Trucking, Except Local  
4214 Local Trucking with Storage  
4215 Courier Services, Except by Air  
4221 Farm Product Warehousing & Storage  
4222 Refrigerated Warehousing & Storage  
4225 General Warehousing & Storage  
4226 Special Warehousing & Storage  
4231 Terminal & Joint Terminal Maintenance Facilities for Motor Freight  
Transportation  
4922 Natural Gas Transmission & Distribution  
4923 Natural Gas Distribution  
4924 Mixed, Manufactured, or Liquid Petroleum Gas Production and/or  
Distribution  
4941 Water Supply  
4952 Sewerage Systems  
4953 Refuse Systems  
4959 Sanitary Services, NEC  
4981 Steam & Air Conditioning Supply  
5983 Fuel Oil Dealers  
5984 Liquefied Petroleum Gas(Bottled Gas) Dealers  
5989 Fuel Dealers, NEC  
5000-5199 Wholesale Durable and Non Durable Goods

RECEIVED  
MEMBERS' COMPENSATION BOARD  
OCT 30 2001  
TREASURANCE OFFICE

**DRAFT**

**RECEIVED**  
**WORKERS' COMPENSATION BOARD**  
**JUN 10 2005**  
**SELF INSURANCE OFFICE**

**RESTATED TRUST AGREEMENT**  
**OF**  
**TRANSPORTATION WORKERS' COMP TRUST**

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## RESTATED TRUST AGREEMENT

**DRAFT**

OF

## TEAM TRANSPORTATION WORKERS' COMP TRUST

THIS RESTATED TRUST AGREEMENT, dated \_\_\_\_\_, is made by and between the Participating Members and the Trustees of Team Transportation Workers' Comp Trust (the "Trust").

## RECITALS

1. The Trust was established under the original name Transportation Workers' Comp Trust pursuant to a Trust Agreement executed April 15, 1995, and amended on August 31, 2000 (the "Amended Trust Agreement") to enable Participating Members to fund the costs of Workers' Compensation Insurance through a self-insurance program in accordance with Section 50, Subdivision 3-a of the New York Workers' Compensation Law.

2. Article VI of the Amended Trust Agreement empowers the Trustees of the Trust to amend the Amended Trust Agreement, in whole or in part.

3. The Trustees, in the exercise of their duties and responsibilities pursuant to the Amended Trust Agreement, now deem it advisable and necessary to amend and restate the Amended Trust Agreement in its entirety, in order to provide for the more efficient and proper management and operation of the Trust, and for the furtherance of the purposes for which the Trust was formed.

**NOW, THEREFORE, THE AMENDED TRUST AGREEMENT IS RESTATED, IN ITS ENTIRETY, AS FOLLOWS:**

**ARTICLE 1  
DECLARATION OF TRUST**

1.1. **Name.** The Trust shall be known as Team Transportation Workers' Comp Trust.

1.2. **Policies and Purposes.** The Trust is a group self-insurance trust organized and existing pursuant to Section 50, Subdivision 3-a of the Workers' Compensation Law of the State of New York. Its policies and purposes are:

- a. To provide workers' compensation self-insurance coverage to its Participating Members.
- b. To pay workers' compensation benefits in a timely manner.
- c. To improve safe working conditions and to promote safety programs.

d. To establish compensation coverage rates that are comparable to or more favorable than, other available workers' compensation coverage rates.

e. To do any other act or thing incidental to, or connected with, the foregoing purposes, or the advancement thereof.

## **ARTICLE 2 DEFINITIONS**

**2.1. Definitions.** For the purposes of this Restated Trust Agreement, the following terms shall have the following meanings

a. "Board of Trustees" or "Trustees" shall mean that body, identified in the Trust Documents, that is responsible for all operations of the Trust and shall take all necessary action to protect the assets of the Trust.

b. "By-Laws" shall mean the rules governing the conduct of the Trust, including among other things, the meetings of Participating Members, the election of Trustees, Administration of the Trust, and amendment of existing By-Laws.

c. "Claims" shall mean, for purposes of financial reporting and determining trust liabilities, the present value of all workers' compensation claims, including those incurred but not reported, and the expenses associated therewith that the Trust is obliged to settle and adjust. Such claims must be determined on an actuarial basis and may be discounted at a reasonable rate, provided however, that the WCB (as hereinafter defined) may reject discount rates considered to be unreasonable. Claims may be variously referred to as claim reserves, loss reserves or reserves for loss and loss adjustment expenses in the Trust's financial statements and actuarial reports.

d. "Claims Administrator" or "Third-Party Administrator" shall mean an individual or entity licensed by the WCB pursuant to Section 50, Subdivision 3-b or 3-d of the Workers' Compensation Law that is responsible for the administration and defense of workers' compensation claims of Participating Members of the Trust.

e. "Contribution" means a payment to the Trust Fund made by a Participating Member in response to an assessment in accordance with the Trust Documents. Without limiting the generality of the foregoing, Contributions shall consist in part of required Contribution payments and other payments made by Participating Members to cover the costs of purchasing excess insurance, establishing and maintaining a claims fund account, and establishing and maintaining an administrative fund account.

f. "Excess Insurance" shall mean insurance, purchased from an insurance company authorized by the Superintendent of Insurance of the State of New York, that reduces the exposure of the Trust:

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- i. for workers' compensation claims; and
- ii. for employers' liability.

Such excess insurance may be specific, aggregate or other insurance, singly or in combination, in amounts and form acceptable to the Chairman of the WCB (the "WCB Chair").

g. "Group Administrator" shall mean an individual or entity that is responsible for ensuring compliance with the provisions of the WCB Rules and Regulations (as hereafter defined) and the coordination of outside services including but not limited to Claims processing, loss control and legal, accounting, and actuarial services.

h. "Participating Member" or "employer" shall mean an individual employer that is participating in the Trust.

i. "Participation Agreement" shall mean the agreement, with language prescribed by the WCB Chair, and, in a form approved by the WCB Chair, that must be shared with all prospective members of the Trust and that must be individually executed by each Participating Member of the Trust, and such agreement shall include an acknowledgment that the prospective member has been provided with and has reviewed a copy of the Restated Trust Agreement, the By-Laws, and the Trust Membership Agreement.

j. "Trust" shall mean Team Transportation Workers' Comp Trust, an association of employers performing related activities in a given industry that contractually agree, in accordance with Section 50, Subdivision 3-a of the Workers' Compensation Law, to assume the workers' compensation liabilities of each Participating Member.

k. "Trust Account" or "Trust Fund" or "Fund" shall mean a trust account or fund, financed by the Contributions of Participating Members of the Trust, for the exclusive purpose of paying for and otherwise administering workers' compensation Claims and other liabilities incurred by Participating Members of the Trust.

l. "Trust Assets" shall mean cash and deposits in a bank or trust company insured under the provisions of the Federal Deposit Insurance Act or investments permitted pursuant to the WCB Rules and Regulations. For the purpose of determining the financial condition of the Trust and proper capitalization, Trust Assets shall not include fixed assets nor shall they include the security posted by the Trust under the WCB Rules and Regulations.

m. "Trust Documents" shall mean the Application, the Participation Agreement, the Restated Trust Agreement, the Trust Membership Agreement, and the By-Laws, as from time to time in effect, or any other rules, regulation, policies and procedures incidental thereto.

n. "Trust Liabilities" shall mean all Claims, accrued WCB assessments, accrued expenses including administrative costs, costs of excess insurance policies, and other fixed

costs, accounts payable, loans, bonds and notes payable, unearned contributions and all other trust obligations.

o. "Trust Membership Agreement" shall mean that certain agreement setting forth the methodology utilized to determine the Participating Members Contributions, the annual adjustment to Contributions, and the terms and conditions of Membership in the Trust.

p. "Termination" shall mean:

- i. action taken by the Trust to remove a Participating Member; or
- ii. the cessation of Trust's status as a self-insurance trust.

q. "Withdrawal" shall mean action taken by a Participating Member to remove itself from the Trust.

r. "Workers' Compensation Board, State of New York" or "WCB" shall mean the state agency charged with administering the Workers' Compensation Law. Currently, it consists of a thirteen member board responsible (directly or through review of delegated authority) for determining all issues involving claims under the Workers' Compensation Law; members of the board are appointed to seven-year terms by the Governor, by and with the advice and consent of the Senate, and the Governor designates the Chair and Vice-Chair.

s. "WCB Rules and Regulations" shall mean Title 12, Part 317 of the New York Compilation of Codes, Rules and Regulations, promulgated by the WCB governing self-insurers.

### ARTICLE 3 PARTICIPATING MEMBERS

3.1. **Homogeneity Requirements.** To qualify for membership and to continue to be eligible for membership an applicant or a Participating Member must be engaged in a transportation industry that falls into the same or a related Standard Industrial Classification Code (SIC Code) Division Structure as published in the United States Department of Commerce, Standard Industrial Classification Code Manual, or must share a predominant payroll classification, as those set forth on Schedule "A" of this Restated Trust Agreement.

### ARTICLE 4 TRUSTEES

4.1. **Board of Trustees.** The business of this Trust shall be managed under the direction of its Board of Trustees. The Trustees shall conduct or direct the affairs of the Trust and exercise its powers, subject to applicable provisions of the Workers' Compensation Law and the Trust Documents.

**4.2. General Duties and Powers.** The Trustees shall control, manage, invest, and reinvest the Trust's assets, collect the income thereof, and make payments therefrom, and shall have the further administrative powers, in their discretion:

- a. to cause any investment to be registered and held in the name of one or more of its nominees, or one or more nominees of any system, for the central handling of securities;
- b. to collect and receive any and all money and other property due to the Trust, and to give full discharge therefor;
- c. to settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Trust (other than Claims which are the subject of the Trust), to commence or defend suits or legal proceedings to protect any interest of the Trust, and to represent the Trust in all suits or legal proceedings in any court or before any other body or tribunal;
- d. to borrow money for any Trust purpose on terms and conditions deemed appropriate by the Trustees, provided that the Trustees deem such action to be for the best interests of the Trust, and to pledge or otherwise encumber Trust assets for the repayment of such indebtedness; and
- e. to generally do all acts, whether or not expressly authorized, that the Trustees may deem necessary or desirable for the protection of the Trust, consistent with the WCB Rules and Regulations.

**4.3. Duty of Care.** The Trustees shall discharge their duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like character and with like aims. The Trustees shall not be liable for any loss sustained by the Trust by reason of the purchase, retention, sale, or exchange of any investment in good faith and in accordance with the provisions of the Trust Documents, and of any applicable law and regulations.

**4.4. Limitation of Liability.** The Trustee's duties and obligations shall be limited to those expressly imposed upon it by the Trust Documents, and of any applicable law and regulations.

**4.5. Consultation with Others.** The Trustees may consult with legal counsel or with representatives of the WCB, with respect to the construction of this Restated Trust Agreement, their duties hereunder, or any act which they propose to make or omit.

## ARTICLE 5 SECURITY DEPOSIT

**5.1. Security Deposit.** The Trust will deposit security with the WCB in a form prescribed by the WCB Chair. The amount of the Trust's security will be revaluated annually following the receipt and review of the Trust's financial and other reports, and such security deposits may be



adjusted at the discretion of the WCB Chair. The security held by the WCB Chair will not be included in the calculation of the Trust's Trust Assets for the purposes of determining the financial condition of the Trust.

## **ARTICLE 6 CAPITALIZATION**

**6.1. Capitalization.** The Trust will establish and maintain Trust Assets in an amount that exceeds Trust Liabilities.

## **ARTICLE 7 FINANCIAL INTEGRITY OF TRUST FUNDS**

**7.1. Preservation of Trust Funds.** Every effort will be made by the Trust, the Trustees, the Group Administrator, Third-Party Administrator, or other agent(s) to preserve the integrity, strength and liquidity of the Trust's Trust Funds to permit the timely and complete payment of all of the Trust's Claims and other liabilities. The Trust Fund may be invested at the discretion of the Trustees so long as such investment is consistent with the WCB Rules and Regulations.

**7.2. Investment of Trust Funds.** The Trust Fund may be invested in any property, real, personal, or mixed, wherever situate, and whether or not productive of income, including, without limitation, common and preferred stocks, bonds, notes and debentures (including convertible stocks and securities, but not including stock or security of the Trustees, the Participating Members, or the approved claims management corporation, or their respective affiliates, or of any group, Claims or Third-Party Administrator), leaseholds, mortgages, certificates of deposit, demand or time deposits, share of investment companies and mutual funds, interests in partnerships and trusts, insurance policies and contracts. All investments are limited to the classes of property in which Trustees are authorized to invest trust funds by the laws of the State of New York, and all such investments must be consistent with the WCB Rules and Regulations. All investments shall be so diversified as to minimize the risks of large losses, unless, under the circumstances, it is clearly prudent not to do so in the judgment of the Trustees.

**7.3. Application or Disbursement of Trust Assets.** The Trust, the Trustees, the Group Administrator, Third-Party Administrator, and other agent(s) shall not utilize any of the Trust Funds collected from Participating Members or earned by the Trust for any purpose not directly related to the payment of Claims, security deposits, assessments, penalties, reasonable costs of operation, fixed costs such as Excess Insurance, the payment of earnings or refunds to Participating Members, or other trust obligations. The Trust, the Trustees, the Group Administrator, Third-Party Administrator, or other agent(s) shall not borrow money from the Trust Fund or in the name of the Trust and shall not permit any lending, issuance of debt instruments or other forms of obligations and encumbrances, nor shall the Trust, its Group Administrator, Third-Party Administrator, or other agent(s) extend credit to a Participating Member for the payment of Contributions or assessments.

**DRAFT****ARTICLE 8  
EXCESS INSURANCE**

8.1. **Purpose.** The Trust shall maintain Excess Insurance in a form approved by the WCB Rules and Regulations.

8.2. **Notification of Excess Insurance.** The Trust will notify the WCB Chair, on a prescribed form, of the Excess Insurance it has obtained, or, of any change in its Excess Insurance.

**ARTICLE 9  
BLANKET FIDELITY BOND**

9.1. **Blanket Fidelity Bond.** The Trust shall obtain a Blanket Fidelity Bond providing coverage for theft, disappearance or destruction of money, securities, or other property, in an amount acceptable to the WCB Chair. Such bond shall provide coverage for dishonest acts of the Group Administrator, Third-Party Administrator, or a Trustee, employee or agent of the Trust, whether identified or not, while acting alone or in collusion with others, and shall name the Trust as loss payee. Such bond shall be maintained at all times during existence of the Trust.

**ARTICLE 10  
TERMINATION AND DISSOLUTION OF THE TRUST**

10.1. **Termination and Dissolution of the Trust.** The Trust shall continue for such time as may be necessary to accomplish the purpose for which the Trust was created, and so long as all requirements to maintain authorization as set forth in the WCB Rules and Regulations continue to be met. Upon Termination of the Trust's status as a group self-insurer, the Trust will continue to administer the workers' compensation Claims and liabilities incurred by the Trust. Upon failure on the part of the Trust to properly administer such liabilities, the WCB Chair shall assume the administration and final distribution of the Trust's assets and liabilities.

**ARTICLE 11  
AMENDMENTS**

11.1. **Amendments.** Except as otherwise provided in the Workers' Compensation Law or other applicable law, this Restated Trust Agreement may be amended, repealed and/or adopted by the Board of Trustees by a two-thirds vote at a special meeting called specifically for that purpose. The notice of such special meeting shall contain the proposed amendment.

11.2. **Notification of Amendments.** The Trust will notify the WCB Chair, and all Participating Members, in writing, within ten (10) days, of any alteration, modification or amendment to the Trust Documents.

**ARTICLE 12  
MISCELLANEOUS**

**DRAFT**

**12.1. Counterparts.** This Restated Trust Agreement may be executed and delivered in any number of counterparts, each of which, when so executed and delivered, shall be an original, and all of such counterparts shall together constitute one and the same Restated Trust Agreement.

**12.2. Governing Law.** This Restated Trust Agreement and the Trust hereby created shall be construed and regulated by the laws of the State of New York, except as such laws are superseded by Federal Law.

**12.3. Entire Agreement.** This Restated Trust Agreement contains the complete and entire agreement between the parties concerning its subject matter, and replaces all earlier agreements or understandings between them, whether written or oral, concerning its subject matter.

**12.4. Severability.** Whenever possible, each provision of this Restated Trust Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. However, if any provision of this Restated Trust Agreement shall be prohibited by or invalid under such law, it shall be deemed modified to conform to the minimum requirements of such law or, if for any reason it is not deemed so modified, it shall be prohibited or invalid only to the extent of such prohibition or invalidity without the remainder thereof or any other such provision being prohibited or invalid.

**12.5. Captions.** Captions in this Restated Trust Agreement are for convenience only, and shall be deemed irrelevant in construing its provisions.

**ARTICLE 13  
TRUST ACCEPTANCE**

**13.1. Trust Acceptance.** This Restated Trust Agreement supercedes and replaces in its entirety the Amended Trust Agreement dated August 31, 2000, and the Trustees and the Participating Members hereby acknowledge their acceptance of the Trust, as herein amended.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the \_\_\_\_ day of \_\_\_\_\_, 2005.

TRUSTEES:

\_\_\_\_\_  
J. Dana Murphy

\_\_\_\_\_  
Fred Cason

\_\_\_\_\_  
Scott Earl

STATE OF NEW YORK :  
COUNTY OF \_\_\_\_\_: SS.:

On the \_\_\_\_ day of \_\_\_\_\_, 2005, before me, the undersigned, a notary public in and for said state, personally appeared J. Dana Murphy, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides in \_\_\_\_\_; that said subscribing witness was present and saw said \_\_\_\_\_ execute the same; and that said witness at the same time personally subscribed his/her name as a witness thereto.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK :  
COUNTY OF \_\_\_\_\_: SS.:

On the \_\_\_\_ day of \_\_\_\_\_, 2005, before me, the undersigned, a notary public in and for said state, personally appeared Fred Cason, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides in \_\_\_\_\_; that said subscribing witness was present and saw said \_\_\_\_\_ execute the same; and that said witness at the same time personally subscribed his/her name as a witness thereto.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK :  
COUNTY OF \_\_\_\_\_: SS.:

On the \_\_\_\_ day of \_\_\_\_\_, 2005, before me, the undersigned, a notary public in and for said state, personally appeared Scott Earl, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides in \_\_\_\_\_; that said subscribing witness was present and saw said \_\_\_\_\_ execute the same; and that said witness at the same time personally subscribed his/her name as a witness thereto.

\_\_\_\_\_  
Notary Public

**DRAFT****Schedule A**

- 4212 Local Trucking Without Storage
- 4213 Trucking, Except Local
- 4214 Local Trucking with Storage
- 4215 Courier Services, Except by Air
- 4221 Farm Product Warehousing & Storage
- 4222 Refrigerated Warehousing & Storage
- 4225 General Warehousing & Storage
- 4226 Special Warehousing & Storage
- 4231 Terminal & Joint Terminal Maintenance Facilities for Motor Freight Transportation
- 4922 Natural Gas Transmission & Distribution
- 4923 Natural Gas Distribution
- 4924 Mixed, Manufactured, or Liquid Petroleum Gas Production and/or Distribution
- 4941 Water Supply
- 4952 Sewerage Systems
- 4953 Refuse Systems
- 4953 Sanitary Services, NEC
- 4961 Steam & Air Conditioning Supply
- 5983 Fuel Oil Dealers
- 5984 Liquefied Petroleum Gas (Bottled Gas) Dealers
- 5989 Fuel Dealers, NEC

**BY-LAWS  
OF  
TEAM TRANSPORTATION WORKERS' COMP TRUST**

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**BY-LAWS  
OF  
TEAM TRANSPORTATION WORKERS' COMP TRUST**

**ARTICLE 1  
NAME AND LOCATION**

**1.1. Name.** This Trust shall be known as Team Transportation Workers' Comp Trust (the "Trust").

**1.2. Offices.** The principal office of the Trust shall be located at The Gordon, Siegel Law Firm, 9 Cornell Road, Airport Park, Latham, New York 12110. The Trust may change the principal office and may establish other offices at such other places within or without the State of New York as the Board of Trustees may from time to time appoint or the business of the Trust may require.

**ARTICLE 2  
PARTICIPATING MEMBERS**

**2.1. Participating Members.** All members of the Trust and identified in the Restated Trust Agreement as "Participating Members," shall hereinafter be identified as "Participating Members" of the Trust. Participating Members who are not individuals may act through and/or be represented by any general partner, officer, manager or other person legally authorized to act on the Participating Member's behalf, or by any other agent duly authorized by the Participating Member by appropriate resolution filed with the Trust.

**2.2. Additional Members.** Participating Members may be added to the Trust by a vote of the Trustees, in accordance with the Application, the Restated Trust Agreement, the Participation Agreement, and/or these By-Laws (collectively referred to as the "Trust Documents"), and any other applicable regulations covering the Trust, as adopted from time-to-time by the Workers' Compensation Board, State of New York (the "WCB").

**2.3. Terms and Conditions for Membership.** To qualify for membership, be admitted for membership and maintain eligibility for membership in the Trust, a Participating Member must satisfy all of the terms and conditions set forth in the Trust Documents, as from time to time are in effect, and any other rules, regulations, policies, and procedures pursuant or incident thereto.

**2.3.1 Homogeneity Requirements.** To qualify for membership and to continue to be eligible for membership an applicant or a Participating Member must be engaged in a business activity: (i) the predominant workers' compensation exposure of which is related to transportation, or (ii) that falls within the same or a related Standard Industrial Classification Code (SIC Code) Division Structure as published in the United States Department of Commerce's Standard Industrial Classification Code Manual, or (iii) that has a predominant payroll classification that falls within the transportation industry.

**2.3.2 Qualifications for Membership.** To qualify for membership and to continue to be eligible for membership the Participating Member must meet the following underwriting criteria:



- a. A prospective member must be financially solvent, furnish records to prove such solvency, and must meet such other criteria as to financial qualification as may be established by the Trustees from time to time;
- b. A prospective member's expected loss rate must be within parameters determined from time to time by the Trustees;
- c. A prospective member must satisfy all other requirements of the Trust's excess carrier or carriers, and the WCB; and
- d. A prospective member must adhere to the safety policies and practices adopted by the Trustees from time to time, as well as the WCB Rules and Regulations.

**2.4. Application for Membership.** Any qualified applicant may apply for membership by completing and submitting to the Trust an application on a form approved by the WCB, and such other documents as the Trustees, the WCB, and/or the Superintendent of Insurance of the State of New York may require, and paying to the Trust the required application fee as determined by the Trustees. Each applicant shall furnish to the Trust such access to its records and facilities as are deemed necessary by the Trustees in their sole and absolute discretion to permit evaluation of the eligibility of such applicant. The applicant must furnish to the Group Administrator not less than thirty (30) days before coverage is to be provided an annual estimated payroll by job classification. New Participating Members may be admitted to the Trust at any time during the year. All applications, application fees, information and documentation required by the Trustees must be received by the Trust no later than ninety (90) days before the proposed date of admission in order to qualify the applicant for admission as of the proposed admission date. The Trustees shall consider all completed applications no later than sixty (60) days before the proposed date of admission, and any approval may be made subject to conditions imposed by the Trustees or the WCB. The Trustees, in their discretion, shall have the right to waive any of the time requirements contained in this Section 2.4.

