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HAND-DELIVER

December 30, 2011

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

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

The Honorable Dean Skelos  
President Pro Tempore  
New York State Senate  
State Capitol, 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

# Insolvent Group Self-Insured Trust Report

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 below table 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 Recently Audited Financial Statement ^ |
|--------------------------------------------------------------------------------------------------------|--------------------|-----------------------------------------------------------|------------------------------------------------------------------|
| Provider Agency Trust for Human Services (PATH)*                                                       | 03/01/2006         | \$ 25,801,000                                             | \$ 8,448,000                                                     |
| Manufacturing Industry WC Insurance Trust (NYMIT)*                                                     | 03/31/2006         | \$ 12,024,000                                             | \$ 4,577,000                                                     |
| New York Healthcare Facilities WC Trust (HCF)                                                          | 07/31/2006         | \$ 34,840,000                                             | \$ 28,666,000                                                    |
| Manufacturing Self Insurance Trust (MSIT)                                                              | 06/01/2007         | \$ 35,117,000                                             | \$ 30,754,000                                                    |
| Public Entity Trust of New York (PETNY)                                                                | 01/15/2008         | \$ 6,274,000                                              | \$ 6,950,000                                                     |
| Healthcare Industry Trust of New York (HITNY)                                                          | 02/01/2008         | \$ 218,266,000                                            | \$ 180,927,000                                                   |
| Trade Industry WC Trust for Manufacturers (TRADE)                                                      | 05/16/2008         | \$ 24,982,000                                             | \$ 18,094,000                                                    |
| Wholesale and Retail WC Trust of New York (WRWCT)                                                      | 08/11/2008         | \$ 71,668,000                                             | \$ 51,727,000                                                    |
| Real Estate Management Trust of New York (REMTNY)                                                      | 07/07/2008         | \$ 6,143,000                                              | \$ 6,102,000                                                     |
| New York State Cemeteries Trust (NYSCT)                                                                | 07/07/2008         | \$ 2,894,000                                              | \$ 2,187,000                                                     |
| Transportation Industry WC Trust (TRANSPORTATION)                                                      | 09/08/2008         | \$ 138,786,000                                            | \$ 97,042,000                                                    |
| Retail and Wholesale Industry WC Self Insurance Trust                                                  | 10/15/2008         | \$ 6,293,000                                              | \$ 4,403,000                                                     |
| Builders Self Insurance Trust (BUILDERS)                                                               | 05/01/2009         | \$ 16,791,000                                             | \$ 14,512,000                                                    |
| Healthcare Providers Self Insurance Trust (HCP)**                                                      | 10/12/2009         | \$ 207,917,000                                            | \$ 207,917,000                                                   |
| Elite Contractors Trust of New York (ELITE)                                                            | 04/01/2010         | \$ 87,793,000                                             | \$ 76,584,000                                                    |
| Auto Service and Repair Self Insurance Trust (AUTO)                                                    | 10/15/2010         | \$ 4,849,000                                              | \$ 4,849,000                                                     |
| Total of GSIT's with completed Deficit Reconstructions                                                 |                    | \$ 900,438,000                                            | \$ 743,739,000                                                   |
| Selective Safety Trust (SELECTIVE)***                                                                  | 03/18/2011         | \$ 13,337,000                                             | \$ 13,337,000                                                    |
| Long Term Care Risk Management Group (LONG TERM                                                        | 04/14/2011         | \$ 22,602,000                                             | \$ 22,602,000                                                    |
| New York McDonalds Operators' Workers' Compensation                                                    | 07/15/2011         | \$ 3,239,000                                              | \$ 3,239,000                                                     |
| Community Residence Insurance Savings Plan Self-Insurance Trust for Workers Compensation(CRISP)***     | 08/08/2011         | \$ 27,165,000                                             | \$ 27,165,000                                                    |
| Total of GSIT's prior to completed Forensic Review                                                     |                    | \$ 66,343,000                                             | \$ 66,343,000                                                    |
| Total All Trusts                                                                                       |                    | \$ 966,781,000                                            | \$ 810,082,000                                                   |
| *The Claims Liability has been transferred via an Assumption Liability Policy.                         |                    |                                                           |                                                                  |
| ** Does not reflect 2011 legislative changes to NYS Assessment.                                        |                    |                                                           |                                                                  |
| ***The financials were completed by the prior administrator and have not yet been confirmed by the WCB |                    |                                                           |                                                                  |
| ^ Does not reflect amounts held by the WCB or collections expected to be recovered.                    |                    |                                                           |                                                                  |

