

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ALBANY

BELAIR CARE CENTER, INC.; BELLHAVEN CENTER FOR GERIATRIC & REHABILITATION CENTER; BERKSHIRE NURSING AND REHABILITATION CENTER; CREST HALL CORP. D/B/A CREST HALL CARE CENTER; CROWN NURSING HOME ASSOCIATES, INC.; DMN MANAGEMENT SERVICES, LLC, D/B/A CAPITAL LIVING & REHABILITATION; HERITAGE MINISTRIES MANAGEMENT COMPANY, INC., SUCCESSOR IN INTEREST TO GERRY HOMES MANAGEMENT COMPANY, INC.; HERITAGE VILLAGE REHAB & SKILLED NURSING, INC., SUCCESSOR IN INTEREST TO GERRY NURSING HOME COMPANY, INC.; HILLSIDE MANOR REHABILITATION AND EXTENDED CARE CENTER, LLC; HUDSON VALLEY CARE PARTNERS, LLC, D/B/A HUDSON VALLEY REHABILITATION AND EXTENDED CARE; HUDSON VALLEY HOSPITAL CENTER; JACKSON HEIGHTS CARE CENTER, LLC, D/B/A REGAL HEIGHTS REHABILITATION & HEALTH CARE CENTER; MORGAN ESTATES ACF, LP; NASSAU EXTENDED CARE CENTER CORP.; NESCONSET NURSING CENTER LLC; NEW SANS SOUCI NURSING HOME, LLC; NEW VANDERBILT REHABILITATION & CARE CENTER, INC.; NYMED INC., D/B/A TEN BROECK COMMONS; NYMED PUTNAM, INC., D/B/A PUTNAM RIDGE NURSING HOME; OAK HOLLOW NC CORP.; PALJR, LLC D/B/A EAST NECK NURSING AND REHABILITATION; PARK AVENUE EXTENDED CARE CENTER CORP.; PONTIAC NURSING HOME, INC.; RENSSELAER PLANNING, LLC, D/B/A EVERGREEN COMMONS; RIVER MANOR CORP. D/B/A RIVER MANOR HEALTH RELATED FACILITY; ROSS HEALTH CARE CENTER, INC.; RWB CORP., D/B/A PORT CHESTER NURSING AND REHABILITATION CENTER; SEA CREST HEALTH CARE CENTER, LLC; SEPHARDIC HOME FOR THE AGED, INC. D/B/A SEPHARDIC SKILLED NURSING & REHABILITATION CENTER; SHORE VIEW NURSING HOME, LP; THE GERRY HOMES; THROGS NECK CARE CORP., C/O BENJAMIN DEVELOPMENT; UPR CARE CORP. D/B/A COLD SPRING HILLS CENTER FOR NURSING &

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COMPLAINT

INDEX NO. 1476-14

RJI NO. \_\_\_\_\_

Hon. Richard M. Platkin, J.S.C.

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**REHABILITATION; WEN EXTENDED CARE  
FACILITY MANAGEMENT CORP.,**

*Plaintiffs,*

*-against-*

**COOL INSURING AGENCY, INC.; HICKEY-FINN & CO., INC.; HIRSCH WOLF & COMPANY, INC.; MARSHALL & STERLING, INC.; OXFORD COVERAGE, INC.; RAMPART AGENCY, INC. D/B/A THE RAMPART GROUP; THE REIS GROUP; SHELBERN ASSOCIATES; SPAIN AGENCY, INC.; THE TREIBER GROUP, LLC; VANNER INSURANCE AGENCY; JOHN DOE BROKER 1-5, a fictitious name, true name unknown, each party intended being an individual who acted as a broker with respect to Healthcare Industry Trust of New York; and JOHN DOE BROKER CORPORATION 1-5, a fictitious name, true name unknown, each party intended being a corporation or other legal entity that acted as a broker with respect to Healthcare Industry Trust of New York.**

*Defendants.*

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Plaintiffs, by their attorneys, Hiscock & Barclay, LLP, as and for their Complaint against Defendants, allege as follows:

**INTRODUCTION**

1. The Plaintiffs bring this action for damages against the defendant brokers resulting from the Defendants' failure to carry out their respective contractual, common law and statutory obligations to the Plaintiffs to provide insurance brokerage and other services relating to the self-funded workers' compensation trust of which Plaintiffs were members, and for other actions of the Defendants related to the subject trust.

2. The New York State Workers' Compensation Law (the "WCL") permits employers engaging in related activities in a given industry to satisfy their statutory obligation to provide workers' compensation insurance coverage to their employees by forming a self-funded insurance trust.

3. The Healthcare Industry Trust of New York (the "Trust"), was formed in 1999 pursuant to Section 50(3-a) of the WCL to provide coverage for the workers compensation benefits of the employees of healthcare industry employers. Plaintiffs are healthcare industry employers who were members of the Trust who were placed into the Trust by the various insurance broker defendants set forth herein.

4. The New York Workers' Compensation Board (the "WC Board"), which regulates self-insured trusts, has determined that the Trust is underfunded in an amount in excess of \$176,500,000.

5. The WC Board has further advised the Plaintiffs that they are each jointly and severally liable for the \$176,500,000 deficit of the Trust, for such other fees and costs that may be imposed by the WC Board and has issued assessments against the Plaintiffs, which they are currently repaying.

6. By this action, Plaintiffs seek to hold the Broker Defendants accountable for the breach of their respective contractual and common law duties to the Plaintiffs and for their fraudulent and unlawful acts.

#### VENUE

7. Venue in the County of Albany is proper because this action is subject to an order issued on February 14, 2014 by the Honorable Richard M. Platkin, Supreme Court, Albany County, which provided that this action shall be filed in this Court, and by an order issued on February 23, 2011 by the State of New York Litigation Coordinating Panel, which provided that "any actions seeking damages alleged to have arisen from CRM's administration of GSITs that provided workers compensation coverage to its members" shall be coordinated before the Coordinating Justice (Justice Platkin) in this Court.

