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September 3, 2008

New York State Workers Compensation Trusts

- A Letter From The Amerisc Corp.
- WorkCompCentral News Article
- IIANY (Independent Insurance Agents of New York) News Article
- Contactors Compensation Trust Notification
- Empire State Transportation Trust Letter

The Amerisc Corp.

INSURANCE AND FINANCIAL SERVICES

August 18, 2008

Re: <u>Workers' Compensation Trusts Disband</u>

First Cardinal, respected administrator of 14 solvent self-insured New York trusts, with substantial, wide-ranging membership, has announced that 12 of its trusts have already voted to DISBAND! With these and perhaps the rest of First Cardinal's trusts closing, and with the former C.R.M. trusts headed to liquidation, the workers' compensation marketplace will see tremendous turmoil.

Contractors insuring themselves with WC Trusts in NYS are predicted to face some severe assessments. If you are in such a position, you may wish to take measures to protect yourself from further deficiency exposure.

While First Cardinal's WC Trusts are in the process of dissolving, they are preparing to defend against the WC Board assessments that are being levied on current and previous members of Trusts, to recoup the losses sustained by other defaulted and under-reserved Trusts.

In its correspondence, First Cardinal states **"It is now clear that the statute empowers the Workers' Compensation Board to impose assessments on New York State self-insurance groups <u>for other, unrelated self-insurance groups that have defaulted</u> on their workers' compensation obligations… [and] that the prudent course of action is to commence taking steps necessary to dissolve the trusts."**

At Amerisc, we are in the process of exploring the defenses and other legal recourses available to current and former members of these Trusts. We invite you to call and inquire further on those protective developments and to discuss your coverage options.

Respectfully yours,

Phil Samuels President	Frank Abbatiello VP	Michael Banahan General Counsel

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New York -- Eleven First Cardinal Trusts Vote to Dissolve in N.Y.: *Top* [08/13/08]

First Cardinal – New York's largest manager of group self-insured trusts – told brokers on Monday that 11 of its 14 self-insured trusts have voted to dissolve in the wake of legislative reforms that the Latham, N.Y., company warns will further expose healthy trusts and their members to the failure of other trusts across the state.

First Cardinal President/Chief Executive Officer Richard S. Flaherty said in a letter mailed Monday that members of the 11 trusts gave "unanimous consent" to dissolution and are taking the steps to withdraw from the market. The letter was posted Tuesday on the website of Professional Insurance Agents of New York (PIANY).

Flaherty said First Cardinal's three other trusts haven't reached a final decision.

Flaherty declined to identify the trusts in an interview Tuesday because he said the process of withdrawal is in "midstream."

"Naturally, it's a very sad situation, because the self-insurance model is the backbone of First Cardinal," he said. "But we have come to the conclusion and all of the boards of these groups and the board members who are policyholders have come to the conclusion over the last three or four months."

He cited reforms hammered out late in the 2008 legislative session by State Workers' Compensation Board Chairman Zachary Weiss, Gov. David Paterson, officials of the New York State Insurance Department and the AFL-CIO that provided an immediate bailout plan for injured workers covered by the 12 group self-insured trusts have shut down since 2006.

The new law also calls for long-term regulatory reforms to be charted by a task force that will report back to lawmakers and Paterson in February 2009.

It calls for trust managers to pay $500,000 for each trust they administer in the form of security deposits next April, and it gives Weiss the power to borrow $52 million from the state Uninsured Employer Fund by next April to pay workers' claims from failed trusts to head off future assessments on healthy trusts.

But Flaherty attached a point-by-point analysis of the new law to the letter he sent to brokers and concluded the law enhances "group-to-group" exposures, penalizing healthy trusts for the failures of trusts that may have been poorly administered.

Thirteen of First Cardinal's 14 trusts filed suit against Weiss and the board earlier this year, after Weiss ordered emergency assessments of between $52 and $54 million to pay workers' claims.

