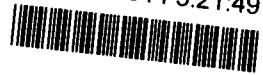


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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ALBANY
NEW YORK STATE WORKERS' COMPENSATION BOARD,
in its capacity as the governmental agency charged with the
administration of the Workers' Compensation Law and attendant
regulations, and in its capacity as successor in interest to
THE BUILDERS' SELF-INSURANCE TRUST,

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**VERIFIED
COMPLAINT**

Plaintiff,

v.

Index No.: 179-14

PHILIP LAROCQUE,

Defendant.

Plaintiff, the New York State Workers' Compensation Board, in its capacity as the governmental entity charged with the administration of the Workers' Compensation Law and attendant regulations, and in its capacity as successor in interest to the Builders' Self-Insurance Trust, as and for its Verified Complaint against the defendant, Philip LaRocque, alleges as follows:

PARTIES

1. Plaintiff is the New York State Workers' Compensation Board ("WCB"), a governmental agency created pursuant to the New York State Workers' Compensation Law ("WCL"), with a place of business located in Albany, Albany County, New York.
2. Pursuant to Title 12 of the New York Codes, Rules and Regulations, Section 317.20 ("12 N.Y.C.R.R. § 317.20"), the WCB is the successor in interest to the Builders' Self-Insurance Trust ("BUILDERS" or "Trust") a group self-insured trust ("GSIT").

3. BUILDERS was a GSIT formed pursuant to Section 50 (3-a) of the WCL. At all times hereinafter mentioned, BUILDERS members were New York employers engaged in the construction of real properties as well as related products and services.

4. Upon information and belief, at all times hereinafter mentioned, defendant Philip LaRocque was and is an individual residing at 63 Bishops Gate A, Guilderland, New York 12084.

5. Upon information and belief, Philip LaRocque was a Trustee of BUILDERS.

JURISDICTION

6. This Court possesses jurisdiction over the WCB because it is a New York State governmental agency and is domiciled in New York State.

7. This Court possesses jurisdiction over Philip LaRocque because he resides in New York State.

BACKGROUND FACTS

8. The WCB is the governmental entity charged with the administration of the WCL and attendant regulations, and has all of the powers and duties set forth in WCL § 142.

9. The WCB's mission is to equitably and fairly administer the provisions of the WCL, including workers' compensation benefits, disability benefits, volunteer firefighters' benefits, volunteer ambulance workers' benefits, and volunteer civil defense workers' benefits on behalf of New York's injured workers and their employees.

10. Workers' compensation benefits provide weekly cash payments and the cost of full medical treatment, including rehabilitation for covered employees who

become disabled as a result of employment-related disease or injury. Benefits also may be payable to qualified dependents of a covered worker who died as a result of a compensable injury or illness.

11. Pursuant to WCL §§ 10 and 50, all employers in New York State must secure the payment of workers' compensation to their employees.

12. The WCL states that employers may secure the payment of workers' compensation to their employees in one of the following three ways: (1) by insuring and keeping insured the payment of such compensation from the State Insurance Fund (WCL § 50(1)); (2) by insuring and keeping insured the payment of such compensation with any insurance carrier authorized to transact such business in New York State (WCL § 50(2)); or (3) by becoming a self-insurer (WCL § 50(3) and WCL § 50(3-a)).

13. Employers who elect to insure the payment of workers' compensation through the State Insurance Fund or a commercial insurance carrier pay money, known as a "premium," in exchange for workers' compensation coverage.

14. Employers who elect to self-insure, either individually or by participating in a GSIT, pay money in exchange for the payment of workers' compensation to their employees, known as a "contribution."

SELF-INSURANCE

15. An employer may self-insure in one of two ways – either as an individual, pursuant to WCL § 50(3), or as a member of a GSIT, pursuant to WCL §50(3-a).

16. All private employers, whether individuals or as members of a GSIT, who wish to self-insure for workers' compensation benefits, must apply to, and be duly authorized by, the WCB's Office of Self-Insurance.

GROUP SELF-INSURANCE

17. In the event that an employer pursuing coverage under WCL § 50(3) is unable to demonstrate the financial wherewithal to self-insure individually, it may join with other employers in related industries and form a GSIT. A GSIT is defined under WCL § 50(3-a) as a group of employers who jointly self-insure for workers' compensation claims.

