



**Workers'  
Compensation  
Board**

**ANDREW M. CUOMO**  
Governor

**CLARISSA M. RODRIGUEZ**  
Chair

December 31, 2019

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

The Honorable Andrea Stewart-Cousins  
Senate Majority Leader  
LOB, Room 907  
Albany, New York 12247

The Honorable Carl E. Heastie  
Speaker  
New York State Assembly  
LOB, Room 932  
Albany, New York 12248

Dear Governor Cuomo and Legislative Leaders:

Legislation passed in 2011 requires the NYS 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.

As part of the Business Relief Act passed in the Executive Budget, the Board was granted \$900 million in bonding authority to address group trust defaults. The bonding authority provides small businesses more affordable payment options and final releases from the joint and several liabilities associated with their participation in the insolvent groups. The Board has issued approximately \$370 million in bonds and has used these proceeds to execute twenty Assumption of Liability policies.

Other highlights contained within the report include:

- The outstanding liability for all defaulted trusts administered by the Board has dropped from \$924 million in the first report published on June 30, 2011 to \$0 in the attached report;
- The Board has signed final settlement agreements with approximately 3,250 defaulted trust members; and

- The total number of defaulted trust claims being administered by the Board has reduced to zero from the 7,515 claims in the first report published on June 30, 2011 demonstrating the Board's effective management of the claims, including the usage of Assumption of Liability policies.

Sincerely,

  
Clarissa M. Rodriguez  
Chair

Enclosure

# **NYS Workers' Compensation Board's Semi-Annual Report on Group Self Insured Trusts for December 2019**

In accordance with Chapter 57 of the Laws of 2011, the Workers' Compensation 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**

Part R of Chapter 56 of the Laws of 2010 allowed self-insurers to transfer future and contingent claim liabilities by executing an assumption of workers' compensation liability insurance policy (ALP). Further, Legislation passed as part of the 2013-14 New York State Executive Budget (the Business Relief Act) established a \$900 million bonding program to assist in the resolution of insolvent group self-insured trusts liabilities. The bill created statutory authority to issue bonds backed by assessments levied pursuant to the WCL to provide financing for the purchase of ALPs for unmet self-insurance obligations including the claims liabilities of the insolvent GSITs being administered by the Board. This bonding ability had three significant, and very positive, effects on the Board's intended course of conduct with respect to insolvent GSITs. First, this bonding, and more specifically the concomitant ability of the Board itself to procure an ALP, allows the Board to eliminate the risk of future adverse development of the underlying workers' compensation claims liability. Accordingly, certain impediments to settlement with former members of insolvent GSITs are eliminated by the Board's ability to itself purchase an ALP policy for an insolvent GSIT thereby allowing the Board to enter into a settlement with any member that is so desirous, regardless of any other member's decision to settle. Each member that executes a settlement agreement is provided with a full and final release from the Board upon receipt of the member's final payment(s). With the bonding in place, the Board is in position to procure multiple ALP quotes since it will be able to fund the ALP directly through the bonding process, rather than waiting for receipt of payments from the members of insolvent GSITs. Second, the Board will reduce each settling member's amount owed, by a pro rata share of estimated recoveries from the Board's third party litigation thereby reducing the amount on money sought from settling members. Third, as a result of the extended period in which to repay the bonds, the Board is now able to provide extended repayment terms of up to twenty years and very favorable interest rates.

As of December 31, 2019, ALPs have been executed for all insolvent non municipal GSITs thereby capping all such liabilities and eliminating all claims related liabilities. The Member settlement proceeds and third party litigation proceeds are funding the cost of the ALPs and detailed in item I.B (infra).

### **A. Qualified Non-Municipal Self-Insurer Groups**

Pursuant to Chapter 57 of Laws of 2011, only certain group trusts were allowed to provide coverage effective January 1, 2012. As a result, each self-insured group must post an annual security deposit as calculated by the Board. The following trusts have posted the requisite security for the period beginning November 1, 2019:

<b>Trust Name</b>
Electrical Employers Self-Insurance Safety Plan
New York College & University Risk Management Group
New York Lumbermen's Insurance Trust Fund

There are 27 inactive group trusts in self-administered run-off. Of those, there are five pending ALP transactions. Further, the Board recently adopted regulations to provide financial assistance, where appropriate and in the form of a “bridge loan”, to assist inactive but not insolvent groups in purchasing an ALP. Groups in run-off have been issued guidelines on successfully managing the group’s obligations. A significant component of this is ensuring sufficient cash is available to pay outstanding claims. 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 expenses will be transitioned to the Board for liquidation. As of September 30, 2019, there are 2 trusts between 6 and 18 months of cash. The Board continues to work with these trusts to ensure amounts are levied against their former members. To the extent such levies are successful, the Board will allow each trust to continue to administer its own run off. It is important to note, however, that the inability of these groups to maintain successful cash balances may result in the number of insolvent trusts increasing. In addition, there are 4 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.

