

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

257

CA 10-01068

PRESENT: SCUDDER, P.J., FAHEY, CARNI, GREEN, AND GORSKI, JJ.

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FS KIDS, LLC, DOING BUSINESS AS BUDWEY'S  
FOOD MARKET, MASK FOODS, INC., VALU HOME  
CENTERS, INC., KBLM FOODS, INC., DOING  
BUSINESS AS BLASDELL JUBILEE, KDJB  
FOODS, INC., DOING BUSINESS AS SAVE-A-LOT  
LACKAWANNA, GAIGE & SON GROCERY, INC.,  
DOING BUSINESS AS CORNING JUBILEE, TJ'S  
MARKET, INC., DOING BUSINESS AS HORSEHEADS  
JUBILEE, BB&T SUPERMARKETS INC., DOING  
BUSINESS AS ATTICA JUBILEE, BNR-LARSON, LLC,  
DOING BUSINESS AS CORFU IGA, AND GIFT EXPRESS  
OF NEW YORK, INC., DOING BUSINESS AS 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-RESPONDENTS-APPELLANTS,

ORDER

V

COMPENSATION RISK MANAGERS, LLC,  
DEFENDANT-APPELLANT-RESPONDENT.  
(APPEAL NO. 1.)

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HITCHCOCK & CUMMINGS, LLP, NEW YORK CITY (CHRISTOPHER B. HITCHCOCK OF  
COUNSEL), AND CONNORS & VILARDO, LLP, BUFFALO, FOR  
DEFENDANT-APPELLANT-RESPONDENT.

PHILLIPS LYTTLE LLP, BUFFALO (KENNETH A. MANNING OF COUNSEL), FOR  
PLAINTIFFS-RESPONDENTS-APPELLANTS.

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Appeal and cross appeal from an order of the Supreme Court, Erie  
County (John M. Curran, J.), entered August 4, 2009 in a breach of  
contract action. The order, among other things, granted in part  
defendant's motion to dismiss plaintiffs' supplemental and amended  
complaint.

It is hereby ORDERED that said appeal is unanimously dismissed  
without costs as moot (*see Baker v 16 Sutton Place Apt. Corp.*, 2 AD3d  
119, 120) and the cross appeal is dismissed without costs as abandoned

(see *Restey v Higgins*, 252 AD2d 954).

Entered: March 25, 2011

Patricia L. Morgan  
Clerk of the Court