18. WCL § 50(3-a)(3) provides that all employers participating in the GSIT shall not be relieved from their liability for workers' compensation, as required under the WCL, except through payment of all claims by the GSIT or by the employer.

19. Pursuant to WCL § 50(3-a)(2), employers "may adopt a plan for self-insurance, as a group, for the payment of compensation under this chapter to their employees." A condition of any such plan is that the group of employers provide proof to the WCB of the GSIT's financial ability to pay all compensation for which the employers may be liable under the WCL.

20. Pursuant to WCL § 50(3-a)(2)(b), the WCB requires GSITs to deposit "such securities as may be deemed necessary...".

21. Pursuant to WCL § 50(3-a)(2)(b), "any group self-insurer that fails to show that it is fully funded shall be deemed underfunded, and must submit a plan for achieving fully funded status which may include a deficit assessment on members of such group self-insurer which shall be subject to approval or modifications by the chair."

22. The WCB has promulgated additional regulations to establish application procedures, qualifications and responsibilities for GSITs at 12 N.Y.C.R.R. § 317, *et seq.*

23. The WCB's regulations contain the definitions pertaining to GSITs as set forth in paragraphs "24" through "28".

24. "Trust liabilities" are defined as "all claims, accrued workers' compensation board assessments, accrued expenses including administrative costs... and all other trust obligations." 12 N.Y.C.R.R. § 317.2(o).

25. "Board of trustees" is defined as "that body, identified in the trust agreement, which is responsible for all operations of the group self-insurer and which shall take all necessary action to protect the assets of the group self-insurer." 12 N.Y.C.R.R. § 317.2(b).

26. "Group administrator" is defined as "an individual or entity that is responsible for ensuring compliance with the provisions of these rules and the coordination of outside services including but not limited to claims processing, loss control and legal, accounting, and actuarial services." 12 N.Y.C.R.R. § 317.2(g).

27. "Contribution" is defined as "the annual charge to individual members of a group self-insurer to cover its workers' compensation liabilities and assessments." 12 N.Y.C.R.R. § 317.2(e).

28. "Trust account or trust fund" is defined as "a trust account or fund, financed by the contributions of and assessments on members of a group self-insurer, for the exclusive purpose of paying for and otherwise administering workers' compensation liabilities." 12 N.Y.C.R.R. § 317.2(m).

29. 12 N.Y.C.R.R. § 317.6 requires GSITs to provide evidence of adequate capitalization and maintain assets in excess of liabilities.

30. 12 N.Y.C.R.R. § 317.5(g) states that “[i]f for any reason the status of a group self-insurer is terminated or revoked, the securities or surety bond on deposit shall remain in the custody of the chair, and the irrevocable letter of credit shall remain in force, for a period of at least 26 months.”

31. 12 N.Y.C.R.R. § 317.8(a) prohibits the use of “trust funds collected from group members or earned by the trust for any purpose not directly related to the payment of claims, security deposits, assessments, penalties, reasonable costs of operation, fixed costs such as excess insurance, the payment of earnings or refunds to group members, or other trust obligations.”

32. 12 N.Y.C.R.R. § 317.7(a) requires that “the contribution rates utilized by a group self-insurer shall not be inadequate, unfairly discriminatory, destructive of competition or detrimental to the solvency of a group.”

33. 12 N.Y.C.R.R. § 317.9 requires GSITs to comply with the remedial provisions applicable to under-funded GSITs.

34. 12 N.Y.C.R.R. § 317.19(a)(2) requires GSITs to submit annual audited financial statements evidencing the financial status of the GSIT.

35. 12 N.Y.C.R.R. § 317.19(a)(3) requires GSITs to submit an annual actuarial report by an independent qualified actuary verifying the GSIT’s outstanding claims.

36. Annual audited financial statements, when accurately submitted, provide the WCB’s Office of Self-Insurance with information to ensure adequate financial strength of the GSIT, and minimize the risk of an interruption in the flow of benefits to injured workers.