New York Supreme Court Kimberly O'Connor ruled the board could not charge the assessments without proving the failed trusts are insolvent. But the ruling left the door open for SWCB to establish insolvency and reissue the assessments.

"We've had a bunch of meetings. We've looked at the legislation we collectively came to the conclusion that the group-to-group exposure was a problem. With the marketplace such as it is, a lot of members are going to be leaving. What you'll end up with is an adverse selection of the group," Flaherty said. "The good guys will get better pricing, and they will leave."

As the groups were finalizing plans to dissolve and place members' coverage with private carriers or the New York State Insurance Fund (NYSIF) last week, they got a letter from one of the fund's safety group managers.

Safety groups operate through NYSIF, the state-run carrier of last resort, to assemble companies with similar businesses for the purpose of obtaining lower rates from the fund. The letter warned of the "harsh reality" of the group self-insured trust market and the possibility that healthy trusts will shoulder the burden of failed trusts.

"We know there's a feeding frenzy out there around these groups," Flaherty said. "We're in uncharted waters."

First Cardinal manages self-insured workers' compensation trusts in Massachusetts, New Hampshire, New York and Texas. Trust management is the core of First Cardinal's business in New York.

Flaherty said Tuesday the company will be exploring its options and hasn't decided yet whether or how it will expand into other areas of the New York insurance market. First Cardinal has 7,500 accounts and hundreds of thousands of employees covered through the New York trusts it manages.

Flaherty said he could not estimate how many employees and employers are covered by the 11 trusts whose boards of directors have voted to dissolve. But news that First Cardinal is dissolving its predominate share of the trust market sent shockwaves through the workers' compensation industry.

The 14 First Cardinal Trusts account for better than one quarter of the group self-insured trusts in New York.

The trust market shrank significantly this year with an agreement by Compensation Risk Managers (CRM) to surrender the last five of its trusts to the SWCB by Sept. 8, along with its third-party administrator's license. CRM signed the surrender agreement after SWCB filed major administrative charges against the Poughkeepsie, N.Y. -based trust manager in April in a bid to revoke its license.

Kathleen Mecca Camp, owner of FCS Administrators and president of the Group Self-Insurance Association of New York, blames the industry's problems on CRM's management of eight of the 12 trusts that have closed since 2006 and says the industry itself is healthy and in tune with Weiss' reforms.

Camp said she had numerous meetings with Weiss and received assurances that the reforms are not aimed at punishing healthy trusts.

"I can't believe he (Flaherty) is doing this," Camp said Tuesday. "But it should have no impact on other funded trusts or those that are approaching fully funded levels."

Camp said she anticipates no further assessments from the closing of the 11 trusts because their members will be placed with other carriers or NYSIF and will continue a traditional run-out of claims.

Flaherty also said First Cardinal will remain involved in the run-out, which he said will take years.

She said Weiss had already agreed to accept letters of credit instead of $500,000 deposits after her group researched the availability of getting carriers to cover the deposits. She said at least one insurer had agreed to provide $100,000 per trust to cover the deposits - a fifth of the required deposit money - but wanted "exorbitant fees."

She said Weiss has offered to take the $500,000 security deposits called for by the new law "off the table," and to come up with some caps on the group self-insured guaranty fund that was created as a part of the legislative reforms.

"We had a litany of concerns about (the legislation), but we think we've come up with some reasonable agreements. The board seems 100% committed to keeping group insurance alive."

Last Friday, SWCB Director of Finance and Policy Kathleen Griffin sent out third-quarter assessments to self-insurers along with a letter seeking to quell concerns about the reforms.

She said the board expects a high level of success from ongoing collection efforts involving the members of failed trusts.

"This will allow the UEF funds to be used as an offset against the 2009-2010 self-insurer's assessment," Griffin said. She said the board expects assessments for self-insurers to be lower than 2007-2008 levels.

Brian Keegan, SWCB's public information director, said the posting of the PIANY website was the first news he'd received of the trusts' closings.