## Insolvent Group Self-Insured Trust Report

### 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 11/30/2011 | Difference     |
|-------------------------------------------------------------------------------------------------|--------------------|----------------------------------------|----------------------------------------|----------------|
| Provider Agency Trust for Human Services (PATH)*                                                | 03/01/2006         | 338                                    | 0                                      | (338)          |
| Manufacturing Industry WC Insurance Trust (NYMIT)*                                              | 03/31/2006         | 149                                    | 0                                      | (149)          |
| New York Healthcare Facilities WC Trust (HCF)                                                   | 07/31/2006         | 294                                    | 138                                    | (156)          |
| Manufacturing Self Insurance Trust (MSIT)                                                       | 06/01/2007         | 256                                    | 101                                    | (155)          |
| Public Entity Trust of New York (PETNY)                                                         | 01/15/2008         | 116                                    | 43                                     | (73)           |
| Healthcare Industry Trust of New York (HITNY)                                                   | 02/01/2008         | 1,651                                  | 676                                    | (975)          |
| Trade Industry WC Trust for Manufacturers (TRADE)                                               | 05/16/2008         | 182                                    | 59                                     | (123)          |
| Wholesale and Retail WC Trust of New York (WRWCT)                                               | 08/11/2008         | 390                                    | 159                                    | (231)          |
| Real Estate Management Trust of New York (REMTNY)                                               | 07/07/2008         | 57                                     | 22                                     | (35)           |
| New York State Cemeteries Trust (NYSCT)                                                         | 07/07/2008         | 24                                     | 9                                      | (15)           |
| Transportation Industry WC Trust (TRANSPORTATION)                                               | 09/08/2008         | 604                                    | 199                                    | (405)          |
| Retail and Wholesale Industry WC Self Insurance Trust (RWWCT)                                   | 10/15/2008         | 29                                     | 14                                     | (15)           |
| Builders Self Insurance Trust (BUILDERS)                                                        | 05/01/2009         | 63                                     | 48                                     | (15)           |
| Healthcare Providers Self Insurance Trust (HCP)                                                 | 10/12/2009         | 1,168                                  | 828                                    | (340)          |
| Elite Contractors Trust of New York (ELITE)                                                     | 04/01/2010         | 501                                    | 263                                    | (238)          |
| Auto Service and Repair Self Insurance Trust (AUTO)                                             | 10/15/2010         | 21                                     | 13                                     | (8)            |
| <b>Total of GSIT's with completed Deficit Reconstructions</b>                                   |                    | <b>5,843</b>                           | <b>2,572</b>                           | <b>(3,271)</b> |
| Selective Safety Trust (SELECTIVE)                                                              | 03/18/2011         | 92                                     | 85                                     | (7)            |
| Long Term Care Risk Management Group (LONG TERM CARE)                                           | 04/14/2011         | 263                                    | 239                                    | (24)           |
| New York McDonalds Operators' Workers' Compensation Trust(McDONALDS)                            | 07/15/2011         | 48                                     | 50                                     | 2              |
| Community Residence Insurance Savings Plan Self-Insurance Trust for Workers Compensation(CRISP) | 08/08/2011         | 574                                    | 522                                    | (52)           |
| <b>Total of GSIT's prior to completed Deficit Reconstructions</b>                               |                    | <b>977</b>                             | <b>896</b>                             | <b>(81)</b>    |
| <b>Total All Trusts</b>                                                                         |                    | <b>6,820</b>                           | <b>3,468</b>                           | <b>(3,352)</b> |
| *The Claims Liability has been transferred via an Assumption Liability Policy.                  |                    |                                        |                                        |                |