37. The WCB employs *inter alia*, the procedures set forth in paragraphs “38” through “40” below to identify GSITs that are in need of remedial action to ensure that the GSITs remain solvent.

38. The WCB receives and reviews the annual independently audited financial statements and actuarial reports submitted by every GSIT. These documents detail the GSIT’s liabilities and assets.

39. If a GSIT’s annual audited financial statements and/or actuarial reports indicate that the GSIT has greater liabilities than assets, known as “underfunding,” the GSIT is subject to the remediation procedures set forth in 12 N.Y.C.R.R. Section 317.9.

40. Depending on the severity of the underfunding, the WCB may take one or more of the actions designated in 12 N.Y.C.R.R. Section 317.9(b), which are designed to restore the GSIT to a funded status in a timely manner.

41. Pursuant to WCL Section 151, the expenses incurred by the WCB in regulating self-insurers, including GSITs, are segregated and paid separately from the WCB’s overall administrative expenses.

42. The New York Compensation Insurance Rating Board, a not-for-profit, unincorporated association of insurance carriers, including the New York State Insurance Fund, collects loss, premium, and payroll data from each carrier and summarizes this information in order to develop an adequate rate structure. In the context of workers’ compensation insurance coverage, the New York Compensation Insurance Rating Board routinely establishes a “Manual Premium,” in order to create a benchmark for premiums charged by private carriers and contribution rates established by GSITs.

43. Pursuant to 12 N.Y.C.R.R. § 317.3, GSITs must maintain a combined minimum annual payroll when “multiplied by the current manual rates promulgated by the New York compensation insurance rating board...”

Dissolution of GSITs

44. A GSIT whose financial analysis demonstrates continued underfunding status that is so severe that it cannot be restored to a financially stable position in a timely manner will be terminated by order of the WCB. When this occurs, the GSIT no longer provides coverage for its members. The GSIT’s members still are required to meet workers’ compensation obligations, which accrued prior to termination, and are payable directly to the injured employees.

45. In the event that the WCB determines that a GSIT cannot properly administer its liabilities due to its inability to pay outstanding lawful obligations, the WCB may deem the GSIT insolvent and assume administration and final distribution of the GSIT’s assets and liabilities, pursuant to 12 N.Y.C.R.R. § 317.20.

46. The WCB’s overriding concern is to ensure that the statutorily mandated benefits to injured workers are not interrupted, even if the private self-insured employer becomes insolvent. The WCL and the WCB’s regulations require that all self-insurers, including GSITs, deposit securities with the WCB pursuant to 12 N.Y.C.R.R. § 50(3-a)(2)(b).

47. After assuming the administration and final distribution of an insolvent GSIT’s assets and liabilities, the WCB makes a demand on the guarantor of the security deposit, and uses the security deposit and the GSIT’s remaining assets to pay the GSIT’s remaining workers’ compensation obligations.

48. Upon the exhaustion of the GSIT's remaining assets and security deposit, the WCB must meet all of the insolvent GSIT's obligations out of its own administrative fund.

49. In so doing, the WCB incurs additional and significant expenses that are allocated to the Office of Self-Insurance.

BUILDERS Trust

50. In or about October, 1998, BUILDERS was authorized by the WCB to operate as a GSIT in the State of New York. BUILDERS was formed on or about June 15, 1998.

51. The BUILDERS' Agreement and Declaration of Trust for the New York State Builders' Self-Insurance Trust Fund ("Trust Agreement"), Rules and Regulations of the New York State Builders' Self-Insurance Trust Fund ("Rules and Regulations") and The New York State Builders' Self-Insurance Trust Fund Indemnity Agreement ("Indemnity Agreement") were executed on June 15, 1998 and established the operating parameters, duties and obligations the Trustees. Copies of BUILDERS' Trust Agreement, Rules and Regulations and Indemnity Agreement are attached as **Exhibits "A," "B" and "C"**, respectively.

Trust Agreement

52. The Trust Agreement was signed on June 15, 1998. *See, Exhibit "A"* page 24.

53. Pursuant to the Trust Agreement (**Exhibit "A"**), the Trustees agreed to act on behalf of BUILDERS to accept member applicants in accordance with the Rules and Regulations (**Exhibit "B"**). *See, Exhibit "A"* page 6 and **Exhibit "B"**.

