

**NY TRANSPORTATION  
WORKERS' COMPENSATION TRUST**

AUDITED FINANCIAL STATEMENTS

Years ended December 31, 2010 and 2009

# **NY TRANSPORTATION WORKERS' COMPENSATION TRUST**

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## INDEPENDENT AUDITOR'S REPORT

To the Board of Trustees and Members of the  
NY Transportation Workers' Compensation Trust

We have audited the accompanying balance sheets of NY Transportation Workers' Compensation Trust (the "Trust") as of December 31, 2010 and 2009, and the related statements of operations, changes in members' deficit, and cash flows for the years then ended. These financial statements are the responsibility of the Trust's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As discussed in Note 2 to the financial statements, New York State Workers' Compensation Laws impose an asset to liability requirement on group self-insurers, including the Trust. At December 31, 2010, the Trust does not meet the minimum regulatory standards. Also as more fully described in Note 1 to the financial statements, the Trust has terminated its status as a group self-insurer and as of January 1, 2009, the Trust no longer provides workers' compensation coverage and continues to operate in run-off status until all of its claim obligations have been fulfilled.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of NY Transportation Workers' Compensation Trust as of December 31, 2010 and 2009, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

*UHY* LLP

Albany, New York  
April 22, 2011

**NY TRANSPORTATION  
WORKERS' COMPENSATION TRUST  
BALANCE SHEETS  
December 31, 2010 and 2009**

	<u>2010</u>	<u>2009</u>
<b>ASSETS</b>		
Cash and cash equivalents	\$ 1,265,234	\$ 1,468,139
Investments	24,207,945	39,204,996
Restricted investments	1,125,000	1,125,000
Contributions receivable	-	17,581
Prepaid expenses and other assets	717,118	150,728
Interest receivable	287,763	447,009
Reinsurance recoverable	4,158,697	2,738,151
	<u>4,158,697</u>	<u>2,738,151</u>
Total assets	<u>\$ 31,761,757</u>	<u>\$ 45,151,604</u>
<b>LIABILITIES</b>		
Reserve for loss and loss adjustment expenses	\$ 52,332,351	\$ 56,111,560
Accrued New York State assessments	-	30,945,705
Uncertain tax position liability	182,000	158,000
Accrued expenses	220,766	306,269
Contributions received in advance and refunds payable	-	69,192
	<u>-</u>	<u>69,192</u>
Total liabilities	52,735,117	87,590,726
<b>MEMBERS' DEFICIT</b>		
Accumulated other comprehensive income	1,885,601	1,948,519
Accumulated deficit	<u>(22,858,961)</u>	<u>(44,387,641)</u>
Total members' deficit	<u>(20,973,360)</u>	<u>(42,439,122)</u>
Total liabilities and members' deficit	<u>\$ 31,761,757</u>	<u>\$ 45,151,604</u>

See notes to financial statements.

**NY TRANSPORTATION  
WORKERS' COMPENSATION TRUST  
STATEMENTS OF OPERATIONS  
Years Ended December 31, 2010 and 2009**

	<u>2010</u>	<u>2009</u>
<b>Revenues</b>		
Contributions earned	\$ 186,270	\$ 474,069
Ceded premium - excess insurance	7,166	(56,354)
Net contributions earned	<u>193,436</u>	417,715
Investment income, net	1,914,281	2,082,932
Other income	5	2,746
Total revenues	<u>2,107,722</u>	<u>2,503,393</u>
<b>Expenses</b>		
Loss and loss adjustment expenses incurred, net of losses recoverable	5,307,245	9,968,030
Management, general and administrative expenses	724,860	1,449,743
New York State assessments (reduction)	<u>(25,476,988)</u>	<u>28,337,307</u>
Total expenses (reductions), net	<u>(19,444,883)</u>	<u>39,755,080</u>
Income (loss) before income taxes	21,552,605	(37,251,687)
Income tax expense	<u>23,925</u>	<u>161,661</u>
Net income (loss)	<u>\$ 21,528,680</u>	<u>\$ (37,413,348)</u>

See notes to financial statements.

