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June 1, 2009

George Knehr, Chief, Self-Insurance Division
Bureau of Workers' Compensation
Department of Labor and Industry
Chapter 125 Regulations – Comments
P.O. Box 15121
Harrisburg, PA 17105

VIA E-MAIL (gknehr@state.pa.us)

RE: Comments to Proposed Amendments to Regulations for Workers'
Compensation; Individual Self-Insurance (34 Pa. Code Chapter 125)
Regulation I.D. # 12-85 (#2758)
Our Clients: Royal Ahold and Giant Food Stores, LLC

Dear Mr. Knehr:

We represent Koninklijke Ahold N.V. ("Ahold") and Giant Food Stores, LLC ("Giant"). We previously sent a letter on November 7, 2005, to John T. Kupchinsky, Director of Bureau of Workers' Compensation, requesting that the Department make certain changes to the Individual Self-Insurance regulations ("Regulations") in order to expand the opportunities for foreign corporations and U.S. subsidiaries of foreign corporations to qualify as self insurers under Chapter 125. We also made an oral presentation at the stakeholder meeting on November 14, 2005.

Ahold and Giant appreciate the Department's efforts in proposing changes to the Regulations to expand the opportunities for U.S. subsidiaries of foreign corporations to qualify and participate as self-insurers. Ahold and Giant commend the Department for recognizing the increasing globalization of the world's economy and the interdependence that exists among the United States and our trade partners around the world. Ahold and Giant fully support the Department's efforts to permit U.S. subsidiaries of foreign corporations to freely compete and participate in Pennsylvania's economy. Ahold and Giant continue to advocate for the implementation of changes to the existing Regulations in order to allow U.S. subsidiaries of foreign corporations the same opportunities to self-insure as those maintained by U.S. companies.

Ahold and Giant have a number of comments as to those portions of the proposed Regulations most directly impacting Giant's ability to qualify and proceed as a self-insurer, as well as a few comments on other proposed changes to the Regulations. Although these comments are being submitted on behalf of Ahold and Giant, many of them would apply to

any U.S. subsidiary of a foreign corporation seeking to qualify to self-insure in Pennsylvania. Ahold and Giant request that the Department consider these comments and the revised language suggested below as it proceeds with drafting the final-form regulations.

1. Section 125.3(c)(2) & (3). Both of these sections refer to either SEC Form 10-K or 10-Q. Some foreign corporations file Form 20-F with the SEC, and others do not file any forms with the SEC. Sections 125.3(c)(2) & (3) should provide for the submission of such documents as are filed by a foreign corporation with either the SEC or the governing body of the public securities exchange where their stock is traded. We request that the language in these two sections be revised as follows:

(2) Its Securities and Exchange Commission (SEC) Form 10-K, **or equivalent form filed by a foreign corporation with the SEC or the governing body of an internationally recognized public securities exchange**, for the last complete fiscal year, if applicable. The SEC Form 10-K, **or similar form filed by a foreign corporation with the SEC or the governing body of an internationally recognized public securities exchange**, does not serve as a substitute for the full completion of the application form.

(3) Its latest audit report issued by a licensed certified public accountant or accounting firm. The report must cover the last complete fiscal-year period immediately prior to the date of application. If the most current audited period precedes the application date by more than 6 months, the applicant's latest SEC Form 10-Q, **or similar form filed by a foreign corporation with the SEC or the governing body of an internationally recognized public securities exchange**, or unaudited financial statements must be submitted. The audit report must include the following:

2. Section 125.3(c)(3)(i). The Department proposes new language providing in part that: "The monetary values presented in the financial statements must be in United States dollars . . ." In many instances, a foreign corporation's audited financial statements will be in a currency other than U.S. dollars. Although there is information in Ahold's annual report regarding its U.S. operations that is stated in U.S. dollars, Ahold's consolidated audited financial statements are in euros. We are attaching as Exhibit A to these comments page 49 from Ahold's 2008 annual report that contains certain notes to the financial statements. Note 2 provides in part that: "These consolidated financial statements are presented in euros. The following exchange rates of the euro against the U.S. dollar have been used in the preparation of these financial statements. . . ." The Department's proposed change would prove problematic for Ahold, Giant and undoubtedly many other foreign corporations and their U.S. subsidiaries where their audited financial statements are stated in a currency other than the U.S. dollar.