# Insolvent Group Self-Insured Trust Report

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

### A. Active Group Trusts

The following lists active trusts, their current funding status, and their status for 2012.

| <b>Trust Name</b>                                           | <b>Current Funding Status</b> | <b>Status for 2012<sup>^ ^</sup></b>                 |
|-------------------------------------------------------------|-------------------------------|------------------------------------------------------|
| Associated Builders & Contractors Compensation Trust        | Fully Funded                  | Granted permission to provide coverage effective 1/1 |
| Baumann Self-Insurance Trust                                | 80-89% Funded                 | Inactive                                             |
| Contractors Self-Insurance Trust Fund                       | Fully-Funded                  | Inactive                                             |
| Electrical Employers Self-Insurance Safety Plan             | Fully Funded                  | Granted permission to provide coverage effective 1/1 |
| ESTRA Self-Insurance Trust                                  | 90-99% Funded                 | Inactive                                             |
| Healthcare of New York Workers' Compensation Trust          | 80-89% Funded                 | Inactive                                             |
| Healthcare Underwriters Mutual Risk Management Group        | 60-69% Funded                 | Inactive                                             |
| Human Service Self-Insurance Trust Fund                     | Fully Funded                  | Inactive                                             |
| New York Bus Operators Compensation Trust                   | 80-89% Funded                 | Inactive                                             |
| New York Choice Self-Insurance Trust                        | 60-69% Funded                 | Inactive                                             |
| New York College & University Risk Management Group         | Fully Funded                  | Granted permission to provide coverage effective 1/1 |
| New York Lumbermen's Insurance Trust Fund                   | Fully Funded                  | Granted permission to provide coverage effective 1/1 |
| New York Operators Self-Insurance Trust                     | 60-69% Funded                 | Inactive                                             |
| New York State Motor Truck Associate Compensation Trust     | 70-79% Funded                 | Inactive                                             |
| Niagara Business Trust                                      | 90-99% Funded                 | Inactive                                             |
| NYASHA Services Inc. Self-Insurance Trust                   | 60-69% Funded                 | Inactive                                             |
| Rochester General Health System Workers' Compensation Trust | Fully Funded                  | Inactive                                             |
| Special Trades, Contracting and Construction Trust          | 90-99% Funded                 | Inactive                                             |
| Western New York Hospital Management Group                  | 80-89% Funded                 | Inactive                                             |

<sup>^ ^</sup>Pursuant to Chapter 57 of the Laws of 2011, only certain group trusts were allowed to provide coverage effective 1/1/2012. The remainder will not continue after January 1, 2012 due to a variety of reasons including but not limited to voluntary closure and/or their inability to meet the new funding requirements for new groups (i.e., 100 percent funded 3 of last 5 years plus one additional year at 90 percent or higher).

# Insolvent Group Self-Insured Trust Report

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## **B. Inactive Group Trusts**

There are an additional 24 inactive trusts as of 12/31/11. These 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 10 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 7 groups with cash balances sufficient to cover 18 to 36 months of claims and another 7 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.

## **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 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 members 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 members. The members 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 members that refuse to acknowledge any liability in connection with their participation in a GSIT the Board commences a civil collection action against those members in conjunction with the Office of the Attorney General. To date the Board has commenced four such collection actions. Alternatively, the Board will file a default judgment against the member in the amount of unpaid claims obligations arising out of the claims of the employees of that particular member.

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However, prior to doing so, the Board provides the member with a final opportunity (Final Demand) to otherwise enter into a repayment agreement, generally either the DACA or the MOU.