**NY TRANSPORTATION  
WORKERS' COMPENSATION TRUST  
STATEMENTS OF CHANGES IN MEMBERS' DEFICIT  
Years Ended December 31, 2010 and 2009**

	<u>Accumulated Other Comprehensive Income</u>	<u>Accumulated Deficit</u>	<u>Total Members' Deficit</u>	<u>Comprehensive (Loss) Income</u>
<b>Balance at December 31, 2008</b>	\$ 2,435,666	\$ (6,974,293)	\$ (4,538,627)	
Net loss	-	(37,413,348)	(37,413,348)	\$ (37,413,348)
Other comprehensive loss				
Unrealized net holding losses arising during the year	(348,987)	-	(348,987)	(348,987)
Reclassification adjustment for net gains realized during the year	<u>(138,160)</u>	<u>-</u>	<u>(138,160)</u>	<u>(138,160)</u>
Total comprehensive loss				<u>\$ (37,900,495)</u>
<b>Balance at December 31, 2009</b>	1,948,519	(44,387,641)	(42,439,122)	
Net income	-	21,528,680	21,528,680	\$ 21,528,680
Other comprehensive loss				
Unrealized net holding gains arising during the year	466,179	-	466,179	466,179
Reclassification adjustment for net gains realized during the year	<u>(529,097)</u>	<u>-</u>	<u>(529,097)</u>	<u>(529,097)</u>
Total comprehensive income				<u>\$ 21,465,762</u>
<b>Balance at December 31, 2010</b>	<u>\$ 1,885,601</u>	<u>\$ (22,858,961)</u>	<u>\$ (20,973,360)</u>	

See notes to financial statements.

**NY TRANSPORTATION  
WORKERS' COMPENSATION TRUST  
STATEMENTS OF CASH FLOWS  
Years Ended December 31, 2010 and 2009**

	<u>2010</u>	<u>2009</u>
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net income (loss)	\$ 21,528,680	\$ (37,413,348)
Adjustments to reconcile net income (loss) to net cash used in operating activities:		
Amortization of bond premium, net	37,386	66,246
Gain on sale of investments, net	(529,097)	(138,160)
Net change in assets and liabilities:		
Contributions receivable	17,581	489,532
Prepaid expenses and other assets	(566,390)	47,375
Interest receivable	159,246	94,938
Reinsurance recoverable	(1,420,546)	(33,603)
Reserve for loss and loss adjustment expenses	(3,779,209)	(5,106,870)
Accrued New York State assessments	(30,945,705)	23,903,801
Uncertain tax position liability	24,000	158,000
Accrued expenses	(85,503)	166,037
Contributions received in advance and refunds payable	(69,192)	11,911
Net cash used in operating activities	<u>(15,628,749)</u>	<u>(17,754,141)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Cost of investments acquired	-	(1,220,806)
Proceeds from investments sold or matured	15,425,844	15,262,936
Net cash provided by investing activities	<u>15,425,844</u>	<u>14,042,130</u>
<b>Net decrease in cash and cash equivalents</b>	<b>(202,905)</b>	<b>(3,712,011)</b>
<b>Cash and cash equivalents at beginning of year</b>	<u>1,468,139</u>	<u>5,180,150</u>
<b>Cash and cash equivalents at end of year</b>	<u>\$ 1,265,234</u>	<u>\$ 1,468,139</u>
<b>SUPPLEMENTAL DISCLOSURE OF CASH FLOWS INFORMATION</b>		
Cash (received) paid during the period for income taxes	<u>\$ (75)</u>	<u>\$ 3,661</u>

See notes to financial statements.

**NY TRANSPORTATION  
WORKERS' COMPENSATION TRUST  
NOTES TO FINANCIAL STATEMENTS  
December 31, 2010 and 2009**

**NOTE 1 — ORGANIZATION**

The NY Transportation Workers' Compensation Trust (the "Trust") was organized to create a nonprofit unincorporated association of transportation merchants within the State of New York to constitute a workers' compensation self-insurance group under New York State Workers Compensation Laws Section 50, subdivision 3-a. The Trust, which commenced operations on December 1, 2000, was created to make available a self-insured workers' compensation program for transportation merchants of the State of New York, to establish, maintain, promote and enforce sound safety programs, and to provide a cost-effective market in which transportation merchants may obtain workers' compensation insurance coverage. The Trust is administered by a third party administrator (Note 8).