**2.5 Approval by Trustees.** An application must be approved by the affirmative vote of the majority of the Trustees then in office, and in accordance with the provisions of the Trust Documents. Upon approval of the application in satisfaction by the applicant of all of the requirements of the Trust, the Trust shall, within thirty (30) days of execution of a new member Participation Agreement, notify the Chairman of the WCB (the "WCB Chair") of such new member on a prescribed form, and file with the WCB the following: (i) a completed application, and (ii) a copy of the properly executed Trust Membership Agreement. Coverage within the Trust will become effective on the admission date set forth in the fully executed Application and Trust Membership Agreement, except in the case of a withdrawal from policy coverage governed by subdivision (a) of Section 94 of the Workers' Compensation Law. In the event the WCB subsequently rejects the application, the Trust shall immediately notify the proposed member, and file with the WCB a notice of termination within thirty (30) days after the notice of rejection.

**2.6 Full Discretion Concerning Approval or Rejection.** The approval or rejection of any application for admission by a prospective member shall be subject to the sole and absolute discretion of the Trustees and the WCB, notwithstanding the qualifications of the applicant and the satisfaction of the requirements of the Trust Documents and any other applicable laws. The Trustees or the WCB may approve or reject any such application for any

reason, and no applicant shall be deemed to have any legal or equitable entitlement or right to membership in the Trust.

**2.7 Basis for Establishing Member Contribution.** The Trustees shall fix the amount of each Participating Member's contributions on an individual basis having regard for each Participating Member's experience history, modification rate, and all other relevant factors, and in accord with the WCB Rules and Regulations and WCB policies and practices.

**2.8 Termination of Member.** The Trustees shall have the right to terminate the membership of a Participating Member in accordance with the terms and provisions of the Trust Participation Agreement between the Trust and the Participating Member to be terminated. Such termination shall become effective ten (10) days after the latter of the filing of the notice of termination in the office of the Chair of the WCB and the service of such notice upon the Participating Member. The notice of termination shall be on a prescribed form, and service upon the Participating Member shall be in accord with the requirements of the Trust Participation Agreement.

### **ARTICLE 3 MEETINGS OF PARTICIPATING MEMBERS**

**3.1. Place of Meeting.** Meetings of Participating Members shall be held at the office of the Trust, or at such other places as the Trustees may determine from time to time. The Chairperson shall preside at all meetings of Participating Members.

**3.2. Annual Meetings.** A meeting of Participating Members shall be held annually for the election of Trustees and the transaction of other business on a business day during business hours in the first fifteen days in the month of May.

**3.2.1. Agenda.** The order of business at the annual meeting of Participating Members shall be as follows:

- a. Calling the meeting to order.
- b. Proof of notice of meeting or waiver thereof.
- c. Reading of minutes of last annual meeting.
- d. Reports of officers.
- e. Reports of committees.
- f. Election of Trustees.
- g. Transaction of other business.

**3.3. Special Meetings.** Special meetings of the Participating Members, for any purpose or purposes, may be called by the Chairperson, by a majority vote of the Board of Trustees or by the Secretary of the Trust at the request in writing by a majority of the Participating Members entitled to vote. The notice for such meetings shall state the purpose or purposes therefor. At such special meetings, the only business transacted shall be that stated in the notice of such meeting.

**3.4. Notice of Meetings.** Written notice of the annual meeting stating the place, date and hour shall be given personally or by mail not less than ten (10) days and no more than fifty (50) days before the date of the meeting to each Participating Member entitled to vote at such meeting. Written notice of a special meeting stating the place, date and hour, and indicating that it is being issued by or at the direction of the person or persons calling the meeting, and stating the purpose or purposes of which the meeting is called, shall be given, personally or by mail, not less than ten (10) days and no more than fifty (50) days before the date of the meeting to each Participating Member entitled to vote at such meeting. If any provision of these By-Laws regulating an impending election of Trustees is adopted, amended or repealed by the Trustees, there shall be set forth in the notice to Participating Members of the next meeting for the election of Trustees, the text of the By-Laws so adopted, amended or repealed, together with a concise statement of the change made.

**3.5. Adjourned Meetings.** The Participating Members present may adjourn a meeting despite the absence of a quorum. Only those Participating Members entitled to notice and/or to vote at the original meeting are Participating Members for purposes of the adjourned meeting, unless the Board of Trustees fixes a new record date for the adjourned meeting. When a meeting is adjourned to another time or place, it shall not be necessary to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and at the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. However, if after the adjournment the Board of Trustees fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each Participating Member of record on the new record date entitled to notice.

**3.6. List of Participating Members at Meeting.** A list of Participating Members as of the record date, certified by the Secretary of the Trust, shall be produced at any meeting of Participating Members upon the request thereat or prior thereto of any Participating Member. If the right to vote at any meeting is challenged, the person presiding thereat, shall require such list of Participating Members to be produced as evidence of the right of the persons challenged to vote at such meeting, and all persons who appear from such list to be Participating Members entitled to vote thereat may vote at such meeting.

**3.7. Quorum.**

- a. A majority of Participating Members shall constitute a quorum at any meeting of Participating Members for the transaction of any business.
- b. When a quorum is once present to organize a meeting, it is not broken by the subsequent withdrawal of any Participating Members from that meeting.

**3.8. Voting.**

- a. Every Participating Member of record shall be entitled at every meeting of Participating Members to one vote, unless otherwise provided in the Trust Documents, or by the WCB Rules and Regulations.
- b. Trustees shall be elected by a majority of the votes cast at a meeting of Participating Members entitled to vote in the election.

**3.9. Proxies.** Every Participating Member entitled to vote at a meeting of Participating Members or to express consent or dissent without a meeting may authorize another person or persons to act for the Participating Member by proxy. Every proxy must be in writing and signed by the Participating Member or its attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Participating Member executing it, except as otherwise provided by law.

**3.10. Written Consent of Participating Members.** Whenever Participating Members are required or permitted to take any action by vote, such action may be taken without a meeting on written consent, setting forth the action so taken, signed by the majority of Participating Members entitled to vote thereon. However, this section shall not be construed to alter or modify any provision of the Trust Documents.

**3.11. Action by Participating Members.** For all purposes under this Article, a Participating Member that is not an individual may participate in meetings and act by or through any officer, partner, member, manager or other agent entitled by law to act on behalf of the Participating Member. In all other cases, a proxy, duly executed in accordance with Section 3.9 shall be required.

## ARTICLE 4 TRUSTEES

**4.1. Board of Trustees.** The business of this Trust shall be managed under the direction of its Board of Trustees.

**4.2. Reporting Procedures.** As is deemed necessary and/or upon appropriate request, the Trustees shall report to the Participating Members the operations, conditions and status of the Trust. The Trustees shall appoint a Certified Public Accountant to audit records of the Trust and annually to submit its report.

**4.3. Meetings of Trustees.** The Trustees shall meet at least two (2) times per year at the call of the Chairperson, upon at least ten (10) days notice to all Trustees. Special meetings may be called by the Chairperson or upon request of two (2) Trustees. Two (2) days written notice for such meeting shall be sent by the Chairperson to all of the Trustees. The Trustees may meet by means of conference phone call during which each Trustee can comment at all times, and both speak and hear. Notwithstanding the foregoing, the Trustees may meet without notice provided that all Trustees sign a Waiver of Notice to the meeting and ratify the actions taken at such meeting.

**4.4. Quorum.** A quorum for the transaction of business of a regular or special meeting of Trustees shall consist of not less than a majority of the Trustees.

**4.5. Order of Business.** The order of business at all regular meetings of Trustees shall be as follows:

- a. Roll call.
- b. Reading of meeting minutes.
- c. Communications.

- d. Report of Chairperson.
- e. Financial Report.
- f. Report of Committees.
- g. Safety Director's Report, if any.
- h. Unfinished business.
- i. New business.

**4.6. Indemnification.** The Participating Members and the Trust shall indemnify, defend, and hold harmless the Trustees from and against any and all damages, losses, claims, actions, suits, penalties, liability, costs, or expenses arising out of, or relating to, the performance of their obligations and responsibilities hereunder, so long as such Trustees' actions are consistent with, and in discharge of, their obligations and responsibilities, except only in the case of gross or willful negligence or intentional wrongdoing. The Trustees are authorized to purchase insurance on behalf of the Participating Members and the Trust for the indemnification provided for herein.

**4.7. Compensation of Trustees.** No compensation shall be paid to Trustees, as such, for their services. However, the Board may engage a Trustee to perform compensated work for the Board or for the Trust, provided that the Trustee involved does not vote on the decision to engage him or her.

## **ARTICLE 5 OFFICERS**

**5.1. Election of Officers.** The Trustees shall elect annually from its membership, by a majority vote, a Chairperson and a Secretary. At a meeting immediately following the annual meeting of Participating Members or at an interim meeting of the Board of Trustees, the Trustees may elect from their membership, by a majority vote, a Treasurer, if such a position is considered necessary by the Trustees in their sole and absolute discretion. Any vacancy in office shall be filled by the Trustees at either an interim meeting or immediately following the annual meeting of Participating Members. All officers elected shall hold office until the next annual meeting of Board of Trustees, provided that each officer shall hold office for the term which such officer is appointed, or until his or her successor has been elected and qualified. The Trustees shall have the discretion to create and fill such other and further offices as they deem necessary or desirable for the fulfillment of the purposes of the Trust. Any two (2) or more offices may be held by the same person.

**5.1.1. Vacancies.** If the office of any officer becomes vacant, the Trustees may appoint any qualified person to fill such vacancy, who shall hold office for the unexpired term of his or her predecessor and until his or her successor is elected or appointed and qualified.

**5.2. General Powers and Duties of Officers.** The officers of the Trust are empowered to invest and reinvest all funds of the Trust in housing, mortgages, and government and other securities as they may in their sole discretion select, and to purchase, lease for any other terms of years, sell, exchange, convey or dispose of any property, whether real or personal, or any interest therein, all of which shall be at prices that are upon such terms and conditions that the officers may deem advisable to carry out the purposes of the Trust and whether or not any of

the foregoing are authorized by law for the investment of the Trust Funds generally; to borrow money in such amounts and upon such terms and conditions as shall be deemed advisable by the officers to carry out the purposes of the Trust and to pledge any securities and to mortgage any property, real or personal, or any interest therein for the payment of any such loan, to lend monies upon such terms and conditions as they may deem advisable; and to do all acts whether or not expressly authorized herein, which said officers may deem necessary and proper to effectuate the foregoing and for the protection of the property held hereunder.

**5.3. Chairperson.** The Chairperson shall preside at all meetings of the Trust. The Chairperson is authorized to sign all contracts or orders drawn on the Treasurer. The Chairperson shall apply for all bonds and Excess Insurance coverage as may be required of the Trust by the WCB or other state agency to qualify the Trust and to do any and all acts that may be necessary to obtain such bonds and coverage. The Chairperson shall appoint all committees and shall define their powers and duties, except as otherwise provided, and shall be a member *ex officio* of such committees.

**5.4. Secretary.** The Secretary shall keep the minutes of all meetings of the Board of Trustees, and the minutes of all meetings of the Participating Members, and also, unless otherwise directed, the minutes of all meetings of committees in books provided for that purpose. The Secretary shall give, or cause to be given, notice of all meetings of Participating Members and Trustees, and all other notices required by law or by these By-Laws, and in case of his or her absence or refusal so to do, any such notice may be given by any person thereunto directed by the Chairperson or by the Trustees or Participating Members upon whose request the meeting is called. The Secretary shall have charge of the Trust's books and records, and shall have the custody of the seal of the Trust and affix the same to all instruments requiring it when authorized by the Trustees or the Chairperson, and attest the same. The Secretary shall file all written requests that notices be mailed to Participating Members at an address other than that which appears on the record of Participating Members. The Secretary shall, in general, perform all the duties incident to the office of Secretary.

**5.5. Treasurer.** If a Treasurer is elected in accordance with Section 5.1, the Treasurer shall have custody of all funds, securities, evidences of indebtedness and other valuable documents of the Trust; when necessary or proper the Treasurer shall indorse on behalf of the Trust for collection checks, notes and other obligations and shall deposit the same to the credit of the Trust in such bank or banks or depository as the Board of Trustees may designate. The Treasurer shall enter or cause to be entered in books of the Trust to be kept for that purpose full and accurate accounts of all moneys received and paid out on account of the Trust, and whenever required by the Chairperson or the Trustees, the Treasurer shall render a statement of accounts. The Treasurer shall keep or cause to be kept such other books as will show a true record of the expenses, losses, gains, assets and liabilities of the Trust, and shall at all reasonable times exhibit his or her books and accounts to any Trustee upon application at the office of the Trust during business hours. The Treasurer shall perform all other duties and acts incident to the office of Treasurer. The Treasurer shall give the Trust security for the faithful performance of his or her duties in such sum and with such surety as the Board of Trustees may require, and the fee and premium for such security shall be paid by the Trust.

**5.6. Review of Trustees.** The acts of the officers shall be subject to the review and approval of the Trustees.

**5.7. Removal of Officers.** Any officer elected or appointed by the Board of Trustees may be removed by a majority vote of the Trustees with or without cause.

**5.8. Compensation of Officers.** The officers shall receive such salary or compensation as may be determined by the Board of Trustees. No officer shall be precluded from receiving any compensation by reason of the fact that he or she is also a Trustee.

## **ARTICLE 6 COMMITTEES**

**6.1. Committees.** Subject to the approval of the Board of Trustees, the Chairperson may appoint such committees as may be necessary to carry out the objectives of the Trust. Except as provided in Section 6.2 below, a minimum of two (2) Trustees shall serve on each such committee. The Chairperson shall appoint the chair of each such committee, provided that each such chair must be a Trustee.

**6.2. Advisory Committee.** The Board of Trustees, if it so desires, may appoint an Advisory Committee of persons who need not be Participating Members of the Trust. Such an advisory committee shall consult with, counsel, recommend, suggest and advise the Board of Trustees with respect to the activities of the Trust. The Advisory Committee shall act and serve without compensation, other than that necessary to defray the just and reasonable actual expenses incurred while acting for or on behalf of the Trust.

**6.3. Authority of Board Committees.** Except as otherwise provided by applicable laws or regulations, the Chairperson may delegate to a Board committee any of the authority of the Board, except with respect to:

- a. the election of Trustees;
- b. filling vacancies on the Board or any committee that has the authority of the Board;
- c. the amendment or repeal of these By-Laws or the adoption of new by-laws; and
- d. the appointment of other committees of the Board, or the members of the committees.

**6.4. Procedures of Committees.** Unless otherwise provided, the Trustees may prescribe the manner in which the proceedings of any Board committee are to be conducted. In the absence of such prescription, a Board committee may prescribe the manner of conducting its proceedings, except that regular and special meetings of the committee are governed by Article 3 of these By-Laws with respect to the calling of meetings.

## **ARTICLE 7 ACCOUNTS, RECORDS, AND REPORTING**

**7.1. Reporting Requirements.** The Trustees shall ensure that all accounts and records are complete and accurate, and all reporting is done in an accurate and timely manner.

**7.2. Accounts and Records.** The Trustees shall keep full accounts of all receipts and disbursements. The financial statements, books and records with respect to the Trust Fund shall be open to inspection by any Participating Member at all reasonable times during business hours

and shall be audited each fiscal year by an independent certified public accountant. The Trustees will ensure that all financial, actuarial and other reports required by the WCB Chair are complete, accurate, and submitted in a timely manner. Within a reasonable amount of time after the close of each fiscal year, the Trustees shall provide every Participating Member with a full accounting of transactions that occurred during the fiscal period.

**7.3. Access to Trust Records.** The Trust will permit the WCB Chair or its authorized representatives access to audit relevant records of the Group Administrator, the Trustees, and/or any Participating Member for the purposes of examining operations and records. The Trust will adhere to the WCB Rules and Regulations, with regard to the periodic reporting requirements.

## **ARTICLE 8 ADMINISTRATION OF THE TRUST**

**8.1. Group Administrator.** A Group Administrator under the supervision of the Trustees shall be employed to act as manager of the Trust, and shall work with the Trustees and any Third-Party Administrator to establish an accident prevention program. The Group Administrator shall meet with the Trustees as often as practicable to review the experience of the Participating Members so as to prevent the recurrence of accidents and to review and revise safety rules and regulations to be carried out by the Participating Members. The Group Administrator is responsible for ensuring compliance with the provisions of the WCB Rules and Regulations and the coordination of outside services including but not limited to claims processing, loss control, and legal, accounting and actuarial services. The Group Administrator shall maintain day-to-day records of the Trust and shall carry out duties and responsibilities as the Trustees may require. The Trustees may also engage the Group Administrator to carry out the functions of a Third Party Administrator or Claims Administrator.

**8.2. Third-Party Administrator or Claims Administrator.** The Trustees may employ a Third-Party Administrator, licensed by the WCB pursuant to subdivision 3-b or 3-d of Section 50 of the Workers' Compensation Law, for the administration and defense of workers' compensation claims of Participating Members. Such Third Party Administrator or Claims Administrator shall be responsible for the efficient securing of benefits for which the Trust was established, and performing all necessary and incidental tasks for the orderly functioning of the Trust, including, but not limited to, processing reports of accidents or occupational disease of employees of the Participating Members, assist in determining the validity of claims, advising the Participating Members with respect to such claims, filing all required reports with the WCB, and carrying out such other functions and acts necessary and in compliance with the WCB Rules and Regulations.

## **ARTICLE 9 AMENDMENTS**

**9.1. Amendments.** Except as otherwise provided in the Workers' Compensation Law or other applicable law, these By-Laws may be amended, repealed and/or adopted by the Board of Trustees by a two-thirds vote at a special meeting called specifically for that purpose. The notice of such special meeting shall contain the proposed amendment.

**9.2. Notification.** The Trust will notify the WCB Chair, and all Participating Members, in writing, within ten (10) days, of any amendment to terms of the By-Laws.

## **ARTICLE 10**



**JOINT AND SEVERAL LIABILITY**

**10.1 Joint and Several Liability.** Each and every Participating Member is JOINTLY AND SEVERALLY LIABLE for the workers' compensation, employers' liability, and all operational liabilities and obligations of the Trust and its Participating Members that are incurred during a Participating Member's period of membership in the Trust, irrespective of the insolvency or bankruptcy of another Participating Member or Members of the Trust, or of any other facts or circumstances. A Participating Member shall only be relieved from the liability for compensation prescribed by the Workers' Compensation Law upon the payment thereof by the Trust.

**ARTICLE 11  
LOSS CONTROL/SAFETY PROGRAMS**

**11.1. Loss Control/Safety Programs.** The Trust, through the Administrator, will provide loss control and/or safety programs designed to assist Participating Members in following and developing a plan that may result in reduced losses and costs. Notwithstanding the Trust's and Administrator's responsibility for the loss control and/or safety programs, the Trust and the Administrator assume no responsibility for and in no way ensure the safety of the workplace of Participating Member.

**ARTICLE 12  
FISCAL YEAR**

**12.1. Fiscal Year.** The fiscal year of the Trust shall be the calendar year.

**ARTICLE 13  
MISCELLANEOUS PROVISIONS**

**13.1. Governing Law.** These By-Laws shall be construed in accordance with the laws of the State of New York and the WCB Rules and Regulations.

**13.2. Capitalized Terms.** Capitalized terms contained herein that do not have the meaning ascribed to them in these By-Laws, shall have the meaning ascribed to such term in the Trust Agreement, Participation Agreement, or the WCB Rules and Regulations.

\*\*\*\*\*

**CERTIFICATE OF THE SECRETARY**

The undersigned does hereby certify that he is the Secretary of the Trust; that the foregoing By-laws of the Trust were duly and regularly adopted as such by the Board of Trustees of the Trust on October 19, 2006; and that the above and foregoing By-laws are now in full force and effect.

  
\_\_\_\_\_

Name:

Its: Secretary

Dated: July 23, '08

## Schedule A

4212 Local Trucking Without Storage  
4213 Trucking, Except Local  
4214 Local Trucking with Storage  
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5984 Liquefied Petroleum Gas (Bottled Gas) Dealers  
5989 Fuel Dealers, NEC

**Transportation  
Workers Comp Trust**

**Administration Agreement**

THIS AGREEMENT is entered into as of the \_\_\_\_ day of January 1996 by and between the Transportation Workers' Comp Trust, an unincorporated non-profit business trust ("Trust") established under the "Trust Document" dated October 15, 1995, and First Cardinal Corp. ("Cardinal").

**WITNESSETH:**

WHEREAS, the Trust has received from the State of New York Workers' Compensation Board a certificate of approval to operate as a workers' compensation self-insurance group in accordance with Section 50, Subd. 3-a, of the Workers' Compensation Law; and

WHEREAS, in accordance with the terms and provisions of the Trust Document dated October 15, 1995, the Trustees have heretofore appointed Cardinal as administrator of the Trust; and

WHEREAS, the parties hereto desire to set forth the conditions under which Cardinal 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 Cardinal agree as follows:

1. Term

- (a) Cardinal shall serve as administrator of the Trust for a period of five (5) years, commencing October 15, 1995, through and including October 14, 2000 (the "Term") provided, however, that this Agreement shall be automatically renewed and extended annually for successive one (1) year periods commencing October 15, 2000, unless either the Trust or Cardinal shall give the other party sixty (60) days' written notice certified mail 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 the Trustees that Cardinal has continuously and deliberately failed to perform its duties, responsibilities, and/or obligations under this Agreement (the "Obligations"). The Trustees must give Cardinal written notice (the "Notice") specifying what actions they believe reflect Cardinal's continuous and deliberate failure to perform such Obligations. The Notice shall provide Cardinal with a sixty (60) 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 that Cardinal has failed to satisfy its duties, Obligations under this Agreement.

2. General Administration Responsibilities

In accordance with the terms of the Trust Document, and subject to the direction and control of the Trustees, Cardinal shall have the power and duty to:

- (a) Manage the daily operations of the Trust and, to the extent consistent with the terms and provisions of the Agreement, carry out the policies established by the Trustees of the Trust;
- (b) Administer and manage the funds of the Trust in accordance with the terms and provisions of the Trust Documents;
- (c) Obtain data and information from each member of the Trust in order to determine applicable experience rating modifications;
- (d) Retain and supervise legal counsel necessary for the prosecution or defense of any litigation on behalf of the Trust;
- (e) Prepare and review all applications, forms, and related documentation necessary or desirable in connection with each qualified member who elects to join the Trust as a Member;
- (f) Obtain Excess Insurance coverage; and
- (g) Conduct comprehensive outstanding claims reviews upon request. (Collectively the "General Administration Service")

3. Billing and Collection Services

The administrator of the Trust shall: (a) bill and charge each member the required annual contributions to the Trust; provide collection service as needed; (c) contract for audit adjustments on behalf of the Trust, and (d) provide managerial financial statements on a monthly basis, (the "Accounting Services").