54. The Trust Agreement states that BUILDERS was established for the purpose of establishing and implementing a GSIT in accordance with the WCL. *See, Exhibit “A”* page 4.

55. The Trust Agreement further stated that the Trustees would act in their capacity strictly in accordance with the provisions of the Trust Agreement, Rules and Regulations and Indemnity Agreement. *See, Exhibit “A”* page 9. This obligated the Trustees to comply with the WCL and attendant regulations.

56. Section 5.12 of the Trust Agreement states “[t]he Trustees shall not receive compensation for the time spent in the performance of their duties.” *See, Exhibit “A”* page 15.

57. The Trust Agreement defines the Rules and Regulations of the Trust as “those Rules and Regulations defining how the program is to be operated, adopted by the Trustees in accordance with the Provisions of [the] Trust Agreement and the Indemnity Agreement.” *See, Exhibit “A”* pages 3-4.

58. The Trust Agreement states that “[t]itle and ownership of the Trust Assets at all times during the continuance of the Program shall remain solely in the trust hereunder...” *See, Exhibit “A”* page 21.

Rules and Regulations

59. Article VI of the Rules and Regulations, describes the eligibility for membership in the Trust as follows: “Membership in the Trust is limited to those entities meeting the criteria established and other requirements imposed by the Trustees and made a part of these Rules and Regulations as Appendix A. *The Trustees shall be the*

sole judge of whether or not an applying entity qualifies for admittance to membership.”

See, Exhibit “B” page 3, emphasis added.

60. Pursuant to the Rules and Regulations, “[t]he Trustees will have the responsibility for... overseeing the management of all Trust funds, and overseeing the administration of the Trust.” *See, Exhibit “B” page 1.*

61. The Rules and Regulations state that: “[t]he Trustees shall be responsible for all collection and payment of monies from the Trust. The Trustees may appoint a Fund Administrator to perform such duties as the Trustees shall determine are part of the daily activities of the Trust.” *See, Exhibit “B” page 2.*

62. The Rules and Regulations provided that “[t]he Fund Administrator selected by the Trustees shall be the agent and attorney-in-fact of each Member to act on its behalf and to execute all contracts, to make or arrange for the payment of all claims, medical expenses, and all other things required or necessary by the terms of the Indemnity Agreement, these Rules and Regulations of the Trust, and pursuant to the Rules and Regulations of the Chair, and the agreement between the Fund Administrator and the Trustees of the Trust.” *See, Exhibit “B” page 2.*

63. Under the section titled “calculation of contribution” the Rules and Regulations state that “[t]he rates of contribution per \$100 of compensation for each eligible class code to be charged to each Member by the Trust shall be established by the Trustees once annually, as of the beginning of the fiscal year of the Trust. Total annual contributions to be paid by each member will be based on the Members’ payrolls and experience ratings and according to a formula approved by the Trustees.” *See, Exhibit “B” page 3.*

64. The Rules and Regulations' "Annual Audit and Adjustment of Premium" section states that "[w]ithin one hundred and twenty (120) days of the close of the fiscal year of the Trust, [t]he Trustees shall direct the Fund Administrator to review and audit the payroll information for all Members. This Audit information shall be used in calculating a final premium for each Member. Any credit shall be refunded to the Member. Any additional charge shall be billed to the Member and shall be paid within thirty (30) days." See, **Exhibit "B"** page 3.

65. The Rules and Regulations further state that "[o]nce annually, the Trustees shall review all existing Members to ascertain that the Members all continue to meet all criteria for membership in the Trust." See, **Exhibit "B"** pages 13-14.

66. Under the Section "Termination of Membership by the Trustees", the Rules and Regulations state "[a] Member may be terminated from the Trust by the Trustee without the formal review provided for in Article XVII..." See, **Exhibit "B"** page 9.