## **B. Current NYS Workers Compensation Board Efforts to Extinguish Outstanding Liabilities**

One of the primary objectives of the Board’s Litigation Division is to facilitate the extinguishment of the liabilities of insolvent GSITs. The Litigation Division employs a variety of methods to accomplish this goal, including: 1) collection of funds from the former employer members of the insolvent GSIT; and 2) recoupment of damages from the former management of the insolvent GSIT.

### **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 refuse to acknowledge any liability in connection with their participation in a GSIT, the Board employs a variety of enforcement mechanisms, including: 1) filing default judgments, restraining notices and information subpoenas; 2) the issuance of stop work orders; and 3) the commencement of a civil collection action. With respect to judgments and judgment enforcement, the Board has obtained approximately \$8.4 million in contractual recoveries. Additional judgments, information subpoenas, and restraining notices may be filed against any employer who refuses to enter into a repayment arrangement. With respect to stop work orders, five have been issued, resulting in the recovery of approximately \$332,000.

For those employers that are in agreement with the Board’s assessment of their pro rata share of the liabilities, the Board initially offers two types of agreements. For those employers that are in complete agreement, 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 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 preserving all of their rights. Finally, where the Board is in possession of sufficient information, the Board will issue a final settlement offer. In light of the bonding authority discussed below, the Board is now able to issue settlement offers to any individual employer(s) that wishes to settle its liability associated with participation in the GSIT for its pro rata allocation of the GSITs deficit. Upon completion of its repayment obligations, such settling member

is provided a full and complete release from its liability associated with participation in the GSIT. To date, the Board has issued final settlement offers in twenty-six GSITs and has entered into settlements with approximately three thousand two hundred fifty members. To date, the approximate cash and contracted recoveries from members of insolvent GSITs are as follows:

Healthcare Industry Trust of NY (HITNY):	\$177,268,000
Healthcare Providers Self Insurance Trust (HCP):	\$ 89,273,000
Manufacturing Industry WC Insurance Trust (NYMIT):	\$ 7,852,000
New York Healthcare Facilities WC Trust (HCF):	\$ 33,116,000
Provider Agency Trust for Human Services (PATH):	\$ 20,506,000
Transportation Industry Workers Comp. Trust (TIWCT):	\$ 29,334,000
Manufacturing Self Insurance Trust (MSIT):	\$ 21,807,000
Elite Contractors Trust of New York (ELITE):	\$ 29,469,000
Wholesale and Retail WC Trust of New York (WRWCT):	\$ 29,905,000
Auto Service and Repair Self Insurance Trust (AUTO):	\$ 2,337,000
Builders Self Insurance Trust (BUILDERS):	\$ 7,690,000
Trade Industry WC Trust for Manufacturers (TRADE):	\$ 10,425,000
Real Estate Management Trust of NY (REMTNY):	\$ 3,303,000
Public Entity Trust of NY (PETNY):	\$ 6,144,000
Retail and Wholesale Industry WC Self Insurance Trust (RWWCT):	\$ 5,584,000
Selective Safety Trust (SELECTIVE):	\$ 4,210,000
New York Cemeteries Trust (NYSCT):	\$ 2,033,000
Preferred Manufacturers Insurance Trust Fund (PREFERRED):	\$ 8,199,000
Long Term Care Risk Management Group (LTCRMG):	\$ 14,375,000
NY McDonalds Operators WC Trust (MCDONALDS):	\$ 3,375,000
OHI Workers Compensation Self Insurance Trust (OHI):	\$ 4,732,000
Mercantile Self Insurance Trust (MERC)	\$ 9,904,000
Community Residence Insurance Savings Plan SI Trust (CRISP):	\$ 53,726,000
Team Transportation WC Trust (TEAM):	\$ 13,818,000
Empire State Towing and Recovery Association SI Trust (ESTRA):	\$ 1,379,000
Empire State Transportation WC (EST):	\$ 28,948,000
<b>Grand Total</b>	<b>\$618,712,000</b>

