



ANDREW M. CUOMO
GOVERNOR

STATE OF NEW YORK
WORKERS' COMPENSATION BOARD
328 STATE STREET
SCHENECTADY, NY 12305
(518) 408-0469
FAX (518) 473-1415



ROBERT E. BELOTEN
CHAIR

JEFFREY FENSTER
EXECUTIVE DIRECTOR

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

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

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

Dear Gentlemen:

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

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

Sincerely,

Robert E. Beloten
Chair

Enclosure

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

I. Insolvent Non-Municipal Group Self-Insured Employers

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

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

Name of Insolvent Non-Municipal Group Self-Insured Trust	Date of Transition	Total Liability from Previous Audited Financial Statement[^]	Total Liability from Most Recent Audited Financial Statement [^]
Auto Service and Repair Self Insurance Trust (AUTO)	10/15/2010	\$ 4,849,000	\$ 3,669,000
Builders Self Insurance Trust (BUILDERS)	05/01/2009	\$ 14,512,000	\$ 12,892,000
Elite Contractors Trust of New York (ELITE)	04/01/2010	\$ 76,584,000	\$ 68,027,000
Healthcare Industry Trust of New York (HITNY)	02/01/2008	\$ 180,927,000	\$ 164,038,000
Healthcare Providers Self Insurance Trust (HCP)	10/12/2009	\$ 207,917,000	\$ 193,052,000
Manufacturing Industry WC Insurance Trust (NYMIT)*	03/31/2006	\$ 10,242,000	\$ 6,655,000
Manufacturing Self Insurance Trust (MSIT)	06/01/2007	\$ 30,754,000	\$ 24,973,000
New York Healthcare Facilities WC Trust (HCF)*	07/31/2006	\$ 28,666,000	\$ 22,130,000
New York State Cemeteries Trust (NYSCT)	07/07/2008	\$ 2,187,000	\$ 1,926,000
OHI Workers' Compensation Self-Insurance Trust(OHI)	07/01/2011	\$ 7,584,000	\$ 7,151,000
Provider Agency Trust for Human Services (PATH)*	03/01/2006	\$ 8,448,000	\$ 8,607,000
Public Entity Trust of New York (PETNY)	01/15/2008	\$ 6,950,000	\$ 4,894,000
Real Estate Management Trust of New York (REMTNY)	07/07/2008	\$ 6,102,000	\$ 5,384,000
Retail and Wholesale Industry WC Self Insurance Trust (RWWCT)	10/15/2008	\$ 4,403,000	\$ 3,062,000
Trade Industry WC Trust for Manufacturers (TRADE)	05/16/2008	\$ 18,094,000	\$ 18,709,000
Transportation Industry WC Trust (TRANSPORTATION)	09/08/2008	\$ 97,042,000	\$ 77,348,000
Wholesale and Retail WC Trust of New York (WRWCT)	08/11/2008	\$ 51,727,000	\$ 40,817,000
Total of GSIT's with completed Deficit Reconstructions		\$ 756,988,000	\$ 663,334,000
Community Residence Insurance Savings Plan Self-Insurance Trust for Workers Compensation(CRISP)**	08/08/2011	\$ 27,165,000	\$ 65,444,000
Empire State Transportation WC Trust(EMPIRE)	01/01/2012	\$ 42,536,000	\$ 42,536,000
Long Term Care Risk Management Group (LONG TERM CARE)**	04/14/2011	\$ 22,602,000	\$ 32,178,000
New York McDonalds Operators' Workers' Compensation Trust(McDONALDS)**	07/15/2011	\$ 3,239,000	\$ 4,596,000
Selective Safety Trust (SELECTIVE)**	03/18/2011	\$ 13,337,000	\$ 15,027,000
Team Transportation Workers' Comp Trust(TEAM)**	02/01/2012	\$ 13,867,000	\$ 44,216,000
Total of GSIT's prior to completed Forensic Review		\$ 122,746,000	\$ 203,997,000
Total All Trusts		\$ 879,734,000	\$ 867,331,000
*The Claims Liability has been transferred via an Assumption Liability Policy. This amount has been updated upon finalization of the Assumption Liability Policy.			
**Significant restatement of the claims reserves in current year audited financial statements.			
[^] Does not reflect amounts held by the WCB or collections expected to be recovered.			