"The board respects the decision of these First Cardinal Trusts," Keegan said. "However, we believe the recent legislation, agreed to by business and labor leaders and signed by the governor, will help strengthen the group self-insurance industry in New York."

He said the $52 million Weiss is allowed to borrow from the UEF ensures uninterrupted payments to injured workers covered by defaulted trusts, "while moderating the assessment amounts of the remainder of the self-insurance community."

Tim Dodge, research and external communications director for Independent Insurance Agents and Brokers of New York (IIABNY) said Flaherty's letter went to brokers across the state.

Despite what Flaherty described as the feeding frenzy involving other insurance stakeholders vying for a piece of the new business, Dodge said the developments at First Cardinal may not be good news for agents and brokers who stand to profit from writing the business with other carriers.

"We have said all along that the self-insured trusts are one important distribution system for the workers' compensation system. They are an important outlet, and it's a little disturbing that 11 healthy trusts are disappearing," Dodge said. "I don't think it's necessarily a good thing because opportunities may open up."

A copy of the First Cardinal letter to brokers and Flaherty's analysis of the legislation is at http://www.workcompcentral.com/pdf/2008/misc/FirstCardinalLetter.pdf.

By Michael Whiteley, Eastern Bureau Chief
mike@workcompcentral.com

August 20, 2008

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Breaking News: Workers' Comp Board Issues Emergency Reg on Self-Insured Trusts

Editor's note: IIABNY is currently investigating the implications of this late-breaking development and will report back to the association's membership as soon as it determines the short-term and longer-term repercussions of this action by the state Workers' Compensation Board.

In a swift response to a July court decision, the New York Workers' Compensation Board today announced an emergency rule to deal with the growing issue of insolvent self-insured trusts. The rule, published in the Aug. 20 issue of *New York State Register*, creates for the first time a measurement to determine whether a trust is insolvent. It also affirms that the board has the authority to assess all trusts when one becomes insolvent. The board said that the rule is a response to the New York Supreme Court's ruling in *Held v. Workers' Compensation Board.* That decision voided the board's assessment of self-insured employers because the board had failed to show that the trusts in question were insolvent.

The new rule specifically states that the new definition of "insolvent" is in the context of the board's decision to levy an assessment. It defines "insolvent" to mean:

> (T)he inability of a private group self-insurer, to pay its outstanding lawful obligations under the Workers' Compensation Law as they mature in the regular course of business, as may be shown by: i) the self-insurer being underfunded as defined in (the Workers' Compensation Law)...and ii) the sum of the self-insurer's assets...plus the available security deposit held by the (Workers' Compensation Board)...being less than the total cost of all of the self-insurers' anticipated workers' compensation liabilities...that will accrue within the succeeding six months.

The rule goes on to say that the board shall assess all private group self-insurers whenever it determines that workers' compensation benefits may be unpaid because of the default of an insolvent private group self-insurer. In supporting statements, the board wrote:

> The definition of insolvent in the rule makes clear the information the Chair must have and how he must make the determination that a private group self-insurer is insolvent. Such specificity requires a reasoned decision based upon the facts that a private group self-insurer is insolvent...The rule also addresses the court's finding that insolvency must not be prospective or speculative but real and actual before imposing the assessment...This rule provides a framework for making a determination of insolvency in light of the Court's decision in Held...so that the Chair may determine the appropriate assessments in light of that decision.

The board issued the regulation as an emergency rule to expire on Oct. 29. However, it also said that it intends to make the rule permanent and will publish a proposed rule in the *Register* at a future date.

CONTRACTORS COMPENSATION TRUST

A Workers' Compensation Self-Insurance Group organized under Section 50, subdivision 3-a of the New York State Workers' Compensation Law

IMPORTANT NOTIFICATION

August 18, 2008

To Fellow Members of the Contractors Compensation Trust:

As you may be aware, Governor Paterson signed into law important new legislation governing workers compensation self-insurance programs in New York State this past July. The legislation is far-reaching and though some of the numerous changes are constructive, there are many which impact our Trust negatively. One such portion of the legislation makes it clear that the Workers Compensation Board is empowered to impose assessments on the Contractors Compensation Trust ("CCT"), and all other self-insured groups, for the liabilities of other, unrelated self-insurance groups that have defaulted on their workers' compensation obligations. We challenged these assessments earlier this year in court, a process which is still ongoing.