Where the members of the insolvent GSITs did not voluntarily enter into settlement agreements with the Board the Board has commenced collection actions against those members of insolvent GSITs who have refused the Board's settlement offers. The majority of these actions have concluded and resulted in settlement recoveries (referenced immediately above) or judgments in favor of the Board for amounts owed. A summary of the collection actions that remain active is as follows:

	<b>GSIT(S)</b>	<b>CAPTION</b>	<b>Original Number of Defendants</b>	<b>Original Damages Sought</b>	<b>Status</b>
1	WRWCT	WCB v. 1&3 On Fifth Corp. et al.  WCB v. 208 Braco Food Corp. et al.	375	\$33,800,000	WCB has taken judgments against all defaulting defendants in the first and second action. In the first action, WCB has been awarded summary judgment on liability, has filed the note of issue and anticipates that either motion practice or a hearing on damages will occur in first or second quarter of 2020. In the second action, WCB also expects to make a motion for partial summary judgment. A total of approximately 57 defendants remain in both actions combined.
2	TRADE	WCB v. A&L Sheet Metal Fabrications Corp., et al.  WCB v. Armstrong Brands, Inc. et al.	85	\$17,900,000	WCB has taken judgments against all defaulting defendants in the first and second action. WCB is engaged in discovery in both actions and continues to engage in settlement efforts. A total of approximately 28 litigating defendants remain in both actions.
3	REMTNY	WCB v. 10 Ellicott Square et al.  WCB v. Cavco Services, Inc. et al.	257	\$3,800,000	WCB has taken judgments against all defaulting defendants, has been awarded summary judgment in the first action and anticipates that the Court will soon direct the WCB to file a note of issue. A total of approximately 80 defendants remain in the first action. All defendants in the second action have settled.

4	TIWCT	WCB v. A. Morrison Trucking, Inc.	625	\$68,108,000	WCB has formally resolved the <i>Riccelli</i> action. WCB has been granted default judgments against all defaulting defendants and has also been successful in moving the venue of the action back to Albany County. WCB anticipates that a Court conference will be scheduled in the near future. Approximately 116 defendants remain in the action.
5	BUILDERS	WCB v. Battista Construction, Inc. et al.	213	\$11,979,000	WCB has taken judgments against all defaulting defendants. A total of approximately 27 defendants remain in the action.
6	HCP	WCB v. A&T Healthcare, Inc.  WCB v. Barksdale Management Corp. et al.	70	\$132,500,000	WCB has taken judgments against all defaulting defendants in the first and second actions. In the first action, WCB has reached a settlement in principle with all remaining defendants. In the second action, there is currently no scheduling order in place, but the parties have engaged in some informal discovery. There are a total of approximately 14 remaining defendants in the second action.
7	ELITE	WCB v. 21 <sup>st</sup> Century Construction Corp. et al.	2322	\$57,634,038	WCB's motions for default judgment has been granted and judgments have been entered against the defaulting defendants. WCB has also been awarded summary judgment on liability. WCB is engaged in discovery with the remaining defendants. A total of approximately 65 litigating defendants remain in the action.
8	ASR	WCB v. 10473 Enterprises, Inc.	314	\$3,835,536	WCB has taken judgments against all defaulting

		WCB v. Brian Horn's Auto Repair, Inc. et al.			defendants in the first and second action. WCB has engaged in discovery with the remaining defendants. A total of approximately 7 defendants remain in both actions.
9	PATH	WCB v. Baden Street Settlement of Rochester, Inc. et al.  WCB v. Armstrong Senior Living LLC	21	\$6,210,662	WCB has substituted as counsel of record in the first action. WCB has engaged in some discovery with the remaining defendants. A total of approximately 7 defendants remain in both actions.
10	CRISP	WCB v. A Program Planned for Life Enrichment Housing Corp., et al.  WCB v. Mary Alfano, et al.	221	\$56,140,985	WCB has taken judgments against all defaulting defendants in the first and second action. Only 6 defendants remain in the first action and one defendant remains in the second action (pending a second motion for default judgment).
11	EST	WCB v. 1 <sup>st</sup> Choice Ambulette Service, LLC, et al.  WCB v. Able Medical Transportation, Inc., et al.  WCB v. Advance Transit Bus Co., Inc., et al.	449	\$46,933,450	WCB's motion for default judgment has been granted in both the first and second actions. The second action has been fully resolved. A court conference has been scheduled for December 2019 in the first action. A total of approximately 67 defendants remain in the first and third actions.