It is a simple matter to convert the monetary values contained in a foreign corporation's financial statements to U.S. Dollars. The Bureau of Financial Management Service of the United States Department of the Treasury is tasked with establishing the exchange rate for purposes of our federal government's operations. See 22 U.S.C. §2363(b) ("The Secretary of the Treasury shall have sole authority to establish for all foreign currencies or credits the exchange rates at which such currencies are to be reported by all agencies of the Government.") The Bureau of Financial Management Service provides the official exchange rate information on its web-site (www.fms.treas.gov/intn.html). There are numerous other available sources to obtain the exchange rate between U.S. dollars and euros, as well as the currencies of most industrialized countries in the world.

We expect that the Department will be able to easily convert the monetary values set forth in the foreign corporation's financial statements to U.S. dollars, especially where the monetary value is stated in euros. However, to the extent that the Department is simply looking for the applicant to assist in the conversion of the monetary values set forth in the consolidated financial statements, then we suggest the following alternative language for section 125.3(c)(3)(i):

(i) Financial statements which are presented in conformance with applicable generally accepted accounting principles as promulgated by the Financial Accounting Standards Board or the Government Accounting Standards Board or with international financial reporting standards promulgated by the International Accounting Standards Board. **[The monetary values presented in the financial statements must be in]** To the extent that the monetary values presented in the financial statements are not in U.S. dollars, then the applicant will cooperate with and assist the Bureau in converting the monetary values to United States dollars and the text of the financial statements and their accompanying notes must be in the English language. If the applicant is a parent company, consolidated financial statements of the applicant and its subsidiaries shall be provided.

3. Section 125.3(c)(4). This provision provides in part that: "If audit reports covering these periods are not available, financial statements reviewed by a certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants" Financial statements prepared by many foreign corporations will not be reviewed in accordance with standards established by the American Institute of Certified Public Accountants. In order to maintain consistency with Section 125.3(c)(3)(i), we suggest that this language be modified as follows:

(4) Audit reports covering the applicant's second and third most recent complete fiscal-year periods prior to the date of the application, if an initial application. If audit reports covering these periods are not available, financial statements reviewed by a certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants or

International Accounting Standards Board covering the second and third most recent complete fiscal year periods will be accepted.

4. Section 125.3(c)(8)(ii). This newly proposed provision provides in part that an applicant needs to provide information with respect to its "Pennsylvania workers' compensation claims incurred as a self-insurer . . . (ii) All claims closed in the past if those claims are available. If a listing of all claims closed in the past is not available, the listing must at least include all claims closed on or after _____." Giant was previously self-insured in the Commonwealth of Pennsylvania. Giant was required to terminate its self-insurance status effective October 1, 2003, as a result of the manner in which Ahold prepared its consolidated financial statements. Based on the express wording of this proposed change, Giant would be required to provide the Bureau with a list of the claims it closed when it was a qualified self-insurer prior to October 1, 2003. Although the Department limits the applicant's duty to "available" claims information, there is a great deal of information that is technically "available" if the applicant conducts an exhaustive historical search of its archives. We see no reason for Giant to have to go back and conduct an exhaustive search of the claims information when it was a self-insurer over five years ago. Accordingly, we propose that Section 125.3(c)(8)(ii) contain a five year limitation on closed claims. We are proposing the following modified language:

(ii) All claims closed **[in the past] within five years prior to _____** if those claims are available. If a listing of all claims closed **[in the past] within five years prior to _____** is not available, the listing must at least include all claims closed on or after _____. (Editor's Note: The blank refers to the effective date of adoption of this prop[r]osed rulemaking.)

For purposes of this proposed revision to the proposed change, the Editor's Note would apply equally to the two additional blank lines we have inserted. (We have also corrected the spelling of "proposed." We note that this same spelling appears in other Editor's Notes, and would suggest that this correction be made throughout the proposed changes to the Regulations).

5. Section 125.4(a). We would suggest that section 125.4 be revised to conform with the proposed section 125.4(e). The Department uses the term "indirect subsidiary" in section 125.4(e) in recognition that the applicant's direct parent might be a holding company or other intermediary between the applicant and ultimate parent corporation. We propose the following revisions to section 125.4(a):

(a) An affiliate or **direct or indirect** subsidiary may be included under an application submitted by another affiliate or its **direct or indirect** parent company by providing information and data on the affiliate or **direct or indirect** subsidiary on a form prescribed by the Bureau. The related entities will be included under one consolidated permit if the application is approved. A written request shall be made by

the applicant to delete an affiliate or **direct or indirect** subsidiary from a consolidated permit after its issuance.