4. Claims Services

Cardinal shall have the power and duty to:

- (a) Phone the member within 24 hours of receipt of a loss of time claim;
- (b) Investigate, review, negotiate, adjust, settle, and/or arrange for the litigation of all workers' compensation claims brought by the Member's employees;
- (c) issue and process checks required for the payment of claims;
- (d) establish and maintain reserves of the payment of claims;
- (e) arrange for medical examinations;
- (f) maintain appropriate claims' files; and
- (g) prepare quarterly loss reports outlining the Trust's payments, reserves, and such other information as may be deemed necessary or appropriate by the Trust, (collectively, the "Claims Services").

5. Loss Control Services

Cardinal shall develop and conduct loss prevention, safety, and risk management programs for the purpose of reducing the frequency and severity of potential losses (the "Loss Control Services"). Cardinal shall have the power and duty to:

- (a) complete on site loss control surveys for accounts over \$5,000 or accounts with loss ratios over 30%.
- (b) onsite investigations on any death or amputation claims
- (c) conduct loss control seminars as deemed appropriate and necessary

6. Independent Contractor Services

Cardinal shall be considered an independent contractor of the Trust for all purposes whatsoever. Cardinal 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, provided, however, that such assignment or subcontracting shall not relieve Cardinal of its obligations to the Trust hereunder.

7. Limitations

It is expressly agreed and understood that Cardinal shall not act as or be deemed an insurer of 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 Cardinal be financially responsible for the payment of claims against the Trust or its Members. In no event shall Cardinal be liable to the Trust or its Members for any indirect, special, consequential, or punitive damages, except as it may be caused by willful misconduct or gross negligence of Cardinal.

8. Proprietary Rights

- (a) All systems created or utilized by Cardinal in the performance of its duties under this Agreement shall belong to and shall remain as the sole property of Cardinal. The Trust shall have no ownership interest or other proprietary right to such systems. For purposes of this term "systems" shall include, but is not limited to, computer programs, computer equipment, data, records, procedures, documentations, and internal reports of Cardinal.
- (b) Notwithstanding the foregoing, the Trust shall have the right of access to and may make copies of all information generated by the Administrator relating to:
- (1) Workers' compensation claims made by the Members' employees;
  - (2) Expenses and revenues of the Trust; and
  - (3) Actuarial matters of the Trust

9. Amount of Compensation

In consideration of the services rendered by Cardinal hereunder, the Trust shall pay Cardinal fees totaling thirteen percent (13.0%) of the aggregate annual contributions for the General Administration, Accounting, Claims, and Loss Control "services".

10. Payments of Compensation

- (a) 6% of the General Administration, Accounting, Claims and Loss Control fee shall be payable within 30 days to the members effective date.
- (b) the remaining 7% of the General Administration, Accounting, Claims and Loss Control fee shall be payable from the Trust on a monthly basis throughout the Term of the participant's policy.

11. Insurance Agent's Commission

The Trust shall appoint Cardinal and Energy Insurance Brokers Inc. as the Trust's co-exclusive marketing agents. The Trust agrees it shall be bound by any such agreement between Cardinal and Energy Insurance Brokers, Inc. The marketing agents shall be paid at a rate of 6% of the aggregate annual contributions. This commission shall be payable to Cardinal by the Trust on the effective date of each policy.

12. General

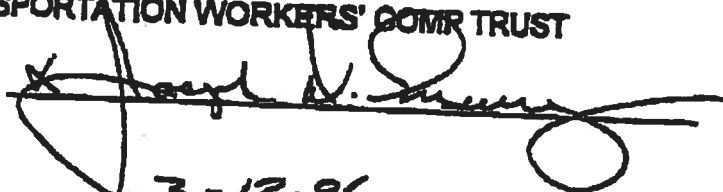
- (a) This Agreement supersedes any and all prior oral or written understanding of the parties with respect to the subject matter herein and may be amended, changed or modified only by a written instrument signed by both Cardinal and the Trust.
- (b) This Agreement shall be governed by and construed in accordance with the laws of the State of New York.



IN WITNESS WHEREOF, the Trust and Administrator have executed this Agreement as of the day and year first written above.

TRANSPORTATION WORKERS' COMR TRUST

By:



Date:

3-12-96

By:

\_\_\_\_\_

Date:

\_\_\_\_\_

FIRST CARDINAL CORP.

By:



Date:

2/21/96

## ADMINISTRATIVE SERVICES AGREEMENT

THIS AGREEMENT made the 7<sup>th</sup> day of November, 2000, by and between TRANSPORTATION WORKERS' COMP TRUST, a self-insured group trust for Workers' Compensation (the "Trust"), and APA PARTNERS, INC., a New York corporation with offices at 8 British American Boulevard, P.O. Box 1506, Latham, New York 12110 ("APA").

WHEREAS, the Trust is an entity duly authorized by the New York State Workers' Compensation Board to operate as a Workers' Compensation self-insurance group trust in accordance with Section 50(3-a) of the New York Workers' Compensation Law; and

WHEREAS, APA is engaged in the business of, among other things, providing complete administrative services to self-insured Workers' Compensation groups; and

WHEREAS, the Trust desires to employ APA, and APA desires to accept such employment, for the purpose of administering the Trust's self-insured Workers' Compensation program (the "Program"), pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Engagement/Employment. The Trust hereby engages and employs APA, and APA hereby accepts such engagement and employment, as an independent contractor to administer the Program in the manner and in accordance with the terms and conditions hereinafter set forth.

2. APA's Duties and Responsibilities. Subject to any limitations set forth in this Agreement, APA shall provide all general administrative, program management, claims administration and loss control services (the "Services") of the Program. The Services shall include the following:

A. Manage the daily operations of the Trust and carry out the policies established by the trustees of the Trust;

- B. Obtain necessary data and information from each member of the Trust in order to assist the actuary in determining applicable experience rating modifications;
- C. Assist the trustees in the retention and supervision of legal counsel, accountants, actuaries and other professionals, as required.
- D. Assist the trustees in the preparation and review of all forms and other documentation in connection with the application of prospective members desiring to join the Trust;
- E. Assist the trustees in evaluating the suitability of prospective Trust members;
- F. Obtain and maintain excess insurance coverage;
- G. Develop and conduct loss control, risk management, and safety programs for the Trust and its members;
- H. Act as the Trust's liaison with the New York State Workers' Compensation Board, with the advice and consent of the trustees;
- I. Coordinate administrative claims and actuarial services;
- J. Make recommendations to the trustees whenever APA deems it prudent as to Trust policies, programs, contribution rates, and the like;
- K. Assist the trustees in marketing or carrying out marketing programs;
- L. Monitor and coordinate the activities of all brokers dealing with the Trust;
- M. Insure that the Trust is operated in compliance with the New York State Workers' Compensation Laws and Regulations, and that all filings required by any governmental authority are timely and properly made;
- N. Conduct and carry out all billings and collections of the Trust;
- O. Receive and deposit all member payments and contributions;

P. Review all incidents of reported employee lost-time injuries arising out of employment;

Q. Process all Workers' Compensation claims incurred by members of the Trust in accordance with applicable law and regulation, including, but not limited to:

- i. maintaining claim files on each reported claim;
- ii. determining whether or not injuries are compensable;
- iii. investigating claims internally through routine and customary methods;
- iv. investigating claims externally and through personal contact with injured employees where necessary;
- v. reviewing the status of all disabled employees on a regular and periodic basis, and arrange for independent medical examinations, as necessary;
- vi. preparing and furnishing all reports, including quarterly Loss Reports, and notifications required by applicable law or statute;
- vii. reviewing all claims to identify questionable or unusual claims or avoidable incidents;
- viii. providing each claim file with a written chronology for all lost-time claims; and
- ix. monitoring all treatment programs recommended to injured employees by their physicians or other healthcare providers, and, as necessary, furnishing managed care services.

R. Approve or disapprove of claims and furnish a regular accounting thereof to the Trust;

S. Establish claims reserves and assist in the maintenance of claims reserves on a current basis through periodic review;

T. Assist counsel for the Trust in preparation for all hearings before the Workers' Compensation Board and in connection with all other legal matters;

U. Assist the auditor or accountant for the Trust in the preparation of periodic audits, reviews, financial statements, and tax returns;

V. Pursue recoveries against third parties, or otherwise undertake subrogation activities, as directed by the trustees;

W. Where appropriate, apply for payment or reimbursement to the Trust from the Second Injury Fund, or other offsets;

X. Perform all other necessary and customary administrative and clerical work in connection with all claims, including preparation of checks or vouchers, releases, agreements, and other documents needed to finalize claims, and provide forms as required by law or regulation, or as are necessary and customary in order to properly administer the Program;

Y. Provide additional information, analyses, and reports that are necessary in order to effectively administer the Program;

Z. Provide regular and periodic communication to the trustees; notify the trustees of all significant or unusual events or occurrences; and, except in the event of emergencies, consult with the trustees prior to taking any action which is not in the regular course of its operations or the performance of the Services.

AA. Provide competent and qualified personnel, in suitable numbers, in order to perform its responsibilities hereunder;

BB. Perform such other services or activities as are reasonably necessary to carry out the intent and purpose of this Agreement.

3. Term of Agreement.

A. The term of this Agreement shall be for a period of five (5) years and two (2)

months, commencing November 1, 2000, and expiring December 31, 2005 (the "Term").

The Term shall be automatically renewed for an additional one (1) year term, and thereafter shall continue to automatically renew, for succeeding one (1) year terms, unless either party gives the other written notice to terminate at least sixty (60) days prior to the expiration date of the original Term or of any renewal Term.

B. This Agreement may be terminated during the Term for cause upon fifteen (15) days written notice. "Cause" is defined as: 1) a material breach of the terms of this Agreement, provided that the party claiming such breach must give the other party ten (10) days notice and an opportunity to cure; 2) the event of APA's losing authority under the laws of the State of New York to perform its obligations under this Agreement; 3) a party filing for bankruptcy under any federal or state statute, or becoming insolvent, or being subject to an arrangement for the benefit of creditors; 4) the transfer, sale, merger, or other acquisition of APA (or a majority interest therein), including any sale of all or substantially all of the assets of APA to any person or entity, except a transfer, sale or merger into Healthcare Underwriters Mutual Insurance, or one of its affiliates; 5) the failure of APA to meet the following performance criteria: statutory or regulatory requirements established by the Workers' Compensation Board; or 6) termination of the Trust pursuant to the terms of its Trust Agreement then in effect.

C. Upon termination of this Agreement, APA, at the Trust's written request, shall continue to manage pending claims, and claims occurring within the Term, but not reported prior to the termination date, provided that the Trust shall pay to APA, to handle open claims, at APA's reasonable prevailing rate.

D. Except as herein above provided, upon termination, the Trust will be

responsible for the processing, administration, and defense of all pending claims and appeals, and will be responsible for removing all files, claims, and related materials from APA's facilities, which APA shall make readily available to the Trust.

4. Compensation. As compensation for the Services, and the performance of all other obligations or responsibilities pursuant to this Agreement, the Trust agrees to pay APA thirteen (13%) percent of the total annual actual billed premiums determined for all members under the applicable provisions of the New York State Workers' Compensation Law. APA will bill the Trust monthly for one-twelfth (1/12) of this amount, which shall be determined and adjusted (based on changes in membership and audits) on a calendar quarterly basis. At the end of the calendar year, there shall be a further adjustment so that the compensation paid to APA equals thirteen (13%) percent of the actual billed premiums for the previous calendar year. If such calendar year adjustment results in additional compensation to APA, such compensation shall be paid within thirty (30) days of APA submitting documentation verifying such adjustment to the trustees. If such calendar year adjustment results in an overpayment having been made to APA, such overpayment shall be credited dollar-for-dollar against the calendar year's monthly compensation due APA until such credit is fully extinguished. If, at the end of the Term, such calendar year adjustment results in additional compensation to APA, such compensation shall be paid within thirty (30) days of APA submitting documentation verifying such adjustment to the trustees. If such calendar year adjustment results in an overpayment having been made to APA, such overpayment shall be repaid to the Trust within thirty (30) days of APA submitting disclosure verifying such overpayment. For the month of November, 2000, APA will be paid one-twelfth (1/12) of the actual billed premiums for the year 2000, and a like amount will be paid for the month of December, 2000. In addition, APA shall be paid a ten (10%) percent commission on renewals or replacements of excess insurance

coverage. Based upon bills duly rendered, the Trust will pay APA on or before the 15th of the month for the Services applicable to that month. It is expressly acknowledged that the foregoing compensation shall constitute the full and complete amount of all compensation payable to APA for the performance of the Services, or any other responsibilities or obligations under this Agreement, and APA shall not be entitled to receive, and shall not accept, any compensation from any other sources, including brokerage or insurance commissions.

5. Expenses. APA will defray and bear all expenses, costs, disbursements, and charges, of whatsoever kind or nature, incurred by it, directly or indirectly, in the performance of the Services, or any other obligations or responsibilities pursuant to this Agreement, except as follows:

- A. Excess insurance premiums;
- B. Independent medical examinations;
- C. Brokerage commissions;
- D. Attorneys, auditors, actuaries, and accountants retained by or with the express prior written authorization of the trustees;
- E. Private investigators, photographers, and non-routine investigations (which must be approved by the trustees in advance);
- F. Licenses of the Trust; and
- G. Any unusual or extraordinary expenditure not regularly incurred in the performance of the Services, provided the trustees authorize and approve the same in writing in advance.

6. Responsibilities of the Trust.

- A. The Trust will pay the compensation to APA in accordance with Paragraph "4" above, and will promptly pay and/or reimburse APA for all of the expenses which are



the Trust's responsibilities as set forth in Paragraph "5" above.

B. The Trust will promptly pay any Workers' Compensation Board assessments and excess insurance premiums.

C. The Trust will pay any fines, penalties, or costs, including legal fees, imposed by any regulatory body, agency, or third party, from errors, omissions, untimely handling, late payments, or the like, that are not due to the action, inaction, or non-compliance by APA.

7. Indemnification/Bond.

A. Each party agrees to defend, indemnify, and hold the other harmless against and from any and all damages, losses, costs, and expenses (including reasonable attorney's fees) incurred by the other party, arising from: 1) the breach of any term or condition of this Agreement; or 2) any negligent, culpable or willful act or omission by such party, its directors, officers, employees, agents or persons subject to its control in performing its obligations under this Agreement. This provision shall survive the termination of this Agreement.

B. APA shall provide to the Trust a fidelity bond in an amount and otherwise on terms reasonably approved by the Trustees to secure APA's performance pursuant to this Agreement.

8. Proprietary Rights/Confidential Information.

A. APA acknowledges that the information provided by the Trust with respect to its members is proprietary and constitutes confidential business information. APA shall keep secret, and retain in the strictest confidence, all such confidential information of the Trust and its members, including, without limitation, membership lists, trade secrets,

operational methods, proposed operations, financial information, and other business affairs and plans of the Trust and its members, and will not disclose such information to anyone outside of APA or the Trust, except in the course of performing its duties hereunder, or with the express prior written consent of the trustees. This provision shall survive the termination of this Agreement.

B. APA further acknowledges that the proprietary information of the Trust, as specified above, and all Workers' Compensation claims made by employees of members, all revenues and funds of the Trust, all actuarial matters of the Trust, and all memoranda, notes, records, and other documents relating to this Agreement, and any other papers or property relating to the performance of the Services, are the sole and exclusive property of the Trust. The trustees shall have the right of access to, and may make copies of, all such property or information, at all reasonable times, and, upon the termination of this Agreement, such property and information shall be made available/returned to the Trust without delay.

C. Notwithstanding the foregoing, the Trust acknowledges that the actual computer programs, computer equipment, internal procedures and reports, and the like, of APA are APA's sole and exclusive property.

D. For a period of two (2) years after the termination or expiration of this Agreement, APA will permit the Trust to have access, upon reasonable notice and during business hours, to review APA's books and records related to the Services, and the Trust shall be authorized to audit the same, either itself or through its designee.

9. Dispute Resolution. In the event of any disputes or claims arising from or related to this Agreement, including any claimed or actual breaches hereof (the "Dispute"), and subject to the cure provisions of Paragraph 3.B.1 hereof, written notice thereof shall be given to the other party

specifying in detail the nature of the Dispute, and, thereafter, a meeting shall be held promptly between the parties, attended by individuals with decision-making authority regarding the Dispute, to confer as to the nature of the Dispute and attempt in good faith to negotiate a mutually acceptable resolution. If, within thirty (30) days after giving written notice of the Dispute, the parties are unable to agree to a mutually acceptable resolution, either party may submit the Dispute to binding arbitration to be conducted in accordance with the then prevailing Commercial Arbitration Rules of the American Arbitration Association. The parties shall agree to either one (1) or three (3) arbitrators and shall select a mutually acceptable arbitrator or arbitrators. In the event the parties are unable to so agree, such arbitrator or arbitrators shall be selected by the American Arbitration Association. Such arbitration shall be conducted in the County of Albany, New York, and shall be governed by the laws of the State of New York. Judgment upon any award rendered may be entered in any court having competent jurisdiction. Notwithstanding the foregoing, either party shall have the right to seek temporary or preliminary injunctive relief in the Supreme Court of the State of New York, County of Albany, where such relief is necessary in order to protect the interests of a party during the pendency of arbitration.

10. Miscellaneous.

A. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to rules of choice of law.

B. Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements or understandings between the parties. No statement, representation, warranty, covenant, or agreement of any kind, not expressly set forth in this Agreement, shall affect or be used to interpret change or restrict the express terms and

provisions of this Agreement.

C. Notice. Any notice, demand, or request from one party to the other hereunder shall be deemed to have been sufficiently given or served for all purposes if it is personally delivered, or delivered by overnight courier or facsimile (with confirmation), or by registered or certified mail, postage prepaid, return receipt requested, to the parties at the following addresses (or such other addresses which may be changed from time to time by written notice served in accordance with this provision):

To the Trust:	J. Dana Murphy c/o West Central Environmental Corp. P.O. Box 83 Rensselaer, New York 12144
With a copy to:	Harold D. Gordon, Esq. The Gordon, Siegel Law Firm 9 Cornell Road, Airport Road Latham, New York 12110
To APA:	APA Partners, Inc. 8 British American Boulevard P.O. Box 1506 Latham, New York 12110
With a copy to:	Gary L. Lombardi, Esq. Lombardi, Reinhard, Walsh & Harrison, P.C. 3 Winners Circle Albany, New York 12205

11. Waiver. No waiver of any breach of this Agreement shall be held as a waiver of any other or subsequent breach.

12. Assignability. Neither party may assign a performance of any covenant, obligation, or duty to be performed or observed by it hereunder, without the express prior written consent of the other party. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their permitted successors and assigns.

13. Severability. In the event that any provision of this Agreement shall be determined to be invalid, unlawful, or unenforceable, to any extent, the remainder of this Agreement shall not be affected thereby, and each remaining provision hereof shall continue to be valid and may be enforced to the fullest extent permitted by law.

14. Amendments. This Agreement may only be amended or changed by a writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first set forth above.

TRANSPORTATION WORKERS' COMP  
TRUST

APA PARTNERS, INC.

By: 

J. Dana Murphy, Trustee

By: 

Gerald A. Pedinotti, President

By: 

Scott T. Earl, Trustee

RECEIVED  
WORKERS' COMPENSATION BOARD  
OCT 30 2001  
SELF INSURANCE OFFICE

**TRANSPORTATION WORKERS' COMP TRUST**  
**ADMINISTRATIVE SERVICE AGREEMENT**

THIS AGREEMENT made this 7th day of November, 2001, by and among the Transportation Workers' Comp Trust, (hereinafter referred to as Trust) and Consolidated Risk Services, Inc., a Pennsylvania corporation (hereinafter referred to as the "Administrator").

**WITNESSETH**

- WHEREAS, the Transportation Workers' Comp Trust (the "Trust"), was formed for the purpose of providing a source of funds adequate for the payment of the Workers Compensation benefits incurred by employees of the Participating Employers of the Trust under the Workers' Compensation Law of the State of New York,
- WHEREAS, the Trustee of the Trust in accordance with the terms of the Trust have appointed an initial Board of Trustees of the Trust (the "Trustees") for the purpose of directing and managing the general operation of the Trust;
- WHEREAS, the Trustee desires to engage the Administrator to oversee the daily management of the Trust, on behalf of the Board of Trustees, and to maintain the administrative structure and policies of the Trust;
- WHEREAS, the Administrator desires to accept the engagement of the Trustee and to perform in accordance with this Agreement;
- WHEREAS, each Participating Employer as a precondition to its participation in this Trust agrees to be bound by the terms and provisions of the Agreement.

NOW, THEREFORE, in consideration of the mutual promises and duties set forth in this Agreement, the parties hereto, intending to be legally bound, agree as follows:

By Brokers

12 + 1  
13

## ARTICLE I

### DUTIES OF THE TRUSTEE

#### 1.1 Duties of the Trustee:

The Trustee shall also appoint the Financial Institution to invest and manage the assets of the Trust Fund and with the Financial Institution shall establish the Trust Agreement. In addition, the Trustee shall contract with the Administrator to oversee daily management of the Trust and the self-insurance program for the benefit of the Participating Employers.

#### 1.2 Limitation of Trustee's Duties and Liabilities

2 The duties of the Trustee shall be limited to the establishment of the Trust, appointment of the initial Board of Trustees, the selection of the Financial Institution and contracting with the Administrator. The Trustee hereby delegates the remainder of its authority and responsibilities to the Board of Trustees and its designees. The Trustee shall have no liability for the Trust, the Fund or for any actions taken by the Board of Trustees or any of its designees.

## ARTICLE II

### DUTIES OF PARTICIPATING EMPLOYER

2.1 The Participating Employers acknowledge and agree that the initial Board of Trustees appointed by the Trustee and each subsequent Board of Trustees elected by the Participating Employers will assume and will therefore be vested with the overall operational responsibility of the Trust. The Participating Employers further grant to the Board of Trustees the authority to delegate all, or a portion, of its operational responsibility to an Administrator, as provided for in the Trust, and hereby ratify and approve the selection of Consolidated Risk Services, Inc. as the Administrator. The Administrator and Financial Institution will take direction and instructions from the Board of Trustees as if it were communicating with the Participating Employers directly. The Board of Trustees may change, from time to time, and the Administrator and Financial

Institution will be notified of such changes, in writing, by the Secretary of the Board of Trustees. The Participating Employers agree to hold harmless, from any liability, Trustee, the Administrator and Financial Institution from any damages or costs for any action taken or not taken, as result of direction or instructions communicated by the Board of Trustees.