67. The Rules and Regulations' Section 16.3, "Reasons for Termination of Membership," provides as follows:

A member may be terminated from the Trust for any of the following reasons, after the review procedure established in Article XVII has been completed:

- (A) A Member's annual individual loss ration exceeds 100%;
- (B) A Member's experience modification exceeds 1.10;
- (C) A Member fails to respond timely to the loss prevention and safety recommendations of the Fund Administrator, or fails to cooperate with the Fund Administrator in claims administration;
- (D) A Member fails to continue to meet the underwriting criteria of the Trust as determined by the Trustees;
- (E) A Member fails to meet the requirements established by the Workers' Compensation Board or any insurance company furnishing an insurance contract to the Trust; or

(F) A Member files for bankruptcy or reorganization under Titles 9, 11 or 13 of the Federal Bankruptcy Code.

See, **Exhibit "B"** pages 9-10.

68. The Rules and Regulations' Section "Review of Member Prior to Termination" provides that: "Whenever any of the circumstances enumerated in Section 16.3 occur, the Fund Administrator will notify the Trustees of such occurrence, and request a determination of such Member's continuation in the Trust. Any Trustee who becomes independently aware of the occurrence of any of the circumstances enumerated in Section 16.3 from any other source shall notify all Trustees, and the Trustees shall make a determination of such Member's continuation in the Trust." See, **Exhibit "B"** page 10.

69. The Rules and Regulations' state that "[t]he decision of the Trustees in terminating any Member shall be final." See, **Exhibit "B"** page 13.

70. The Rules and Regulations further state that "[t]he Fund Administrator's report and any other information which may be provided will be reviewed with the Member at the meeting. Based upon the discussion, the Trustees will decide to (1) take no action against the Member; (2) place the Member on probationary status; or (3) terminate the Member from the Trust." See, **Exhibit "B"** page 12.

71. Upon information and belief, the reasons for membership termination listed above constituted BUILDERS' underwriting requirements until the WCB issued a draft Level II report on September 30, 2003 and Cheryl Meyer of Marsh sent "Appendix A" to the WCB which listed the underwriting criteria of BUILDERS.

Indemnity Agreement

72. The Indemnity Agreement was signed on June 15, 1998. *See, Exhibit "C" page 7.*

73. The Indemnity Agreement states that "[t]he Trustees are authorized to establish all necessary premiums, charges and assessments as authorized in this Indemnity Agreement and in the Declaration of the Trust, and the Rules and Regulations of the Trust, as necessary for the proper operation and administration of the Trust." *See, Exhibit "C" page 4.*

BUILDERS Trustees

74. The Administrative Agreement with FCS, a third party administrator located in the Buffalo, New York area, was executed on June 15, 1998. In or about December 1999, the first addendum of amendment to the agreement and declaration of the trust was submitted, which formally changed the name of the Trust to "The Builders Self-Insurance Trust." A copy of the first addendum is attached as **Exhibit "D"**.

75. On or about October 25, 2000, FCS submitted a second addendum to amend the Trust Agreement. It was undated. It set forth that members of BUILDERS must either be a member in good standing of an authorized chapter of the New York State Builders Association ("NYSBA") or be classified within one of eleven listed SIC Major Groups. A copy of the second addendum to amend the Trust is attached as **Exhibit "E"**.

76. A third addendum dated December 13, 2001 required BUILDERS' members to be in good standing of an authorized chapter of NYSBA, or within certain SIC Major Groups. A copy of the third addendum to amend the Trust is attached as **Exhibit "F"**.

77. On February 20, 2002, the Trust Agreement was amended to expand the number of Trustees to five and Joseph Guida was appointed as a Trustee. It was signed by Defendant LaRocque. A copy of the Amendment is attached as **Exhibit "G"**.

78. On September 1, 2002, the Trust Agreement was amended to appoint Barrett Greene as an additional Trustee and was signed by Defendant LaRocque. A copy of this amendment is attached as **Exhibit "H"**.

BUILDERS Insolvency

79. On March 21, 2002, the WCB sent a letter to the Trust Administrator and the Trustees informing them that the Trust had a regulatory deficit of \$1,083,000 based on its September 30, 2001 financial statements. Attached as **Exhibit "I"** is the March 21, 2002 letter.

80. On February 19, 2004, the WCB sent a letter to the Trust Administrator and the Trustees informing them that the Trust was significantly underfunded, that a remediation plan needed to be submitted and suspended the addition of new members to the Trust pursuant to N.Y.C.R.R. § 317.9(b)(5). Attached as **Exhibit "J"** is the February 19, 2004 letter.

