

STATE OF NEW YORK  
LITIGATION COORDINATING PANEL

560009/11  
SUB J 2

Panel Case No. 0001/2010

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FS KIDS, LLC d/b/a BUDWEY'S FOOD MARKET, MASK  
FOOD, INC., VALU HOME CENTERS, INC., KBLM  
FOODS, INC., d/b/a BLADSDPELL JUBILEE; KDJB  
FOODS, INC. d/b/a SAVE-A-LOT LACKAWANNA;  
GAIGE & SON GROCERY, INC. d/b/a CORNING JUBILEE;  
TJ'S MARKET, INC. d/b/a HORSEHEADS JUBILEE; BB&T  
SUPERMARKETS INC., d/b/a ATTICA JUBILEE; and BNR-  
LARSON, LLC d/b/a CORFU IGA, AND GIFT EXPRESS OF  
NEW YORK, INC. d/b/a THE MARKET IN THE SQUARE on  
their own behalf and on behalf of ALL OTHERS SIMILARLY  
SITUATED as they, as Former Employee Members/  
Participants in the Wholesale And Retail Workers' Compensation  
Trust of New York

Plaintiffs,

: Index No. 11268/08

- against -

: Pending in the:  
Eighth Judicial District

COMPENSATION RISK MANAGERS, LLC

:  
Assigned Justice:  
Hon. John Michalek

Filed in the Erie County Clerk's  
Office on

Defendants.

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AND OTHER MATTERS LISTED ON THE ATTACHED APPENDIX

DECISION AND ORDER

Compensation Risk Managers LLC (CRM), defendant in the above-captioned action and in various of the actions listed on the attached Appendix, moves by counsel, Hitchcock & Cummings, LLC, pursuant to section 202.69 of the Uniform Rules for the Trial Courts of the State of New York (22 NYCRR202.69[c][1]), by Order to Show Cause, dated March 31, 2010, for an order of coordination with regard to the case listed above and those listed on the Appendix.

Specifically, CRM seeks to coordinate this Erie County action with the five pending actions listed in the Appendix and with any other subsequently filed actions or actions pending at the time of this application but not included in the application that are claiming damages alleged to have arisen from CRM's administration of group self-insured trusts (GSITs) that provided workers' compensation coverage to its members. Plaintiffs are employer-members of GSITs and the Workers' Compensation Board itself seeking recovery in behalf of GSITs and itself from CRM.

Plaintiffs in four of these actions (*FS Kids, LLC, 70 Sheldon, Inc., Armstrong Brands, Inc.* and *Arlen Senior Contracting of Central Islip, LLC*) have indicated that they consent to coordination with the New York State Workers' Compensation Board action, and assert that Erie County should be designated as the venue for the coordination, since that is where the initial action was commenced. These plaintiffs, however, oppose coordination with the Healthcare Industry Trust of New York (*HITNY*) action, arguing that the *HITNY* action has numerous defendants not party to the five other actions, bearing factual issues and legal claims particular to the *HITNY* action alone.

*UHY* and *Spain Agency, Inc.*, both defendants in the *HITNY* action have submitted papers in opposition. *UHY* maintains that there are significant questions of law and fact in *HITNY* not present in the five other actions. *Spain Agency Inc.* emphasizes that in each case the vast majority of facts will be distinct. Both contend that coordination will result in delays with respect to discovery and increased expense overall. *UHY* additionally asserts that it will be severely prejudiced by prolonged interruption of its auditing business. In the event that coordination is ordered, *Spain Agency, Inc.* sets forth Albany County as the most suitable venue as this is where the greatest number of parties are already in litigation.

Upon review, the Panel unanimously determines that Coordination of these actions is appropriate and that section 202.69 of the Uniform Rules for the Trial Courts of the State of New York is best served by the Coordination of this and those related matters listed in the Appendix hereto as well as related matters subsequently filed, or pending and not included in the Appendix, by directing that Coordination of these related matters be before a Coordinating Justice in the Third Judicial District, Supreme Court, County of Albany- Civil Branch.

The Panel has chosen Albany County as the county for the Coordination because several cases are pending there, the attorneys all have offices in Albany County and the Workers' Compensation Board is located in Albany County.