**2.2** The Participating Employers agree to be legally bound, with the Financial Institution and the Trustee, by the Trust Agreement. By signing the Joinder and Indemnification Agreement required for participation in the Trust, the Participating Employer agree to all terms of the Trust Agreement as if an original signatory to the Trust Agreement.

**2.3** Each Participating Employer will maintain a supply of injury report forms furnished by the Administrator.

**2.4** Each Participating Employer shall deliver all injury reports it completes to the Administrator or its designee, within the time frame prescribed by the Administrator in the administration manual provided to each participating employer.

**2.5** Each Participating Employer agrees to adopt the risk management, loss control and utilization management controls and guidelines developed by the Administrator. The Administrator may revise these guidelines from time to time.

**2.6** Each Participating Employer shall contribute to and maintain in the Trust, sufficient funds to pay benefits and other operational and administrative expenses in accordance with the funding requirements and obligations set forth in the Trust Agreement. The initial contribution levels for each Participating Employer shall be determined by the Contribution Rate Schedule and Funding Analysis provided to each Participating Employer at the time of its acceptance into the Trust, and any subsequent contribution rate schedules that may be promulgated by the Administrator or the



Board of Trustees. At least thirty (30) days prior to the beginning of each succeeding fiscal year of the Trust, each Participating Employer will be provided with a Contribution Rate and Funding Analysis for that fiscal year, provided each Participating Employer has submitted to Administrator certain information requested by the Administrator necessary to complete this analysis at least sixty (60) days prior to the beginning of each succeeding fiscal year. Each Participating Employer agrees to make the budgeted contributions required in strict accordance with the contribution schedule provided by the Administrator.

2.7 Assuming that the Administrator complied with Section 2.1 of this article, the Participating Employer shall indemnify and hold the Administrator, its directors, officers, employees and agents harmless in the event that the Administrator, acting at the direction of the Board of Trustees, becomes liable to any other parties; provided, however, that such liability is not due to any unlawful acts, torts, intentional torts or gross negligence on the part of the Administrator, its agents, or employees.

### ARTICLE III

#### DUTIES OF THE ADMINISTRATOR

3.1 The Administrator will make a diligent effort to file on a timely basis, all applications, forms, and reports necessary to secure and maintain the fund's group self-insurance privileges. Specifically, the Administrator will complete and forward the Fund's self insurance application to the Chairman of the Workers Compensation Board of the State of New York and file all appropriate renewal forms and reports in accordance with the self-insurance privileges.

3.2 The Administrator will represent the Trust as the Broker of Record for the purposing of obtaining, placing and maintaining Direct Facultative Excess Insurance and a Surety Bond in connection with the Trust to the extent such coverages are available in the marketplace. The terms and cost of the actual coverages placed will be subject to the review and approval of the

Board of Trustees. The cost of the excess insurance and bond will be borne by the Trust. The Administrator may receive brokerage commissions for placing these coverages.

3.3 The Administrator shall provide claims administration services to the Participating Employers and may subcontract some or all of these duties to qualified third parties.

EUB 3.4 The Administrator shall receive and review the applications of prospective Participating Employers to determine whether they meet the established underwriting guidelines for participation in the Trust. The Administrator shall have the absolute authority to approve the application of new Participating Employers that meet the established underwriting criteria as set forth in the Trust Agreement. In order to accept a prospective Participating Employer that falls outside the established underwriting guidelines the Administrator must obtain the approval of a majority of the Board of Trustees. To do so, the Administrator will prepare a written recommendation outlining its' reasons for accepting the prospective participating employer and shall send, via facsimile, a copy of its recommendation to each member of the Board of Trustees. The Administrator will then contact each member of the Board of Trustees for his or her vote and shall record same. Administrator will notify the entire Board of Trustees of the decision.

3.5 The Administrator will distribute a supply of Employee Report of Injury forms to the Participating Employers.

3.6 The Administrator will review each Employee Report of injury form submitted by the Participating Employer in which the dates of injury fall within the terms of this Agreement. The Administrator or its designee shall provide a determination as to whether (i) the affected employee is covered under the Trust, (ii) the injury or illness is compensable under the Acts; and (iii) the amount and duration of the benefit.



Board of Trustees or its designee. The Administrator will maintain separate files for Trust contributions and expenses and will retain these files for a period of four (4) years, unless the Agreement is terminated and then all such files will be returned to the Board of Trustees or its designee.

*Good* 3.11 As soon as administratively practicable following the end of each calendar month, the Administrator shall provide to the Board of Trustees a monthly claims report setting forth the following:

- (a) The total number of claims reported during the preceding month;
- (b) The total amounts paid during the preceding month and a breakdown of such amount on a claims category basis;
- (c) The amounts paid during the preceding month on each individual claimant on a claims category basis;
- (d) The amounts paid to date on each open and closed claim during the current fiscal year;
- (e) The outstanding reserves on each individual case on a claims category basis.

3.12 The Administrator will file all appropriate claims with the excess insurance carrier and will comply with the excess insurance carriers claims reporting requirements in doing so.

3.13 The Administrator will make a diligent effort to file with the Chairman all reports required by section 315.4 of the Rules and Regulations of Workers Compensation Law of the State of New York and shall make a diligent effort to administer the Trust in compliance with all applicable regulatory requirements. The Board of Trustees and each Participating Employers





equipment and phone lines to be used by the Employer, external investigations and surveillance; independent medical examinations; telephone and field medical case management other than that performed directly by personnel of the Administrator, utilization review costs; medical bill repricing fees; activity checks; court reporting; expert witnesses; travel costs for third parties (i.e. individuals not employed by Administrator), other costs normally considered allocated to a specific claim. All fees or other charges excluded under this agreement will be pre-approved by the Employer.

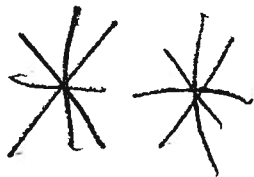
3.24 The Administrator shall have no obligation or requirement to advance its own funds to pay claims, losses or any expense or cost associated therewith.

3.25 The Administrator shall assist the Trustees in marketing the Trust and implementing marketing programs.

3.26 The Administrator shall perform all other necessary and customary administrative and clerical work in connection with all claims, including preparation of checks or vouchers, releases, agreements, and other documents needed to finalize claims, and provide forms as required by law or regulation, or as are necessary and customary in order to properly administer the Program. The Administrator shall perform all reasonable duties and responsibility delegated to it by the Board of Trustees and agreed to in writing by the Administrator in the Trust Agreement or other separate written agreements.

#### ARTICLE IV

#### TERM, CONSIDERATION AND ARBITRATION



5yr or 5yr Rolling

4.1 The initial term of the Agreement shall commence at 12:01 a.m. on November 7, 2001, and end at 12:00 midnight on November 7, 2006. Thereafter, this Agreement will automatically renew for successive five (5) year periods, at the discretion of the Administrator, unless earlier terminated by the Board of Trustee in accordance with Section 4.2 of this Agreement

\* OPTION OTHER THAN CAUSE FOR NON RENEWAL ONLY

4.2 If at any time during the term of this Agreement, or any renewal thereof, the Board of Trustees, based on a two-thirds vote of its members, determines that sufficient cause, as defined herein, exists to terminate this Agreement, the Board of Trustees may place Administrator on ninety (90) days notice of cancellation. Cancellation will be effective on the first business day, after the passage of the ninetieth day. The Board of Trustees will have no further obligation or responsibility to Administrator after termination under this provision. The Board of Trustees and Administrator will be responsible for all applicable matters related to the operation of the program during this ninety (90) day period, including but not limited to the payment of fees. Any notice under this provision of the contract must be delivered by Certified Mail/Return Receipt Requested to the attention of the President of Administrator. The notice must outline the specific cause upon which their decision was based. All open claims as of the date of termination will be handled pursuant to Section 4.3. For the purpose of this section, the term Cause shall be expressly limited to the following:

1. Administrator is convicted by a court of competent jurisdiction of fraud, misappropriation of trust funds or other criminal acts directly related to its management of the program.
2. Administrator files for chapter 7 bankruptcy proceedings.
3. Administrator is barred from serving in its capacity as Administrator by the New York Workers Compensation Board, Insurance Department or other appropriate governmental agency.



4. The Trust Fund is terminated in accordance with the terms and provisions of the Trust Agreement.

4.3 Upon termination of this Agreement by either party or should the Trust be declared in default by the Chairman and converted to a Runoff Fund as that term is defined in the Trust, the Administrator shall have no further responsibilities to the Trust as of the date of termination or the date of conversion to a Runoff Fund. The Administrator will within sixty (60) days of the date of termination or conversion have the claim files packaged and prepared to be shipped to the new Administrator or to the designee of the Chairman. The Board of Trustees, the new Administrator or the Chairman's designee will be responsible for picking up and/or shipping these files. Should the Board of Trustees or the Chairman desire that the Administrator continue to handle all claims open on the date of termination, the Administrator will agree to do so for a period of time and at a fee mutually agreed to by the Board of Trustees and the Administrator. Should the Chairman designate the Administrator to handle all claims of the Runoff Fund, the Administrator will do so subject to the applicable rules and regulations of the Workers Compensation Board of the State of New York.

4.4 In consideration of the services provided by the Administrator under the terms of the Agreement, the Board of Trustees agrees, on behalf of the Trust Fund, to pay to the Administrator an amount equal to thirteen percent (13%) of the aggregate member funded premium for each Participating Employer. Funded Premium is defined as the premium charged by the Trust for workers' compensation coverage. A one time charge of 1% of member funded premium shall apply to the Administrator's first management year for the takeover and successful coordination of information related to the takeover of any open claims prior to the start of the Administrator's term. The Administrator's fee shall be a component of the premium contributed by each Participating Employer and not a separate charge in addition to the contribution of the Participating Employer. This fee shall be payable monthly. The Administrator is authorized to

withdraw this fee each month from the claims account established by the Administrator. The Financial Institution shall be authorized to transfer this amount into the claims account at the beginning of each month based on instructions as to the amount required from the Administrator. In the event that there are insufficient funds to pay the monthly fee at the time it is payable, the Participating Employers shall immediately deposit sufficient funds into the Trust in accordance with the funding and contribution schedules provided to each Participating Employer. If this funding schedule is inadequate to pay the full fee due, the Participating Employers will contribute adequate funds by proportion based on the Participating Employers contribution as compared to the total fund contributions. The Administrator's fee shall be adjusted annually based on an annual payroll audit of each Participating Employer to be conducted by the Administrator or its designee in order to calculate the actual funded premium for each Participating Employer. The Administrator shall be responsible for the payment of all fees to its subcontractors, unless otherwise specified in this Agreement.

4.5 Failure of either party at any time to require performance of any provisions shall not affect the right to require full performance thereof at any time thereafter and the waiver by either party of a breach of any such provision shall not be taken or held to be a waiver of any subsequent breach thereof or as nullifying the effectiveness of such provision.

4.6 In the event any of the parties hereto is not able to amicably resolve any breach of this Agreement arising in connection with the terms and provisions hereof, any party may declare a deadlock which may be settled by binding arbitration or, if the parties do not then mutually agree to binding arbitration, by any other remedy at law or equity. Any arbitration proceeding commenced under this Agreement shall be held before the American Arbitration Association in accordance with Pennsylvania Law and the Rules of the Association. The arbitrators are empowered to decide all questions or issues and shall be free to reach their decision by application of principles of equity and customary practices of the insurance and reinsurance industry rather

COMMONWEALTH

Nov 14 2001

than by strict application of all rules of evidence and law. Their decision shall be final, binding and conclusive on both parties and may be filed for execution, enforcement or any other action in an appropriate court in the State of Pennsylvania. There will be no right of appeal from the arbitrators written decision.

4.7 Any notice, demand, or request from one party to the other hereunder shall be deemed to have been sufficiently given or served for all purposes if it is personally delivered or delivered by overnight carrier or facsimile (with confirmation), or by registered or certified mail, postage prepaid, return receipt requested, to the parties at the following addresses (or such addresses which may be changed from time to time by written notice served in accordance with this provision)

To the Trust:

J. Dana Murphy  
C/o West Central Environmental Corporation  
P.O Box 83  
Rensselaer, NY 12144

With a copy to:

Harold D. Gordon, Esq.  
The Gordon Siegel Law Firm  
9 Cornell Road, Airport Road  
Latham, NY 12110

To the Administrator:

Dennis M. Ryan  
Consolidated Risk Services, Inc  
985 Old Eagle School Rd. Suite 504  
Wayne, PA 19087

## ARTICLE V

### MISCELLANEOUS

5.1 Each party agrees during and after the term of this Agreement to hold harmless and indemnify the other party against, any and all claims, losses and expenses, including attorney's fees, incurred by the other party as a result of the other parties negligence, gross negligence or willful misconduct in connection with its performance of services under the Agreement.

5.2 CRS shall provide to the Trust a fidelity bond in an amount and otherwise on terms reasonably approved by the Trustees to secure CRS's performance pursuant to this agreement.

Am

5.3 The failure by either party to insist upon compliance with any provision of this Agreement will not operate to waive or modify such provisions or in any manner render it unenforceable as to any other time or as to any other occurrence.

5.4 This Agreement may only be amended in writing signed by both parties.

5.5 The invalidity or unenforceability of any provisions in this Agreement will not affect the validity of enforceability of any other provisions. However, it is intended that any invalid or unenforceable provision of this Agreement be constructed by a court of competent jurisdiction by limiting or reducing it so as to be valid or enforceable to the extent compatible with applicable law.

5.6 This Agreement is the entire agreement of the parties and supersedes all prior contracts, proposals, representations and other communications between the parties.

5.7 This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to rules of choice of law.

IN WITNESS WHEREOF, and intending to be legally bound the parties hereto have caused this Agreement to be executed and their corporate seals to be hereunto affixed and attested as of this 7th day of November 2001.

ATTEST:

\_\_\_\_\_

Transportation Workers' Comp Trust

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

Administrator

Consolidated Risk Services, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_



P.O. Box 83  
Rensselaer, NY 12144  
518-272-6891

**WEST CENTRAL  
ENVIRONMENTAL**  
24-HOUR SERVICE **CORP.**

EPA ID #NYD000708271  
N.Y.S. Waste Haulers #4A-106

APPENDIX 7  
315-472-6500

Binghamton, NY  
807-722-6400

Poughkeepsie, NY  
914-471-1400

Grand Island, NY  
716-775-3335

**FAX COVER SHEET**

FAX#: (518) 272-0108

# OF PAGES INCLUDING COVER SHEET: 20

TO:

Mike

FROM:

DANA

DATE:

9/18/01

TIME:

RE:

IF YOU DO NOT RECEIVE ALL PAGES TRANSMITTED, PLEASE NOTIFY ME  
IMMEDIATELY AT (518) 272-6891.

**ADMINISTRATIVE SERVICES AGREEMENT**

THIS AGREEMENT made the 27<sup>th</sup> day of July, 2006, by and between TEAM TRANSPORTATION WORKERS' COMP TRUST, a New York self-insured group trust for Workers' Compensation (the "Trust"), and PROGRAM RISK MANAGEMENT, INC., a New York corporation with offices at 900 Watervliet Shaker Road, Suite 250, Albany, New York 12205 ("Administrator").

WHEREAS, the Trust is an entity duly authorized by the New York State Workers' Compensation Board to operate as a Workers' Compensation self-insurance group trust in accordance with Section 50(3-a) of the New York Workers' Compensation Law; and

WHEREAS, Administrator is engaged in the business of, among other things, providing complete administrative services to self-insured Workers' Compensation groups; and

WHEREAS, the Trust desires to employ Administrator, and Administrator desires to accept such employment, for the purpose of administering the Trust's self-insured Workers' Compensation program (the "Program"), pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Engagement/Employment. The Trust hereby engages and employs Administrator, and Administrator hereby accepts such engagement and employment, as an independent contractor to administer the Program in the manner and in accordance with the terms and conditions hereinafter set forth.

2. Administrator's Duties and Responsibilities. Subject to any limitations set forth in this Agreement, Administrator shall provide all general administrative, program management, claims administration and loss control services (the "Services") of the Program. The Services shall include the following:

A. Manage the daily operations of the Trust and carry out the policies established

by the Board of Trustees of the Trust (hereinafter the "Trustees").

B. Receive and review the applications of prospective Members desiring to join the Trust to determine whether they meet the established underwriting guidelines approved by the Trustees for participation in the Trust. Administrator shall recommend to the Trustees the approval or disapproval of applications of prospective participating employers (hereinafter referred to as "Members") based upon underwriting criteria established by the Trustees. Admission of prospective Members which fall outside such established underwriting criteria will require approval of the Trustees.

C. Represent the Trust as the Broker of Record for the purpose of obtaining, placing, and maintaining excess insurance and a surety bond, provided that the terms and cost of the actual coverages placed will be subject to review and approval of the Trustees. The cost of the excess insurance and bond will be borne by the Trust, and Administrator may receive brokerage commissions for placing these coverages not to exceed ten (10%) percent; in no event shall outside brokers be utilized without the prior written consent of the Trustees.

D. Provide policies and procedures, and develop and conduct a general safety and risk management program, subject to review by the Trustees, for the Trust and its Members. If individual Members request additional safety and loss control services, Administrator may provide these services at an additional fee to be paid by the requesting Members.

E. File, on a timely basis, all applications, forms, and reports necessary to secure and maintain the Trust's group self-insurance privileges, and act as the Trust's liaison with the New York State Workers' Compensation Board, with the advice and consent of the Trustees. Administrator will file with the Chairman of the Workers' Compensation Board all reports required by Section 315.4, as amended, of the Rules and Regulations of the Workers'



Compensation Law, and shall make a diligent effort to administer the Trust in compliance with all applicable regulatory requirements.

F. Market the Trust and implement marketing programs; this service shall include monitoring and coordinating the activities of all brokers dealing with the Trust. Administrator shall have the right and authority to engage and negotiate the services of outside brokers. Administrator shall allocate six (6%) percent of all Member contributions billed and received, net of refunds, to a special account to be utilized for the payment of brokerage commissions and all other reasonable and necessary expenses of the Trust; any expenditures paid from this account, with the exception of brokerage commissions, are subject to the approval of the Trustees. Administrator will not accept or receive any commissions or other remuneration for sales or marketing, other than that which is set forth in Paragraph "4" of this Agreement.

G. Receive and deposit all payments and contributions from Members, doing so in a manner so as to maximize interest and earnings thereon, and maintain records accounting for contributions, gains, earnings, losses, and expenses attributable to the Trust, such records to be kept at the offices of Administrator for review by the Trustees. The parties agree to implement a general and administrative expense approval system for expenses to be paid by the Trust; such system shall include a counter-signature expense authorization by a designated Trust representative. Administrator shall conduct and carry out all billings and collections of the Trust, and pursue collections and bring such actions as may be deemed necessary, with approval of the Trustees, to collect any and all contributions due from Members. Administrator shall establish and adhere to a reasonable policy and procedure to be approved by the Trustees with respect to the management of and reporting on all bank accounts. Administrator will furnish the Trustees monthly financial statements with an attached

receivables list.

H. Provide all claims administration services to the Members in accordance with applicable law and regulation, which services shall include, without limitation, the following:

- (i) distribution of employee report of injury forms to Members;
- (ii) perform a medical bill claim review that shall include checking medical bill charges for compliance with the statutory fee schedule.
- (iii) complete and file all claim forms as required by law and/or regulation, and maintain claim files for each reported claim throughout the life of a claim; all closed claims will be retained for a minimum period of three (3) years after closing, unless these files are sooner returned to the Trustees or their designee upon the termination of this Agreement;
- (iv) administer files pursuant to Workers' Compensation Board determinations regardless of whether or not injuries are compensable;
- (v) investigate claims internally through routine and customary methods, and externally, as reasonably required, through the subcontracting of others, and through personal contact with injured employees;
- (vi) review the status of all claims and all disabled employees on a regular and periodic basis, and arrange for independent medical examinations, as necessary;
- (vii) prepare and furnish the Trustees with a monthly claims report, which shall include the total number of claims reported during the preceding month, the total amounts paid during the preceding month, with a breakdown of such amount on a claims category basis, the amounts paid during the preceding month on each individual claimant on a claims category basis, the amounts paid to date on each

opened and closed claim during the fiscal year, and the outstanding reserves on each individual case on a claims category basis;

(viii) monitor all treatment programs recommended to injured employees by their physicians or other healthcare providers, and, as necessary, furnish managed care services directly or through an independent third-party case management or other managed care services provider;

(ix) file all appropriate claims with the excess insurance carrier, and comply with excess insurance carrier's claims reporting requirements;

(x) establish claims reserves, and assist in the maintenance of claims reserves on a current basis through periodic review, and communicate these reserve figures to the Members and/or the Trustees;

(xi) establish a claims payment account for the payment of all approved claims and allocated claims expenses, and establish a procedure for the distribution of payments from the account, all with the approval of the Trustees; and

(xii) perform all other necessary and customary administrative and clerical work in connection with all claims, including preparation of checks or vouchers, releases, agreements, and other documents needed to finalize claims, and provide forms as required by law or regulation, or as are necessary and customary.

I. Assist counsel for the Trust in preparation for all hearings before the Workers' Compensation Board and in connection with all other legal matters.

J. Assist the auditor selected by the Trustees in the preparation of annual and periodic audits, reviews, financial statements, and tax returns.

K. Provide a written report to the Trustees of any claim deemed to be

appropriately pursued for subrogation, and pursue recoveries against third parties, or otherwise undertake subrogation activities.

L. Where appropriate, apply for payment or reimbursement to the Trust from the Second Injury Fund, or other offsets.

M. Prepare an annual report within ninety (90) days following the end of the fiscal year of the Trust as to the annual results of the operation of the Trust, which report shall be prepared in accordance with the requirements of the Workers Compensation Law and Regulations, and provide additional information, analyses, and reports as are necessary in order to effectively administer the Program.

N. Provide regular and periodic communication to the Trustees; notify the Trustees of all significant or unusual events or occurrences; and, except in the event of emergencies, consult with the Trustees prior to taking any action which is not in the regular course of its operations or the performances of the Services.

O. Provide competent and qualified personnel, in suitable numbers, in order to perform its responsibilities hereunder.

P. Comply with and carry out all obligations imposed by applicable statute, and the regulations of the Workers Compensation Board and the New York State Insurance Department.

Q. Perform such other services or activities as are reasonably necessary to carry out the intent and purpose of this Agreement and/or as may be reasonably delegated to Administrator by the Trustees.