6. Section 125.4(d). Similar to the comments stated above with respect to section 125.4(a), we propose the use of the phrase "direct or indirect" to modify both subsidiary and parent. We also propose that section 125.4(d) expressly state that it is subject to section 125.4(e). We propose the following revisions to section 125.4(d):

(d) **Except as provided in §125.4(e), [I]if an affiliate or direct or indirect** subsidiary not included under a consolidated application as outlined in subsection (a) wishes to self-insure, it shall submit an application in its own name and provide its own reports in the manner indicated in §125.3 (relating to application). The Bureau may require the **direct or indirect** parent company to furnish appropriate financial information within a time period prescribed by the Bureau.

7. Section 125.4(e). We suggest using the term "consolidated financial statements" in place of "consolidated audit report". Further, it appears that there is an extra "the" before the reference to §125.3(c)(3)(i) and (ii), or alternatively, the words "requirements of" is missing before the reference to §125.3(c)(3)(i) and (ii). We propose the following revisions to proposed section 125.4(e):

(e) If the applicant is a direct or indirect subsidiary of a parent company that is not incorporated or organized under the laws of a state of the United States, the applicant may submit its parent company's consolidated **[audit report] financial statements** and an unaudited consolidated balance sheet of the applicant's financial condition, or other financial information on the applicant that the Bureau deems pertinent to its review of the application, to satisfy the financial reporting requirements of § 125.3(c), provided the parent company's **[audit report] consolidated financial statements** compl[ies] with the **requirements of** § 125.3(c)(3)(i) and (ii).

8. Sections 125.6(a)(2)(ii)(A) and (B). These proposed provisions deal with the applicant's actual or estimated investment grade long-term credit or debt rating. In situations where the applicant is a direct or indirect subsidiary corporation and is relying on the parent corporation's consolidated financial statements, the Bureau should be willing to accept the parent corporation's actual or estimated investment grade long-term credit or debt rating. We propose the following revisions to proposed sections 125.6(a)(2)(ii)(A) and (B):

(A) The applicant, **or the applicant's direct or indirect parent company**, possesses an investment grade long-term credit or debt rating, or such a rating that is one generic rating classification below investment grade.

(B) For applicants, **or direct or indirect parent companies of applicants**, who do not receive a long-term credit or debit rating by an NRSRO, the Bureau estimates that the applicant, **or the applicant's direct or indirect parent company**, would merit an investment grade long-term credit or debt rating, or a rating that is one generic rating classification below investment grade, if it were rated.

9. Sections 125.6(b)(1), 125.6(b)(1)(i), and 125.6(b)(2). Similar to the comments with respect to section 125.6(a)(2)(ii)(A) and (B), there are a few provisions in section 125.6(b) that should be modified to account for the situation where the applicant is a direct or indirect subsidiary corporation and is relying on the parent corporation's consolidated financial statements. We propose the following revisions to proposed sections 125.6(b)(1), 125.6(b)(1)(i), and 125.6(b)(2):

(b) The Bureau will consider the following information in assessing an applicant's financial ability to self-insure:

(1) The applicant's, **or the applicant's direct or indirect parent company's**, level of financial health based upon **[its] the applicant's, or the applicant's direct or indirect parent company's**, long-term credit or debit rating, if any, or upon an evaluation by the Bureau of one or more of the following:

(i) The applicant's, **or the applicant's direct or indirect parent company's**, financial statements, which may include comparisons of the applicant's, **or the applicant's direct or indirect parent company's**, financial ratios to general or to industry ratios and cash flow analysis.

(ii) Public documents and reports filed with other state and Federal agencies including the United States Securities and Exchange Commission.

(iii) Other financial analysis information provided to or considered by the Bureau.

(2) The amount of the applicant's, **or the applicant's direct or indirect parent company's**, quick assets at the end of **[its] the last 2 completed fiscal years** as shown on the audited financial statements provided to the Bureau under § 125.3 (relating to application).

10. Section 125.6(c)(2)(iii). Similar to the comments stated above with respect to section 125.4(a), we propose the use of the phrase "direct or indirect" to modify parent. We propose the following revisions to proposed section 125.6(c)(2)(iii):

(iii) A guarantee agreement executed by **[its] the applicant's direct or indirect parent company** or an affiliate as set forth in § 125.4 (relating to application for affiliates and subsidiaries), if required.

11. Section 125.9(d)(1)(iii). Similar to the comment to sections 125.6(a)(2)(ii)(A) and (B), the discount should be based on the parent corporation's highest current long-term credit or debt rating. We propose the following revisions to section 125.9(d)(1)(iii):

(iii) Discounted to the percentage outlined under subsection (l) for the applicant's, **or the applicant's direct or indirect parent company's**, highest current long-term credit or debt rating, if any.

