N.Y. workers' comp trusts: rising prices and broker concerns

By Adam Friedlander

The *inadequate rates that many of New York's* workers' compensation self-insured trusts charge may increase effective Jan. 1, 2007 due to imminent changes in regulations from the New York State Workers' Compensation Board. Insurance brokers may advise their clients to "cut their losses" and choose guaranteed, lower priced alternatives rather than continue to be exposed to the unjustifiable risk of assessments and non-competitive pricing of some trusts.

Since December 2005, five trusts have been closed, despite multi-million dollar assessments billed to members. According to the NYSWCB Self-Insured Trusts Summary of Funding Status, 44 percent of the trusts were still "under-funded" as of Oct. 20, 2006.

Trusts with assets greater than 90 percent of liabilities are considered to have "no funding issues" and those with assets below 90 percent of liabilities were deemed to be "under-funded."

Both the Independent Insurance Agents and Brokers of New York and the Professional Insurance Agents have expressed concern about the status reports not being more specific about the degree of under-funding.

Many trusts charged inadequate rates to cover the ultimate development of all expenses, including reserves, administrative expenses, assessments, and reinsurance. The board reported late last year that the state's 60 odd self-insurance trusts had a combined regulatory deficit of $162 million.

Members are responsible for any shortfalls due to the joint and several liability provision, required to join a self insured trust. Agreeing to joint and several liability is like signing unlimited blank checks, collateralized by members' assets, to pay for any unfunded liabilities and expenses, and worse, those of participating competitors.

The board is re-thinking the way it evaluates group self-insured trusts. *In a letter dated July 27, 2006, Suzanne Aluise, director of* self-insurance at the NYSWCB, states that "an integral part of the success of a group self-insured trust is the adequacy of the rates charged." Determining rate adequacy is complicated by the "long *term development inherent to workers' compensation claims.* However, with the vast experience we have had in the past with under funded groups it has become very evident that, in order to avoid significant deficit, it is necessary to base the rates charged on a well developed rate analysis."

The letter asks every group to file with the board a rate adequacy review that supports the rates that will be charged in the fiscal years that begin Jan. 1, 2007. The rate analysis should clearly identify the breakeven rate and assumptions therein.

"The filing will be informational for trusts with no funding issues and will become the foundation for remediation for those trusts deemed under funded," the letter states.

"In some cases these rate analyses are requiring trusts to increase rates by as much as 20 percent or 30 percent," Jon Sullivan, a spokesman for the NYSWCB told workcompcentral in the article on Oct. 2, 2006.

Since most businesses joined trusts for projected savings, they will likely leave trusts for the lower priced alternatives. *Unfortunately, members will still* be responsible for any unfunded liabilities and expenses incurred during their membership.

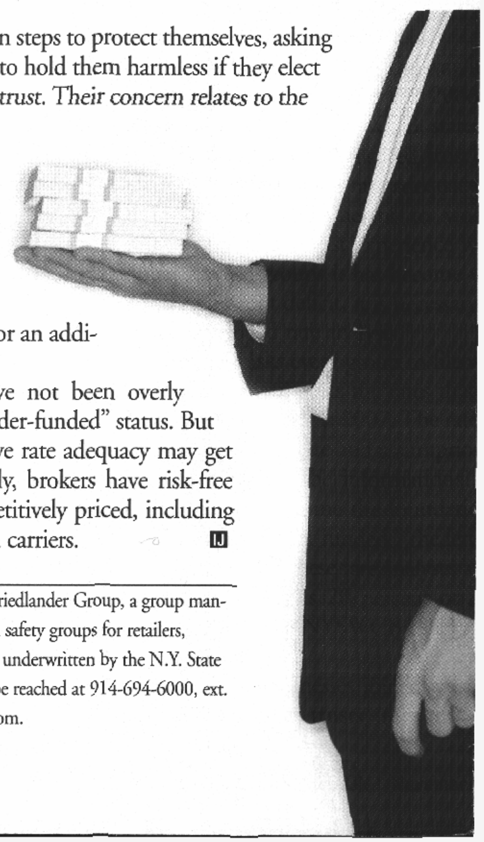
New York regulations also require that all trusts are jointly and severally liable for the unfunded liabilities of the other group self-insured workers' compensations trusts. The financial strength of healthy trusts would be undermined by the assumption of any unfunded liabilities of weaker trusts.

Based upon the experience of other states, this liability can be significant. In Florida, self insurance trusts dropped from 60 to 4 during the 1990's due to numerous insolvencies. The AIK workers' compensation trust in Kentucky closed in February of 2005, going from a small surplus to a $92 million deficit in less than one year.

Some brokers have taken steps to protect themselves, asking clients to sign agreements to hold them harmless if they elect to obtain coverage from a trust. Their concern relates to the insolvency exclusion of self insured trusts in their errors and omissions policy.

In an interview published September 2006 in Insurance Journal, Glenn Jennings, the former executive director of the Kentucky Office of Insurance, said his agency "moved [AIK self-insured fund] into receivership. Of course, we have joint and several as the main backstop for financial solvency for our self insured funds. That hole turned out to be $92 million. Approximately 3,800 employers were involved in AIK. We've gone through several assessments. We have successfully collected approaching $72 million, and we have callable notes for most of the rest." *Twelve hundred members were sued in order* to collect the assessments.

Some brokers have taken steps to protect themselves, asking clients to sign agreements to hold them harmless if they elect *to obtain coverage from a trust. Their concern relates to the* insolvency exclusion of self-insured trusts in the errors and omissions policy issued by Westport Insurance Corp. which many agents carry. Westport will not assume that risk for an additional premium.



Members of trusts have not been overly concerned about their "under-funded" status. But increased pricing to achieve rate adequacy may get their attention. Fortunately, brokers have risk-free alternatives that are competitively priced, including safety groups and standard carriers. IJ

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