## **PARTIES**

### **The Plaintiffs**

8. Plaintiff, Belair Care Center, Inc., located at 2478 Jerusalem Avenue, North Bellmore, New York 11710, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

9. Plaintiff, Bellhaven Center For Geriatric & Rehabilitation Center, located at 110 Beaver Dam Road, Brookhaven, New York 11719, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

10. Plaintiff, Berkshire Nursing And Rehabilitation Center, located at 10 Berkshire Road, West Babylon, New York 11704, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

11. Plaintiff, Crest Hall Corp. d/b/a Crest Hall Care Center, located at 63 Oakcrest Avenue, Middle Island, New York 11953, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

12. Plaintiff, Crown Nursing Home Associates, Inc., located at 3457 Nostrand Avenue, P.O. Box 272, Brooklyn, New York 11229, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

13. Plaintiff, DMN Management Services, LLC, d/b/a Capital Living & Rehabilitation, located at 26 North Broadway, Schenectady, New York 12305, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

14. Plaintiff, Heritage Ministries Management Company, Inc., Successor In Interest To Gerry Homes Management Company, Inc., located at Route 60, P.O. Box 250, Gerry, New York 14740, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

15. Plaintiff, Heritage Village Rehab & Skilled Nursing, Inc., Successor In Interest To Gerry Nursing Home Company, Inc., located at Route 60, P.O. Box 250, Gerry, New York 14740, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

16. Plaintiff, Hillside Manor Rehabilitation and Extended Care Center, LLC, located at 162-15 Hillside Avenue, Jamaica Estates, New York 11430, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

17. Plaintiff, Hudson Valley Care Partners, LLC, d/b/a Hudson Valley Rehabilitation and Extended Care, located at 260 Vineyard Avenue, Highland, New York 12528, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

18. Plaintiff, Hudson Valley Hospital Center, located at 1980 Crompond Road, Cortlandt Manor, New York 10567, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

19. Plaintiff, Jackson Heights Care Center, LLC, d/b/a Regal Heights Rehabilitation & Health Care Center, located at 70-50 35th Avenue, Jackson Heights, New York 11372, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

20. Plaintiff, Morgan Estates ACF, LP, located at 45887 Morgan View Road, Geneseo, New York 14454, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

21. Plaintiff, Nassau Extended Care Center Corp., located at 377 Oak Street, Garden City, New York 11530, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

22. Plaintiff, Nesconset Nursing Center LLC, located at 100 Southern Boulevard, Nesconset, New York 11767, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

23. Plaintiff, New Sans Souci Nursing Home, LLC, located at 115 Park Avenue, Yonkers, New York 10703, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

24. Plaintiff, New Vanderbilt Rehabilitation & Care Center, Inc., located at 135 Vanderbilt Avenue, Staten Island, New York 10304, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

25. Plaintiff, NYMED Inc., d/b/a Ten Broeck Commons, located at One Common Drive, Lake Katrine, New York 12499, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

26. Plaintiff, NYMED Putnam, Inc., d/b/a Putnam Ridge Nursing Home, located at 46 Mount Ebo Road North, Brewster, New York 10509, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

27. Plaintiff, Oak Hollow NC Corp., located at 49 Oakcrest Avenue, Middle Island, New York 11953, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

28. Plaintiff, PALJR, LLC d/b/a East Neck Nursing and Rehabilitation Center, located at 134 Great Eastneck Road, West Babylon, New York 11704, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

29. Plaintiff, Park Avenue Extended Care Center Corp., located at 377 Oak Street, Garden City, New York 11530, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

30. Plaintiff, Pontiac Nursing Home, Inc., located at 303 East River Road, Oswego, New York 13126, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

31. Plaintiff, Rensselaer Planning, LLC, d/b/a Evergreen Commons, located at 1070 Luther Road, East Greenbush, New York 12061, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

32. Plaintiff, River Manor Corp. d/b/a River Manor Health Related Facility, located at 630 East 104th Street, Brooklyn, New York 11236, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

33. Plaintiff, Ross Health Care Center, Inc., located at 839 Suffolk Avenue, Brentwood, New York 11717, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

34. Plaintiff, RWB Corp., d/b/a Port Chester Nursing and Rehabilitation Center, located at 1000 High Street, Port Chester, New York 10573, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

35. Plaintiff, Sea Crest Health Care Center, LLC, located at 3035 West 24th Street, Brooklyn, New York 11224, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

36. Plaintiff, Sephardic Home for the Aged, Inc. d/b/a Sephardic Skilled Nursing & Rehabilitation Center, located at 2266 Cropsey Avenue, Brooklyn, New York 11214, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

37. Plaintiff, Shore View Nursing Home, LP, located at 2865 Brighton 3rd Street, Brooklyn, New York 11235, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

38. Plaintiff, The Gerry Homes, located at Route 60, P.O. Box 350, Gerry, New York 14740, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

39. Plaintiff, Throgs Neck Care Corp., c/o Benjamin Development, located at 377 Oak Street, Garden City, New York 11530, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

40. Plaintiff, UPR Care Corp, d/b/a Cold Spring Hills Center For Nursing & Rehabilitation, located at 378 Syosset-Woodbury Road, Woodbury, New York 11797, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

41. Plaintiff, Wen Extended Facility Management Corp., located at 707 Throgs Neck Expressway, Bronx New York, is a healthcare industry employer and was during times relevant hereto a member of the Trust.