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

Name of Insolvent Non-Municipal Group Self-Insured Trust	Date of Transition	Number of Open Claims as of Transition	Number of Open Claims as of 11/30/2012	Difference
Auto Service and Repair Self Insurance Trust (AUTO)	10/15/2010	21	11	(10)
Builders Self Insurance Trust (BUILDERS)	05/01/2009	63	48	(15)
Elite Contractors Trust of New York (ELITE)	04/01/2010	501	238	(263)
Healthcare Industry Trust of New York (HITNY)	02/01/2008	1,651	625	(1,026)
Healthcare Providers Self Insurance Trust (HCP)	10/12/2009	1,168	731	(437)
Manufacturing Industry WC Insurance Trust (NYMIT)*	03/31/2006	149	0	(149)
Manufacturing Self Insurance Trust (MSIT)	06/01/2007	256	88	(168)
New York Healthcare Facilities WC Trust (HCF)*	07/31/2006	294	0	(294)
New York State Cemeteries Trust (NYSCT)	07/07/2008	24	8	(16)
OHI Workers' Compensation Self-Insurance Trust(OHI)	07/01/2011	38	31	(7)
Provider Agency Trust for Human Services (PATH)*	03/01/2006	338	0	(338)
Public Entity Trust of New York (PETNY)	01/15/2008	116	29	(87)
Real Estate Management Trust of New York (REMTNY)	07/07/2008	57	23	(34)
Retail and Wholesale Industry WC Self Insurance Trust (RWWCT)	10/15/2008	29	16	(13)
Trade Industry WC Trust for Manufacturers (TRADE)	05/16/2008	182	46	(136)
Transportation Industry WC Trust (TRANSPORTATION)	09/08/2008	604	168	(436)
Wholesale and Retail WC Trust of New York (WRWCT)	08/11/2008	390	134	(256)
Total of GSIT's with completed Deficit Reconstructions		5,881	2,196	(3,685)
Community Residence Insurance Savings Plan Self-Insurance Trust for Workers Compensation(CRISP)	08/08/2011	574	384	(190)
Empire State Transportation WC Trust(EMPIRE)	01/01/2012	464	421	(43)
Long Term Care Risk Management Group (LONG TERM CARE)	04/14/2011	263	205	(58)
New York McDonalds Operators' Workers' Compensation Trust(McDONALDS)	07/15/2011	48	25	(23)
Selective Safety Trust (SELECTIVE)	03/18/2011	92	76	(16)
Team Transportation Workers' Comp Trust(Team)	02/01/2012	193	153	(40)
Total of GSIT's prior to completed Deficit Reconstructions		1,634	1,264	(370)
Total All Trusts		7,515	3,460	(4,055)
*The Claims Liability has been transferred via an Assumption Liability Policy.				

II. Qualified Non-Municipal Self-Insurer Groups

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

Trust Name	2013 Status
Associated Builders & Contractors Compensation Trust	Closing 12/31/12
Electrical Employers Self-Insurance Safety Plan	Fully funded pending consultant review
New York College & University Risk Management Group	Fully funded
New York Lumbermen's Insurance Trust Fund	Fully funded

- B.** There are an additional 34** inactive trust as of December 31, 2012. Groups have been issued guidelines on successfully managing their groups' obligations in run off. A significant component of this is ensuring sufficient cash is available to pay outstanding claims obligations. Specifically, groups that have 18 months of cash or less are required to levy an assessment to their members. Groups that fail to maintain cash in excess of 9 months of payouts will be transitioned to the Board for liquidation. At this time, there are 2 trusts that have between 6 and 18 months of cash. The Board continues to work with the trusts to ensure amounts are levied against their former members. To the extent such levies are successful; the Board will allow a trust to continue to administer its own run off. In addition, there are 15 groups with cash balances sufficient to cover 18 to 36 months of claims and another 17 groups whose cash is sufficient for 36 months or more. It is important to note, however, that the inability of these groups to maintain successful cash balances will result in the number of insolvent trusts increasing, which will lead to increased assessments of the self-insurance industry.