During 2008, the Board of Trustees voted to voluntarily terminate their status as a group self insurer for the Trust effective December 31, 2008 due to changes in New York State Workers' Compensation Laws which adversely affected the Trust's ability to provide workers' compensation coverage to its members without exposing them to financial risks associated with other self-insured groups (Note 8). The plan to terminate was ratified by a vote of the membership on January 29, 2009. The Trust notified the NYS Workers' Compensation Board of its decision to terminate their status on November 25, 2008. Accordingly, as of December 31, 2008, the Trust no longer provides Workers' Compensation coverage. The Trust continues to operate in a run-off status until all of its claim obligations for events that occurred prior to December 31, 2008 have been fulfilled.

The Trust has a contract with a third party administrator through December 2011 to manage the assets and liabilities of the Trust during its run off status.

**NOTE 2 — REGULATORY REVIEW AND MANAGEMENT'S PLANS**

The Trust is not in compliance with the assets to liabilities ratio as required by New York State Workers' Compensation Law, Section 50, subdivision 3a, Part 317.9 as currently enacted as of December 31, 2009. Group Self-insurers (trusts) who do not meet the ratio requirement are deemed under-funded and may be subject to regulatory action by the New York Workers' Compensation Board Chair.

As of December 31, 2010 the Trust has liabilities in excess of assets totaling \$20,973,360. However, management believes that the Trust has sufficient cash flow to manage and pay claims as submitted. The Trust's management will closely monitor the claims run off process including the cash flow necessary to meet its obligations. The Trust's management believes that it has sufficient resources to meet its obligations for at least the next year. If it determines the cash flow is not adequate to meet its current obligations the Trust will work with the Workers Compensation Board to determine the best course of action to remedy the situation.

**NOTE 3 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Use of Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements. Estimates also affect the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.



**NY TRANSPORTATION  
WORKERS' COMPENSATION TRUST  
NOTES TO FINANCIAL STATEMENTS  
December 31, 2010 and 2009**

**NOTE 3 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

**Cash and Cash Equivalents**

The Trust considers cash and cash equivalents to be cash in the bank, money market funds and highly liquid securities with an original maturity of three months or less. From time to time, the Trust has on deposit with certain financial institutions, cash and cash equivalents which exceed the amount subject to federal deposit insurance. The Trust attempts to mitigate this risk by depositing its cash and cash equivalents with high credit quality financial institutions.

**Investments**

Investments in fixed maturities (U.S. Government and corporate obligations) are carried at fair value, based on quoted market prices. The Trust accounts for its investments in accordance with accounting for *Investments – Debt and equity securities*. The Trust classifies all investments as available-for-sale, and as such these marketable securities are carried at fair value and unrealized holding gains and losses on investments are excluded from income and reported as a separate component of members' deficit until realized. Interest income is recognized when earned. Amortization of bond discount and premium is recorded using the straight line method over the period from purchase date to maturity. Net amortization of bond premiums and discounts resulted in a reduction of investment income of approximately \$37,000 and \$66,000 for 2010 and 2009, respectively. Realized gains and losses for investments are included in income and determined using the specific identification method.

The Trust follows the accounting for fair value measurements and disclosures for financial assets, which defines fair value and establishes a hierarchy for inputs used in measuring fair value. Investments are valued and carried at fair value on a recurring basis and at December 31, 2010 and 2009, are valued at Level 1 inputs (quoted prices in active markets for identical assets or liabilities).

**Contributions**

Contributions earned were computed on a pro rata basis over the term of the underlying insurance certificates. The Trust provided for contribution adjustments to its members based upon actual payroll information and accrues such contributions in the year billed. Amounts received during the years ended December 31, 2010 and 2009 for payroll audits of previous years was approximately \$186,300 and \$474,100, respectively.

Contributions receivable deemed uncollectable are written off to bad debt expense in the year they are deemed uncollectable. Bad debt recovery was approximately \$63,000 and bad debt expense was approximately \$528,000 for the years ended December 31, 2010 and 2009, respectively.

**Loss and Loss Adjustment Expenses**

The actuarially determined reserve for loss and loss adjustment expenses includes an amount determined from loss reports of individual cases and an amount for losses incurred but not reported. The Trust discounts its reserve for loss and loss adjustment expenses. Such reserves are necessarily based on estimates (and industry trends data) and, while management believes that the amount is adequate, the ultimate liability may vary significantly from the estimated amounts in these financial statements and could have a material effect on Members' deficit in future periods. The methods for making such estimates and for establishing the resulting reserve are continually reviewed, and any adjustments are reflected in operations in the year of the change.