#### **Defendants**

42. Upon information and belief, and at all times hereinafter mentioned, each of the defendants is a duly licensed insurance broker with whom one or more of the plaintiffs entered into a contractual relationship to procure workers compensation insurance.

43. Upon information and belief and at all times hereinafter mentioned, the defendant Cool Insuring Agency, Inc. ("Cool") is a domestic business corporation organized and existing pursuant to the laws of the State of New York.

44. Upon information and belief and at all times hereinafter mentioned, the defendant Hickey-Finn & Co., Inc. ("Hickey-Finn") was a corporation duly organized under the laws of the State of New York.



45. Upon information and belief and at all times hereinafter mentioned, the defendant Hirsch Wolf & Company, Inc. ("Hirsch Wolf") is a domestic business corporation organized and existing pursuant to the laws of the State of New York.

46. Upon information and belief and at all times hereinafter mentioned, the defendant Marshall & Sterling, Inc. ("Marshall") is a domestic business corporation organized and existing pursuant to the laws of the State of New York.

47. Upon information and belief and at all times hereinafter mentioned, the defendant Oxford Coverage, Inc. ("Oxford") is a foreign business corporation organized under the laws of the State of New Jersey and authorized to transact business in the State of New York.

48. Upon information and belief and at all times hereinafter mentioned, the defendant Rampart Agency, Inc., d/b/a The Rampart Group, ("Rampart") is a domestic business corporation organized and existing pursuant to the laws of the State of New York.

49. Upon information and belief and at all times hereinafter mentioned, the defendant The Reis Group ("Reis Group") is licensed insurance sales agent authorized to transact business in the State of New York.

50. Upon information and belief and at all times hereinafter mentioned, the defendant Shel-Bern Associates, is a corporation authorized to transact business in the State of New York.

51. Upon information and belief and at all times hereinafter mentioned, the defendant Spain Agency, Inc. ("Spain") is a domestic business corporation organized and existing pursuant to the laws of the State of New York.

52. Upon information and belief and at all times hereinafter mentioned, the defendant The Treiber Group, LLC ("Treiber") is a domestic business corporation organized and existing pursuant to the laws of the State of New York.

53. Upon information and belief and at all times hereinafter mentioned, the defendant Vanner Insurance Agency (“Vanner”), is a corporation authorized to transact business in the State of New York.

54. JOHN DOE BROKER 1-5, a fictitious name, true name unknown, each party intended being an individual who acted as a broker with respect to the Trust.

55. JOHN DOE BROKER CORPORATION 1-5, a fictitious name, true name unknown, each party intended being a corporation or other legal entity that acted as a broker with respect to the Trust.

56. The entities referenced in paragraphs 43 through 55 are sometimes collectively referred to herein as “the Brokers”.

#### **THE HITNY TRUST**

57. Upon information and belief and at all times hereinafter mentioned, Compensation Risk Managers, LLC (hereinafter “CRM”) was a domestic limited liability company with its principal place of business located at 2515 South Road, Poughkeepsie, New York.

58. Upon information and belief and at all times hereinafter mentioned, CRM USA Holdings, Inc., now known as Majestic USA Capital, Inc., (hereinafter “CRM USA”) was a Delaware corporation regularly doing business in the State of New York.

59. Upon information and belief and at all times hereinafter mentioned, CRM Holdings, Ltd., now known as Majestic Capital, Ltd. (hereinafter “CRM Holdings”) was a Bermuda limited liability company regularly doing business in the State of New York.

60. CRM, CRM USA, CRM Holdings are collectively referred to herein as the “CRM Entities.”

61. Upon information and belief, Daniel G. Hickey, Jr. (“Hickey Jr.”) was the Chief Executive Officer of CRM and Chairman of the Board of CRM Holdings, Daniel G. Hickey, Sr. (“Hickey Sr.”) was a member of the Board of Managers of CRM Holdings, James J. Scardino (“Scardino”) was the Chief

Financial Officer of CRM, Martin D. Rakoff ("Rakoff") was the Chief Executive Officer of CRM Holdings, Louis J. Viglotti ("Viglotti") was the General Counsel of CRM Holdings. Chester J. Walczyk ("Walczyk") was the Chief Operating Officer of CRM Holdings, Robert Polansky ("Polansky") was the Senior Vice President of Sales and Product Development of CRM Holdings, David M. Birsner ("Birsner") was a member of the Board of Members of CRM Holdings, Keith S. Hynes ("Hynes") was the Chariman of the Board of Members of CRM Holdings, Philip J. Magnarella ("Magnarella") was a member of the Board of Members of CRM Holdings. Salvatore A. Patafio ("Patafio") was a member of the Board of Members of CRM Holdings, John Dubois ("Dubois") was an officer of CRM, Joseph Taylor ("Taylor") was the Chief Financial Officer of CRM.

62. The individuals set forth in Paragraph 61 are collectively referred to herein as the "CRM Individuals."

63. Upon information and belief, on September 12, 1999, CRM established the Trust, of which the Plaintiffs subsequently became members.

64. Section 50(3-a)(5)(a) of the WCL requires that all self-funded workers' compensation trusts such as the Trust retain the services of a group administrator to be responsible for assisting the trust in complying with the provisions of the WCL and for coordinating required services to the trust.

65. On September 12, 1999, the Trust and CRM entered into the Healthcare Industry Trust of New York Service Agreement, pursuant to which CRM was retained as the group administrator of the Trust, as required by the WCL, for the purpose of providing management of the Trust for the benefit of all participating employers, including the Plaintiffs.

66. On April 1, 2005, the Trust and CRM entered into a subsequent service agreement entitled Healthcare Industry Trust of New York Agreement for Program and Claims Administrative Services. The two service agreements referenced above are hereinafter collectively as "the Service Agreement".

