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CHAIR

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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)
Total of GSIT's with completed Deficit Reconstructions		5,843	2,572	(3,271)
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)
Total of GSIT's prior to completed Deficit Reconstructions		977	896	(81)
Total All Trusts		6,820	3,468	(3,352)
*The Claims Liability has been transferred via an Assumption Liability Policy.				

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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.

Trust Name	Current Funding Status	Status for 2012 ^{^^}
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

^{^^}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).

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 arrangement¹. Additional judgments will be filed against all employers who refuse to enter into a repayment arrangement.

¹ 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