3. Term of Agreement.

A. The term of this Agreement shall commence August 1, 2006, and expire July

31, 2009, unless sooner terminated, as hereinafter provided (the "Term"). The Term shall be automatically renewed for an additional three (3) year term, and thereafter shall continue to automatically renew for succeeding three (3) year terms, unless either party gives the other written notice to terminate at least sixty (60) days prior to the expiration date of the original Term or of any renewal Term.

B. This Agreement may be terminated by the Trust during the Term for cause upon twenty (20) days prior written notice from the Trustees to Administrator. "Cause" is defined as:

1) the material breach of any of its obligations, or dereliction of any of its duties, obligations or responsibilities under any of the terms of this Agreement, or the persistent or repeated failure to provide the specific services required of it under Paragraph 2 hereof in a timely and/or adequate manner, provided that if such breach or failure is reasonably capable of cure, Administrator must be given sixty (60) days prior notice and a reasonable opportunity to do so;

2) Administrator's loss of authority under the laws or regulations of the State of New York to serve in its capacity as a group administrator and/or to perform its obligations under this Agreement, or Administrator's loss of, or inability to, obtain a fidelity bond as required under Paragraph "7B" hereof;

3) the filing by Administrator for bankruptcy under any federal or state statute, or Administrator becoming insolvent, or being subject to an arrangement for the benefit of creditors;

4) the transfer, sale, merger, or other acquisition of Administrator (or a controlling interest therein), including any sale of all or substantially all of the assets of

Administrator to any person or entity;

5) the failure of Administrator to follow or adhere to applicable law or the Regulations of the Workers' Compensation Board, the New York Insurance Department, or any other governmental agency with jurisdiction, after fifteen (15) days notice and a reasonable opportunity to cure, if applicable.

C. Notwithstanding the foregoing, this Agreement shall be terminated if at any time during the Term, or any renewal thereof, the Trust is terminated pursuant to the terms of its Trust Agreement then in effect, or by the action of any governmental agency with appropriate jurisdiction.

D. Upon termination of this Agreement for any reason, Administrator, at the Trustees' request and with the consent of Administrator, shall continue to manage pending claims, and claims occurring within the Term but not reported prior to the termination, and the Trust shall pay Administrator to handle such claims at a rate to be mutually agreed to between the parties. Subject to foregoing, Administrator will, as expeditiously as possible, and no later than sixty (60) days of the date of termination, package and prepare all claims files, and related materials for shipping, delivery, or retrieval by the Trust, at its option. The Trust will be responsible for the retrieval and/or shipping of these files. Administrator will also cooperate in good faith and take all steps reasonably require in the transition to the new administrator. Except as otherwise provided herein, upon such termination Administrator shall have no further responsibilities to the Trust, and the Trust and/or new administrator will be responsible thereafter for the Services.

4. Compensation.

A. As compensation for the Services and the performance of all other

obligations or responsibilities pursuant to this Agreement, and except as provided below in Subparagraphs "B" and "C", the Trust agrees to pay Administrator a fee equal to twelve (12%) percent of the Aggregate Member Funded Contribution. "Aggregate Member Funded Contribution" is defined as the total annual contributions billed and received by the Trust to all of its Members for Workers' Compensation coverage, including audited contributions, and net of refunded contributions and the New York State assessment charge.

(i) Administrator will bill the Trust monthly for one-twelfth (1/12) of this annual fee, which shall be determined and adjusted (based on changes in Membership and audits) on a calendar quarterly basis. At the end of the calendar year, there shall be a further adjustment so that the compensation paid to Administrator equals twelve (12%) percent of the actual billed and received contributions, net of refunded contributions for the foregoing calendar year. If such calendar year adjustment results in additional compensation to Administrator, such compensation shall be paid within thirty (30) days of Administrator submitting documentation verifying such adjustment to the Trustees. If such calendar year adjustment results in an overpayment having been made to Administrator, such overpayment shall be credited dollar-for-dollar against the upcoming calendar year's monthly compensation due Administrator until such credit is fully extinguished.

(ii) If, at the end of the Term, such calendar year adjustment results in additional compensation to Administrator, such compensation shall be paid within thirty (30) days of Administrator submitting documentation verifying such adjustment to the Trustees; if such calendar year adjustment results in an overpayment having

been made to Administrator, such overpayment shall be repaid to the Trust within thirty (30) days of Administrator submitting disclosure verifying such overpayment.

(iii) For the period of time from the commencement of this Agreement through December 31, 2006, Administrator will be paid on a pro rata basis based upon the actual billed and received contributions, net of refunded contributions, for the year 2006. Administrator is authorized to withdraw its fee each month from the operating account of the Trust, and the Trust's banking or financial institution shall be authorized to transfer into the Trust's operating account, at the beginning of each month, appropriate amounts to pay Administrator's fee based on instructions from Administrator.

B. As compensation for the medical bill claim review services set forth in Paragraph "2H(ii)" of this Agreement, Administrator shall be paid a fee of One and 30/100 (\$1.30) Dollars per line based on the number of lines on each medical bill that it reviews and checks. This fee will be paid monthly based upon a detailed listing prepared by Administrator of the medical bills reviewed and checked in the prior month.

C. As compensation for additional Services to be rendered on a one-time basis by Administrator in connection with the initial takeover and coordination of information related to the takeover of any open claims at the commencement of the Term, Administrator shall be paid as follows: Thirty Three and 33/100 (\$33.33) Dollars for each open claim taken over on the first day of the first month of the Term, and a like amount for each such claim that is still open on the first day of each of the next five (5) consecutive months. Administrator will provide the Trustees with an accounting of such claims and the calculation of such fee for each of the six months in which it is entitled to this compensation.



D. It is expressly acknowledged that the foregoing compensation shall constitute the full and complete amount of all compensation payable to Administrator for the performance of the Services or any other responsibilities or obligations under this Agreement.

Administrator shall be responsible for the payment of all fees to its subcontractors, unless otherwise specified in this Agreement. Administrator shall not be entitled to receive, and shall not accept, any compensation from any other sources, including brokerage or insurance commissions, except as hereinbefore expressly provided in Paragraph "2C" hereof.

5. Expenses. Administrator will defray and bear all expenses, costs, disbursements, and charges, of whatsoever kind or nature, incurred by it, directly or indirectly, in the performance of the Services, or any other obligations or responsibilities pursuant to this Agreement, except as follows:

- A. Trust insurance premiums for coverages approved by the Trustees;
- B. independent medical examinations;
- C. brokerage commissions;
- D. fees and expenses of independent attorneys, auditors, actuaries, and accountants;
- E. fees of independent private investigators and photographers, and the costs of independent non-routine investigations;
- F. licensing fees of the Trust;
- G. case management and managed care services performed by independent parties; medical bill repricing fees of third parties; court reporting; and expert witnesses; and
- H. any unusual or extraordinary expenditure not regularly incurred in the performance of the Services, provided the Trustees authorize and approve the same in writing

in advance.

6. Responsibilities of the Trust

A. The Trust will pay the compensation to Administrator in accordance with Paragraph "4" above, and will promptly pay and/or reimburse Administrator for all of the expenses which are the Trust's responsibilities as set forth in Paragraph "5" above.

B. The Trust will promptly pay any Workers' Compensation Board assessments and excess insurance premiums.

C. The Trust will pay any fines, penalties, or costs, including legal fees, imposed by any regulatory body, agency, or third party, from errors, omissions, untimely handling, late payments, or the like, that are not due to the action, inaction, or non-compliance by Administrator.

7. Indemnification/Bond

A. Each party agrees to defend, indemnify, and hold the other harmless against and from any and all damages, losses, costs, and expenses (including reasonable attorney's fees) incurred by the other party, arising from: 1) the breach of any term or condition of this Agreement; or 2) any negligent, culpable or willful act or omission by such party, its directors, officers, employees, agents or persons subject to its control in performing its obligations under this Agreement. This provision shall survive the termination of this Agreement.

B. Administrator shall provide to the Trust a fidelity bond in an amount and otherwise on terms reasonably approved by the Trustees, and as may be required by the Workers' Compensation Board, to secure Administrator's performance pursuant to this Agreement.

C. The Trust agrees to defend and hold harmless the Administrator from any and

all damages, losses, costs and expenses (including reasonable attorneys' fees) incurred by the Administrator, arising from any acts or omissions of whatever nature that occurred prior to the commencement of the Term.

8. Proprietary Rights/Confidential Information.

A. Administrator acknowledges that the information provided by the Trust with respect to its Members is proprietary and constitutes confidential business information. Administrator shall keep secret, and retain in the strictest confidence, all such confidential information of the Trust and its Members, including, without limitation, Membership lists, trade secrets, operational methods, proposed operations, financial information, and other business affairs and plans of the Trust and its Members, and will not disclose such information to anyone outside of Administrator or the Trust, except in the course of performing its duties hereunder, or with the express prior written consent of the Trustees, or as required by the New York Workers' Compensation Board or any court of competent jurisdiction. This provision shall survive the termination of this Agreement.

B. Administrator further acknowledges that the proprietary information of the Trust, as specified above, and all Workers' Compensation claims made by employees of Members, all revenues and funds of the Trust, all actuarial matters of the Trust, and all memoranda, notes, records, and other documents relating to this Agreement, and any other papers or property relating to the performance of the Services, are the sole and exclusive property of the Trust. The Trustees shall have the right of access to, and may make copies of, all such property or information, at all reasonable times, and, upon the termination of this Agreement, such property and information shall be made available/returned to the Trust without delay.

C. Notwithstanding the foregoing, the Trust acknowledges that the actual computer programs, computer equipment, internal procedures and reports, and the like, of Administrator are Administrator's sole and exclusive property.

D. For a period of two (2) years after the termination or expiration of this Agreement, Administrator will permit the Trust to have access, upon reasonable notice and during business hours, to review Administrator's books and records directly related to the Trust or the Services, and the Trust shall be authorized to audit the same, either by itself or through its designee.

9. Dispute Resolution. In the event of any disputes or claims arising from or related to this Agreement, including any claimed or actual breaches hereof, (the "Dispute"), and subject to any cure provisions contained in this Agreement, written notice of the Dispute shall be given to the other party specifying in detail the nature thereof, and, thereafter, a meeting shall be held promptly between the parties, attended by individuals with decision-making authority regarding the Dispute, to confer as to the nature of the Dispute and attempt in good faith to negotiate a mutually acceptable resolution: If, within thirty (30) days after giving written notice of the Dispute, the parties are unable to agree to a mutually acceptable resolution, either party may submit the Dispute to binding arbitration to be conducted in accordance with the then prevailing Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be heard by a single arbitrator selected by mutual agreement of the parties. In the event the parties are unable to so agree, such arbitrator shall be selected under the auspices of the American Arbitration Association. Such arbitration shall be conducted in the County of Albany, New York, and shall be governed by the laws of the State of New York. Judgment upon any award rendered may be entered in any court having competent jurisdiction. Notwithstanding the foregoing, either party shall have the right to seek temporary or

preliminary injunctive relief in the Supreme Court of the State of New York, County of Albany, where such relief is necessary in order to protect the interests of a party during the pendency of arbitration.

10. Miscellaneous.

A. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to rules of choice of law.

B. Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements or understandings between the parties. No statement, representation, warranty, covenant, or agreement of any kind, not expressly set forth in this Agreement, shall affect or be used to interpret change or restrict the express terms and provisions of this Agreement.

C. Notice. Any notice, demand, or request from one party to the other hereunder shall be deemed to have been sufficiently given or served for all purposes if it is personally delivered, or delivered by overnight courier or facsimile (with confirmation), or by registered or certified mail, postage prepaid, return receipt requested, to the parties at the following addresses (or such other addresses which may be changed from time to time by written notice served in accordance with this provision):

To the Trust: J. Dana Murphy  
c/o West Central Environmental Corp.  
P.O. Box 83  
Rensselaer, New York 12144

With a copy to: Harold D. Gordon, Esq.  
The Gordon, Siegel Law Firm  
9 Cornell Road, Airport Park  
Latham, New York 12110

To Administrator: John Conroy, President

Program Risk Management, Inc.  
P.O. Box 12305  
Albany, New York 12212

With a copy to: Arkley L. Mastro, Jr., Esq.  
The Gordon, Siegel Law Firm  
9 Cornell Road, Airport Park  
Latham, New York 12110

D. Waiver. No waiver of any breach of this Agreement shall be held as a waiver of any other or subsequent breach.

E. Assignability. Neither party may assign a performance of any covenant, obligation, or duty to be performed or observed by it hereunder, without the express prior written consent of the other party, except that Administrator may assign portions of this Agreement to PRM Claim Services, Inc. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their permitted successors and assigns.

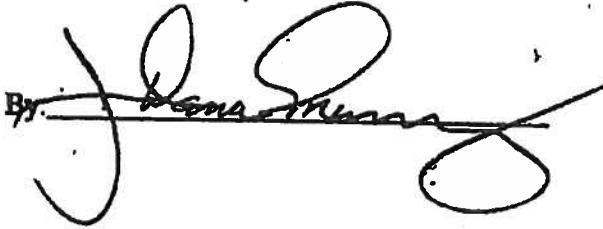
F. Severability. In the event that any provision of this Agreement shall be determined to be invalid, unlawful, or unenforceable, to any extent, the remainder of this Agreement shall not be affected thereby, and each remaining provision hereof shall continue to be valid and may be enforced to the fullest extent permitted by law.

G. Amendments. This Agreement may only be amended or changed by a writing signed by both parties.

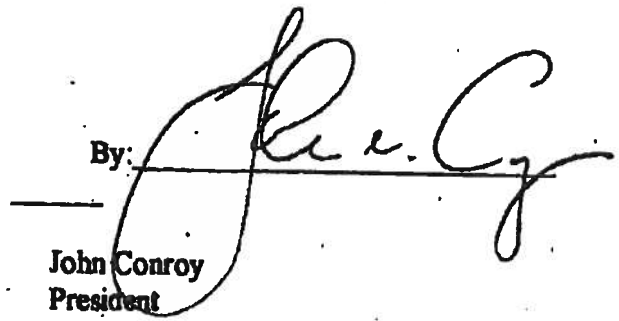
IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first set forth above.

TEAM TRANSPORTATION WORKERS'  
COMP TRUST

PROGRAM RISK MANGEMENT, INC.

By: 

J. Dana Murphy  
Chairman, Board of Trustees

By: 

John Conroy  
President

## **Team Transportation Workers' Compensation Trust**

### **Responsibility for Acceptance and Termination of Members**

#### Citations in Various Governing Documents and Other Information Obtained Relative to Member Acceptance and Termination

##### Per the various Trust documents:

Section 7.2 of the original Trust document ("Acceptance of New Members") states "Membership shall be effective upon acceptance by the Board of Trustees by a majority vote," and Section 7.3 ("Duration of Membership") states "The Board of Trustees may terminate membership of any participating member upon occurrence of any of the following..."

Section 2.4 ("New Members") of the amended Trust document from July 2000 states "An employer who meets the qualifications set forth in Section 2.1 above shall be accepted as a Participating Member upon the majority vote of the Trustees," and Section 2.5 ("Duration of Membership") states "The Trustees may terminate membership of a participating member upon occurrence of any of the following..."

The amended Trust document of August 2000 contains the same wording found in the amended Trust document from July 2000.

The 2005 restated Trust document did not address the party responsible to accept or terminate members.

##### Per the By-Laws:

Section 2.2 ("Additional Members") states "Participating Members may be added to the Trust by a vote of the Trustees," while Section 2.5 ("Approval by Trustees") states "An application must be approved by the affirmative vote of the majority of the Trustees then in office, and in accordance with the provisions of the Trust Documents."

Section 2.6 ("Full Discretion Concerning Approval or Rejection") states "The approval or rejection of any application for admission by a prospective member shall be subject to the sole and absolute discretion of the Trustees," while Section 2.8 ("Termination of Member") states "The Trustees shall have the right to terminate the membership of a Participating Member."

##### Per Indemnity Agreement (version from early in TEAM's existence):

Section 3 ("Conditions Precedent to Effectiveness of Agreement") states "...which application must be then be approved by the Board of Trustees of the Trust."

##### Per Trust Participation Agreement (version dated 2009):

Article 3, Paragraph 3.1 ("Application for Membership") states "...Application has been submitted to the WCB for approval, and that it is provisionally approved by the Trustees, pending WCB approval."

Based on our interpretation of the above governing documents, we believe the Trustees were always ultimately responsible to both approve and terminate members.



## APPENDIX 9

### Trustee Interviews and Other:

#### Acceptance and Renewal:

Apart from two meetings in 1997 where the Trustees approved the continued participation of *all* existing members at once, our inspection of the minutes failed to indicate a single documented instance when the Trustees collectively approved an individual member for participation. However, we did note various other documents in certain member files to indicate a member was formally approved by at least one Trustee.

During our review of WCB member application forms (GSI-1.1 forms), we noted that TEAM's Chairman, J. Dana Murphy, signed all the forms until CRS took over on November 7, 2001 as the "Authorized Official of the Trust." L&M believes his signature constituted Trustee approval of the member for participation. During our interview, Trustee Murphy concurred with our view that his signature constituted a formal approval of the member by the Trustees.

Trustee Murphy informed us that the Trustees had delegated the authority to unilaterally accept members falling within the internal underwriting to the Administrators that served after APA (CRS and PRM). We asked Trustee Murphy several times during our interview if this delegation was written or verbal; however, we failed to receive a direct answer to our question. Mr. Murphy also made the following additional comments related to member approval during our interview:

- "While each Administrator was different, each member came before Board [of Trustees]; some Administrators were more diligent than others."
- "The Trustees, in one way or another, approved new members."
- "All new/potential members had to go through [underwriting] process."
- "All [potential] members considered marginal were discussed."
- "Had arguments with First Cardinal on regular basis that they [the Trustees] did not agree with the members being admitted."
- "Discussed those [members] that were outside guidelines."
- When asked if he had recalled ever rejecting an application for membership, Trustee Murphy, stated "Yes, [but] not a lot."

When asked to describe the nature of Trustee involvement in the renewal process, Trustee Murphy informed us that "any stand-outs, I'm sure were discussed" and "[some members were] forced to be dropped for non-payment." L&M believes this is important to note because TEAM, similar to many other Trusts, would often not renew members rather than terminate them during the policy term. Trustee Murphy's responses indicate the Trustees were involved with termination decisions at least on a limited basis.

Trustee Earl informed us that, *after* the First Cardinal administration period, (1) "we [the Trustees] would approve or reject the members," (2) "the member admission process changed in a positive manner," and (3) he recalled rejecting a certain named member (affiliated group) multiple times. L&M notes that Trustee Earl's recommendation to reject must have been overruled by the other Trustees serving at or around the time the member applied for membership, since it was eventually admitted. L&M estimates this affiliated group generated a deficit of \$973,000 for TEAM prior to any IBNR allocation (see "Poor Performing Related Party Group" subsection in "Underwriting, Including Renewal Ptocess" report section).

#### Terminations:

During our inspection of WCB member termination forms (GSI-3.1 forms), we noted TEAM's four Administrators always signed the forms as the "Authorized Official of the Trust." As a result, the Administrators took responsibility for at least the process to notify the WCB of terminations.

## APPENDIX 9

As noted above, Trustee Murphy informed us that “any stand-outs, I’m sure were discussed” and “[some members were] forced to be dropped for non-payment.” Trustee Earl informed us that the Trustees “would accept or reject based on the criteria presented,” including a member’s claims and payment history.

In general, the documents we obtained did not provide any significant evidence to support a consistent and ongoing involvement of the Trustees with the termination process.

The lack of formal documentation that supports significant Trustee involvement with terminations, the somewhat vague description provided to us by the two Trustees regarding the same, and a minimal discussion of specific substandard members in the minutes obtained all indicate Trustee involvement in the termination process may have been limited.

## Team Transportation Workers' Compensation Trust

### Summary of Underwriting Guidelines Located in Governing and Other Documents:

L&M's inspection of the four different Trust documents we obtained revealed the following statements, each of which relate to member homogeneity which we consider an underwriting guideline:

- Addendum to Original Trust document – “The majority of the exposure shall fall under the following four digit...[SIC Code]: 4212 Local Trucking, Without Storage; 4213 Trucking, Except Local; 4214 Local Trucking With Storage; 4952 Sewerage Systems; 4953 Refuse Systems; 4959 Sanitary Services, Not Elsewhere Classified.”
- Amended Trust document (July 2000) – “Must meet the homogeneity requirements of any regulations of the Workers' Compensation Board.”
- Amended Trust document (August 2000) – “Must (1) be in a transportation industry that falls in one of the Standard Industrial Classification Codes set forth on Schedule A; (2) meet the homogeneity requirements of any regulations of the Workers' Compensation Board.” Schedule A included the 6 SIC codes identified above in the first bullet point above and an additional *84 SIC codes*. L&M questions how TEAM could possibly retain reasonable homogeneity following the addition of such a large number (84) of further eligible codes. L&M notes that these homogeneity requirements conflict with those contained in TEAM's February 2000 underwriting guidelines discussed later in report section “Underwriting, Including Renewal Process.”
- Amendment to *Original Trust document* – “It is also agreed that effective January 1, 2002, the following are approved classes of business for the above referenced Trust; 8394 – Bus Co., All Other Employees and Drivers 8385 – Bus Co. – Garage Employees.” L&M questions why those charged with governance moved to amend, via this document, what appears to have been a superseded (the 1995) Trust document.
- Restated Trust document (mid 2005) – “Must be engaged in a transportation industry that falls into the same or a related...(SIC Code) Division Structure..., or must share a predominant payroll classification, as set forth on Schedule ‘A’ of this Restated Trust Agreement.” L&M notes that the Schedule ‘A’ was made up of SIC Codes (not payroll classifications/codes), and included the 6 SIC codes identified above in the first bullet point, and only an additional *14 SIC codes*. 70 codes were removed from eligibility as compared to the August 2000 Trust document. L&M notes that these homogeneity requirements conflict with those contained in the By-Laws adopted in 2006 (see bullet point directly below).

L&M's inspection of the single set of By-Laws obtained (adopted October 19, 2006) revealed the following information; each of which we consider an underwriting guideline:

- In regards to homogeneity, the definition was expanded to include three different ways a potential member qualified for participation. An applicant needed to be engaged in a business activity where: “(i) the predominant worker's compensation exposure of which related to transportation, or (ii) that falls in the same or a related Standard Industrial Classification Code (SIC Code) Division Structure as published in the United States Department of Commerce's Standard Industrial Classification Code Manual, or (iii) that has a predominant [payroll] classification that falls within the transportation industry.” L&M believes the literal interpretation of this guideline would allow a significant number of different types of businesses to participate in TEAM. This definition also did not coincide with that included in the 2005 Restated Trust document (see prior bullet point) since that document only listed two ways to meet the homogeneity standard (instead of three), and also named the SIC Codes that qualified. This discrepancy was brought to both PRM's and the Trustees' attention on several occasions by the WCB, but was never corrected.