81. On September 24, 2004, the WCB sent the Trustees and Trust Administrator a letter stating that based on the Level II review for the fiscal period ending September 30, 2003, BUILDERS was "significantly under funded". Attached as **Exhibit "K"** is the September 24, 2004 letter.

82. The WCB notified the Trustees and Trust Administrator that the membership freeze imposed pursuant to 12 N.Y.C.R.R. § 317.9 on February 19, 2004, remained in effect. *See, Exhibit "K"*.

83. Enclosed in the September 24, 2004 letter was the Level II Review as of September 30, 2003, which informed the Trustees and Trust Administrator that BUILDERS had a regulatory deficit of \$1,402,014. Attached as **Exhibit "L"** is the Level II Review as of September 30, 2003, *see* page 9.

84. Upon information and belief, on March 23, 2005, assessment notices were issued to the BUILDERS' members pertaining to the deficit as of September 30, 2004.

85. On July 11, 2006, the WCB sent a letter to the Trust Administrator and the Trustees stating that based on the financial reports submitted by the Trustees for the fiscal year ending September 30, 2005, pursuant to the requirements set forth in N.Y.C.R.R. § 317, BUILDERS was deemed under-funded. Attached as **Exhibit "M"** is the July 11, 2006 letter.

86. The July 11, 2006 letter warned that failure to take efforts to ensure the long-term viability of the group trust and to limit the group members' exposure to long-term and unexpected financial liability would result in the termination of BUILDERS as a self-insurer. *See, Exhibit "M"*.

87. Enclosed in the July 11, 2006 letter was the Level I Review that determined that BUILDERS had a regulatory deficit of \$3,502,510. Attached as **Exhibit "N"** is the Level I Review, *see* page 8.

88. On or about October 11, 2006, the Trustees and the Board entered into a Consent Agreement in which BUILDERS was opened for new membership on the condition that the Trust's 2007 contribution year and all future years would be operating at breakeven or better. Attached as **Exhibit "O"** is the Consent Agreement

89. On May 2, 2007, the WCB sent the Trustees and the Trust Administrator a letter stating that based on its review of the annual financial reports submitted by the Trust for the fiscal year ending September 30, 2006, BUILDERS was deemed underfunded. Attached as **Exhibit "P"** is the May 2, 2007 letter.

90. The May 2, 2007 letter directed the Trustees and Trust Administrator not to issue renewal quotes for the upcoming policy year and that there would have to be a meeting between the WCB, Marsh and the Trustees. *See, Exhibit "P"*.

91. Enclosed in the May 2, 2007 letter was the Level I Review that determined that BUILDERS had a regulatory deficit of \$5,941,581. Attached as **Exhibit "Q"** is the Level I Review, *see* page 9.

92. On July 30, 2007, the WCB, the Trustees and the Trust Administrator had a conference call during which it was decided that "[d]ue to the financial concerns and the inability to reach breakeven rates for 2008, it was decided that [BUILDERS] will cease offering coverage as of [September 30, 2007]." Attached as **Exhibit "R"** is the WCB's July 31, 2007 letter.

93. On August 2, 2007, the WCB sent a letter to all current and former members of BUILDERS informing them that BUILDERS was in a significant deficit position, did not meet the financial standards required under the Rules, the Trustees and Trust Administrator could not propose a rating structure for the upcoming coverage year sufficient to cover anticipated losses and expenses and that BUILDERS could not be restored to a financially viable condition. For those reasons, the WCB was dissolving BUILDERS effective October 1, 2007 and members would have to find alternative

workers' compensation coverage by September 30, 2007. A copy of the August 2, 2007 letter is attached as **Exhibit "S"**.

94. On September 30, 2007, BUILDERS ceased offering workers' compensation coverage to its members. The Trustees continued to administer BUILDERS with Marsh as the Trust Administrator.

95. On February 8, 2008, BUILDERS' independent auditors sent the Trustees the financial statement as of September 30, 2007. The independent auditor's report noted that BUILDERS was no longer providing workers' compensation benefits to its members. A deficit of \$6,409,315 was reflected for the year 2007 in the report. Attached as **Exhibit "T"** is the Financial Statement as of September 30, 2007.