67. Upon information and belief, from the inception of the Trust, CRM and the CRM Individuals exercised complete dominion and control over the Trust and its operations and over the Trustees of the Trust, including participating in and controlling board meetings, entering into contracts with third-parties on behalf of the Trust, including the Brokers and the Plaintiffs, making investment decisions and appointing trustees of the Trust.

68. Upon information and belief, the Trust was one of eight such self-funded workers' compensation trusts in New York that CRM had established and for which it served as group administrator.

69. CRM was licensed by the WC Board to act as a group self-insurer administrator in the State of New York. As a result of CRM's breach of its duties and obligations under the WCL and the Service Agreement (described more fully herein), on April 15, 2008, the Chairman of the WC Board issued a "Notice of Charges and Hearing" to revoke CRM's license to act as a representative of the Trust and other similar trusts in New York.

70. As the result of the actions of the CRM Entities and Defendants as referenced herein, on or about December 15, 2007, the Board of Trustees of the Trust voted to surrender control of the Trust to the WC Board. Such determination became effective on December 31, 2007.

71. On or about June 2, 2008, CRM and the WC Board entered into a Settlement Agreement pursuant to which CRM agreed to surrender its license to act as a group administrator in New York, and to cease representing self-insured trusts, including the Trust, before the WC Board.

72. In or about February 2008, the WC Board took over administration of the claims of the Trust. The WC Board currently operates the Trust through its own third-party administrator.

73. Upon information and belief, all seven of the other self-funded workers' compensation trusts administered by CRM have been found to be underfunded, and the WC Board has similarly taken over their administration and control.

74. On April 29, 2011, the CRM Entities filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court, Southern District of New York.

#### **THE WC BOARD ASSESSMENTS LEVIED AGAINST THE PLAINTIFFS**

75. Pursuant to the WCL, the Trust is required to maintain funds sufficient to pay existing and anticipated claims and to levy assessments against individual members of the Trust to fully-fund the Trust.

76. In order to determine the overall amount needed to fully fund the Trust and to determine each Trust member's individual assessment, the WC Board commissioned the preparation of a forensic analysis of the Trust by the accounting firm of Bollam, Sheedy, Torani & Co., LLP (the "Forensic Analysis"), which was completed and issued on or about December 18, 2009. A copy of the Forensic Analysis is annexed hereto as *Exhibit A* and is incorporated herein by reference.

77. The Forensic Analysis concluded that the Trust was underfunded by an amount in excess of \$220,000,000.

78. In or about December of 2009, the WC Board issued letters to members of the Trust, including the Plaintiffs, asserting that the Trust members were each jointly and severally liable for the underfunded amount in excess of \$220,000,000.

79. Those letters set forth the amount of each Corporate Plaintiff's assessed share of the \$220,000,000 deficit and further stated that if such amount was not paid within the timeframe set forth, the New York State Attorney General's Office would bring a collection action to recover the amount

claimed to be due. The WC Board later announced that the Trust's deficit, as of March 31, 2012, was estimated to be \$176,500,000.

80. The Plaintiffs have since enrolled in payment plans to pay their pro rata shares of the assessed deficit to the WC Board pursuant to written agreements.

81. In addition, the Plaintiffs and other HITNY members commenced a legal action against the Brokers and other entities by the filing of the summons and complaint on July 10, 2009 ("the Member Action"). The most recent amendment to that complaint occurred on November 13, 2013.

82. Pursuant to a Stipulation dated January 14, 2014, the Plaintiffs and other plaintiffs in the Member Action assigned the claims asserted in the Member Action, with the exception of claims against the Brokers, to the WC Board. The Member Action is now coordinated with this action by Order of the Court.

83. On February 28, 2014, the WC Board filed a Fourth Amended Complaint in the coordinated Member Action reflecting the assignment of the member claims. The Plaintiffs incorporate by reference the factual allegations in the WC Board's Fourth Amended Complaint in the coordinated Member Action as if fully set forth herein, a copy of which is attached hereto as *Exhibit B*.

#### **CRM AND THE BROKERS**

84. Upon information and belief, from the inception of the Trust until it ceased operations, CRM and the CRM Individuals failed to administer the Trust in compliance with the WCL, the Regulations, the Service Agreement and community standards of reasonable prudence in the operation of a trust fund.

85. Upon information and belief, CRM lacked the experience and expertise to competently act as the administrator for the Trust.

86. Upon information and belief, CRM and the CRM Individuals entered into a relationship with the Brokers pursuant to which they paid additional, inflated, excessive and/or undisclosed fees and

commissions to insurance agents and brokers who placed certain employers with the Trust, including the Defendants named herein.

87. Upon information and belief, the Brokers knew or should have known about CRM and the CRM Individuals' experience and mismanagement of the Trust, including but not limited to, the following:

- a) Upon information and belief, the CRM Entities and CRM Individuals caused the Trust to fail to maintain an investment policy for the investment of the Trust's funds.
- b) Upon information and belief, the CRM Entities and CRM Individuals represented to the Plaintiffs that the joint and several liability of the Plaintiffs was limited and comparable to that in other self-insured trust groups that had no joint and several liability.
- c) On several occasions the CRM Entities and CRM Individuals caused the Trust to be penalized for late payments of workers' compensation awards or installments.
- d) Upon information and belief, the CRM Entities and CRM Individuals caused the eight New York self-insured trusts administered by CRM to be penalized for late payments of workers' compensation awards or installments and for other conduct at a rate significantly higher than that of all other New York group self-insurance trusts as a whole.
- e) CRM and the CRM Individuals repeatedly failed to file proper forms with the WC Board during the course of the administration of the Trust.
- f) CRM and the CRM Individuals repeatedly engaged in dilatory conduct in their interactions with the WC Board in connection with their administration of the Trust.
- g) CRM and the CRM Individuals under-reserved dozens of Trust claims that were open at the time the WC Board assumed responsibilities for administering the Trust in February of 2008.