12	SELECTIVE	<p>WCB v. 158 King Street Associates, LLC, et al.</p> <p>WCB v. American Bulb Corporation, et al.</p>	133	\$9,059,442	WCB has taken judgments against all defaulting defendants in the first and second action. A scheduling order has been issued in the second action. A total of approximately 60 defendants remain in both actions.
13	LTCRMG	<p>WCB v. Brae Loch Manor, Inc., et al</p> <p>WCB v. Blossom Health Care Center, Inc., et al.</p> <p>WCB v. Episcopal Church Home and Affiliates Inc., et al.</p>	48	\$21,011,959	WCB has taken judgments against all defaulting defendants in the first and second actions and all remaining defendants have settled in the first and second actions. Venue of the third action has been transferred to Erie County. WCB has been granted default judgments against a number of defendants in the third action, and the WCB is engaged in discovery with the remaining 11 defendants.
14	MERC	WCB v. 1654 Metropolitan Food Corp. et al.	194	\$22,182,504	WCB motion for default judgment against the defaulting defendants has been granted pending an inquest on damages. WCB also made a motion for summary judgment against the 5 remaining defendants which is pending.
15	TEAM	<p>WCB v. A&amp;D Transport Service Inc., et al.</p> <p>WCB v. Almeida Oil Co. Inc., et al.</p>	317	\$22,664,156	WCB has taken judgments against all defaulting defendants in the first and second actions and all remaining defendants have settled in the second actions. A scheduling order secured in the first action. A total of approximately 34 defendants remain in the first action.
16	MCDONALDS	WCB v. 18 Demars Blvd., Inc., et al.	46	\$2,087,292	WCB has recently made a motion for default judgment against all remaining defendants.

### 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 thirteen such actions. In all of these actions settlement discussions ensued after motion practice and or discovery. Where reasonable settlement parameters are reached, the Board seeks court approval, on notice to all former members of the affected GSIT, of the settlement terms. The chart below reflects the status of the remaining third party actions listing affected GSIT, the defendants, damages sought, recoveries obtained to date and status is reflected in the chart below.

	<b>GSIT(S)</b>	<b>DEFENDANTS</b>	<b>DAMAGES SOUGHT</b>	<b>STATUS</b>
1	HCF	Group Administrator (Hamilton Wharton Group and Walter Taylor)	\$33 Million	Action has been consolidated with the HCF action referenced immediately below. WCB and remaining non-settling defendants (Group administrator and Berenson) have agreed to mediation with discovery proceeding in interim.
2	HCF	Accountant (Berenson and Co, James McGarrity, and Lorette Belgrier and L. Belgrair CPA, P.C.), Attorney (Steven Glaser) and Trustees	\$33 Million	Action has been consolidated with the HCF action referenced immediately above. Settlements with two Accountants, Attorney and Trustees was approved by Court.
3	HITNY, ELITE, WRWCT, TIWCT, TRADE, CEMETERIES, PETNY, REMTNY	Actuary (SGRisk, LLC) and Accountant (UHY, LLP)	\$557 Million	Settlement in principle reached with actuary. Discovery is ongoing against Accountant. Action is consolidated with the action referenced immediately below.
4	HITNY, ELITE, WRWCT, TIWCT, TRADE, CEMETERIES, PETNY, REMTNY	Group Administrator and affiliates (Compensation Risk Managers, LLC, et al) and Trustees (Matter has been coordinated with other suits against Compensation Risk Managers, LLC arising out of its management of GSITs)	\$472 Million	WCB secured bankruptcy distribution from bankrupt administrator (and its affiliates). Settlement with individual defendants affiliated with bankrupt administrator (and its affiliates) and Actuary approved by the Court. WCB

				in mediation with defendant Trustees.
5	RWWCT, 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	Settlement reached with Trustees, Trust Broker and Actuary subject to Court approval. WCB will file an application for court approval of the settlements at the appropriate time. Discovery ongoing with remaining defendant.
6	BUILDERS	Group Administrator (Marsh U.S.A., Inc.); Trustees	\$20 Million	Settlement reached with all defendants and application for court approval is pending.

