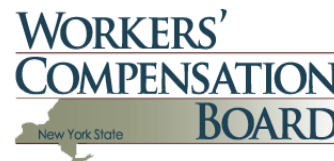




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WORKERS' COMPENSATION BOARD
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ROBERT E. BELOTEN
CHAIR

JEFFREY FENSTER
EXECUTIVE DIRECTOR

July 1, 2013

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

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

The Honorable Jeffrey D. Klein
Temporary President and IDC Coalition Leader
New York State Senate LOB, Room 913
Albany, NY 12248

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	\$ 3,669,000	\$ 3,669,000
Builders Self Insurance Trust (BUILDERS)	05/01/2009	\$ 12,892,000	\$ 11,079,000
Elite Contractors Trust of New York (ELITE)	04/01/2010	\$ 68,027,000	\$ 68,027,000
Healthcare Industry Trust of New York (HITNY)	02/01/2008	\$ 164,038,000	\$ 164,038,000
Healthcare Providers Self Insurance Trust (HCP)	10/12/2009	\$ 193,052,000	\$ 131,345,000
Manufacturing Industry WC Insurance Trust (NYMIT)*	03/31/2006	\$ 6,655,000	\$ 6,022,000
Manufacturing Self Insurance Trust (MSIT)	06/01/2007	\$ 24,973,000	\$ 16,976,000
New York Healthcare Facilities WC Trust (HCF)*	07/31/2006	\$ 22,130,000	\$ 22,130,000
New York State Cemeteries Trust (NYSCT)	07/07/2008	\$ 1,926,000	\$ 1,445,000
OHI Workers' Compensation Self-Insurance Trust(OHI)	07/01/2011	\$ 7,151,000	\$ 5,559,000
Provider Agency Trust for Human Services (PATH)*	03/01/2006	\$ 8,607,000	\$ 6,208,000
Public Entity Trust of New York (PETNY)	01/15/2008	\$ 4,894,000	\$ 4,894,000
Real Estate Management Trust of New York (REMTNY)	07/07/2008	\$ 5,384,000	\$ 5,145,000
Retail and Wholesale Industry WC Self Insurance Trust (RWWCT)	10/15/2008	\$ 3,062,000	\$ 2,875,000
Trade Industry WC Trust for Manufacturers (TRADE)	05/16/2008	\$ 18,709,000	\$ 16,449,000
Transportation Industry WC Trust (TRANSPORTATION)*	09/08/2008	\$ 77,348,000	\$ 66,919,000
Wholesale and Retail WC Trust of New York (WRWCT)	08/11/2008	\$ 40,817,000	\$ 33,987,000
Community Residence Insurance Savings Plan Self-Insurance Trust for Workers Compensation(CRISP)	08/08/2011	\$ 65,444,000	\$ 58,785,000
Total of GSIT's with completed Deficit Reconstructions		\$ 728,778,000	\$ 625,552,000
Empire State Transportation WC Trust(EMPIRE)**	01/01/2012	\$ 42,536,000	\$ 56,568,000
Long Term Care Risk Management Group (LONG TERM CARE)	04/14/2011	\$ 32,178,000	\$ 29,114,000
New York McDonalds Operators' Workers' Compensation Trust(McDONALDS)	07/15/2011	\$ 4,596,000	\$ 4,596,000
Selective Safety Trust (SELECTIVE)	03/18/2011	\$ 15,027,000	\$ 12,311,000
Team Transportation Workers' Comp Trust(Team)	02/01/2012	\$ 44,216,000	\$ 44,068,000
Total of GSIT's prior to completed Forensic Review		\$ 138,553,000	\$ 146,657,000
Total All Trusts		\$ 867,331,000	\$ 772,209,000
*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 05/31/2013	Difference
Auto Service and Repair Self Insurance Trust (AUTO)	10/15/2010	21	9	(12)
Builders Self Insurance Trust (BUILDERS)	05/01/2009	63	39	(24)
Elite Contractors Trust of New York (ELITE)	04/01/2010	501	199	(302)
Healthcare Industry Trust of New York (HITNY)	02/01/2008	1,651	567	(1,084)
Healthcare Providers Self Insurance Trust (HCP)	10/12/2009	1,168	684	(484)
Manufacturing Industry WC Insurance Trust (NYMIT)*	03/31/2006	149	0	(149)
Manufacturing Self Insurance Trust (MSIT)	06/01/2007	256	77	(179)
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	22	(35)
Retail and Wholesale Industry WC Self Insurance Trust (RW WCT)	10/15/2008	29	15	(14)
Trade Industry WC Trust for Manufacturers (TRADE)	05/16/2008	182	47	(135)
Transportation Industry WC Trust (TRANSPORTATION)*	09/08/2008	604	0	(604)
Wholesale and Retail WC Trust of New York (WRWCT)	08/11/2008	390	132	(258)
Community Residence Insurance Savings Plan Self-Insurance Trust for Workers Compensation(CRISP)	08/08/2011	574	350	(224)
Total of GSIT's with completed Deficit Reconstructions		6,455	2,209	(4,246)
Empire State Transportation WC Trust(EMPIRE)	01/01/2012	464	358	(106)
Long Term Care Risk Management Group (LONG TERM CARE)	04/14/2011	263	204	(59)
New York McDonalds Operators' Workers' Compensation Trust(McDONALDS)	07/15/2011	48	28	(20)
Selective Safety Trust (SELECTIVE)	03/18/2011	92	77	(15)
Team Transportation Workers' Comp Trust(TEAM)	02/01/2012	193	151	(42)
Total of GSIT's prior to completed Deficit Reconstructions		1,060	818	(242)
Total All Trusts		7,515	3,027	(4,488)
*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
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 33 inactive trusts as of June 30, 2013. 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 0 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 12 groups with cash balances sufficient to cover 18 to 36 months of claims and another 21 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 SETTLEMENTS WITH MEMBERS