- h) CRM and the CRM Individuals failed to cooperate with the WC Board and its third-party agent retained to audit the Trust, including refusing to provide requested data and providing erroneous and incomplete data.
- i) CRM and the CRM Individuals submitted materially false information to the WC Board and to the Plaintiffs in connection with the Trust's annual audited financial statements.
- j) CRM and the CRM Individuals provided materially false information to the WC Board and to the Plaintiffs in connection with the number and size of the Trust's "Section 32" settlement agreements, obscuring the Trust's true liabilities.
- k) CRM and the CRM Individuals provided materially false information to the WC Board, to the Trust's Board of Trustees and to the Plaintiffs in connection with CRM's representations with respect to its purported actions to strengthen the Trust's reserves, obscuring the Trust's true liabilities and forestalling the imposition of corrective measures.

88. In addition, the contribution rates set by CRM with respect to the Trust failed to comply with the WC Board Regulations and the Service Agreement in that they were insufficient to ensure the solvency of the Trust, resulting in the Trust being continuously deemed underfunded, a fact that the Brokers knew or should have known.

89. For example, Defendant Hirsch Wolf sent a letter dated March 24, 2006 to a Trust member stating that there was a 20% increase state-wide in workers' compensation insurance premiums. However, Hirsch Wolf informed the member that its premium would only increase by 12% in part because Hirsch Wolf had obtained "an increase in the premium discount to help defer some of the rate increase."

90. Upon information and belief, CRM allowed such excessive discounts in order to retain existing Trust members and to entice prospective members to join the Trust through the Brokers.



91. Upon information and belief, the failure to set adequate contribution rates, including as the result of awarding excessive discounts, resulted in increased fees being paid to CRM in that CRM was able to increase the size of the Trust membership and the amount of Trust assets (on which its fees were based) by understating the true cost of joining the Trust, which was paid back to the Brokers through excessive commissions.

92. Upon information and belief, CRM failed to use its best efforts to obtain excess insurance coverage for the Trust at a reasonable and competitive price and failed to obtain competing quotes for excess coverage, which the Brokers knew or should have known.

93. Upon information and belief, CRM lacked the expertise and knowledge to provide the required claims administration services and failed to hire competent professionals to perform the claims administration services as is the standard in the self-insured insurance administration industry, which the Brokers knew or should have known.

#### **GENERAL ALLEGATIONS AGAINST THE BROKERS**

94. As referenced above, upon information and belief, each of the Brokers acted in the capacity as insurance brokers by counseling the Plaintiffs set forth in Paragraph 122 below with regard to obtaining workers compensation insurance for their employees and by soliciting, recommending and placing such Plaintiffs in the Trust.

95. Upon information and belief, based upon the provisions of the New York State Insurance Law, the Brokers acted as the legal representative for such Plaintiffs with regard to insurance brokerage transactions.

96. Upon information and belief, each of these Plaintiffs had a special relationship of personal trust and confidence with their Brokers that existed for several years wherein Plaintiffs continuously and

reasonably relied upon the expertise and advice of the Brokers with regard to inquiries on securing suitable workers compensation insurance coverage for their employees.

97. Upon information and belief, the special relationship between these Plaintiffs and their Brokers placed the Brokers on notice that Plaintiffs, as their clients, would rely upon their expertise and advice concerning the procurement of suitable workers compensation coverage for their employees.

98. As a result of the parties' special relationship, the Brokers owed such Plaintiffs a heightened duty of care.

99. Upon information and belief, such Plaintiffs solely dealt with their Brokers who marketed the Trust to them with the representation that it had lower premiums than other traditional insurance options and carried little risk.

100. As referenced above, upon information and belief, the Brokers knew or should have known that workers compensation group self-insurance trusts carried a significant amount of risk, including, but not limited to: the potential of being held jointly and severally liable for the losses of the entire Trust during a given membership period, the risk of increased rates, and the risk of being held liable for the losses of other members that became defunct or otherwise unable to pay.

101. Upon information and belief, in the course of marketing the Trust and recommending that such Plaintiffs join and/or remain members of the Trust, the Brokers represented that they had investigated the details concerning the Trust, that it was financially sound and that the insurance coverage provided by the Trust was equivalent to or better than an insurance policy.

102. Upon information and belief, in the course of marketing the Trust and recommending that such Plaintiffs join and/or remain members of the Trust, the Brokers represented to Plaintiffs and/or provided materials containing representations concerning certain aspects of the Trust, including: the cost of participating in the Trust, the relative safety and financial soundness of the Trust, the limited liability of

the Trust due to excess insurance policies purchased by the Trust, and the expertise and experience of CRM in acting as an administrator for a group self-insured workers' compensation trust.

103. For example, Defendant Hirsch Wolf sent a letter dated March 24, 2006 to a Trust member stating that Hirsch Wolf "can assure you that the HITNY program remains in excellent financial condition."

104. Upon information and belief, the materials provided and representations made by the Brokers to the Plaintiffs were false or misleading and the Brokers knew or should have known of the falsity of such material and representations and further knew or should have known that Plaintiffs, as clients with whom they had a special relationship of personal trust and confidence, would rely on such materials and representations in deciding whether to join and/or remain in the Trust.

105. Plaintiffs reasonably relied on such material and representations in making a determination to become and/or remain a member of the Trust.

106. Upon information and belief, the Brokers also had a duty and responsibility to explain the risks of group self-insurance generally to such Plaintiffs, specifically the concept of joint and several liability inherent to the Trust and that becoming a member of the Trust was not equivalent to traditional workers compensation coverage.