Any issues regarding discovery or claims of delay can be adequately addressed by the Coordinating Justice assigned. Thus, in cases where discovery is complete or nearly complete, the Coordinating Justice shall have discretion to decide if those cases should be separated out. Similarly, the Coordinating Justice shall have discretion to separate out any issues that are not common to or typical of the parties.

According, upon due deliberation, and for the reasons state, it is hereby:

**Ordered**, that the actions set forth above and in the Appendix shall be Coordinated

pursuant to Section 202.69 of the Uniform Rules for the Trial Courts of the State of New York, in the Supreme Court, Albany County, before a Coordinating Justice of that county; and it is further

**Ordered**, that any actions seeking damages alleged to have arisen from CRM's administration of GSITs that provided workers' compensation coverage to its members that were filed in the Supreme Court of the State of New York heretofore and which remain active, but are not listed in the caption above or in the Appendix and any such actions that are filed hereafter shall, in accordance with Subdivision F of the Procedures of the Panel, likewise be Coordinated pursuant to Section 202.69 of the Uniform Rules for the Trial Courts of the State of New York, before the Coordinating Justice, unless the Panel rules otherwise pursuant to Subdivision F of the Procedures of the Panel; and it is further

**Ordered**, that, pursuant to Section 202.69(c)(1) of the Uniform Rules for the Trial Courts of the State of New York, the Honorable George B. Ceresia, Jr., the Administrative Judge of the Third Judicial District (Civil Branch) shall assign the Coordinating Justice; and it is further

**Ordered**, that the Clerk of the Panel shall forthwith transmit a copy of this decision and order to counsel for all parties herein, the Justices to whom each of the above actions is currently assigned and to the Honorable Ceresia, Jr., Administrative Judge for the Third Judicial District; and it is further

**Ordered** that, within 15 days from receipt of a copy of this Decision and Order, counsel for the applicants shall serve a copy of the Panel's Decision and this Order with notice of entry upon the Clerk of the Supreme Court for Erie County, who is directed, upon payment of appropriate fees, if any, to transmit the files in the four listed actions that are pending in said County to the Clerk of the Supreme Court, Albany County; and it is further

**Ordered**, that with respect to any additional action that is to be Coordinated as provided in the second order provision hereof, upon service of a copy of the Order of the Panel with notice of entry, together with the affidavit of compliance or the Decision of the Panel set forth in Subdivision F of the Procedures of the Panel, upon the Clerk of the Court in which any such additional action is or hereafter shall be pending (other than the Supreme Court, Albany County) as provided in Subdivision F, the said Clerk shall forthwith transfer to the Supreme Court, Albany County, after the payment of the appropriate fees, if any, the file in any such additional action that is to be Coordinated as provided in this Decision and Order and Subdivision F; and it is further

**Ordered**, that the Clerk of the Supreme Court, Albany County, shall assign an Albany County index number, without fee, to any such additional action transferred to that county from another as provided above and such number shall serve as a means of identification and orderly processing of any such case while it remains in Albany County for the purpose of Coordination.

This constitutes the Decision and Order of the Panel. The Panel, by its Presiding Justice and

with their consent, signs this Decision and Order.

Dated: February 23, 2011

**Justices of the Panel:**

**Hon. Helen E. Freedman**

Presiding Justice, First Department

**Hon. Joseph J. Maltese**

Associate Justice, Second Department

**Hon. E. Michael Kavanagh**

Associate Justice, Third Department

**Hon. Matthew Rosenbaum**

Associate Justice, Fourth Department

For the Panel:



Hon. Helen E.  
Freedman,  
Presiding Justice

**APPENDIX**

<b><u>CASE</u></b>	<b><u>INDEX NO.</u></b>	<b><u>COUNTY</u></b>	<b><u>JUSTICE ASSIGNED</u></b>
<i>70 Sheldon, Inc. v CRG.</i>	009742/09	Erie	Hon. John Michalek
<i>Arlen Senior Contracting v CRG</i>	09212/09	Erie	Hon. John Michalek
<i>Armstrong Brands Inc v CRG</i>	001537/09	Erie	Hon. John M. Curran
<i>Healthcare Industry Trust v CR</i>	005966/09	Albany	Hon. Richard M. Platkin
<i>NYS WCB v CRG</i>	010288/09	Albany	None