There are a 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.

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 settlement offer. In light of the bonding authority discussed below, the Board is now able to issue settlement offers to any individual employer that wishes to settle its liability associated with participation in the GSIT for its pro rata allocation of the GSITs deficit, as adjusted by the Board to account for both insolvent former members and potential collections from third parties. Upon completion of its repayment obligations, such settling member is provided a full and complete release from their liability associated with participation in the GSIT.

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

NYMIT DACAs:	\$5,457,000
PATH DACAs:	\$17,019,000
HCF DACAs and Settlements:	\$31,494,000
MSIT Settlements:	\$19,345,000
ELITE MOUs and DACAs:	\$11,424,000
HITNY MOUs, DACAs and Settlements:	\$58,641,000
HCP MOUs and DACAs:	\$30,359,000
NYSCT MOUs and DACAs:	\$1,464,000
PETNY MOUs, DACAs and Settlements:	\$4,910,000
REMTNY MOUs and DACAs:	\$915,000
RWWCT MOUs and DACAs:	\$2,823,000
WRWCT MOUs and DACAs:	\$12,995,000
ASR MOUs and DACAs:	\$677,000
TIWCT MOUs and DACAs:	\$5,853,000
TRADE MOUs and DACAs:	\$2,804,000
BUILDERS MOUs and DACAs:	\$4,329,000
PREFERRED DACAs and MOUs:	\$4,222,000
OHI MOUs and DACAs:	\$2,757,000
CRISP MOUs and DACAs:	\$3,668,000
Total:	\$216,934,000

COLLECTIONS FROM ENFORCEMENT MECHANISMS

A. JUDGMENTS

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 seven 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.

Additionally, with respect to judgments and judgment enforcement, the Board has issued approximately two hundred ninety Pre-Judgment Final Notices across thirteen GSITs. Approximately thirty of these Final Notices have resulted in the employer agreeing to enter into either an MOU or DACA. Another approximately forty employers have repaid the judgment amounts, or executed repayment agreements, in the aggregate of approximately \$1,614,000.¹ Approximately one hundred and thirty two 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 eight of these employers. Additional judgments, information subpoenas and restraining notices will be filed against all employers who refuse to enter into a repayment arrangement.

By 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. 10-6901 (*Ricelli*)), a court the Board is preliminarily enjoined from filing proposed judgments and taking any other enforcement action with respect to the plaintiffs in that case. The Board has appealed this decision and the appeal is ongoing.

However, the preliminary injunction issued by *Ricelli* appears to have been compromised by the decision and order dated March 25, 2013 in the matter of *Bolivar Foods Inc. et. al. v. State of New York Workers' Compensation Board, et al* (Allegheny County, Index No. 40642) (*Bolivar*). In *Bolivar*, the members of multiple GSITs commenced a combined Article 78/Declaratory Judgment action seeking a preliminary injunction and a declaration that WCL §26 and §50(3-a)(7)(b) is unconstitutional. The *Bolivar* Court denied the preliminary injunction and then issued a final determination on the merits upholding the constitutionality of statutes themselves and finding the Board's actions to be the Board's actions and statute. In reaching this determination, the Court noted that Legislature, in enacting the WCL in general, provided the Board with wide latitude in enforcing the provisions of the WCL specifically commenting that the provisions of WCL §141-a providing for the issuance of stop work orders (see below) for the failure to carry workers' compensation coverage had already been deemed constitutional.