107. Upon information and belief, the Brokers failed to disclose such risks to such Plaintiffs.

108. Upon information and belief, the Brokers further had the duty and responsibility to research and confirm the financial viability of the Trust prior to recommending and/or placing such Plaintiffs into the Trust.

109. Upon information and belief, the Brokers breached their professional and/or contractual duty to the Plaintiffs by failing to determine the financial viability of the Trust or placing them in the Trust with the knowledge that the Trust was underfunded.

110. Upon information and belief, the Brokers also breached their professional and/or contractual duty to such Plaintiffs by failing to determine the financial viability of the Trust each year such Plaintiffs had to renew their membership or by continuing to place Plaintiffs in the Trust with the knowledge that the Trust was continually underfunded.

111. Further, upon information and belief, based upon industry standards, group self-insurance is not suitable for each and every employer.

112. Upon information and belief, the Brokers breached their professional and/or contractual duty to such Plaintiffs by failing to advise them that group self-insurance was not suitable for them.

113. As referenced above, upon information and belief, CRM gave commissions in excess of the industry standards to brokers who referred members accepted by the Trust, including the Brokers.

114. Upon information and belief, the Brokers received a commission from CRM in excess of the industry standard for each member they placed in the Trust, including Plaintiffs, and the Brokers failed to disclose that fact to such Plaintiffs.

115. Upon information and belief, the Brokers acted in concert with CRM to increase the membership of the Trust despite a mounting deficit by aggressively marketing Trust membership as a relatively safe and conservative alternative to regulated insurance products, while negotiating, pursuing and accepting excessive and hidden commissions that were dramatically higher than those customary in the industry.

116. Upon information and belief, the Brokers' independence as insurance advisors and duty to such Plaintiffs as clients were undermined and compromised by the hidden compensation arrangements with the Trust and CRM.

117. For example, in a conference call with industry analysts on March 4, 2009, Hickey Jr. alluded to this improper relationship between CRM and the Brokers by stating that “[w]e will work with brokers committed to our product platforms and pullback where we see unprofitable relationships.”

118. The failure to disclose this compensation arrangement constituted a conflict of interest and was a dishonest and untrustworthy practice in violation of the New York State Insurance Law.

119. Upon information and belief, based upon the compensation arrangement and acts of negligence, fraud, breaches, misrepresentations and statutory violations, the Brokers converted the assets of such Plaintiffs for their personal use in the form of excessive fees, premiums, commissions, salary and bonuses paid by the Trust and/or CRM to them, intending to deprive these Plaintiffs of such assets.

120. As a result of the foregoing, upon information and belief, the Brokers diverted such Plaintiffs’ assets to their personal use and were unjustly enriched as the result.

121. Such Plaintiffs would not have joined and/or remained as members of the Trust but for the solicitation and recommendation of their Brokers.

**SPECIFIC PLAINTIFFS’ CLAIMS  
AGAINST SPECIFIC BROKER DEFENDANTS**

122. Each individual Plaintiff repeats and re-alleges each of the allegations contained in the preceding paragraphs with the same force and effect as if set forth fully herein with respect to the specific defendants as follows:

- a) *Belair Care Center, Inc. v. Hirsch Wolf*
- b) *Bellhaven Center for Geriatric & Rehabilitation Center v. Hirsch Wolf*
- c) *Berkshire Nursing and Rehabilitation Center v. Oxford*
- d) *Crest Hall Corp. d/b/a Crest Hall Care Center v. Hirsch Wolf*
- e) *Crown Nursing Home Associates, Inc. v. Hirsch Wolf*
- f) *DeWitt Rehabilitation and Nursing Center, Inc. v. Rampart*
- g) *DMN Management Services, LLC, d/b/a Capital Living & Rehabilitation v. Marshall & Sterling*

- h) *The Gerry Homes v. Vanner Insurance*
- i) *Heritage Ministries Management Company, Inc., Successor In Interest To Gerry Homes Management Company, Inc. v. Vanner Insurance*
- j) *Heritage Village Rehab & Skilled Nursing, Inc., Successor In Interest To Gerry Nursing Home Company, Inc. v. Vanner Insurance*
- k) *Hillside Manor Rehabilitation and Extended Care Center, LLC v. Hirsch Wolf*
- l) *Hudson Valley Care Partners, LLC, d/b/a Hudson Valley Rehabilitation and Extended Care v. Hirsch Wolf*
- m) *Hudson Valley Hospital Center v. Spain*
- n) *Jackson Heights Care Center, LLC, d/b/a Regal Heights Rehabilitation & Health Care Center v. Spain*
- o) *Morgan Estates ACF, LP y. Cool Insuring Agency, Inc.*
- p) *Nassau Extended Care Center Corp. v. The Treiber Group, LLC*
- q) *Nesconset Nursing Center LLC v. Rampart*
- r) *New Sans Souci Nursing Home, LLC v. Hirsch Wolf*
- s) *New Vanderbilt Rehabilitation & Care Center, Inc. v. Shel-Bern Associates*
- t) *NYMED Inc., d/b/a Ten Broeck Commons v. Reis Group*
- u) *NYMED Putnam, Inc., d/b/a Putnam Ridge Nursing Home v. Reis Group*
- v) *Oak Hollow NC Corp. d/b/a Oak Hollow Nursing Home v. Hirsch Wolf*
- w) *PALJR, LLC d/b/a East Neck Nursing and Rehabilitation Center v. Rampart*
- x) *Park Avenue Extended Care Center Corp v. The Treiber Group, LLC*
- y) *Pontiac Nursing Home, Inc. v. Oxford*
- z) *Rensselaer Planning, LLC, d/b/a Evergreen Commons v. Reis Group*
- aa) *River Manor Corp. d/b/a River Manor Health Related Facility v. Hirsch Wolf*
- bb) *Ross Health Care Center, Inc. v. Hirsch Wolf*
- cc) *RWB Corp., d/b/a Port Chester Nursing and Rehabilitation Center v. Rampart*
- dd) *Sea Crest Health Care Center, LLC v. Hirsch Wolf*
- ee) *Sephardic Home for the Aged, Inc. d/b/a Sephardic Skilled Nursing & Rehabilitation Center v. Hirsch Wolf*
- ff) *Shore View Nursing Home, LP v. Hirsch Wolf*
- gg) *Throgs Neck Care Corp., c/o Benjamin Development v. The Treiber Group, LLC*