12. Section 125.9(d)(4)(ii). Similar to the comment to section 125.9(d)(1)(iii), the discount should be based on the parent corporation's highest current long-term credit or debt rating. We propose the following revisions to section 125.9(d)(4)(ii):

(iii) Discounted by the percentage outlined under subsection (l) for the applicant's, **or the applicant's direct or indirect parent company's**, highest current long-term credit or debt rating, if any.

13. Sections 125.9(d)(5)(ii), 125.9(d)(6)(ii), and 125.9(d)(6)(iii)(A). Similar to the comments to section 125.9(d)(1)(iii) and 125.9(d)(4)(ii), the discount should be based on the parent corporation's highest current long-term credit or debt rating. We propose the following revisions to sections 125.9(d)(5)(ii), 125.9(d)(6)(ii), 125.9(d)(6)(iii)(A):

(5)(ii) Discounted by the percentage outlined under subsection (l) for the runoff's, **or the runoff's direct or indirect parent company's**, highest current long-term credit or debt rating, if any.

* * *

(6)(ii) Discounted by the percentage outlined under subsection (l) for the runoff self-insurer's, **or the runoff self-insurers' direct or indirect parent company's**, highest current long-term credit or debt rating, if any.

* * *

(6)(iii)(A) The nearest ten thousand if the Bureau's calculated undiscounted outstanding liability, net of worker's compensation excess insurance recoveries, discounted by the percentage outlined under subsection (l) for the runoffs', **or the runoffs' direct or indirect parent company's**, highest current long-term credit or debt rating, if any, is \$50,000 or less.

We are not certain of the reason the Department uses the word "runoff" and "runoffs" at times in subsections (5) and (6), and the phrase "runoff self-insurers" in subsection (6). We understand the difference between the singular and plural, but would suggest that the

Department consider whether there should be greater consistency between the terms used in subsections (5) and (6) to describe the runoff self-insurer(s).

14. Section 125.9(l). Similar to the other comments to section 125.9, the discount should be based on the parent corporation's highest current long-term credit or debt rating. We propose the following revisions to section 125.9(l):

(l) The following discount percentages shall be applied in calculating a self-insurer's required amount of security under subsection (d) based on the highest **current** long-term credit or debt rating of the self-insurer, **the self-insurer's direct or indirect parent company**, or of the affiliate guarant[y]eeing the self-insurer's liability:

We note that in section 125.9(l), the Department has removed reference to the word "current", which was used previously in the phrase "highest current long-term credit or debt rating". We are not certain as to whether this was intentional, and if so, the reason the Department is making a distinction between "highest current long-term credit or debt rating" and "highest long-term credit or debt rating." We do not see a reason for this distinction in subsection (l), and would suggest that the Department use the phrase "highest current long-term credit or debt rating."

We further note that the Department added the phrase "or of the affiliate guarantying the self-insurer's liability." This phrase was not previously referenced in sections 125.6 or 125.9. We suggest consistency between 125.6 and 125.9 in this regard.

Finally, we suggest using the common spelling of "guaranteeing", especially considering that the Department has used the word "guarantee" rather than "guaranty" throughout the Regulations. See Section 125.6(c)(2)(iii) ("guarantee agreement"); Section 125.15 ("guarantee and assumption agreement").

15. Section 125.16(b). Similar to the comments to section 125.3(c)(8)(ii), we propose that section 125.16(b) contain a limitation on listing closed claims. We propose that the subject language be modified to read as follows:

(b) ... The listing must include all open[s] claims at the time of submission and, if available, all claims closed **[in the past] within five years prior to _____** if those claims are available. If a listing of all claims closed **[in the past] within five years prior to _____** is not available, the listing must at least include all claims closed on or after _____. (Editor's Note: The blank refers to the effective date of adoption of this prop[r]osed rulemaking.)

(We would suggest changing the word "opens" to "open").

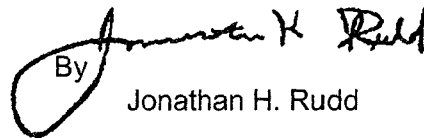
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June 1, 2009
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Ahold and Giant greatly appreciate the Department's efforts to date to bring about changes to the Regulations in order to permit U.S. subsidiaries of foreign corporations the ability to more freely participate in Pennsylvania's self-insurance program. This is the type of change that is needed in our current global economy and will be beneficial to the citizens of this Commonwealth.