The reserve for loss and loss adjustment expenses includes an amount for certain New York State assessments and charges.

**NY TRANSPORTATION  
WORKERS' COMPENSATION TRUST  
NOTES TO FINANCIAL STATEMENTS  
December 31, 2010 and 2009**

**NOTE 3 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

**New York State Assessments**

During June 2008, legislation was passed regarding the billing of certain New York State Assessments for self-insured groups. The legislation stipulated that, effective January 1, 2009, assessments for certain sections, will be billed to self-insured groups based on paid indemnity.

Under the legislation it also stipulated that self-insured groups be billed for certain assessment sections on a premium base. The premium base for self-insured groups who cease to self-insure was based on payroll at the time the group self-insurer ceased to self-insure reduced by a factor provided by New York State Workers Compensation Board, reflecting the reduction in the groups liabilities since ceasing to self-insure. An impact of the change on the December 31, 2009 financial statements was an increase to Accrued New York State Assessments and New York State Assessment expense to record a liability for these estimated future premium based assessments due to the run-off status of the Trust.

On April 1, 2011, legislation was signed which stipulated that an inactive self-insured group in New York State would no longer be subject to the pure premium assessments. The impact to the Trust, as of and for the year ended December 31, 2010, was a reduction of Accrued New York State Assessments and New York State Assessment Expense of approximately \$27.3 million to eliminate the liability for these previously estimated future premium based assessments. The effective date of the law is January 1, 2011.

**Income Taxes**

The Trust follows guidance issued by the Financial Accounting Standards Board ("FASB") regarding accounting for uncertainty in income taxes. This guidance clarifies the accounting for income taxes by prescribing the minimum recognition threshold an income tax position is required to meet before being recognized in the financial statements and applies to all income tax positions. Each income tax position is assessed using a two step process. A determination is first made as to whether it is more likely than not that the income tax position will be sustained, based upon technical merits, upon examination by the taxing authorities. If the income tax position is expected to meet the more likely than not criteria, the benefit recorded in the financial statements equals the largest amount that is greater than 50% likely to be realized upon its ultimate settlement.

The Trust records income tax and related interest and penalties as components of the provision for income tax expense. Such amounts totalled \$24,000 and \$158,000 for the years ended December 31, 2010 and 2009, respectively. Total amount of interest recognized in the statement of operations for the years ended December 31, 2010 and 2009 was approximately \$24,000 and \$71,400, respectively, which is included in income tax expense.

Deferred taxes are provided on the liability method whereby deferred taxes are recognized for deductible temporary differences and deferred tax liabilities are recognized for taxable temporary differences. Temporary differences are the differences between the reported amounts of assets and liabilities and their tax bases. Deferred tax assets and liabilities are adjusted for the effects of changes in tax laws and rates on the date of enactment.

**NY TRANSPORTATION  
WORKERS' COMPENSATION TRUST  
NOTES TO FINANCIAL STATEMENTS  
December 31, 2010 and 2009**

**NOTE 3 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

**Subsequent Events**

In preparing these financial statements, management has evaluated events and transactions for potential recognition or disclosure through April 22, 2011, the date the financial statements were available for issuance.

**NOTE 4 — INVESTMENTS AND RESTRICTED INVESTMENTS**

The amortized cost, fair value and gross unrealized gains and losses of investments by major security type at December 31, 2010 and 2009 are as follows:

	<b>2010</b>			
	<b>Amortized Cost</b>	<b>Gross Unrealized Gains</b>	<b>Gross Unrealized Losses</b>	<b>Fair Value</b>
U.S. Government obligations	\$ 18,014,689	\$ 1,480,749	\$ -	\$ 19,495,438
Corporate obligations	5,432,655	404,852	-	5,837,507
	<u>\$ 23,447,344</u>	<u>\$ 1,885,601</u>	<u>\$ -</u>	<u>\$ 25,332,945</u>
	<b>2009</b>			
	<b>Amortized Cost</b>	<b>Gross Unrealized Gains</b>	<b>Gross Unrealized Losses</b>	<b>Fair Value</b>
U.S. Government obligations	\$ 29,158,171	\$ 1,481,452	\$ 23,898	\$ 30,615,725
Corporate obligations	9,223,306	490,965	-	9,714,271
	<u>\$ 38,381,477</u>	<u>\$ 1,972,417</u>	<u>\$ 23,898</u>	<u>\$ 40,329,996</u>

Proceeds from the sale and maturity of investments were \$15,425,844 for the year ended December 31, 2010, resulting in gross realized gains of \$529,390 and realized losses of \$293. Proceeds from the sale and maturity of investments were \$15,262,936 for the year ended December 31, 2009, resulting in gross realized gains of \$167,514 and realized losses of \$29,354.