- hh) *UPR Care Corp., d/b/a Cold Spring Hills Center for Nursing & Rehabilitation v. Hirsch Wolf*
- ii) *Wen Extended Facility Management Corp. v. The Treiber Group, LLC*

## **CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION (Conversion)**

123. Plaintiffs repeat and re-allege each of the allegations contained in the preceding paragraphs and the allegations contained in the WC Board's Fourth Amended Complaint in the Member Action with the same force and effect as if set forth fully herein.

124. Upon information and belief, each of the Defendants converted the assets of the Plaintiffs for personal use in the form of excessive fees, premiums, salary and bonuses paid by the Trust, intending to deprive the Plaintiffs of such assets.

125. Plaintiffs are therefore entitled to a judgment against such Defendants for the amount of assets of the Plaintiffs converted to their personal use, such amount being unknown at this time.

### **SECOND CAUSE OF ACTION (Unjust Enrichment)**

126. Plaintiffs repeat and re-allege each of the allegations contained in the preceding paragraphs and the allegations contained in the WC Board's Fourth Amended Complaint in the Member Action with the same force and effect as if set forth fully herein.

127. Each of the Defendants have diverted the assets of the Plaintiffs to their personal use and were unjustly enriched as the result.

128. As a result, such Defendants should be required to disgorge and make restitution of the amount of such unjust enrichment to the Plaintiffs.

**THIRD CAUSE OF ACTION  
(Negligent Misrepresentation)**

129. Plaintiffs repeat and re-allege each of the allegations contained in the preceding paragraphs and the allegations contained in the WC Board's Fourth Amended Complaint in the Member Action with the same force and effect as if set forth fully herein.

130. By virtue of the relationship between the Defendants and the Plaintiffs as set forth herein above, such Defendants owed to the Plaintiffs a duty to impart to them complete and accurate information concerning the financial status of the Trust, the risks associated with becoming a member of the Trust, the ongoing risk associated with remaining a member of the Trust and the competency of CRM in acting as the administrator of the Trust.

131. Upon information and belief, the information provided to the Plaintiffs by each of the referenced Defendants with respect to the financial status of the Trust, the risks associated with becoming a member of the Trust, the ongoing risk associated with remaining a member of the Trust and the competency of CRM in acting as the administrator of the Trust, was inaccurate and/or incomplete.

132. Upon information and belief, each of the Plaintiffs reasonably relied on the information provided to them by the Defendants as aforesaid in making decisions with respect to their involvement in the Trust.

133. Upon information and belief, the failure of the Defendants to impart accurate and complete information to the Plaintiffs prevented the Plaintiffs from being in a position to take actions to protect their interests and to avoid incurring liability in connection with being a member of the Trust.

134. It was reasonably foreseeable that the Plaintiffs would be injured by the Defendants' misrepresentations and omissions.

135. As the result of the actions set forth herein, the Plaintiffs have been damaged in amounts: (a) for their pro rata share for assessments levied by the WC Board (b) due based upon unpaid claims of



their employees, (c) of such other monetary claims that may be imposed by the WC Board related to the Trust, and (d) of the fees and/or compensation paid to or on behalf of Defendants.

**FOURTH CAUSE OF ACTION  
(Fraud in the Inducement)**

136. Plaintiffs repeat and re-allege each of the allegations contained in the preceding paragraphs and the allegations contained in the WC Board's Fourth Amended Complaint in the Member Action with the same force and effect as if set forth fully herein.

137. Upon information and belief, the Brokers represented to the Plaintiffs that CRM was an experienced self-insured trust administrator capable of undertaking the significant task of properly administering and managing the Trust.

138. Upon information and belief, the Brokers represented to the Plaintiffs that CRM would hire those professionals it deemed necessary, at CRM's expense, to assist it in administering and managing the Trust.

139. Upon information and belief, the Brokers purposely withheld information from the Plaintiffs, or provided to the Plaintiffs erroneous and misleading information regarding the true financial condition of the Trust, the Trust's compliance with the WCL and the Regulations and the risks associated with becoming a member of the Trust.

140. Upon information and belief, the above-referenced representations were made by the Brokers to the Plaintiffs with an intent to deceive and with knowledge that they were false and with knowledge that the Plaintiffs would rely on them in making a decision whether to become and remain a member of the Trust.

141. Upon information and belief, the actions of the Brokers as set forth herein prevented the Plaintiffs from making an informed decision regarding the financial status of the Trust, its compliance

with the WCL and the Regulations, the performance of CRM as the Trust's administrator, and the risks of becoming a member of the Trust and/or continuing membership in the Trust.

142. The Plaintiffs reasonably relied upon the representations of the Brokers referenced herein in making their decision to become a member of the Trust.

143. By Defendants' deceptive activities and misrepresentations and breach of their professional and contractual duties, Plaintiffs were fraudulently induced into entering into one or more agreements that caused them damage.

144. As the result of the actions set forth herein, the Plaintiffs have been damaged in amounts: (a) for their pro rata share for assessments levied by the WC Board (b) due based upon unpaid claims of their employees, (c) of such other monetary claims that may be imposed by the WC Board related to the Trust, and (d) of the fees and/or compensation paid to or on behalf of Defendants.