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

Currently the NYS Workers' Compensation Board has 886 active individual (large corporate) self-insured employers. This number consists of 113 parent companies (accounts) and 773 subsidiary companies which are self-insured on a consolidated basis.

A listing of the 113 self-insured accounts is attached herein:

### Self-Insured Employers

ABA Transportation Holding Co Inc  
 ABF Freight System Inc  
 Arnot Ogden Medical Center  
 Ascension Health Alliance  
 Aspire of Western New York Inc  
 Ball Corporation  
 BJ's Wholesale Club, Inc.  
 Bon Secours Charity Health System, Inc.  
 Briggs & Stratton Corporation  
 Brookdale Hospital Medical Center  
 Brooklyn Bureau of Community Service  
 Bush Industries Inc  
 Carillon Nursing and Rehabilitation Center LLC  
 Cayuga Medical Center at Ithaca Inc  
 CBS Corporation  
 CH Energy Group, Inc.  
 Champlain Valley Physicians Hospital Medical Center  
 Child and Family Services of Erie County, Inc.  
 Columbia University in the City of New York, Trustees of  
 Consolidated Edison Company of New York, Inc.  
 Cornell University  
 Costco Wholesale Corporation  
 CRH Americas, Inc.  
 Crouse Health Hospital, Inc.

Cummins, Inc.  
Delhaize America, LLC  
DePaul Group Inc  
Dolgen New York, LLC dba Dollar General Stores  
Eastman Kodak Company (NJ)  
Entergy Nuclear Operations Inc  
Erie County Medical Center Corporation  
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 NA, Inc.  
General Motors, LLC  
Gleason Works, The  
Golub Corporation  
Highland Hospital of Rochester  
Hillside Family of Agencies  
Kistner Concrete Products Inc  
Krasdale Foods, Inc.  
L & JG Stickley Inc  
L Brands Inc  
Leprino Foods Company  
Lifetime HealthCare, Inc.  
Lowe's Home Centers LLC  
Macy's Inc  
Marriott International, Inc.  
McWane Inc dba Kennedy Valve Co  
Memorial Sloan-Kettering Cancer Center  
Metropolitan Museum of Art  
Mid-Hudson Valley Staffco LLC  
National Fuel Gas Company  
National Grid USA  
Netflix, Inc.  
New Era Cap Co, Inc.  
New York Black Car Operators' Injury Comp Fund Inc  
New York University (2015)  
Nordstrom Inc  
NYSARC Inc Chautauqua County Chapter dba The Resource Ctr  
NYU Langone Hospitals  
Orange and Rockland Utilities Inc  
Oswego Hospital  
Our Lady of Lourdes Memorial Hospital  
Our Lady of Victory Homes of Charity  
Owens Corning  
Parker Hannifin Corporation  
People, Inc.  
Queens Borough Public Library  
QuickChek Corporation  
Raymond Corporation  
Rochester Institute of Technology

Rochester Regional Health  
Rockefeller University, The  
Roman Catholic Diocese of Albany NY  
Roman Catholic Diocese of Buffalo  
Roman Catholic Diocese of Ogdensburg  
Roman Catholic Diocese of Syracuse  
Rosina Food Products Inc  
Roswell Park Cancer Institute Corporation  
Ryder Truck Rental, Inc.  
Saint-Gobain Abrasives Inc  
Samaritan Medical Center  
Samaritan-Keep Nursing Home Inc  
Sherwin-Williams Company  
Shop Vac Corporation  
SKF USA, Inc.  
St. Barnabas Community Enterprises Inc  
St. Joseph's Hospital  
St. Mary's Healthcare  
Stanley Black & Decker, Inc.  
Starbucks Corporation  
Stewart's Shops Corp  
Swift Transportation Co. LLC  
Syracuse University  
Tessy Plastics Corp  
Trinity Health Corporation  
Unifrax I, LLC  
United Airlines, Inc.  
University of Rochester  
Viacom, Inc.  
Visiting Nurse Service of New York  
Wal-Mart Associates Inc  
Washington Mills Electro Minerals Corporation  
Wegmans Food Markets, Inc.  
Wendy's International LLC  
Western Regional Off Track Betting Corporation  
White Castle System, Inc.  
Yeshiva University