The scheduled maturities of fixed maturity investments at December 31, 2010 are as follows:

	<b>Amortized Cost</b>	<b>Fair Value</b>
Due within one year or less	\$ 4,177,206	\$ 4,294,986
Due after one year through five years	10,501,156	11,332,960
Due after five years through ten years	6,801,884	7,620,515
Thereafter	1,967,102	2,084,484
Total	<u>\$ 23,447,348</u>	<u>\$ 25,332,945</u>

**NY TRANSPORTATION  
WORKERS' COMPENSATION TRUST  
NOTES TO FINANCIAL STATEMENTS  
December 31, 2010 and 2009**

**NOTE 4 — INVESTMENTS AND RESTRICTED INVESTMENTS (Continued)**

As discussed in Note 8, during 2010 and 2009, the Trust pledged \$1,125,000 of the above investments as collateral for the surety bond as of December 31, 2010 and 2009. Collateral is classified separately as restricted investments on the balance sheet.

**NOTE 5 — RESERVE FOR LOSS AND LOSS ADJUSTMENT EXPENSES**

The components of the reserve for loss and loss adjustment expenses at December 31, 2010 and 2009:

	<u>2010</u>	<u>2009</u>
Reserve for reported losses	\$ 33,199,418	\$ 33,604,898
Reserve for incurred but not reported losses	<u>19,132,933</u>	<u>22,506,662</u>
Total reserve for loss and loss adjustment expenses	<u>\$ 52,332,351</u>	<u>\$ 56,111,560</u>

To reflect the time value of money, the reserve for loss and loss adjustment expenses has been discounted using an interest rate of 2.75% and 3.75% at December 31, 2010 and 2009, respectively. The undiscounted reserve as of December 31, 2010 and 2009 was \$56,944,203 and \$64,539,820, respectively.

The reserve for loss and loss adjustment expenses includes approximately \$5,171,600 and \$4,462,100 related to New York State assessments for December 31, 2010 and 2009, respectively.

The following table presents an analysis of the reserve for loss and loss adjustment expenses, including an estimate of future losses and a reconciliation of beginning and ending reserve balances for 2010 and 2009. The reserve is stated on a net basis after deductions for losses recoverable from reinsurers and subrogation.

	<u>2010</u>	<u>2009</u>
Discounted reserve for loss and loss adjustment expenses, beginning of year, gross	\$ 56,111,560	\$ 61,218,430
Less: reinsurance recoverable, beginning of the year	<u>(2,738,151)</u>	<u>(2,704,548)</u>
Discounted reserve for loss and loss adjustment expenses, beginning of the year, net	<u>53,373,409</u>	<u>58,513,882</u>
Incurring provision for loss and loss adjustment expenses		
Increase in provision for insured events of prior years	<u>5,307,245</u>	<u>9,968,030</u>
	<u>5,307,245</u>	<u>9,968,030</u>
Payments		
Loss and loss adjustment expenses attributable to insured events of prior years	<u>(10,507,000)</u>	<u>(15,108,503)</u>
	<u>(10,507,000)</u>	<u>(15,108,503)</u>
Discounted reserve for loss and loss adjustment expenses, end of year, net	48,173,654	53,373,409
Add: reinsurance recoverable, end of the year	<u>4,158,697</u>	<u>2,738,151</u>
Discounted reserve for loss and loss adjustment expenses, end of the year, gross	<u>\$ 52,332,351</u>	<u>\$ 56,111,560</u>

**NY TRANSPORTATION  
WORKERS' COMPENSATION TRUST  
NOTES TO FINANCIAL STATEMENTS  
December 31, 2010 and 2009**

**NOTE 5 — RESERVE FOR LOSS AND LOSS ADJUSTMENT EXPENSES (Continued)**

Included in loss and loss adjustment expenses incurred in the statement of operations is subrogation received of \$2,059,319 and \$1,795,926 for the years ended December 31, 2010 and 2009, respectively.