**FIFTH CAUSE OF ACTION  
(General Business Law §349)**

145. Plaintiffs repeat and re-allege each of the allegations contained in the preceding paragraphs and the allegations contained in the WC Board's Fourth Amended Complaint in the Member Action with the same force and effect as if set forth fully herein.

146. Section 349 of the New York General Business Law makes it unlawful to engage in deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in the State of New York.

147. Upon information and belief, the Brokers engaged in deceptive acts or practices within the meaning of Section 349 of the New York General Business Law, including the dissemination of false and misleading information to employers and their employees concerning the administration and financial

status of the Trust, the risks associated with joining the Trust and CRM's capabilities as a self-insured trust administrator.

148. Upon information and belief, the Plaintiffs reasonably relied on such false and misleading information in making a determination whether to become and remain a member of the Trust.

149. Upon information and belief, these actions harmed the Plaintiffs and the general-public by jeopardizing the workers' compensation benefits of New York employers and their employees.

150. As the result of the actions set forth herein, the Plaintiffs have been damaged in amounts: (a) for their pro rata share for assessments levied by the WC Board (b) due based upon unpaid claims of their employees, (c) of such other monetary claims that may be imposed by the WC Board related to the Trust, and (d) of the fees and/or compensation paid to or on behalf of Defendants.

151. As the result of Defendants' action, Plaintiffs are entitled to treble damages and the recovery of attorneys' fees and the costs of this litigation, as provided for in General Business Law §349.

**SIXTH CAUSE OF ACTION  
(RICO § 1962(c))**

152. Plaintiffs repeat and re-allege each of the allegations contained in the preceding paragraphs and the allegations contained in the WC Board's Fourth Amended Complaint in the Member Action with the same force and effect as if set forth fully herein.

153. The Brokers are "persons" pursuant to 18 U.S.C. §1962 (c) who are liable to the Plaintiffs for violations of 18 U.S.C. §1961, et al. (the Racketeer Influenced and Corrupt Organizations (RICO) Act) pursuant to 18 U.S.C §1964 (c).

154. CRM was the self-insured group trust administrator for seven workers' compensation trusts in addition to the Trust, as follows: Elite Contractors Trust of New York, Wholesale and Retail Workers' Compensation Trust of New York, Trade Industry Workers' Compensation Trust for Manufacturers, Real Estate Management Trust of New York, Transportation Industry Workers Compensation Trust of New York,

Public Entity Trust of New York and the New York State Association of Cemeteries Trust (collectively with the Trust, the "Trust Enterprise"). The Trust Enterprise is an enterprise engaged in and whose activities affect interstate commerce.

155. Upon information and belief, the CRM Entities, CRM Individuals and the Brokers exerted complete dominion and control over the Trust Enterprise and agreed to and did conduct and participate in the conduct of the Trust Enterprise's affairs through a pattern of racketeering activity and for the unlawful purpose of intentionally defrauding Plaintiffs and others.

156. Upon information and belief, pursuant to and in furtherance of their fraudulent scheme, Defendants committed multiple related acts of mail fraud in violation of 18 U.S.C. §1341, including repeatedly using the U.S. mails to transmit fraudulent and misleading material to the Plaintiffs and to other employers in New York as set forth herein.

157. The acts of the Brokers set forth above constitute a pattern of racketeering activity pursuant to 18 U.S.C. §1961(5).

158. As a direct and proximate result of the Brokers' racketeering activities and violations of 18 U.S.C. §1962(c) as set forth herein, Plaintiffs have been injured in their business and property in that Plaintiffs will be or are liable for amounts: (a) for their pro rata share for assessments levied by the WC Board (b) due based upon unpaid claims of their employees, (c) of such other monetary claims that may be imposed by the WC Board related to the Trust, and (d) of the fees and/or compensation paid to or on behalf of Defendants.

159. As the result of the Brokers' actions, Plaintiffs are entitled to treble damages and the recovery of attorneys' fees and the costs of this litigation, as provided for in 18 U.S.C. §1964(c).

**SEVENTH CAUSE OF ACTION  
(Common Law Indemnification)**

160. Plaintiffs repeat and re-allege each of the allegations contained in the preceding paragraphs and the allegations contained in the WC Board's Fourth Amended Complaint in the Member Action with the same force and effect as if set forth fully herein.

161. Plaintiffs, through no fault of their own, were invoiced assessments from the WC Board resulting from the actions or inactions, fraud, breaches and negligence of the Defendants.

162. As previously set forth, Plaintiffs are currently enrolled in payment plans with the WC Board for payment of their assessment amounts pursuant to written agreements.

163. The Plaintiffs are therefore entitled to a determination that Defendants are required to indemnify Plaintiffs in amounts: (a) for their pro rata share for assessments levied by the WC Board (b) due based upon unpaid claims of their employees, (c) of such other monetary claims that may be imposed by the WC Board related to the Trust, and (d) of the fees and/or compensation paid to or on behalf of Defendants.

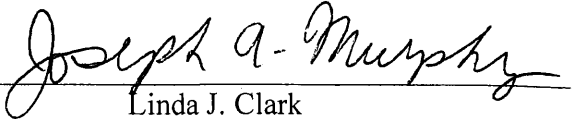
**JURY DEMAND**

164. Plaintiffs demand a trial by jury on all issues so triable.

**WHEREFORE**, for the foregoing reasons, and those set forth in the Fourth Amended Complaint filed by the WC Board, Plaintiffs request that this Court (i) enter Judgment against the Defendants in favor of the Plaintiffs on the Causes of Action pleaded herein, including their reasonable attorneys' fees and costs of this action; and (ii) award Plaintiffs such other and further relief as to the Court seems proper and just.

**DATED:** March 17, 2014

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