- “A prospective member must be financially solvent, furnish records to prove such solvency, and must meet such other criteria as to financial qualification as may be established by the Trustees from time to time.”
- “A prospective member’s expected loss rate must be within parameters determined from time to time by the Trustees.”
- “A prospective member must adhere to the safety policies and practices adopted by the Trustees from time to time, as well as the WCB Rules and Regulations.”

L&M’s inspection of the numerous Indemnity and Participation Agreements we obtained revealed the following statements, each of which we consider to be an underwriting guideline:

- “Employer must meet the homogeneity requirements set forth in the Restated Trust Agreement and By-Laws.”
- “Maintain financial solvency, and meet such financial qualification criteria as may be established for Participating Members from time to time by the Trustees.”
- “Maintain an expected loss rate within the parameters determined for Participating Members from time to time by the Trustees.”
- “Adhere to safety policies and practices adopted by the Trustees from time to time, and the WCB Rules and Regulations.”
- “Furnish information to the Trust confirming the aforesaid as reasonably requested from time to time.”
- “Employer agrees to cooperate in instituting any and all such [loss control/safety] programs” designed by the administrator.

Full Sets of Underwriting Guidelines Located and Those Located in Various Other Documents:

- We obtained a set of internal underwriting guidelines approved at the January 28, 1997 Trustee meeting. No effective date was listed on the guidelines, so we assumed they were adopted/became effective on the date of the vote.
- The WCB provided L&M with two other sets of internal underwriting guidelines it had on file. One set was dated February 9, 2000 and the other had an effective date listed as January 1, 2003.
- We obtained the excess insurer underwriting guidelines for the 2001 policy year as promulgated by General Security Insurance Company.
- Prospective members with an experience modification factor higher than 1.00 required approval by the Board of Trustees prior to quoting. This statement was found in an e-mail from CRS to an insurance agent.
- At the request of the WCB, PRM completed a “Group Self-Insurance Questionnaire” in April 2008. Both the questionnaire and related attachments provided information relative to underwriting guidelines used by TEAM at and around that date and how they were to be applied as follows:
  - The response to question (2) of the underwriting section indicated that the same underwriting guidelines were applied to new and existing members. This response is inconsistent with the conclusion reached by the WCB as a result of its 2008 Level I Review when it concluded “The Trust has written underwriting guidelines which are different for new and renewal accounts.” In addition, the response is also inconsistent with a statement included on an addendum to the questionnaire which stated “Underwriting Guidelines differ for new and renewal accounts,” with the various details of the differences provided. L&M suspects that, in reality, different guidelines existed and were applied according to the status of each member.
  - Minimum of three years loss history provided by prospects.
  - Approval of prospect by TEAM’s excess insurance carrier.

- Renewal accounts, in general, must be at or below a 65% loss ratio. The statement did not detail the period of years the loss ratio was derived from, e.g. – 3 years, 5 years or some other period.

It should be noted that we requested, but never received, a copy of the internal underwriting guidelines used by PRM during its tenure as administrator.

**UNDERWRITING CRITERIA**

**UNDERWRITING GUIDELINES  
FOR  
TRANSPORTATION WORKERS' COMP TRUST**

Coverage Available Workers' Compensation

Binding/Underwriting

Risks are submitted direct to First Cardinal Corporation, Underwriting Department at Executive Park East, Albany, New York. All risks must be reviewed and approved by Underwriting before binding. Clients can only be added after approval by the First Cardinal Underwriting Staff.

Eligible Risks

- \* Operations must be predominate in the Transportation Business.
- \* Loss Ratio for the last five years below 40% and/or Experience Modifier under 1.00.
- \* Claim frequency for the last three years below 5%.
- \* 2 to 1 positive net worth to premium.

Ineligible Risks

- \* Risks where the primary operation is not transportation.
- \* Incurred loss ratio exceed 50% over past 5 years, excluding current year. These risks will be reviewed as special acceptances only.

Restricted Risks

- \* Risks with significant incidental operation other then transportation.
- \* Risks with experience modification factor greater the 1.20. Full details must be submitted for evaluation including nature of claims and steps taken to limit the exposure in the future.

Submission RequirementsSubmission Requirements for Approval to Quote

- \* Complete Underwriting submission form.
- \* Loss Runs for the last 5 years.
- \* Current financial statement  
First Year of Participation:
  - 1. Audited or
  - 2. Reviewed or
  - 3. Compiled or
  - 4. CPA Federal Tax Return
- \* Completed accord application

Additional Requirements To Bind Coverage

- \* Signed Indemnity Agreement and GS1.1 Form
- \* Deposit Check
- \* Signed accord application
- \* Experience MOD sheets-past & current-(if applicable)
- \* Completed supplementary application
- \* Last 5 years audited payroll by code (excess insurance requirement)

Loss Control Surveys

- \* To be ordered at the discretion of Underwriting prior to binding.

Special Hazards

To be noted for type of business being written within the Transportation classification are to be obtained, from "Bests Underwriting Guide" and should be documented in the Underwriting file and should be cross referenced to the loss control survey, to indicate that the Underwriter is aware of the specific exposure hazard and has reviewed the loss control survey with regard to those hazards.



## ***Transportation Workers' Compensation Trust*** **Underwriting Guidelines**

### **Binding/Underwriting Authority**

Risks are submitted directly to the Trust Underwriting Department. All risks must be reviewed and approved, in writing, by Underwriting before binding.

### **Territory**

New York Operations Only

**RECEIVED**

WORKERS' COMPENSATION BOARD

FEB 17 2000

SELF INSURANCE OFFICE

### **Anniversary Date**

All policies will have a common anniversary date of January 1. Any participants, who enter during the course of the year, will be issued a short-term policy, then renewed annually on the anniversary date of the Trust.

### **Eligible Risks**

- Must have an experience modification less than 1.25
- Predominant exposure must be in one of the following class codes :

- ✓ 4000 Sand or Gravel Digging & Drivers 1.25
- ✓ 7219 Trucking: NOC All Employees & Drivers 9.76
- ✓ 7380 Drivers - NOC 1.71
- ✓ 7590 Garbage Works 8.71
- ✓ 8018 Wholesale NOC - Predominant Driving Exposure 4.66
- ✓ 8264 Bottle Dealer - Used & Drivers 8.68
- ✓ 8350 Gasoline Dealer & Drivers 5.22
- ✓ 8353 Gas Dealer - L.P.G. & Drivers
- ✓ 8745 News Agent or Distributor of Magazines or Other Periodicals - Not Retail.
- ✓ 8751 Route Salesperson.
- ✓ 9403 Garbage, Ashes, Refuse Collection & Drivers

And/or one of the following SIC codes:

- 4212 Local Trucking Without Storage
- 4213 Trucking, Except Local
- 4214 Local Trucking With Storage

4215 Courier Services, Except by Air  
 4221 Farm Product Warehousing & Storage  
 4222 Refrigerated Warehousing & Storage  
 4225 General Warehousing & Storage  
 4226 Special Warehousing & Storage, NEC  
 4231 Terminal & Joint Terminal Maintenance Facilities for Motor Freight Transportation  
 4922 Natural Gas Transmission & Distribution  
 4923 Natural Gas Distribution  
 4924 Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Distribution  
 4941 Water Supply  
 4952 Sewerage Systems  
 4953 Refuse Systems  
 4959 Sanitary Services, NEC  
 4961 Steam & Air Conditioning Supply  
 5983 Fuel Oil Dealers  
 5984 Liquefied Petroleum Gas(Bottled Gas) Dealers  
 5989 Fuel Dealers, NEC

- Must have a three year loss ratio of less than 65%
- Acceptable financial condition, financially a risk must have a net worth two times premium and a current ratio of 1.1 to 1 or better.
- Must have no losses in excess of \$150,000 in the last five years.

## Submission Requirements

- Completed application
- Five years of currently valued loss and premium information
- Copy of current workers' compensation policy
- Classification codes of employees and corresponding payroll
- Number of employees per classification code
- Current financial statement, preferably prepared by a CPA
- Current experience modification rating sheet
- Brief description of operations, along with any brochures or advertising information if available

## Underwriting Exception

- Any exception to the eligible risk criteria must be referred to the excess carrier.
- Any account with premiums in excess of \$50,000 and/or an experience mod in excess of 1.25 must be approved by the Board of Trustees.

### The submission to the Board of Trustees must include

- Five year loss history
- Five years of payrolls
- Five year premium summary
- Our quote
- And a loss control pre-inspection report for any risk in excess of \$100,000.

## Pricing

- Maximum discounts available to new members is 20%.
- Additional discounts are subject to underwriting approval.

## Ineligible Risks

- Aircraft flight and ground operations;
- Manufacturing , packing, handling, shipping, or storage of explosives, explosive substances intended for use in any explosive, ammunitions, fuses, arms, magnesium, propellant charges, detonating devices, fireworks, nitroglycerine, celluloid, or pyroxylin;
- Gas companies or contractors, oil or gas well works, oil or gas pipeline construction or operations, oil rig and derrick work;
- Maritime or federal employments, or steamship lines, agencies, or stevedoring, except on an "if any" basis;
- Wrecking or demolition of buildings, structures or vessels;
- Subaqueous work;
- Caisson or cofferdam work; dam, dike, lock or revetment construction;
- Manufacturing, packing, handling, shipping or storage of natural or artificial fuel gases, butane, propane, or gasoline;
- Chemical and/or pharmaceutical manufacturing;
- Nuclear Regulatory Commission projects or operations conducted under license from the Nuclear Regulatory Commission;
- Operations which fall under the Jones Act and/or Admiralty Act;

- Roofing contractors;
- Detective or patrol agencies;
- Pesticide/herbicide application; exterminators;
- Manufacture, mining, fabrication, processing, installation or removal of asbestos or products containing asbestos or urea-formaldehyde;
- Logging, lumbering, and/or sawmills;
- Risks written under the Chemical or Dye Stuff Rating Plan;
- General Contractors who sub-contract over 40% of their work
- Any other risks found unacceptable by underwriting.

## Reinsurance

Underwritten by Reliance National

Contact - Donna Vaters  
 77 Water Street, 24<sup>th</sup> Fl  
 New York, NY 10005  
 Phone # 212-858-3635  
 Fax# 212-858-4858

- Specific Excess:
- Self-Insured Retention: \$300,000 per Occurrence
- Limit Statutory
  
- Aggregate Excess:
- Attachment Point: 100% of Trust Written Premium
- Limit \$5,000,000.
  
- Employers Liability:
- Self-Insured Retention \$300,000 per occurrence
- \$500,000 Ea. Employee for disease
- Limit \$10,000,000

## Dividend Plan

- Dividends must be approved by the trusts Board of Trustees. They are based on available trust surplus. Each individual dividend is based on their percentage of the trusts overall premium.

## Payment Plans

- Direct Bill – 30% down and 6 equal installments.
- AI Credit – 10 equal installments after a minimum down payment of 10% to FCC.

Send all submissions to:

***Transportation Workers' Compensation Trust***

***210 Washington Avenue Ext.***

***Albany, New York 12203***

***(800)948-4850***

***Fax (518)456-6978***

**TRANSPORTATION WORKERS' COMPENSATION TRUST  
UNDERWRITING GUIDELINES  
EFFECTIVE 1/1/2003**

**Anniversary Date**

All policies will have a common anniversary date of January 1. Any participants who enter during the course of the year will be issued a short-term policy, and then renewed annually on the January 1.

**Eligible Risks**

Experience Modification < 1.25

Predominate exposure in one of the following class codes:

- 4000 - Sand or gravel Digging & Drivers
- 7219 - Trucking NOC All Employees & Drivers
- 7380 - Drivers NOC
- 7590 - Garbage Works
- 8018 - Wholesale NOC Predominant Driving Exposure
- 8264 - Bottle Dealer - Used & Drivers
- 8350 - Gasoline Dealers & Drivers (NO NEW BUSINESS)
- 8353 - Gas Dealer - L.P.G. & Drivers (NO NEW BUSINESS)
- 8745 - New Agent or distr. of Magazine or other Periodicals
- 8751 - Route Salesperson
- 9403 - Garbage, Ashes Refuse Collection & Drivers

And/or one of the following SIC Codes:

- 3273 - Read Mix Concrete
- 4212 - Local Trucking without Storage
- 4213 - Trucking Except Local
- 4214 - Local Trucking with Storage
- 4215 - Courier Service except by Air
- 4221 - Farm Produce Warehousing & Storage
- 4222 - Refrigerated Warehousing & Storage
- 4225 - General Warehousing & Storage
- 4226 - Special Warehousing & Storage
- 4231 - Terminal & Joint Terminal Maint
- 4922 - Natural Gas Transmission & Distribution
- 4923 - Natural Gas Transmission
- 4924 - Mixed, Manufactured or Liquefied Petroleum Gas Production and/or Distribution (NO NEW BUSINESS)
- 4941 - Water Supply
- 4952 - Sewerage Systems
- 4953 - Refuse Systems
- 4959 - Sanitary Services
- 4961 - Steam & Air-Conditioning Supply
- 5983 - Fuel Oil Dealers (NO NEW BUSINESS)
- 5984 - Liquefied Petroleum Gas (Bottled Gas) Dealers (NO NEW BUSINESS)
- 5989 - Fuel Dealers, NEC (NO NEW BUSINESS)

**TRANSPORTATION WORKERS' COMPENSATION TRUST  
UNDERWRITING GUIDELINES  
(Page 2)**

Or SIC code of 5000-5199 and the account has more than two vehicles.

- Must have a three-year loss ratio of less than 65%
- Acceptable Financial condition, financially a risk must have a net worth two (2) times premium and a current ratio of 1.1 to 1 or better.
- Must have no losses in excess of \$150,000 in the last five (5) years.

**Submission Requirements**

- GS1.1
- Five (5) Years of Currently Value Loss and Premium Information
- Three (3) Years Financial Statements
- Signed Indemnity Agreement
- Experience Modification Worksheet
- Executive Officer Exclusion
- Copy of Reservation of Rights Letter
- Deposit Check
- Safer Report
- Loss Control Pre-Inspection Report for any Risk in Excess of \$100,000

**Underwriting Exceptions**

Any exception to the eligible risk criteria must be referred to excess carrier.

The Board of Trustees must approve any account with premiums in excess of \$50,000 and/or an experience mod in excess of 1.00.

The submission to the Board of Trustees must include:

- Five (5) Year Loss History
- Five (5) Years of Payrolls
- Five (5) Year Premium Summary
- Quote
- Loss Control Pre-Inspection report for any risk in excess of \$100,000.

**Pricing**

Maximum TOTAL discounts, including experience modification available to new members is 20%. (W/o Board preapproval)

- Additional discounts, up to 22% of manual premium are subject to prior approval of the Trustees.

**TRANSPORTATION WORKERS' COMPENSATION TRUST  
UNDERWRITING GUIDELINES  
(Page 3)**

**Ineligible Risks**

- Aircraft flight and ground operations
- Manufacturing, packing, handling, shipping or storage of explosives, explosives substances intended for use in any explosive, ammunitions, fuses, arms, magnesium, propellant charges, detonating devices, fireworks, nitro-glycerin, celluloid or pyroxylin
- Gas companies or contractors, oil or gas well works, oil or gas pipeline construction or operations, oil rig and derrick work
- Maritime or Federal employment, or steamship lines, agencies or stevedoring except on an "if any" basis
- Wrecking or demolition of buildings, structures or vessels
- Subaqueous work
- Caisson or cofferdam work, dam, dike, lock or revetment construction
- Manufacturing, packing handling shipping or storage of natural or artificial fuel gases, butane, propane or gasoline
- Chemical and/or pharmaceutical manufacturing
- Nuclear Regulatory Commission projects or operations conducted under license from the Nuclear Regulatory Commission
- Operations which fall under the Jones Act and/or Admiralty Act
- Roofing Contractors
- Detective or Patrol Agencies
- Pesticide/herbicide application, exterminators
- Manufacturing, mining, fabrication, processing, installation or removal of asbestos or products containing asbestos or urea-formaldehyde
- Logging, lumbering and/or sawmills
- Risks written under the Chemical or Dye Staff Staff Rating Plan
- General Contractors who subcontract over 40% of their work
- Any other risks found unacceptable by underwriting



**TEAM Transportation Workers' Compensation Trust****Safety Programs – Member File Inspections****First Cardinal**

First Cardinal served as TEAM's administrator from October 15, 1995 – October 31, 2000. TEAM's Administration Agreement with First Cardinal stated "[First] Cardinal shall develop and conduct loss prevention, safety, and risk management programs for the purpose of reducing the frequency and severity of potential losses" and "have the power and duty to complete on site loss control surveys for accounts over \$5,000 or accounts with loss ratios over 30%." Since the agreement did not dictate the frequency of the duties to be performed by First Cardinal, L&M believes this aspect was left to First Cardinal's discretion. The agreement also stated First Cardinal was to "conduct loss control seminars as deemed appropriate and necessary." L&M located nothing to indicate First Cardinal hosted any loss control seminars for the benefit of TEAM's membership.

L&M obtained many of First Cardinal's completed prescribed Risk Assessment Forms, which included sections to describe safety related programs implemented by the member, evaluate member responsiveness to First Cardinal requests, assess the overall risk of the member, list corrective recommendations, and assess and conclude on the required frequency of future visits (monthly, quarterly, semi-annually, annually, or none). The Risk Assessment Form concluded with First Cardinal's opinion as to whether the member was an acceptable risk for TEAM.

Of the 16 member files L&M inspected for safety related materials, 11 members participated in TEAM during at least one year of First Cardinal's term as administrator (47 separate policy periods). All 11 members had annual contributions exceeding \$5,000 and/or a loss ratio in excess of 30% and, therefore, should have been subject to loss control inspections as required under First Cardinal's Administration Agreement with TEAM. Our inspection of these 11 member files revealed the following:

- L&M located at least one Risk Assessment Form, Risk Assessment Report, or other document to indicate a safety site visit had been performed on 8 of these 11 members. We located evidence to suggest that 15 visits in total took place over the 47 policy periods tested. We located First Cardinal's prescribed Underwriting Renewal Forms for many of the periods that were absent a Risk Assessment Form, and the section labeled "Loss Control" was always either left blank, stated "none in file," or otherwise indicated that a safety site visit was not performed during the year immediately preceding renewal. As a result, L&M concludes First Cardinal did not perform a safety site visit on every member whose annual contributions exceeded \$5,000 and/or had a loss ratio in excess of 30%, and the frequency of visits was inconsistent. Even though many Risk Assessment Forms or other documentation indicated certain safety problems/concerns existed, we were surprised that only 1 of the 8 members were identified by First Cardinal as being a "poor" or unacceptable risk. L&M noted the member identified by First Cardinal as a poor risk, upon implementing many of First Cardinal's recommendations, improved its safety program, and First Cardinal concluded it was an average/acceptable risk after subsequent safety site visits were completed.
- L&M located numerous letters sent by First Cardinal to members following safety site visits which detailed safety recommendations and requested the member respond within 30 days with a plan for corrective action. We found evidence First Cardinal performed a follow up visit within one year for 5 of the 15 safety site visits noted in the above bullet point. Each of the follow up visits assessed the implementation/correction of past recommendations and provided additional safety recommendations when deemed appropriate.
- The Risk Assessment Form relating to one member's initial site visit stated "mgmt is not involved with nor very concerned with employee safety & health. Owner appeared very troubled with safety & health related questions." Despite these statements, First Cardinal's Risk

Assessment Form rated the member as an acceptable risk with an *average* opinion of risk. First Cardinal also indicated the member was not in need of additional future safety site visits. Considering the negative comments from First Cardinal's initial risk assessment, L&M is surprised it recommended no future safety visits for this member.

- An undated Underwriting Request for Risk Management Services form located in the file for a Trustee member company (Member E from Table 2) stated "Scott Earl is a trustee. He has indicated that he has a background in Safety and does not need one of our associates to do a survey...His loss ratio based on annual premium is 82%." L&M noted First Cardinal's initial safety site visit in March 1996 for the member indicated a "severe fire hazard" and "shock and electrocution hazards." Two additional safety visits were performed during 1999, and although First Cardinal noted improvement to the member's safety program, it still only concluded the member was an "average risk." Since the Underwriting Request for Risk Management Services form was undated, L&M could not determine if any safety site visits were performed subsequent to Trustee Earl's insistence that visits not be performed.
- 5 of the 11 member files contained two or more Risk Assessment Reports, and First Cardinal determined that all five members' overall safety rating gradually improved after their initial safety site visit. Accordingly, and as common sense would dictate, we believe the members that received recurring safety visits had improved their overall safety as a direct result of First Cardinal's efforts. L&M questions why First Cardinal, either on its own or at the direction of the Trustees, did not conduct recurring safety site visits on all members.

Our inspection of other documents, including those handed out at Trustee meetings, revealed that from 1997 – 2000 First Cardinal periodically provided loss control/risk management information to the Trustees. The information disseminated to the Trustees included (1) the number, type, and cost of injuries sustained by certain members and the entire Trust, (2) examples of safety documents previously provided or intended to provide to members, (3) specific members that incurred excessive claims, and (4) the results of specific member loss control site visits. During the December 8, 1999 Trustee meeting, it appears First Cardinal provided the Trustees with a summary of loss control inspections for 16 members, one of which First Cardinal rated as a bad (below average) risk due to a high loss ratio and its management's attitude toward employee safety. Our member file inspections revealed this member received a safety site visit during 1999 and 2000.

L&M believes First Cardinal, although inconsistent, made an effort to identify members with poor loss histories and/or safety records and conduct safety site visits in an attempt to remedy safety deficiencies. In addition, L&M believes First Cardinal periodically kept the Trustees apprised of relevant safety/loss control information, including specific members it believed had the potential to be especially detrimental to the Trust.

#### APA Partners, Inc. (APA)

APA served as TEAM's administrator from November 1, 2000 - November 7, 2001. The Administration Agreement with APA stated it was to "develop and conduct loss control, risk management, and safety programs for the Trust and its members."

Of the 16 member files L&M inspected for safety related materials, 13 members participated in TEAM during APA's term as Administrator. Our inspection of these 13 member files and other documents revealed nothing to indicate APA provided any general loss control services or ever performed a safety site visit for any of these members. As previously mentioned, we could not locate a representative from APA to interview who had sufficient knowledge of TEAM's operations to confirm that no safety programs were implemented by APA for TEAM.

We believe it is likely no general safety program was implemented and no safety site visits were completed during APA's 12 month tenure as TEAM's administrator. If true, L&M questions APA's

rationale to not perform safety visits on TEAM's members. Safety visits and related corrective recommendations could have improved the safety procedures of member employees, which correspondingly may have reduced the number and/or severity of claims incurred.

