

---

LAW OFFICES OF  
**Pullano & Farrow**  
PLLC

---

LEGAL BRIEFING: NY Small Business Owners Fight Back Against Workers' Compensation Board  
"We Broke It, You Buy It!"

Page 1 of 2

January 6, 2015

The saga continues for thousands of small business owners in New York as the Workers' Compensation Board ("Board") carries on its intense collection efforts to recover hundreds of millions of dollars to buoy underwater funds in the state's Group Self Insurance Trust ("GSIT") Program.

In a grand rebuke of the Board's practices, Onondaga County Supreme Court Justice John C. Cherundolo, now retired, breathed life into the hopes of fed up business owners. The 2012 case, Riccelli Enterprises, Inc., et al. v. State of NY Workers' Compensation Board ("Riccelli"), was recently affirmed by the Fourth Department of the Appellate Division.

Besides the immediate relief, a stay of all assessment enforcement measures by the Board pending a resolution of the case on the merits, the 168-page decision provides much needed leverage for business owners facing liability – specifically, the denial of the Board's motion to move the venue to Albany, and the allowance of several plaintiffs to join the suit and litigate what would have otherwise been time-barred claims.

The Albany-based Board has consistently pushed to try all GSIT cases in the Capital District. The Board argued that as an Article 78 proceeding, the law requires that the case take place in the county of the agency's principal office, where the agency made its determination, or where all material events on which the claims are based occurred. Justice Cherundolo, to put it mildly, didn't see it that way. He ruled that all material events took place in Onondaga County, and notably proclaimed, "It is Onondaga County that will have to deal with the issues surrounding potential permanent layoffs and systematic local and social problems that undoubtedly follow."

Also significant was Riccelli's reliance on the relation-back doctrine to preserve the ability of dozens of additional plaintiffs to join the action against the Board. Justice Cherundolo ruled that all of these parties had sufficiently similar claims. Permitting intervention was not a surprise. Indeed the motion was not even challenged by the Board (notwithstanding that it would consent only if the case was transferred to Albany County). The real present under the tree for the plaintiffs was the court's ruling that because of these similarities, all other plaintiffs' claims relate back to the original plaintiff's claim, and thus none are barred by the statute of limitations.

For the plaintiffs in Riccelli, the case and its subsequent affirmation by the Fourth Department prevents the Board from resuming any collection efforts against them until the case is ultimately decided. For others who were good faith participants in GSITs and are now targets of the Board, Riccelli is hope – hope that they can try their case in their own backyard instead of in Albany and hope that by banding together with other trust participants, they can stop the state shakedowns of hardworking small business owners.

---

LAW OFFICES OF PULLANO & FARROW PLLC  
ATTORNEYS & COUNSELORS AT LAW

69 Cascade Dr. Suite 307 • Rochester • New York • 14614 • 585.730.4773

---

ATTORNEY ADVERTISING

---

LAW OFFICES OF  
**Pullano & Farrow**  
PLLC

---

LEGAL BRIEFING: NY Small Business Owners Fight Back Against Workers' Compensation Board  
"We Broke It, You Buy It!"

Page 2 of 2

The Board's tactics are well-documented. The Board reaches out to a business owner, reminding them that under the Workers' Compensation law and the terms of the GSIT in which they participated, they are liable for a portion of the trust's deficit (called their "deficit assessment"). In many of the GSITs, the overall deficits run into the millions of dollars. The Board then offers to compromise on the assessment. Refusal to pay up often results in the Board suing for the money. Particularly hard to swallow for negotiating employers is that agreeing to pay a deficit assessment does not preclude future assessments if the Board so determines.

Of course, most small businesses do not operate with large enough margins to simply take on this debt. In Riccelli, the lead plaintiff was forced to close up shop. Thousands of businesses around New York currently being sued by the Board are concerned that they will face a similar fate.

As Riccelli demonstrates, these business owners are beginning to fight back. They argue the Board breached its duty to oversee the trusts, which allowed enormous deficits to accumulate. In some cases, the Board is alleged to have had knowledge of the deficits and of the negligent and at times allegedly intentional misconduct of some of the trust administrators, trustees, and brokers that ultimately resulted in the deficits.

GSITs began popping up in the 1990s as a way to save on New York's high Workers' Compensation premiums, seen by many as a major obstacle to the growth of small businesses. GSITs were creatures of state law. They were created by the state legislature to be managed by trust administrators who were chosen by the Board, and subject to the oversight of the Board. It was popular. But it did not go well.

By the mid-2000s there were some 10,000 employers participating in GSITs, but it was becoming clear that many were on the road to insolvency. When the wheels came off in 2012, there was nearly a billion dollars in aggregate trust deficits, many trust administrators had gone broke and disbanded, and the Board began to search for a new scapegoat. Thus the "deficit assessment" levy was born. The unfair and seemingly arbitrary deficit assessments being levied upon good faith and innocent employer participants in the GSIT are, in some people's view, merely the State's way of throwing the baby out with the bath water!

This Legal Briefing is intended for general informational and educational purposes only and should not be considered legal advice or counsel. The substance of this Legal Briefing is not intended to cover all legal issues or developments regarding the matter. Please consult with an attorney to ascertain how these new developments may relate to you or your business.

© 2015 Law Offices of Pullano & Farrow PLLC

Attorney Advertisement

---

LAW OFFICES OF PULLANO & FARROW PLLC  
ATTORNEYS & COUNSELORS AT LAW

69 Cascade Dr. Suite 307 • Rochester • New York • 14614 • 585.730.4773

---

ATTORNEY ADVERTISING