96. On February 24, 2009, the WCB had a conference call with the Trustees and the Trust Administrator to discuss the financial status of BUILDERS. This is set forth in the WCB February 27, 2009 letter, a copy of which is attached as **Exhibit "U"**.

97. The February 27, 2009 letter sets forth that BUILDERS had less than 12 months cash available to pay claims and expenses, had accordingly demonstrated an inability to properly administer its own liabilities and therefore the WCB was required to assume the administration and final distribution of BUILDERS' assets and liabilities. *See, Exhibit "U"*.

98. On April 1, 2009, the WCB informed the members of BUILDERS that it determined that the Trust had insufficient assets to pay claims expenses and that it had demonstrated an inability to properly administer its liabilities. Therefore, effective May 1, 2009, the WCB would assume the administration and final distribution of the group's assets and liabilities and that the WCB's third party administrator, NCA Comp Inc.

(“NCA”) would handle the administration and runoff of BUILDERS. A copy of the April 1, 2009 letter is attached as **Exhibit “V”**.

99. On May 1, 2009, the WCB assumed the administration and final distribution of BUILDERS.

100. On May 1, 2009, NCA took over the administration of BUILDERS from Marsh.

101. The WCB retained Bollam, Sheedy, Torani & Co., LLP, CPAs, (“BST”), through a competitive procurement process to provide an independent assessment of BUILDERS. On June 23, 2010, BST released its Forensic Analysis, a copy of which is attached as **Exhibit “W”**.

102. On July 26, 2010, BST released its Deficit Reconstruction and 2010 Assessment of BUILDERS. BST’s detailed report reconstructed BUILDERS’ member deficit for each year of the Trust’s operation. The Gross Deficit was \$20,378,349. A copy of the July 26, 2010 Deficit Reconstruction is attached as **Exhibit “X”**.

103. Pursuant to the Board’s direction, BST performed a second forensic deficit reconstruction, based on September 30, 2012 financial statements, called the 2013 Joint and Several Liability Deficit Reconstruction. The 2013 Joint and Several Liability Deficit Reconstruction, which used updated actual claims information, reflected that the Gross Deficit of BUILDERS was \$11,978,901 as of September 30, 2012. A copy of the 2013 Joint and Several Liability Deficit Reconstruction is attached as **Exhibit Y**”, *see Schedule 2 and Schedule 3*.

104. As of the date of this complaint, the remaining assets and available security of BUILDERS have been exhausted and the Trust has been rendered insolvent as defined in 12 N.Y.C.R.R. § 317.20.

105. The Board has entered into Settlement Agreement with many of BUILDERS' former members. Through these Settlement Agreements, the Trust is receiving monies to pay for the remaining open claims and expenses of BUILDERS. However, these Settlement Agreement monies are still not enough to meet all of the obligations of the Trust.

106. As a result, and in addition to the WCB's administrative expenses associated with BUILDERS, the WCB meets any and all obligations of this insolvent GSIT with monies from the WCB's administrative funds.

107. The WCB will continue to incur such expenditures for the foreseeable future, until all of the obligations of BUILDERS have been extinguished.

108. As a result of the foregoing, and in accordance with 12 N.Y.C.R.R. § 317.20, the WCB became the successor in interest to BUILDERS.

AS AND FOR A FIRST CAUSE OF ACTION
Breach of Contract

109. The Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 108 with the same force and effect as if set forth at length herein.

110. Pursuant to the Trust Agreement, the Rules and Regulations, the Indemnity Agreement, Defendant LaRocque was required to perform specific duties for the benefit of BUILDERS and its members, as set forth herein.

111. BUILDERS and its members were the express and intended beneficiaries of the Trust Agreement, the Rules and Regulations and the Indemnity Agreement.

112. Defendant LaRocque failed to perform, or negligently and improperly performed, his duties under the Trust Agreements, including but not limited to failing to provide for the proper capitalization of BUILDERS, setting improper contribution rates, and failing to comply with BUILDERS' membership requirements in relation to the admission and removal of members, and failure to prevent inherent conflicts of interest.