**One inactive trust executed an assumption of liability policy in August 2012

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

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

COLLECTIONS FROM MEMBERS

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

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

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

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

NYMIT DACAs:	\$5,029,000
PATH DACAs:	\$16,184,000
HCF DACAs and Tender Offer:	\$31,824,000
MSIT Tender Offer:	\$17,047,000
ELITE MOUs and DACAs:	\$8,753,000
HITNY MOUs and DACAs:	\$44,145,000
HCP MOUs and DACAs:	\$28,484,000
NYSCT MOUs and DACAs:	\$1,280,000
PETNY MOUs and DACAs:	\$4,885,000
REMTNY MOUs and DACAs:	\$842,000
RWWCT MOUs and DACAs:	\$2,661,000
WRWCT MOUs and DACAs:	\$12,090,000
ASR MOUs and DACAs:	\$551,000
TIWCT MOUs and DACAs:	\$5,581,000
TRADE MOUs and DACAs:	\$2,004,000
BUILDERS MOUs and DACAs:	\$4,566,000
PREFERRED DACAs and MOUs:	\$4,111,000
OHI MOUs and DACAs:	\$2,536,000

Total: \$192,573,000

Additionally, with respect to judgments and judgment enforcement, the Board has issued approximately two hundred and sixty Pre-Judgment Final Notices across thirteen GSITs. Approximately twenty five of these Final Notices have resulted in the employer agreeing to enter into either an MOU or DACA. Another approximately twenty seven employers have repaid the judgment amounts, or executed repayment agreements, in the aggregate of approximately \$1,002,000.¹ Approximately one hundred and thirty one judgments in the aggregate amount of approximately \$6,787,586 have been entered against the employers to whom Final Notices were issued and who refused to enter into a repayment arrangement. Information subpoenas and restraining notices have been served on approximately sixty of these employers. Additional judgments, information subpoenas and restraining notices will be filed against all employers who refuse to enter into a repayment arrangement.

However, we would note that the Board's collection ability may become impaired as a result of a decision rendered on April 30, 2012, in *Riccelli Enterprises Inc., et al v. State of New York Workers' Compensation Board, et al* (Onondaga County, Index No.

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

10-6901). The decision preliminarily enjoined the Board from filing proposed judgments and taking any other enforcement action with respect to the plaintiffs in the case. The Board has appealed this decision.

THIRD PARTY ACTIONS

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

To date the Board has commenced eight such actions. Two actions involve the eight insolvent GSITs formerly managed by Compensation Risk Managers; one against Compensation Risk Managers and a number of related and affiliated entities and officers and directors seeking \$472 million and a second against the former accountant and actuary of the eight GSITs seeking \$557 million. Two actions involve HCF; one against the Hamilton Wharton Group and its principal seeking \$33 million and a second against the former trustees and certain other service providers, also seeking \$33 million. A fifth action was commenced against the management and certain service providers in relation to HCPSIT seeking \$188 million in damages. A sixth action was commenced against the management and the Trustees relative to MSIT seeking \$21 million in damages. A seventh action has been commenced against Consolidated Risk Services, and certain service providers and Trustees relative to PATH, RWWCT and NYMIT seeking \$42 million in damages. The eighth action was commenced against the management and the Trustees relative to Builders seeking \$20 million in damages. All eight lawsuits are ongoing.

ALP's

Part R of Chapter 56 of the Laws of 2010 allows self-insurers to transfer future and contingent claim liabilities by executing an assumption of workers' compensation liability insurance policy (ALP). To date, the Board has effectuated an ALP for PATH, NYMIT and HCF thereby extinguishing all claims liabilities. In addition, ALPs have been executed by another inactive GSIT that was administering its own liabilities and an individual self-insurer bringing the total to 3. The Board anticipates releasing an Invitation for Bid (IFB) in the near future to generate interest from a large number of carriers so as to better facilitate the execution of ALP policies on behalf of other insolvent GSITs.

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

Currently the NYS Workers' Compensation Board has 436 active individual (large corporate) self-insured employers. This number consists of 130 parent companies (accounts) and 306 subsidiary companies which are self-insured on a consolidated basis. All 130 self-insured accounts had fully posted the requisite security based on the previous calculation. New security requirements for all self-insurers were recently calculated.

A listing of the 130 self-insured accounts is attached herein:

Employers

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

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

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

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

White Castle System, Inc.
White Rose, Inc.
Yeshiva University