We are requesting that the Department keep us informed of the final-form version of the Regulations and its promulgation as a final rule, as well as its submission of the final-form Regulations for review to the designated House and Senate Committees and the IRRC.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Jonathan H. Rudd

JHR/dd
Enclosure

cc: Independent Regulatory Review Commission (John H. Jewett)
Laura Williams, Esquire
Libby Christman
Greg Stay
Karen Brainard

EXHIBIT A

Notes to the consolidated financial statements

1 The Company and its operations

The principal activities of Koninklijke Ahold N.V. ("Ahold" or the "Company" or "Group" or "Ahold Group"), a public limited liability company with its registered seat in Zaandam, the Netherlands, and its head office in Amsterdam, the Netherlands, are the operation of retail food stores in the United States and Europe through subsidiaries and joint ventures. In addition, some of its subsidiaries finance, develop and manage store sites and shopping centers, primarily to support Ahold's retail operations. Ahold's significant subsidiaries, joint ventures and associates are listed in Note 35.

2 Basis of preparation

These financial statements have been prepared in accordance with International Financial Reporting Standards ("IFRS") as adopted by the European Union ("EU"). All standards and all interpretations issued by the International Accounting Standards Board (the "IASB") and the International Financial Reporting Interpretations Committee (the "IFRIC") effective for 2008 and relevant to Ahold have been adopted by the EU, except that the EU carved out certain hedge accounting provisions of IAS 39. Ahold does not utilize this carve out permitted by the EU. Consequently, the accounting policies applied by Ahold also comply fully with IFRS. Historical cost is used as the measurement basis unless otherwise indicated.

Ahold's financial year is a 52- or 53-week period ending on the Sunday nearest to December 31. Financial year 2008 consisted of 52 weeks and ended on December 28, 2008. The comparative financial year 2007 consisted of 52 weeks and ended on December 30, 2007.

These consolidated financial statements are presented in euros. The following exchange rates of the euro against the U.S. dollar have been used in the preparation of these financial statements:

	2008	2007
Average exchange rate	0.6828	0.7307
Year-end closing exchange rate	0.7111	0.6795

The preparation of financial statements requires management to make a number of estimates and assumptions. These estimates and assumptions affect the reported amounts of assets and liabilities, of revenues and expenses and the disclosure of contingent assets and liabilities. All assumptions, expectations and forecasts used as a basis for certain estimates within these consolidated financial statements represent good-faith assessments of Ahold's future performance for which management believes there is a reasonable basis. They involve risks, uncertainties and other factors that could cause the

Company's actual future results, performance and achievements to differ materially from those forecasted. The estimates, assumptions and judgments that management considers most critical relate to:

- Vendor allowances (Note 3);
- Leases and sale and leaseback transactions (Note 3);
- Impairments (Note 3);
- Non-current assets held for sale and discontinued operations (Notes 3 and 5);
- Income taxes (Notes 3 and 10);
- Equity method of accounting for ICA (Note 14);
- Measurement of defined benefit obligations (Note 22);
- Provisions and contingencies (Notes 23 and 33).

3 Significant accounting policies

Changes in accounting policies

As of 2008, Ahold has early applied the revised IAS 1 "Presentation of Financial Statements". The revised standard introduces requirements to present all changes in equity arising from transactions with owners in their capacity as owners separately from non-owner changes in equity and to disclose (i) income tax related to each component of other comprehensive income and (ii) reclassification adjustments relating to components of other comprehensive income. In addition, when an entity applies an accounting policy retrospectively or makes a retrospective restatement or reclassification of items in its financial statements, IAS 1 requires the presentation of a third balance sheet as of the beginning of the earliest comparative period. The adoption of the revised IAS 1 did not have an impact on the Company's financial results or position.

As of 2008, Ahold has early applied IFRS 8 "Operating segments". IFRS 8 introduces new disclosure requirements with respect to segment information. The adoption of IFRS 8 did not have an impact on Ahold's segment structure, consolidated financial results or position; however, segment results no longer include intercompany royalties. Comparative information has been changed accordingly, with the effect that Giant-Carlisle's 2007 operating income increased by EUR 14 million and the Corporate Center's operating result decreased by the same amount.

Income statement reclassification

Comparative information in the consolidated income statement has been changed to properly present certain intercompany eliminations on the same line item. This resulted in an increase of selling expenses by EUR 18 million and a decrease of general and administrative expenses by EUR 18 million, with no impact to operating income.



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From: Rudd, Jonathan [JRudd@mwn.com]
Sent: Monday, June 01, 2009 4:17 PM
To: Knehr, George
Cc: Jewett, John H.
Subject: Workers' Compensation; Individual Self-Insurance, L&I Proposed Regulation #12-85 (#2758)

Mr. Knehr:

Please respond that you received this e-mail and that it is acceptable to submit these written comments by e-mail.

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