#### Consolidated Risk Services of New York (CRS)

CRS served as TEAM's administrator from November 8, 2001 - July 31, 2006. The Administration Agreement with CRS stated it "will provide policies and procedures for effective risk management and specific risk management programs and shall review same with the Board of Trustees, for adoption by each of the Participating Employers."

Of the 16 member files L&M inspected for safety related materials, 15 members participated in TEAM during at least one year of CRS's term as administrator (61 separate policy periods). Our inspection of these 15 member files only uncovered one document that could possibly be construed as being a member specific safety assessment prepared by CRS. A 2004 document labeled "Risk Analysis" prepared by CRS for Trustee Murphy's company included large sections copied verbatim from the last Risk Management Survey Report prepared by First Cardinal, *approximately five years earlier*. L&M believes the "Risk Analysis" as documented by CRS did not include a safety site visit or any other attempt to accurately assess the current safety initiatives in place at the member and whether any recommendations for improvement were warranted. Instead, it appears CRS opted to rely on outdated information to support what appeared to be a current risk analysis for this member, and may have prepared the form only to "have something in the file."

We did locate one other instance when it appears CRS performed a member specific safety procedure. During our testing of the Underwriting Guideline which required a safety pre-inspection for accounts with contributions over \$100,000, L&M became aware of one instance where CRS completed a safety site visit for a member with contributions over \$100,000. However, the safety visit was done *three months after* the member's admission and listed numerous minor safety observations and related recommendations. The correspondence sent from CRS to the member included a copy of the recommendations and referred to the availability of safety training videos and posters. The correspondence did not mention a time frame for the safety recommendations to be addressed nor did it mention a follow-up visit. Our inspection of the member file uncovered no documentation to indicate a follow-up visit or any other routine safety visit was completed during the subsequent two year period CRS continued as TEAM's administrator.

In addition, the 2003 and 2005 Management Letters issued by Dorfman-Robbie Certified Public Accountants, P.C. (the CPA firm who audited TEAM's 2000 - 2007 financial statements) to TEAM's Trustees stated that TEAM's significant claims expense incurred in recent years "have put the Trust in a difficult financial situation. We recommend that management implement loss control procedures. These procedures could include visits to members to assure that proper safety controls are in place." The management response included in the 2003 letter stated "management is in the process of performing loss control services. Also, management will implement procedures along with the trustees to address the issues mentioned." L&M believes these statements further support the results of our file inspections and test of Underwriting Guidelines which indicated minimal loss control measures were implemented by CRS during its administration of TEAM.

L&M believes CRS expended very little effort to establish either member specific or Trust-wide safety/loss control programs. While it appears CRS did establish some minor aspects of a safety program (i.e. - safety video library, safety newsletters, etc.), the overall lack of documentation obtained and the above referenced letter from TEAM's CPA firm suggests the scope of its program was limited at best.

Program Risk Management, Inc. (PRM)

PRM was TEAM's administrator from August 1, 2006 - January 31, 2012. The Administration Agreement between TEAM and PRM was vaguely worded in regards to the safety/loss control services it was required to perform, and stated it was to "provide policies and procedures, and develop and conduct a general safety and risk management program, subject to review by the Trustees, for the Trust and its Members. If individual Members request additional safety and loss control services, Administrator may provide these services at an additional fee to be paid by the requesting Members." A further description of PRM's "general safety and risk management program" did not exist in the agreement or any other documents we obtained; accordingly, the specific services to be provided under the agreement are unknown.

An addendum to a 2008 questionnaire submitted to the WCB by PRM included a description of the safety program that supposedly existed for TEAM at December 31, 2007. The addendum stated "The Program Administrator provides loss control and safety engineering services under contract to the Trust." Similar to the wording contained in PRM's Administration Agreement with TEAM, the remainder of the description provided to the WCB was both general in nature and vaguely worded. For example, it is impossible to determine if the services mentioned (i.e. safety related visits) were to be provided to all members of the Trust or only those deemed as higher risks by PRM and/or the Trustees. While the description also stated that participation in the "safety effort" was mandatory, L&M believes very few members were subjected to PRM's "safety effort(s)" and, as a result, were not mandated to participate in any employee safety initiatives whatsoever. John Conroy, the President of PRM, informed L&M that its agreement did not require PRM to provide "safety engineering services" to all members, rather, "safety engineering services" would be provided to a member with a lot of losses or if a member requested such.

Of the 16 member files inspected by L&M, 8 members participated in TEAM during at least one year of PRM's term as administrator (31 separate policy periods). Our inspection of these 8 member files revealed no documentation to indicate PRM provided any general loss control services or ever performed a safety site visit for any of these members. The WCB provided L&M with a "Safety Audit & Loss Control Report" submitted by PRM to the WCB during 2008. The Safety Audit was prepared for Member F of Table 2 and included a detailed description of the member's operations and safety procedures. Because this was the only safety documentation we could locate applicable to PRM's term as administrator, we contacted John Conroy and were informed that safety related documents were not maintained in member files, rather the documents were digital images in a separate software program, and not provided to SAFE.

After L&M informed John Conroy that PRM may have violated a Workers' Compensation Law [Section 50-3-a(7)(c)] because it did not provide SAFE with these documents, Mr. Conroy agreed to provide all safety related documents for a sample of 20 members chosen by L&M. Accordingly, in mid-March of 2012, L&M provided John Conroy with a list of 20 members. The 20 members we selected included 16 who L&M believes incurred significant losses, thus we would have expected PRM to have performed loss control services on all or a majority of those 16 members.

In response to our numerous follow-up requests for this information to both Mr. Conroy and his legal counsel over the next three months, Mr. Conroy continually informed L&M that he would provide us with the requested safety documentation, and frequently reiterated that PRM's agreement with TEAM did not require it to provide "safety engineering services" to all members.

On June 15, 2012 Mr. Conroy provided a "Safety Audit & Loss Control Report" for two members, one of which was for one of the twenty members we originally requested loss control documentation for. The loss control reports appear to have been prepared by a PRM representative upon the completion of

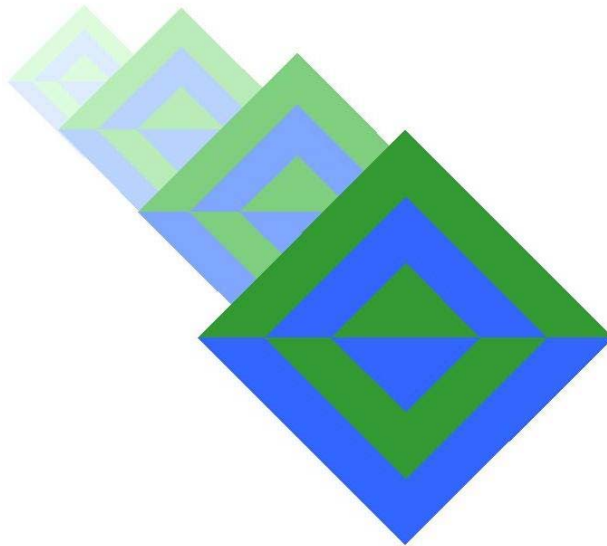
a safety visit, and included a yes/no checklist for safety related criteria, a section for safety recommendations, and an area for the overall evaluation of the member's safety compliance (using a 1-5 grading scale whereas a 1 indicated significant deficiencies). One of the two loss control reports provided indicated PRM rated the member's understanding of loss control and safety attitude each as "2", yet the safety recommendation section was left blank. L&M questions why PRM would rate a member's general safety program below average, but fail to provide recommendations for improvement. The second loss control report included a detailed assessment of the member's safety program and rated each safety criterion as "4", but also failed to list recommendations for improvement. L&M believes that although PRM considered this member's safety program above average, recommendations could have further improved its program.

Since PRM failed to provide us with safety related documentation for the other 19 members in our 20 member sample, we strongly suspect safety visits were not performed on any of these remaining members.

L&M located an abandoned webpage established by PRM that stated "The most important factor in any successful Workers' Compensation program is prevention of workplace injuries. A strong focus on safety awareness and loss prevention at the individual customer level is the key to reducing loss frequency and severity." The abandoned PRM webpage lists examples of effective loss control services including "site visits to identify exposures and potential loss sources, safety training programs designed for specific loss exposures, and Return-To-Work Programs customized for the workplace." Another abandoned PRM webpage setup specifically for TEAM stated "The Trust [TEAM] is one of many administered by Program Risk Management, Inc., which provides employers with information, training, and assistance designed to help them control workplace hazards, reduce employee accidents, and thereby minimize the loss of earnings and workers' compensation expenses." L&M believes these statements indicate PRM was aware of the importance of an effective loss control program; however, our member file inspections and limited additional information we obtained from PRM suggest very few of the services mentioned on PRM's abandoned webpages were actually ever implemented by it for TEAM.

Based on the lack of safety documentation present in the member files inspected, and PRM's failure to provide us with substantial information to suggest otherwise, we believe PRM's loss control/safety program for TEAM could be labeled as insignificant at best.

# TEAM TRANSPORTATION WORKERS' COMPENSATION TRUST



## QUALITY ASSURANCE CLAIM AUDIT

May 2012

*Prepared by*

***KBM*** **MANAGEMENT, INC.**

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## AUDIT OVERVIEW

KBM Management, Inc. audited compensation claims processed on behalf of TEAM Transportation Workers' Compensation Trust (TEAM) dating back to the origin of the Trust. Claims were processed by various administrators (see below for details) from the inception of the Trust until the time the WCB took possession of the Trust on 2/1/12, and transferred the claims administration responsibilities to SAFE, LLC. (SAFE). The audit field work was performed April 30, 2012 through May 14, 2012. The primary objective of our claim audit was to evaluate and express opinions on the performance of the administrators prior to SAFE, LLC.

<u>Administrator Name</u>	<u>Policy periods</u>
First Cardinal Corp. (FC)	10/15/95 - 11/6/00
APA Partners, Inc. (APA)	11/7/00 - 11/6/01
Consolidated Risk Services, Inc. (CRS)	11/7/01 - 7/31/06
Program Risk Management (PRM)	8/1/06 - 7/31/10
PMA Management Corp. (PMA)	8/1/10 - 1/31/12
SAFE, LLC	2/1/12 - present

The audit examination included a sample of claimants' files processed while under the authority of the prior administrators with dates of injury from 1/22/97 through 6/2/10.

The transfer of claim information from the prior administrators to SAFE created many unforeseen challenges. Claim files were generally unorganized and incomplete. A significant amount of time was spent attempting to locate the claim file data and match bills to checks. We found that a significant amount of medical bills were missing from the files, and therefore, many checks that were issued could not be matched to a bill. Evidence suggests the transfer of information from PRM to PMA was incomplete and haphazard.



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.

Thirteen open files and four closed files were audited. We also had very limited access to closed files as PMA was unable to locate files for claimants with names beginning with A-J. The total dollar value of the claims audited is approximately \$3,725,896. Please note that this figure may not be accurate due to the issues that developed during the information transfer from PRM to PMA. Even this limited file selection provided great insight into the prior administrator'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 Administrators' 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

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TEAM Transportation Workers' Compensation Trust  
Administrator: see page 2 for list of Administrators

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, TEAM had specific stop-loss coverage with deductibles of \$300,000 to \$500,000. 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).

No issues with IME's were noted with this audit.

### **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.

CRS filed C-250's on two files but did not complete the process (RO4 and RO14), PRM also filed a C-250 on file RO14. Although the C-250's were filed, none of the administrators filed the prior medical records before the 7/1/10 deadline; therefore, nothing can be done with those claims to obtain relief at this juncture. The estimated loss to the Trust on file RO14 is approximately \$64,259.12. We estimated a loss to the Trust on file RO4 under section "Other Conclusions" with regard to Section 25-a. There were two other claims wherein prior injuries were noted in the medical reports; however, the prior administrators did not file C-250's on those files: (RO1 (FC) and RO16 (CRS & PRM). The estimated loss to the Trust on file RO1 is \$15,054.08 and RO16 is \$22,885.33 as of 5/23/12 and continues to grow. Section 15-8 was accepted on three files and the Trust is receiving reimbursements on those files every six months (RO6, RO11 and RO13).

**CLAIM DETAIL**

Please note that the “Amount Reserved” is the total reserve at the time the files were transferred from PMA to SAFE. The “Amount Paid” is the total paid at the time the file was audited.

**Open Claims**

File #RO1	Date of injury: 1/22/97	Amount Reserved: \$	(.32)
		Amount Paid:	\$ 41,355.58
		KBM's estimate:	\$ 45,797.20

- ANCR: back – 60% apportioned to this file for medical and indemnity
- The file notes on this claim only go back to 1/25/02 (SAFE was also given a binder of printed notes from APA which are apparently from 2000 but these are undated).
- This file was closed prematurely by PMA on 12/15/11. The file was reopened by SAFE when it was transferred to that office for handling as there were outstanding medical bills that needed to be paid with the likelihood of continued treatment.
- This file was under-reserved by PMA as it should not have been closed. The claimant has had intermittent lost time with 10.2 weeks of lost time over the previous 13.6 years. If the claimant does not incur any further lost time before May 31, 2014, this file will become eligible for relief under Section 25-a.
- A C-250 was never filed on this claim by FC. They obviously had a good case for Section 15-8 since they obtained apportionment against a prior back injury. The estimated loss to the Trust for not filing the C-250 on this case is \$15,054.08.
- There is an indemnity overpayment on this file of \$2,839.51; this appears to have occurred during the time when First Cardinal handled the file. At one time they secured an agreement with the claimant and his attorney to repay the funds at \$50 per week and it appears the claimant made several payments and then stopped.
- A penalty was assessed against this file in the amount of \$198.44 for late payment of awards to the claimant with an additional \$50 assessment payable to the WCB. The penalty was against CRS; however, it appears the payment may have been made by the Trust and charged to the file.
- CRS also contributed to the indemnity overpayment by \$792.20 by mistakenly reimbursing the wrong employer for wage reimbursement. When the claimant's attorney brought it to the Judge's attention, CRS was ordered to pay the claimant directly and CRS was told to seek reimbursement from the employer for

the funds they paid in error. A NOD was issued indicating TEAM was to reimburse the employer subject to "restoration of accruals"; however, there was nothing in the file from the employer requesting reimbursement for wages paid. As a result, TEAM should have reimbursed the claimant directly. Instead, they reimbursed the claimant's employer at the time of injury even though there was information in the file (including the claimant's testimony) that indicated the claimant had not worked for that company for several years. CRS attempted to obtain a reimbursement from the employer by writing two different letters requesting the funds be returned to them as they were sent in error but there was no indication they were ever received.

- There were a total of twenty two medical bills that were overpaid on this file; the various TPA's paid the bills in full instead of the 60% apportionment that they were supposed to pay. The number of bills and the total overpayments by TPA are as follows: FC; 5 - \$474.58, APA; 6 - \$167.01, CRS; 3 - \$184.34, PRM; 1 - \$11.29 and PMA; 6 - \$610.62 (\$46.02 was refunded by the doctor on 2 bills which left a remaining o/p of \$564.60).
- Forty eight bills were paid within forty five days of the dates received.
- Thirty seven bills were paid in excess of forty five days of the dates received.
- Twenty two bills could not be matched to a check.
- Nineteen checks could not be matched to a bill in the file.
- Twenty one 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 #RO2	Date of injury: 6/16/97	Amount Reserved: \$11,040.69
		Amount Paid: \$10,348.55
		KBM's estimate: \$30,915.45

- ANCR: left knee
- This file was under-reserved by PMA. PMA did not have an indemnity reserve set on this file but should have since the claimant had surgery on his knee and would therefore be eligible for a SLU award.
- The file notes on this claim only go back to 8/14/07 (there is one older note from APA which is undated). PRM's notes from 8/14/07-1/22/10 all indicate they are attempting to locate the file to review for Section 25-a, one note indicates they do not have a WCB# for the file, however; KBM notes that the doctor's reports all had the WCB# listed on them.

- PRM attempted to obtain relief under Section 25-a on this file but it was denied. This denial was based on the fact that there was never a "true closure" of the file for the purposes of Section 25-a since the issue of permanency initially raised in the 5/29/98 report of Dr. Lewish was never resolved. However, the Board Panel may have come to this decision because the carrier did not file a timely rebuttal; therefore, there was no dissenting opinion to Special Funds appeal of the decision! PMA's legal counsel filed its rebuttal one day after the deadline; therefore, it was not timely and was not considered. In that rebuttal, legal counsel cited several cases to support its case; and had it been filed timely, the outcome may have been a different one.
- The bill from Hamberger & Weiss for service on 7/27/10 should have been denied by PMA. The total amount paid was \$180., and was for the Memorandum of Law filed late. Because of the untimely filing, it was not considered by the Board Panel with regard to the appeal for Section 25-a.
- A medical bill from Gregory Lewish, MD for service on 2/28/98 was overpaid by First Cardinal. The total amount paid was \$97.17, while the total amount owed was \$57.53, resulting in an overpayment of \$39.64.
- A medical bill from Gregory Lewish, MD for service on 4/4/11 was overpaid by PMA. The total amount paid was \$103.06, while the total amount owed was \$51.53, resulting in an overpayment of \$51.53. The physician's office determined that this was a duplicate payment and refunded the full amount of the overpayment.
- Thirteen bills were paid within forty five days of the dates received.
- One bill was paid in excess of forty five days of the date received.
- Five bills located in the file could not be matched to a check.
- Eleven checks could not be matched to a bill in the file.
- Ten 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 #RO4	Date of injury: 12/22/99	Amount Reserved: \$ 0.00
		Amount Paid: \$27,627.21
		KBM's estimate: \$ 6,929.22

- ANCR: right knee
- This file was closed when it was transferred to SAFE as it was being reopened by the WCB at that time to address an updated SLU opinion and apportionment between two TEAM files and an injury that occurred with a different employer.



- The reserves placed on this file by SAFE are sufficient to cover the balance owed on the SLU award as apportioned between the three files involved with this claimant's right knee (two files belong to the Trust and the third file is the responsibility of a volunteer fire department).
- The claimant had two different injuries to his right knee while his employer was insured by the Trust for Workers' Compensation purposes; this case and an injury that occurred on 2/15/01. An apportionment opinion was rendered in 2002 indicating 50% responsibility to each file. If this issue had been taken care of and the apportionment memorialized in 2002 this case would now fall under the provisions of Section 25-a and the Trust would not be responsible to pay any additional funds. Loss to the Trust from the two files is approximately \$15,700.
- CRS filed a C-250 on this case; however, they did not follow through by 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 no scanned documents or paper file to review for this claim. All bills reviewed were located in the eCase file.
- Nine bills were paid within forty five days of the dates received.
- Four bills were paid in excess of forty five days of the dates received.
- One bill located in eCase could not be matched to a check.
- Thirteen checks could not be matched to a bill in the file.

File #RO6	Date of injury: 1/14/01	Amount Reserved: \$ 5,301.79
		Amount Paid: \$134,370.28
		KBM's estimate: \$ 25,653.00

- ANCR: low back – apportioned 75% to this file
- This file was under-reserved by PMA. This file has 100% reimbursement through Section 15-8; therefore, it is necessary to reserve the file for one year of indemnity and medical expenses to cover the payments necessary while awaiting reimbursement from Special Funds.
- A medical bill for the provider "Working RX" for service on 11/7/05 was overpaid by CRS. The total amount paid was \$630.44, while the total amount owed was \$63.44, resulting in an overpayment of \$567.00.
- A medical bill for Samaritan Medical Center for service on 3/10/06 was paid by PRM despite it being paid previously by CRS. The bill of \$52.83 was previously paid by CRS on 6/1/06.
- A penalty was assessed on this file against PRM for failure to pay benefit installments timely. The penalty of \$420.25 was assessed on 4/17/09. It appears PRM never paid the penalty, or

the claimant's attorney's fee that he was granted at the same hearing (\$150), nor did they file a C-8/8.6 which is required when awards are rendered at a hearing and reflected on a NOD.

- Seventy four medical bills were paid incorrectly resulting in an overpayment of \$3,672.43. These bills were paid at 100% instead of the 75% apportionment that was supposed to be paid. CRS was responsible for 53 of the overpayments for a total of \$2,418.89; PRM was responsible for the remaining 21 or \$1,253.54. We believe PRM became aware of these overpayments when they completed Section 15-8 detail sheets and detailed all of the medical bills paid during the period for which they were requesting reimbursement and crossed out the total amount they paid and replaced it with the correct 75% apportionment rate since they knew Special Funds would not reimburse them for the incorrect amount. At that point they should have requested reimbursement for the overpayments from the providers.
- Forty five bills were paid within forty five days of the dates received.
- Fifty four bills were paid in excess of forty five days of the dates received.
- Three bills located in the file could not be matched to a check.
- Eighteen checks could not be matched to a bill in the file.
- Eighty one 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 #RO11	Date of injury: 4/29/02	Amount Reserved: \$ 3,007.43
		Amount Paid: \$224,093.56
		KBM's estimate: \$ 25,760.00

- ANCR: low back and umbilical hernia
- This file was under-reserved by PMA. This file has 100% reimbursement through Section 15-8; therefore, it is necessary to reserve the file for one year of indemnity and medical expenses to cover the payments necessary while awaiting reimbursement from Special Funds.
- A medical bill from the provider "Healthcare Associates in Medicine" for service on 1/16/04 was paid by PRM despite it being paid previously by CRS. The bill of \$38.62 was previously paid by CRS on 4/1/04.
- Eighteen bills were paid within forty five days of the dates received.
- Twenty bills were paid 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 date received.

File #RO12    Date of injury: 9/6/02                      Amount Reserved: \$29,822.51  
    Amount Paid:         \$35,326.49  
    KBM's estimate:    \$15,000.00

- ANCR: low back – apportioned 40% as of 6/26/07
- This file is over-reserved. The awards were suspended at the last hearing as the carrier on the companion file has raised Section 114-a (fraud). The claimant's attorney has requested a Section 32 settlement of \$20,000 to resolve both cases (which we believe is much too high considering the issues at hand).
- A pharmacy reimbursement for service during the period 4/5/10-11/12/10 was overpaid by PMA. The total amount paid was \$113.76, while the total amount owed was \$45.50, resulting in an overpayment of \$68.26.
- A mileage and pharmacy reimbursement for services during the period 6/24/08-12/1/09 was overpaid by PRM. The total amount paid was \$240.58, while the total amount owed was \$97.03, resulting in an overpayment of \$143.55.
- An expense bill for Walsh & Hacker (legal counsel) for service on 6/27/11 was overpaid by PMA. The total amount paid was \$321.29, while the total amount owed was \$231.29, resulting in an overpayment of \$90.00.
- Two bills were paid within forty five days of the dates received.
- Seven bills located in the file could not be matched to a check.
- Five checks 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 date received.