Finally, where the Board is in possession of sufficient information as to the ability to fully collect of the pro rata shares of the deficits of all members of a GSIT, the Board will issue a Tender Offer. The Tender Offer is a settlement offer from the Board to the members of a GSIT as a whole, whereby if 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 contracted recoveries from these methods are as follows:

|                        |               |
|------------------------|---------------|
| NYMIT DACAs:           | \$3,660,223   |
| PATH DACAs:            | \$13,091,987  |
| HCF DACAs:             | \$7,389,242   |
| MSIT Tender Offer:     | \$14,500,000  |
| ELITE MOUs and DACAs:  | \$8,192,000   |
| HITNY MOUs and DACAs:  | \$39,205,000  |
| HCP MOUs and DACAs:    | \$21,822,000  |
| NYSCT MOUs and DACAs:  | \$630,000     |
| PETNY MOUs and DACAs:  | \$2,473,000   |
| REMTNY MOUs and DACAs: | \$460,000     |
| RWWCT MOUs and DACAs:  | \$652,000     |
| WRWCT MOUs and DACAs:  | \$5,708,000   |
| ASR MOUs and DACAs:    | \$422,000     |
| Total:                 | \$151,205,452 |

Additionally, the Board has issued approximately 165 Pre-Judgment Final Notices across eight GSITs. Approximately 40 of these Final Notices have resulted in the employer agreeing to enter into a repayment arrangement. Seventy-four judgments in the aggregate amount of approximately \$3,900,000 have been entered against the employers to whom Final Notices were issued and who refused to enter into a repayment arrangement<sup>1</sup>. Additional judgments will be filed against all employers who refuse to enter into a repayment arrangement.

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<sup>1</sup> On October 7, 2011, Supreme Court, Onondaga County issued a Temporary Restraining Order enjoining the Board from filing proposed judgments.

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### **THIRD PARTY ACTIONS**

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

To date the Board has commenced seven 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 also seeking \$557 million. Two actions involve HCF; one against one against the Hamilton Wharton Group and its principal relative to HCF 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 relative 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. All seven lawsuits are ongoing.

### **ALPs**

To date, only one commercial carrier has shown an interest in executing an ALP relative to the liabilities of an insolvent GSIT. The Board has effectuated the transfer of all liabilities of PATH and NYMIT to this carrier thereby extinguishing all the claims liabilities associated with PATH and NYMIT. The Board anticipates releasing a Invitation for Bid 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. In addition, the Empire State Education Trust, an inactive trust that is not in the Board's possession, also executed an ALP.

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

Currently the NYS Workers' Compensation Board has 430 active individual self-insured employers, consisting of 127 parent companies and 303 subsidiary companies. All 127 self-insured accounts (parents + subsidiaries) have fully posted the requisite security. The current listing of such employers is attached herein:

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| Employers                                           |
|-----------------------------------------------------|
| ABF Freight System, Inc.                            |
| Albany International Corporation                    |
| American Express Company                            |
| Arnot-Ogden Medical Center                          |
| Ascension Health                                    |
| Aspire of Western New York, Inc.                    |
| Ball Corporation                                    |
| BJ's Wholesale Club, Inc.                           |
| Bon Secours Health System, Inc.                     |
| Brookdale Hospital Medical Center, The              |
| Brooklyn Bureau of Community Service                |
| Bush Industries, Inc.                               |
| Carillon Nursing and Rehabilitation Center, LLC     |
| Cayuga Medical Center at Ithaca, Inc.               |
| CBS Corporation                                     |
| Champlain Valley Physicians Hospital Medical Center |
| Climax Paperboard, Inc.                             |
| Columbia University N.Y., Trustees of               |
| Consolidated Edison Company of New York, Inc.       |
| Cornell University                                  |
| Costco Wholesale Corporation                        |
| Crouse Health Hospital, Inc.                        |
| Cummins Inc.                                        |
| Curtis Niagara LLC                                  |
| DCH Auto Group (USA) Inc.                           |
| DePaul Group, Inc.                                  |
| DHL Holdings (USA), Inc.                            |
| Dolgencorp of New York, Inc.                        |
| E. I. du Pont de Nemours and Company                |
| Eastman Kodak Company                               |
| Entergy Nuclear Operations, Inc.                    |