Effective January 1, 2009, the Administrative Agreement was amended to meet the needs of the Trust based on its voluntary termination of its status as a group self-insurer (Notes 1 and 2). The agreement calls for the Administrator to be paid for claims management on an annual fee per claim basis. The reserve for loss and loss adjustment expenses includes an estimate of the claims portion of the costs to administer the Trust after December 31, 2008 (date group self insurer status was terminated).

**NOTE 6 — INCOME TAXES**

The provision for income tax expense consists of the following:

	<u>2010</u>	<u>2009</u>
Current		
Federal	\$ 16,500	\$ 55,850
New York State Franchise taxes	7,425	105,811
	<u>\$ 23,925</u>	<u>\$ 161,661</u>

The reconciliation of income taxes calculated at the Federal tax statutory rate to the Trust's effective rate is set forth below:

	<u>2010</u>		<u>2009</u>	
	\$	%	\$	%
Tax at federal statutory rate	\$ 7,327,886	34%	\$(12,665,574)	34%
New York State Franchise Tax	-	0%	3,661	0%
Valuation allowance (reductions) additions	(8,408,400)	(39%)	14,528,158	(39%)
Other	1,080,514	5%	(1,862,584)	5%
Adjustment for uncertain tax positions	23,925	(1%)	158,000	(3%)
	<u>\$ 23,925</u>	<u>(1%)</u>	<u>\$ 161,661</u>	<u>(3%)</u>

The details of deferred tax assets are set forth below:

	<u>2010</u>	<u>2009</u>
Deferred tax assets:		
Net operating loss carryforwards	\$ 8,853,000	\$ 7,488,000
Accrued NYS assessment future liability	-	9,773,400
Gross deferred tax asset	8,853,000	17,261,400
Deferred tax asset valuation allowances	(8,853,000)	(17,261,400)
Deferred tax assets	<u>\$ -</u>	<u>\$ -</u>

**NY TRANSPORTATION  
WORKERS' COMPENSATION TRUST  
NOTES TO FINANCIAL STATEMENTS  
December 31, 2010 and 2009**

**NOTE 6 — INCOME TAXES** (Continued)

For the year ended December 31, 2010, the valuation allowance was reduced by \$8.4 million. At December 31, 2010, the Trust has net operating losses (NOL's) carryforwards of approximately \$22.7 million available to offset future taxable income. Deferred tax assets at December 31, 2010 and 2009 have been fully offset by a valuation allowance due to the uncertainty as to their realizability. The NOL's begin to expire in 2028. The Trust has no other deferred tax assets or liabilities.

The total amount of the uncertain tax position liability may be reduced because of the statute of limitations has expired or the tax position is resolved with the taxing authority. It is reasonably possible that during the next twelve months the total amount of the unrecognized tax benefits may be reduced by \$182,000.

None of the Trust's federal or state income tax returns is currently under examination by the Internal Revenue Service ("IRS") or state authorities. However years 2007 and later remain subject to examination by the IRS and respective states.

**NOTE 7 — EXCESS INSURANCE**

The Trust through the Administrator, has obtained specific and aggregate excess insurance from an outside carrier for each policy year of the Trust. Under this arrangement, the Trust's losses in excess of approximately \$5,450,000 to \$36,850,000 in aggregate or \$300,000 to \$750,000 per accident per insured will be covered by the excess insurance depending on the policy year's coverage.

In the event the Trust's excess insurer is unable to meet its obligations under the excess insurance agreement, the Trust would continue to have primary liability to members for losses incurred.

**NOTE 8 — COMMITMENTS AND CONTINGENCIES**

**Management Agreement and Commissions**

The Trust has entered into an Administrative Agreement with a third-party administrator ("Administrator") which expires December 31, 2011. Effective January 1, 2009, the Administrative Agreement was amended to meet the needs of the Trust based on its terminated status (Note 1). The agreement calls for the Administrator to be paid for claims management on an annual fee per claim basis. The reserve for loss and loss adjustment expenses includes an estimate of the claims cost portion of the dissolution costs. Administrative services relating to accounting and billing services performed during the run off period will be billed to the Trust on an hourly basis. The Trust incurred management fees and commission expense of \$749,008 and \$1,129,227 for the years ended December 31, 2010 and 2009, respectively.