File #RO13    Date of injury: 10/17/03                      Amount Reserved: \$ 34,841.77  
    Amount Paid:         \$273,698.19  
    KBM's estimate:    \$ 24,384.67

- ANCR: low back
- This file is over-reserved. Since this file has 100% reimbursement through Section 15-8; it is only necessary to reserve the file for one year of indemnity and medical expenses to cover the payments while awaiting reimbursement from Special Funds.
- PMA created a duplicate claim file for this claim; SAFE discovered this error and combined the two files. There should never be a duplicate claim file for the same injury. This could

lead to duplicate payment of medical bills as well as overpayments for indemnity due to the improper and/or incomplete history in the files.

- All of the medical bills for provider "Atlantic Wellness Center" for services rendered during the period 9/27/06-6/9/10 were overpaid by PRM. This is a Florida provider and should have been paid per the Florida fee schedule; however, PRM did not reduce the total payment to the schedule. The approximate overpayment for these bills is \$46,000. We are stating this as approximate since the last Florida fee schedule posted on-line is dated 2008 and it is not clear if Florida has continued to use those rates or just discontinued the practice of placing them on-line (KBM used the 2008 rates to calculate the overpayment on the 2008 through 2010 bills, the 2006 and 2007 schedules were available and were utilized for bills from those years).
- All of the medical bills for provider "Atlantic Wellness Center" for services rendered during the period 6/8/10-12/14/11 were overpaid by PMA. This is a Florida provider and should have been paid per the Florida fee schedule; however, PMA did not pay the bills properly. While PMA did at least partially reduce the bills, the "general rules" of the Florida fee schedule were not followed, which states chiropractors are limited to reimbursement for only two body regions per day, two specified codes must be utilized for those two regions (97260 and 97261), and that physical therapy codes cannot be used for their billing purposes. The approximate overpayment for these bills is \$2,510. We are stating this as approximate since the last Florida fee schedule posted on-line is 2008 and it is not clear if Florida has continued to use those rates or just discontinued the practice of placing them on-line (we used the 2008 rates to calculate the overpayment on the 2010 & 2011 bills).
- A medical bill for provider "Coxsackie PT Assoc., Inc." for service during the period 2/24/06-3/7/06 was overpaid by PRM. The total amount paid was \$155.76, while the total amount owed was \$141.84, resulting in an overpayment of \$13.92.
- A medical bill for provider "Atlantic Wellness Center" for service on 2/23/10 was paid two times in error by PRM. This bill of \$269 was paid twice on the same date by PRM.
- One hundred seven bills were paid within forty five days of the dates received.
- Thirty four bills were paid in excess of forty five days of the dates received.
- Ten bills located in the file could not be matched to a check.
- Seventy three checks could not be matched to a bill in the file.

- One hundred one 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 #RO14	Date of injury: 1/30/04	Amount Reserved: \$ 52,672.96
		Amount Paid: \$233,957.87
		KBM's estimate: \$330,301.55

- ANCR: back
- This file is under-reserved. Since there is no relief from Section 15-8 the file needs to be reserved up to the excess limit for this policy year which is \$500,000; therefore, the reserves should not exceed that amount plus a six month "cushion" while awaiting reimbursements from the excess carrier.
- CRS and PRM both filed C-250's on this file; 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. The potential loss to the Trust for not pursuing 15-8 on this file as of 5/9/12 was \$64,259.12.
- A medical bill for Alliance Physical Therapy for service on 2/11/04 was overpaid by CRS. The total amount paid was \$55.79, while the total amount owed was \$49.60, resulting in an overpayment of \$6.19.
- A medical bill for St. Luke's Cornwall Hospital for service on 7/21/04 was overpaid by CRS. The total amount paid was \$1,034.28, while the total amount owed was \$952.11, resulting in an overpayment of \$82.17.
- A medical bill for St. Luke's Cornwall Hospital for service on 12/16/04 was overpaid by CRS. The total amount paid was \$1,458.51, while the total amount owed was \$1,084.29, resulting in an overpayment of \$374.22.
- A medical bill for Advanced Medical Support Services for service on 5/17/06 was paid by PRM in the amount of \$172.15 (incorrect amount) despite it being paid previously by CRS. The bill was previously paid by CRS on 5/25/06 (total amount paid by CRS was \$185.10, which was the correct amount).
- A medical bill for St Peter's Hospital for service on 5/11/10 was overpaid by PMA. The total amount paid was \$1,909.01, while the total amount owed was \$1,063.45, resulting in an overpayment of \$845.56.
- A mileage reimbursement bill by the claimant for service during the period 4/15/04-7/3/06 was overpaid by PRM. The total amount paid was \$753.84, while the total amount owed was \$628.56, resulting in an overpayment of \$125.28.

- A medical bill for Community Care Physicians for service on 7/11/08 was overpaid by PRM. The total amount paid was \$142.18, while the total amount owed was \$0.00, resulting in an overpayment of \$142.18. This bill was for treatment of an unrelated body part (right knee); therefore, it should not have been paid.
- A mileage reimbursement bill for the claimant for service during the period 9/20/04-5/2/05 was overpaid by CRS. The total amount paid was \$1,321.62, while the total amount owed was \$1204.62, resulting in an overpayment of \$117.00.
- One hundred one bills were paid within forty five days of the dates received.
- Forty eight bills were paid in excess of forty five days of the dates received.
- Six bills located in the file could not be matched to a check.
- Twenty three checks could not be matched to a bill in the file.
- One hundred seven 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 #RO15	Date of injury: 3/8/05	Amount Reserved: \$21,842.14
		Amount Paid: \$29,514.02
		KBM's estimate: \$30,500.00

- ANCR: right inguinal hernia and low back – 30% appt.
- This file is under-reserved. A Section 32 settlement demand has been received from the claimant and is being reviewed by WAMO for approval as the other carrier involved with this case has Section 15-8 on its file.
- The claimant sustained a second injury on 3/8/05. CRS mistakenly accepted that claim and began paying benefits for it until a representative of the member's new carrier; NY Transportation advised them on 4/14/05 that coverage for this account under TEAM had been cancelled on 1/1/04! The Trust was reimbursed for the funds CRS mistakenly paid on this claim.
- This file was incomplete and only had one expense bill contained therein, all medical bills reviewed were located in the eCase file.
- Eight bills located in the eCase file were paid in excess of forty five days of the dates received.
- Six checks could not be matched to a bill in the file.

File #RO16	Date of injury: 1/17/06	Amount Reserved: \$112,493.61
		Amount Paid: \$103,086.31
		KBM's estimate: \$361,384.08

- ANCR: neck and back

- This file was under-reserved by PMA. PMA's file notes indicate they sent an email to the Trust advising them of a reserve increase; however, they never posted the new reserve to the file.
- CRS and PRM both neglected to file a C-250 on this file. This had to be completed prior to the 7/1/10 deadline. The potential loss to the Trust for not pursuing 15-8 on this file as of 5/23/12 was \$22,885.33.
- A medical bill for Independent Review Services, Inc/Genex Services for service on 4/4/06 was paid by PRM despite it being paid previously by CRS. The bill of \$485.00 was previously paid by CRS on 7/6/06.
- Twenty one bills were paid within forty five days of the dates received.
- Seven bills were paid in excess of forty five days of the dates received.
- Five bills located in the file could not be matched to a check.
- Sixty eight checks could not be matched to a bill in the file.
- Seventy seven 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 #RO18 Date of injury: 5/29/08

Amount Reserved: \$ 7,922.70

Amount Paid: \$33,734.01

KBM's estimate: \$ 4,992.08

- ANCR: right wrist
- This file is over-reserved for 30% SLU of the right hand. Due to the type of injury the claimant suffered coupled with the fact that it did not require surgery; it is unlikely that he would be awarded such a high SLU. A more reasonable amount would have been between 20-25% SLU.
- There is an indemnity overpayment on this file of \$17,468.78. This was generated when PRM paid the claimant partial wages from 5/30/08-12/23/08 and total wages from 12/23/08-11/10/09 even though no wages were due for these periods. They paid the claimant in excess of a 24% SLU of the hand; therefore, if he is awarded more than a 24% SLU when the claim is finalized the overpayment will be absorbed at that time. However, this increase does not appear likely since the claimant went to his doctor on 2/24/12 for an opinion on permanency and the doctor advised his symptoms have resolved and his condition is stable.
- A medical bill for CNY Diagnostic Imaging for service on 8/11/08 was overpaid by PRM. The total amount paid was \$35.00, while



the total amount owed was \$28.52, resulting in an overpayment of \$6.48.

- A medical bill for Carey & Daley PT, PC for service on 12/18/08 was overpaid by PRM. The total amount paid was \$105.97, while the total amount owed was \$76.83, resulting in an overpayment of \$29.14.
- Thirteen bills were paid within forty five days of the dates received.
- Seven bills were paid in excess of forty five days of the dates received.
- Two bills located in the file could not be matched to a check.
- Two checks could not be matched to a bill in the file.
- Eighteen 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 #RO20	Date of injury: 2/23/10	Amount Reserved: \$46,839.43
		Amount Paid: \$13,528.57
		KBM's estimate: \$82,269.10

- ANCR: left carpal tunnel syndrome and right cubital tunnel syndrome.
- This file was under-reserved by PMA. PMA had the file reserved for 15% SLU for each hand when it should have been reserved for 20% SLU of left hand and 20% of the right arm; because of the claimant's unrelated underlying medical problems the injury may take longer to heal after surgical procedures thus increasing his overall disability rating.
- A medical bill for Russell N. Cecil, MD for service on 10/15/10 was overpaid by PMA. The total amount paid was \$75.68, while the total amount owed was \$0.00, resulting in an overpayment of \$75.68. This service took place within the 90 day follow up period after surgery (the surgery was done on 9/30/10); therefore, the Trust was not responsible to pay any fees for this visit. In addition to paying for a visit that should not have been paid, PMA paid the bill twice, doubling the error (each bill was \$37.84).
- Fifteen bills were paid within forty five days of the dates received.
- One bill was paid in excess of forty five days of the date received.
- One bill located in the file could not be matched to a check.



File #RO21 Date of injury: 6/12/07

Amount Reserved: \$ 65,278.26

Amount Paid: \$179,427.18

KBM's estimate: \$255,411.30

- ANCR: low back
- We reviewed this file specifically on the issue of Section 15-8 to determine if in our opinion, the injury qualified for reimbursement. PRM filed the C-250 in a timely manner; the adjuster's file notes indicate that the most serious prior injuries noted on the form (left knee) occurred while the claimant was in the United States Air Force. Therefore, those records would be unattainable, and furthermore, because the injury was not work-related Special Funds would not consider it for relief under Section 15-8. A review of the medical records in the file do not show any prior injury to the back, right arm or hearing loss which are the only other conditions listed on the form that could possibly have qualified for relief under Section 15-8 depending the severity of the injury to those body parts and how they occurred.

In conclusion, based on the information available in the file, PRM would not have been able to obtain Section 15-8 on this file since the injury to the left knee occurred while the claimant was in the United States Air Force and not working in the private sector.

### Closed Claims

File #RC3 Date of Injury: 6/24/97

Amount Reserved: \$ .31

Amount Paid: \$8,086.73

- ANCR: left shoulder and left wrist
- There should be no reserves on a closed file; it is unclear why \$.31 remains posted to this file under the indemnity reserve.
- There are no notes on this file and no online documents. The eCase file was empty as well. There was a paper file which appeared to be incomplete.
- Four bills were paid within forty five days of the dates received.
- Three bills were paid in excess of forty five days of the dates received.
- Three bills located in the file could not be matched to a check.
- Four checks 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 #RC5      Date of Injury: 12/1/99      Amount Reserved: \$ .53  
 Amount Paid:      \$17,038.47

- ANCR: right second finger
- This file closed with a 62.5% SLU of the right second finger with an additional 9.2 weeks for protracted healing.
- There should be no reserves on a closed file; it is unclear why \$.53 remains posted to this file (\$.42 under the indemnity reserve, \$.07 under the medical reserve and \$.04 under the expense reserve).
- A medical bill for Ignatius Daniel Roger MD for service on 4/23/01 was overpaid by APA. The total amount paid was \$69.70, while the total amount owed was \$38.62, resulting in an overpayment of \$31.08.
- Seven bills were paid within forty five days of the dates received.
- Three bills were paid in excess of forty five days of the dates received.
- Two checks could not be matched to a bill in the file.
- Four 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 #RC14      Date of Injury: 5/1/06      Amount Reserved: \$ .32  
 Amount Paid:      \$41,947.68

- ANCR: left knee
- There were no online documents to review for this file and only Volume 1 of the paper file was available for our review which had very little information in it.
- There should be no reserves on a closed file; it is unclear why \$.32 remains posted to this file (\$.05 under the medical reserve and \$.27 under the expense reserve).
- This file closed with a 20% SLU award of the left leg. There is an indemnity overpayment on this file of \$20,926 as they paid the claimant in excess of the SLU for temporary total and temporary partial benefits. The claimant was a malingerer; however, had PRM acted upon medical reports in a timely manner as soon as received, this overpayment could have been reduced greatly. The first SLU report was issued in March 2009 but PRM did not file an RFA-2 until October 2009 requesting the suspension of benefits.
- One bill located in the file and eight bills located in eCase were paid within forty five days of the dates received.
- Two bills located in the file and eight bills located in eCase were paid in excess of forty five days of the dates received.

- Ten checks could not be matched to a bill in the file.

File #RC20	Date of Injury: 6/2/10	Amount Reserved: \$	0.00
		Amount Paid:	\$266,258.87

- ANCR: death
- This file was closed by PMA with a Section 32 settlement of \$242,668.00 which represents approximately eleven years of benefits. This was a very good settlement considering the claimant's son was only 19 months old at the time the settlement was finalized. If the file had not been settled the Trust would have been responsible for paying the child until he reached the age of 18, or possibly 23 if he attended college.
- No medical bills were paid on this file.

### **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, we believe three had high reserves (RO12, RO13 and RO18), nine had low reserves (RO1, RO2, RO6, RO11, RO14, RO15, RO16, RO20 and RO21) and one file had been closed prior to transfer and had to be reopened by SAFE due to apportionment issues (RO4).

There were also reserves on three of the four closed files that we reviewed, RC3, RC5 and RC14. All of these files had minimal reserves (\$.31, \$.53 & \$.32 respectively); however, no reserves should exist on a closed file.

### **OTHER CONCLUSIONS**

Based on the audited claims, the administrators prior to SAFE failed to provide a minimum level of claims processing service on behalf of TEAM. Industry averages require 95% procedural accuracy; we show that the prior administrators only processed 36.04% of the medical bills in our sample within 45 days of receipt. The deficiencies described in this report involve many areas including overall claim management,

undocumented payments, late payments and poor transfer of information.

Due to our limited file sample, we are unable to estimate the overall financial loss to TEAM generated by its prior administrators; however, of the seventeen (17) claims reviewed, eleven (11) contained several financial errors (indemnity overpayments: \$41,234.29 (FC \$2,839.51 and PRM \$38,394.78), medical overpayments: \$57,539.20 (FC \$514.22, APA \$198.09, CRS \$3,749.81, PRM \$48,832.98 and PMA \$4,244.10), two (2) contained penalties (\$668.69) and four (4) had missed opportunities for Section 15-8 with a combined approximate loss to the Trust of \$102,199 (CRS, FC & PRM) which may be significant if interpolated to all the claims incurred during the Trust's entire active life.

SAFE advised us that they have determined that during the transfer of information from PRM to PMA a lot of information was lost. In addition, SAFE informed us that all the history was lost on closed files subsequently reopened by PMA. They also advised that they discovered one file that was accepted by PRM for an employer that was not an active member of the Trust.

One of the open files audited (RO4) included an apportionment opinion rendered in 2002 when CRS had control of the files. If CRS had memorialized the apportionment opinion with the WCB in 2002 it could have potentially saved the Trust approximately \$15,700 because the file was reopened in 2012 to award the claimant a schedule loss of use award. However, since there was an outstanding issue, Special Funds would not accept the case under the provisions of Section 25-a. Since an indemnity payment has been made on the file it will not be eligible to submit to Special Funds again for another 3 years.

One file audited was a duplicate claim file (RO13). SAFE discovered the duplicate; closed and combined all of the financial information into one claim. We believe the duplicate claim file was opened by PMA since KBM found this same issue with another Trust we reviewed previously that involved a transfer of claim information from PRM to PMA. PMA's system should never have allowed this to occur. A duplicate claim increases the risk that duplicate payments could be made for medical and indemnity since there is no way for the system to identify the duplicate payment since it was made on a different file.

**ACRONYMS AND DEFINITIONS** (some of which may not be applicable to this report):

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.).

RFA – 2 – Carrier/Employer’s Request for Further Action – this form is filed by the carrier/employer to request a hearing or administrative decision when they have an issue they believe needs to be addressed by a judge.

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

WAMO - Waiver Agreement Management Office (WAMO)

The 2007 Workers’ Compensation Reform legislation mandated that the NYS Workers’ Compensation Board (Board) Chair establish WAMO, “...to negotiate and seek Board approval for waiver agreements on behalf of the special disability fund.” [WCL §32(e)]. This and the other 2007 legislative amendments within WCL §32, are part of the two-pronged approach to close the Special Disability Fund as quickly and completely as possible; and thereby greatly reduce or eliminate the annual assessments against self-insured employers, insurance carriers and the State Insurance Fund. The first prong of the reform legislation’s approach is the prohibition of Special Disability Fund reimbursement under WCL §15(8)(d) and §14(6) for any and all cases with a date of accident or date of disablement on or after July 1, 2007. The second prong is the resolution of claims by WAMO, together with the other mechanisms provided by the amendments to WCL §32; all of which will aid in greatly reducing or eliminating assessments

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).

## Team Transportation Workers' Compensation Trust

### L&M's Summation of Significant Comments Noted and Conclusions Reached by KBM Management, Inc. in its Quality Assurance Claim Audit Report

#### One other miscellaneous claims handling issue we uncovered during our procedures

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

- KBM noted at least two positive observations as a result of its audit including (1) certain Section 15-8 (Second Injury Fund) reimbursement requests were accepted by the WCB, and (2) the proper use of independent medical examinations on all 17 files audited.
- Nine of the thirteen (or approximately 70%) open files audited were under-reserved by the Claims TPA that serviced the claims prior to SAFE, LLC. L&M notes that the magnitude of under-reserving on the nine claims was significant. As discussed in report section "Establishment of Yearly Reserves on the Balance Sheet," SAFE, LLC significantly increased the case basis reserves previously established by PMA Management Corp. by \$27,339,000 (from \$8,699,000 to \$36,038,000).
- The claims files were often unorganized and incomplete. KBM's inability to locate numerous important documents in the claims files it selected for audit is cited throughout its report. An example of such was the inability of PMA Management Corp. (the Claims TPA prior to SAFE, LLC) to locate any closed claim files for claimants with letters that began with A through J.
- Two different administrators filed Form C-250's on two files to obtain relief from Special Funds, but neither filed the necessary medical records with the WCB prior to the July 1, 2010 deadline, which negated the Trust's ability to potentially receive relief. KBM estimated this oversight cost the Trust approximately \$64,000.
- Three different administrators failed to file for Second Injury Fund reimbursement on two files that most likely would have qualified. KBM estimated this may have cost the Trust almost \$38,000.
- One duplicate claim file was noted, which enhances the risk that duplicate payments for the same injury could be made to medical or other service providers.
- CRS failed to "memorialize" an apportionment opinion it received in 2002, which precluded TEAM from applying for reimbursement from Special Funds under the provisions of Section 25-a, since indemnity payments were made to the claimant. Because of this, the Trust must wait three years until it may submit the claim to Special Funds for potential reimbursement.
- Numerous overpayments/duplicate payments to claimants and/or medical providers were noted. According to KBM, overpayments totaling \$41,234 (indemnity) and \$57,539 (medical) were made in the seventeen files audited.
- KBM noted approximately \$700 of penalties paid in the files audited. The penalties were assessed by the WCB and relate to the untimely payment of awards/benefits to claimants. Of additional concern is that KBM believes at least some of the penalties may have been funded by TEAM instead of the administrator that had been cited for disbursing the awards/benefits late.
- Finally, KBM concluded that the accuracy of the claims processing systems used by the various claims administrators prior to SAFE, LLC were well below industry averages, which require 95% procedural accuracy. For example, only approximately 36% of the medical bills tested were processed within 45 days of receipt as required under the New York State Workers' Compensation Law.

One other miscellaneous claims handling issue we uncovered during our procedures:

L&M also became aware of a \$1,930 penalty imposed by the WCB for PMA's failure to timely pay an amount due under a particular claim.

**Team Transportation Workers' Comp Trust**  
Board of Trustees' Term Information and Meeting Statistics

**APPENDIX 17**

Trustee Name

Company Name

Participation Period(s)

Trustee Term

<b>1 Baldari, Leonard</b>	5/31/05 - 5/31/08
Mystic Materials Management, Inc. and related entities	
Group Member: 1/1/04 - 12/31/10	
<b>2 Cason, Fred</b>	1/1/97 - 4/2/05
Cason , Inc.	
Group Member: 1/1/97 - 12/31/10	
<b>3 Cason, Jeanne - Secretary/Treasurer, effective 5/13/10</b>	4/1/09 - 1/31/12
Cason , Inc.	
Group Member: 1/1/97 - 12/31/10	
<b>4 Champagne, Joe</b>	1/7/00 - 5/18/04
JA Champagne, Inc.	
Group Member: 1/7/00 - 6/28/04	
<b>5 Earl, Scott</b>	3/28/95 - sometime
County Waste & Recycling Services, Inc. and related entities	between 5/01 and 2/02,
Group Member: 10/15/95 - 12/31/10	5/18/04 - 9/23/05,
	and 6/29/10 - 5/31/11
<b>6 Feher, Larry</b>	1/1/08 - 5/31/11
Feher Rubbish Removal, Inc.	
Group Member: 7/15/06 - 12/31/10	
<b>7 Houk, Gilbert - Secretary/Treasurer, unknown effective date through 5/12/10</b>	9/23/05 - 5/12/10
County Waste & Recycling Service, Inc. and related entities	
Group Member: 10/15/95 - 12/31/10	
<b>8 Lanoue, G. William</b>	4/15/95 at the latest -
Ambil Carriers, Inc.	unknown termination date
Group Member: 10/15/95 - 8/10/05	
<b>9 Murphy, J. Dana - Chairman</b>	3/28/95 - 1/31/12
West Central Environmental Corp.	
Group Member: 10/15/95 - 12/31/10	
<b>10 Rexer-Rood, Pamela</b>	1/1/08 - 5/31/11
Amrex Chemical Company, Inc.	
Group Member: 11/1/96 - 12/31/10	

**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 is a reasonably accurate depiction of the individuals that served on TEAM's Board of Trustees and their terms of service.
- Records suggest the Trust was legally formed on 4/15/95, but did not begin formal operations until 10/15/95. Dates around the legal formation date were used as the beginning service date for the two Trustees that signed the Trust document and one other Trustee as well.