

**FOR IMMEDIATE RELEASE**

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## **Thirteen workers' comp self-insured groups win ruling against New York State Workers' Compensation Board**

*New York State Supreme Court declares sections of state workers' comp law "unconstitutional" after two-year litigation case*

**LATHAM, N.Y.** (April 16, 2010) — First Cardinal LLC announced today that 13 workers' compensation self-insured groups for whom it had once acted as third-party administrator received a favorable decision by the New York State Supreme Court in a complex two-year litigation case against the New York State Workers' Compensation Board.

The case pertained to a series of assessment billings levied against the self-insured groups by the New York State Workers' Compensation Board to help pay for the losses of several unrelated self-insured groups that had defaulted on their workers' compensation obligations – effectively initiating group-to-group liability. None of the defaulting self-insured groups that led to a nearly \$450 million deficit were administered by First Cardinal.

In 2008, Phillips Lytle LLP and Patterson Belknap Webb & Tyler LLP filed a set of actions on behalf of the 13 self-insured groups in New York State Supreme Court to challenge the authority of the New York State Workers' Compensation Board to levy the assessments pursuant to the Workers' Compensation Law.

On April 14, 2010, Hon. Kimberly O'Connor, New York State Supreme Court Justice, ruled that former Workers' Compensation Law §50(5)(f) and a newer law §50(5)(g) were an "unconstitutional taking of their [the plaintiffs] private property without just compensation."

Though the 13 self-insured groups closed at the end of 2008 as a result of the weight of the impending assessment payments, new assessments continued to accrue against the former members. In 2007, the 13 groups had an aggregate assessment of \$104,000. In 2008, the Board increased those assessments by more than 10,000% to \$11.1 million.

Prior to their dissolution, the 13 groups were in sound financial shape and had provided workers' compensation coverage to more than 7,000 public and private employers and their 200,000 employees throughout New York State.

"We are very pleased with the court's decision to resolve this difficult matter for the former members of the groups we took great pride and care in managing," said Richard S. Flaherty, President and CEO of First Cardinal.

"We felt it was unfair that the 7,000 business owners who participated in these healthy, well-run self-insured groups should have to collectively pay for millions of dollars in unpaid claims for several completely unrelated groups that failed to set their reserves properly," Flaherty continued.

"Judge O'Connor's decision confirms the position we have taken from day one – that the New York State Workers' Compensation Board acted improperly and that the statutory framework upon which the Board based its actions was unconstitutional," said Richard E. Honen, partner and office leader of Phillips Lytle's Albany office, who helped guide the litigation.

Judge O'Connor's landmark decision stated: "Guided by these principles and applying the factors eschewed by the United States Supreme Court in reviewing a regulatory takings claim, the Court finds that assessing healthy group self-insured trusts for the workers' compensation obligations of defaulted, unrelated group self-insured trusts (GSIT) unconstitutionally imposes significant liability on healthy GSITs, like plaintiffs, which was not anticipated when the trusts were formed and the extent of which is substantially disproportionate to plaintiffs' past experience in New York's self-insurance system."

Stephen Younger, Esq. of Patterson Belknap Webb & Tyler LLP, who argued the groups' summary judgment motion before Justice O'Connor and led the Patterson team working with the Phillips Lytle team out of Albany and Buffalo, said: "We believe the Court's decision was well reasoned and adopted our strongest and most clear positions. We are gratified on behalf of our clients and the other healthy self-insured groups in New York State."

**The 13 self-insured groups that filed the complaint are as follows:**

1. Cooperative Association of Food Enterprises (serving restaurant owners)
2. Contractors Compensation Trust (serving building contractors)
3. THE ELEC-CON Trust (serving electrical contractors)
4. Empire State Transportation Workers' Compensation Trust (serving school buses, ambulances and ambulettes)
5. Empire State Education Trust (serving private schools and universities)
6. First Automotive Services Trust (serving auto repair shops)
7. Empire State Hospitality Workers' Compensation Trust (serving hotels, motels, country clubs, golf courses and YMCAs)
8. New York McDonald's Operators Self-Insurance Trust (serving McDonald's restaurants)
9. New York Petroleum Associations Compensation Trust (serving petroleum haulers)
10. NYSARC Workers' Compensation Trust (serving employees of New York State Association of Retarded Citizens)
11. NY Transportation Workers' Compensation Trust (serving long haul truckers, cross-town truckers and garbage haulers)
12. Retailers Of New York Workers' Compensation Trust (serving retailers and wholesalers)
13. Selective Safety Trust (serving large over-the-road haulers, movers and warehouses)

**EDITOR'S NOTE:**

**A copy of the decision and interviews with the lead attorney are available upon request.**

**About First Cardinal**

Founded in 1994 and headquartered in Latham, N.Y., First Cardinal LLC is presently the exclusive administrator for 6 self-insured groups that provide workers' compensation coverage to nearly 4,000 businesses throughout Massachusetts and New Hampshire.

A self-insured group is an association of employers that provides workers' compensation coverage to its members. Each self-insurance group is composed of homogeneous employers (as defined by state regulation) in the same industry and state, focusing on businesses with favorable risk profiles.

An additional 11,000 businesses are covered through an affiliate, CardinalComp LLC, a managing general agent that offers a fully insured workers' compensation policy through licensed insurance carriers with an A.M. Best financial rating of A- or better.

CardinalComp LLC operates in the states of Connecticut, Illinois, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania and Vermont.

**About Phillips Lytle LLP**

Phillips Lytle LLP is a full-service law firm with seven offices across New York State in Buffalo, Albany, Chautauqua, Garden City, New York City and Rochester. With the farthest geographic reach of any law firm in the state of New York, they are well equipped to meet the needs of their clients. For more information, visit [www.phillipslytle.com](http://www.phillipslytle.com).

**About Patterson Belknap Webb & Tyler LLP**

Founded in 1919, Patterson Belknap is a law firm of nearly 200 lawyers committed to maintaining its independence, its diversity, and its focus of providing high-quality legal advice and service to clients. The firm, consistently recognized as leaders by industry publications, delivers a full range of services across more than 20 practice groups in both commercial law and litigation. For more information, call 212-336-2000 or visit [www.pbwt.com](http://www.pbwt.com).

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