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|---------------------------------------------|
| ESCO Turbine Technologies - Syracuse, Inc.  |
| Federal Express Corporation                 |
| FedEx Freight, Inc.                         |
| FedEx Ground Package System, Inc.           |
| Finger Lakes Regional Health System, Inc.   |
| Ford Motor Company                          |
| Fulton Boiler Works, Inc.                   |
| Fulton Group N.A., Inc.                     |
| Gannett Co., Inc.                           |
| General Motors, LLC                         |
| Gleason Works, The                          |
| Golub Corporation, The                      |
| Great Atlantic & Pacific Tea Co., Inc., The |
| Hannaford Bros., Co.                        |
| Harden Furniture, Inc.                      |
| HealthStar Network, Inc.                    |
| Herr Foods Incorporated                     |
| Highland Hospital of Rochester              |
| Hillside Family of Agencies                 |
| Hilton Worldwide, Inc.                      |
| Hollingsworth & Vose Company                |
| International Paper Company                 |
| John D. Brush & Co., Inc.                   |
| KeyCorp                                     |
| Kistner Concrete Products, Inc.             |
| Knight Transportation Inc.                  |
| Krasdale Foods, Inc.                        |
| L. & J.G. Stickley, Inc.                    |
| Lenox Hill Hospital                         |
| Leprino Foods Co.                           |
| Lifetime Healthcare Inc.                    |
| Limited Brands Inc.                         |
| Lowe's Home Centers, Inc.                   |

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|------------------------------------------------------|
| Luvata Buffalo, Inc.                                 |
| Macy's, Inc.                                         |
| Marriott International Inc.                          |
| McWane Inc.                                          |
| MeadWestvaco Corporation                             |
| Memorial Sloan-Kettering Cancer Center               |
| Metropolitan Museum of Art, The                      |
| National Fuel Gas Company                            |
| National Grid USA                                    |
| New Era Cap Co., Inc.                                |
| New York Black Car Operators Injury Comp. Fund, Inc. |
| Nordstrom, Inc.                                      |
| Northeast Health, Inc.                               |
| NYSARC Inc. Chautauqua County Chapter                |
| NYU Hospitals Center                                 |
| O-AT-KA Milk Cooperative, Incorporated               |
| Oldcastle, Inc.                                      |
| Oneida Ltd.                                          |
| Orange & Rockland Utilities, Inc.                    |
| Oswego Hospital                                      |
| Our Lady of Lourdes Memorial Hospital, Inc.          |
| Our Lady of Victory Homes of Charity, Inc.           |
| Owens-Corning                                        |
| Owens-Illinois Inc.                                  |
| Parker Hannifin Corporation                          |
| Pathmark Stores, Inc.                                |
| People, Inc.                                         |
| Queens Borough Public Library                        |
| Raymond Corporation, The                             |
| Rochester Institute of Technology                    |
| Rockefeller University, The                          |
| Rosina Food Products, Inc.                           |
| Roswell Park Cancer Institute Corporation            |

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|-----------------------------------------------|
| Saint-Gobain Abrasives, Inc.                  |
| Samaritan Medical Center                      |
| Samaritan-Keep Nursing Home, Inc.             |
| Sherwin-Williams Company, The                 |
| Shop Vac Corporation                          |
| Shopwell, Inc.                                |
| SKF USA, Inc.                                 |
| St. Barnabas Community Enterprises, Inc.      |
| St. Joseph's Health System, Inc.              |
| St. Joseph's Hospital Health Center           |
| St. Mary's 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                            |