B. STOP WORK ORDERS

Pursuant to the Ch. 57, Part G of the Laws of 2011, WCL §141-a was modified to include the issuance of stop work for any GSIT member against whom a WCL §50(3-a)(7)(b) judgment has been filed and where there has not been an attempt to satisfy or otherwise modify the judgment for at least ninety days. In such an event, the stop work order will be lifted in the event that the judgment debtor satisfies the outstanding judgment. To date five such stop work orders have been issued. Three have been lifted resulting in the recovery of approximately \$332,000. Two other stop work orders remain in effect.

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.

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 eleven such actions. The affected GSIT, the defendants, damages sought, recoveries obtained to date and status is reflected in the chart below.

	GSIT(S)	DEFENDANTS	DAMAGES SOUGHT	RECOVERIES TO DATE	STATUS
1	HCF	Group Administrator (Hamilton Wharton Group and Walter Taylor)	\$33 Million	None to date	Motion Practice
2	HCF	Accountant (Berenson and Co); Accountants (James McGarrity and Lorette Belgrier), Attorney (Steven Glaser) and Trustees	\$33 Million	None to date	Motion Practice
3	HITNY, ELITE,WRWCT, TIWCT, TRADE, CEMETERIES, PETNY, REMTNY	Actuary (SGRisk, LLC) and Accountant (UHY, LLP)	\$557 Million	None to date	Motion Practice
4	WRWCT, NYMIT, and PATH	Group Administrator and affiliates(Consolidated Risk Services, Inc., et al.); Trust Broker (Hickey Finn & Co); Actuary (Regnier Consulting Group); Trustees	\$42 Million	None to date	Motion practice
5	MSIT	Group Administrator and affiliates(New York Compensation Managers, Inc. et al); Trustees	\$21 Million	\$150,000 from one trustee	Settlement discussions
	HCP	Group Administrator and affiliates (Program Risk Management et al); Actuary (SGRisk); Accountants (DeChants Fugelin and Johnson); Trustees	\$188 Million	None to date	Court imposed mediation
7	HITNY, ELITE,WRWCT, TIWCT, TRADE, CEMETERIES, PETNY, REMTNY	Group Administrator and affiliates(Compensation Risk Managers, LLC, et al); Actuary (SGrisk); Accountant (UHY)Matter has been coordinated with other suits against Compensation Risk	\$472 Million	Approximately \$2 million in severance funds recovered along with assigned shares of bankruptcy	Motion practice with respect to the remaining individuals

		Managers, LLC arising out of its management of GSITs)		estates. ²	
8	BUILDERS	Group Administrator (Marsh U.S.A., Inc.); Trustees	\$20 Million	None to date	Motion practice
9	ASR	Group Administrator and affiliates(New York Compensation Managers, Inc., et al.) and Trustees	Approximately \$4 million	None to date	Recently Commenced
10	OHI	Group Administrator (Cody Management, Inc.), Accountant (Fuller & LAaflura); Trustees	Approximately \$8 million	None to date	Recently Commenced
11	CRISP	Group Administrator and affiliates (Program Risk Management et al); Third Party Administrator and affiliates (PMA Management Corp et al)RM),Trust Marketing Agent and affiliates (MP Agency et al), Actuary (SGRisk); Accountant and affiliates (DeChants, Fugelin and Johnson et al); Auditors and affiliates (Towers Watson Risk Consulting et al); Trustees	Approximately \$60 million	None to date	Recently Commenced

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, HCF and Transportation Industry thereby extinguishing all claims liabilities. In addition, ALPs have been executed by 3 inactive self- insurers.

Legislation was passed in 2013 to establish a bonding program to address insolvent group self-insured trusts. The bill created statutory authority to issue bonds backed by Workers Compensation Assessments to provide financing for the purchase of defaulted group self-insurance trust ALPs. Bonding provides a mechanism to sell the defaulted group trust liability while offering employer members in those trust repayment terms of a longer nature. An Invitation for Bid (IFB) will be utilized to generate interest from a large number of carriers to obtain quotes for ALPs.

² Additionally, the Board recovered legal expenses of approximately \$20,000 in connection with contempt proceedings in the related CRM Ch. 11 proceeding in the Southern District of New York.

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

Currently the NYS Workers' Compensation Board has 429 active individual (large corporate) self-insured employers. This number consists of 126 parent companies (accounts) and 303 subsidiary companies which are self-insured on a consolidated basis. All self-insured accounts had fully posted the requisite security based on the most recent calculation with one exception, noted below.

A listing of the 126 self-insured accounts is attached herein:

Employers

ABA Transportation Holding Co., Inc.
ABF Freight System, Inc.
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
CH Energy Group, Inc.
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.
Dolgencorp of New York, Inc.
E. I. du Pont de Nemours and Company
Eastman Kodak Company
Entergy Nuclear Operations, 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
L Brands Inc.
Krasdale Foods, Inc.
L. & J.G. Stickley, Inc.
Lenox Hill Hospital
Leprino Foods Co.
Lifetime Healthcare 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.
Yeshiva University