113. Upon information and belief, Defendant LaRocque failed to mandate ongoing rules and regulations for BUILDERS, which would have assured the sound administration of BUILDERS.

114. As the result of Defendant LaRocque's breaches of his contractual obligations to BUILDERS and its members, the WCB, as successor in interest to BUILDERS, has been damaged in an amount of \$11,978,901.

AS AND FOR A SECOND CAUSE OF ACTION

Fraud

115. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 114, with the same force and effect as if set forth at length herein.

116. Upon information and belief, Defendant LaRocque was the executive vice president of the NYSBA.

117. By being an officer in an entity that that made membership contingent in order to join BUILDERS, Defendant LaRocque profited to the detriment of Trust Members.

118. Defendant LaRocque intentionally used his knowledge as a Trustee and his dual position with NYSBA and BUILDERS to benefit NYSBA to the detriment of BUILDERS.

119. Trustee Larocque fraudulently represented to BUILDERS that he was a Trustee working in their best interest, when in reality he was intentionally benefitting NYSBA, a separate entity of which he was an officer.

120. Based on the above and below, Defendant LaRocque knowingly made material misrepresentations of fact, with the intent to deceive the Trust and BUILDERS' members and to induce the Trust and its members to act on these misrepresentations.

121. Upon information and belief, Defendant LaRocque obtained benefits from, and protected the interests of, NYSBA instead of administering his duties as BUILDERS' Trustee in a non-biased manner.

122. By having the builders' association of which he was the executive vice president receive referral commissions from BUILDERS for every association member who joined the Trust, while simultaneously representing that the Trustees were not receiving any compensation from BUILDERS for their duties as Trustees, Defendant LaRocque made knowing misrepresentations to BUILDERS with the intent to deceive BUILDERS.

123. Upon information and belief, Defendant LaRocque falsely described himself as being unbiased and just in his determinations for eligibility during membership applications to the Trust.

124. Upon information and belief, Defendant LaRocque falsely represented to the members and prospective members of BUILDERS that he would manage, administer and facilitate the Trust's activities, thus inducing members to join BUILDERS.

125. Defendant LaRocque knew or should have known that he was not putting the best interests of the Trust first and were, instead, promoting the NYSBA and his own interests.

126. BUILDERS' members and the Plaintiff justifiably relied upon the oral and written representations of Defendant LaRocque and had no way of discovering that he was unable or unwilling to competently perform under the Trust Agreement, Rules and Regulations, and Indemnity Agreement.

127. BUILDERS' members and the Plaintiff justifiable relied upon the oral and written representations of Defendant LaRocque and had no way of discovering that he was unable or unwilling to competently perform his duties.

128. These misrepresentations fraudulently induced BUILDERS members to join BUILDERS, and caused BUILDERS, its members, and the WCB to be damaged.

129. Upon information and belief, Defendant LaRocque made representation to Trust members to mislead Trust members into believing that he did not have a conflict of interest between his obligations to the Trust and his financial gain at NYSBA, that the Trust members would experience significant financial savings through their participation as a member of the Trust and that Defendant LaRocque was properly performing his duties as Trustees.

130. As a result of, and in reasonable reliance on, the representations of Defendant LaRocque, Trust members joined BUILDERS.

131. Upon information and belief, the representations made by Defendant LaRocque to the Trust members were not true.

132. The misrepresentations fraudulently induced the members to enter the Trust and caused the Trust to be damaged.

133. As a result of the foregoing, the WCB, as successor in interest to BUILDERS, has been damaged in an aggregate amount of \$11,978,901, plus interest.

134. Based on the foregoing actions of Defendant LaRocque, Plaintiff is also entitled to an award of punitive damages in an amount to be determined at the time of trial.

WHEREFORE, Plaintiff demands judgment as follows:

(a) On its first cause of action, as against Defendant LaRocque, \$11,978,901, plus statutory interest at the rate of six percent (6%);

(b) on its second cause of action, as against Defendant LaRocque, \$11,978,901, plus statutory interest at the rate of six percent (6%);

together with such other and further relief as the Court deems just and proper.

Dated: January 13, 2014
Schenectady, New York

By: 

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