**NY TRANSPORTATION  
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NOTES TO FINANCIAL STATEMENTS  
December 31, 2010 and 2009**

**NOTE 8 — COMMITMENTS AND CONTINGENCIES (Continued)**

**Surety Bond**

As is customary in a workers' compensation regulatory structure, the Trust is required to provide a surety bond (the "Surety Bond") to the Trust's state regulator as a condition to conducting workers' compensation business in the State. Accordingly, the Trust is the principal on a Surety Bond Pledged to the State of New York in the amount of \$1,125,000. Should the State have to draw on the Surety Bond, the Trust is obligated to reimburse the surety company for any losses and costs incurred by them, up to the maximum amount of the Surety Bond. The Trust pledged \$1,125,000 in investments as collateral for the surety bond during 2010 and 2009.

**Indemnity Agreement**

The Trust has entered into an indemnity agreement with each member to provide risk management services and workers' compensation and employer's liability coverage. The agreement stipulates, among other things, that each member is jointly and severally liable for the workers' compensation and employer's liability obligations of the Trust and its members which were incurred during the member's period of membership in the Trust, irrespective of the subsequent termination of the member's membership in the Trust, the insolvency or bankruptcy of another member of the Trust, or other facts or circumstances. However, recourse for any and all payments of workers' compensation and employer's liability benefits covered by the Trust's certificate of coverage to a member shall first be made from the Trust's assets.

**New York State Assessments**

Under New York State regulatory laws, the Trust is required to pay for its share of various assessments to the Workers' Compensation Board (the "WCB") for certain obligations, including but not limited to the costs of the WCB's operations, and defaulted self insurers. Through an assessment under Section 50-5 of the New York State Workers' Compensation Law, the WCB has taken the position that the Trust is obligated to contribute a share of anticipated losses of self-insurance groups that are in default, have closed or have otherwise failed to meet their obligations. The WCB has not declared that there is any limit to the Trust's potential assessments for such failed self-insurance groups. An estimated reserve for the Trust's exposure to the anticipated losses of the defaulted trusts has been included in the reserve for loss and loss adjustment expenses. The Trust's Board is currently challenging the WCB's authority to assess the Trust for its share of the liabilities of the defaulted trusts through various judicial actions.

New York State regulatory law passed in June 2008 stipulates that all trusts, both active and inactive, pay certain premium based assessments during any State fiscal years in which the trust made indemnity claim payments. An accrual for the future premium based assessments was recorded in the financial statements as of December 31, 2009. The Trust paid the premium based assessments during its initial two years of being inactive (2009 and 2010). The Trust challenged the WCB's assessment on an inactive self-insured trust for the premium based assessments in the Supreme Court of New York State in three separate actions. On April 14, 2010, an acting State Supreme Court Justice ruled in the first action that the assessments billed since 2007 under section 50-5 to self-insured trusts to cover the anticipated losses of other self-insured trusts that are in default, have closed or have otherwise failed to meet their obligations, to be unconstitutional, and to permanently enjoin the WCB from enforcing those assessments. The WCB appealed this ruling and on April 21, 2011, the Appellate Division Third Judicial Department reversed the 2010 ruling and ruled that the assessments billed were not unconstitutional. The Trust has not determined whether it will appeal this ruling. There have been no decisions on the two remaining actions relating to assessment billings during the time period from August 2008 through May 2010.

**NY TRANSPORTATION  
WORKERS' COMPENSATION TRUST  
NOTES TO FINANCIAL STATEMENTS  
December 31, 2010 and 2009**

**NOTE 8 — COMMITMENTS AND CONTINGENCIES** (Continued)

**New York State Assessments** (Continued)

On April 1, 2011 legislation was signed which stipulated that an inactive self-insured trust in New York State would no longer be subject to the premium based assessments effective January 1, 2011. The Trust continues its judicial challenge to the premium based assessments paid during 2009 and 2010.

**NOTE 9 — RELATED PARTY TRANSACTIONS**

All Trustees on the Board were employed by covered members of the Trust. Each Trustee receives a nominal fee for serving on the Board; during 2010 and 2009, these fees totaled \$82,000 and \$79,000, respectively. Trustees are also reimbursed for travel costs incurred to attend the meetings.