These assessments, as well as regulatory changes, mean that members of the Trust would see an increase in future premiums. The Trust will receive bills in the future caused by unfunded liabilities of unrelated group self-insurers. If, under the regulatory changes, the Trust were unable to maintain full (100%) funding of our own liabilities as required *and* pay these assessments, then it is possible Trust *members* could also begin receiving bills in the future caused by these unfunded liabilities of other, unrelated groups. The 2008 workers' compensation legislation allows this possibility, creating a liability for the Trust and its members, which is impossible to calculate as the extent of the liabilities is presently unknown.

When we all joined the Trust, we signed an agreement – the wording of which was approved by the Workers' Compensation Board – that makes each of us joint and severally liable for deficiencies within our own Trust. There was no language regarding unrelated, defaulted groups. Accepting liability for a portion of the unfunded liabilities of defaulted groups is not anticipated in the agreements we signed and introduces indeterminate, potential liabilities that could negatively impact us all.

Consequently, we are writing to deliver the disappointing news that we, the Board of Trustees, believe it is in the best interests of our Trust members to commence steps toward the dissolution of the Trust. We have voted unanimously to do so, with a target date of November 1, 2008, but in any event no later than December 31, 2008. Even though our dissolved Trust will continue to be assessed for liabilities incurred by unrelated defaulting self-insurance groups during the period we have been an active Trust, the Board could not support the continued operation of our Trust under the new regulatory scheme in New York State. We will be sending you a proxy statement in September 2008 with a more complete explanation of the process and the measures we are taking to minimize the potential for any impact on members. It is imperative that you respond and return your proxy statement as quickly as possible.

We anticipate that these developments could create difficulties for your firm, as well as for our own. Fortunately, our decision coincides with a new, competitive rating structure in New York State, effective October 1, 2008, so we are confident that there are a number of viable workers' compensation alternatives for all of us. We intend to work with you on alternatives and we will keep you apprised of our findings. ***Your workers' compensation coverage remains in full force and effect through the end of 2008. No action is required by you at the present time.***

Your insurance broker has been kept apprised of this situation and will receive a copy of this correspondence as well.

Finally, it's important to know that we as Trustees are taking steps to protect you, the members, and this Trust that has served us all so well. We, with 12 other New York State self-insurance groups, have challenged the assessments and the new legislation in a judicial challenge in New York State Supreme Court on both statutory and constitutional bases. We will keep you informed as we progress.

On behalf of the over 200 dedicated employees at First Cardinal and your Board of Trustees, we appreciate your continued support and confidence. We will be in touch again soon. In the meantime if you have questions you may call your licensed insurance broker, or First Cardinal (Dennis Mellan, 518.213.1553), or one of your Board members.

Sincerely,
The Board of Trustees

William T. Held Jr., Chairman, Board of Trustees
Held's Janitorial Services, Inc., Buffalo, NY

Nancy Richard, Board Member
Darlind Construction Inc., LaGrangeville, NY

Barry Ballen, Board Member
Gilbert Displays Inc., Melville, NY

Mark Sheffer, Board Member
Most Building Services, Inc. , Broadalbin, NY

Frank Christiantelli, Board Member
Casler Masonry Inc., Auburn, NY

EMPIRE STATE TRANSPORTATION WORKERS' COMPENSATION TRUST

A Workers' Compensation Self-Insurance Group organized under Section 50, subdivision 3-a of the New York State Workers' Compensation Law

IMPORTANT NOTIFICATION

August 25, 2008

Dear Empire State Transportation Workers' Compensation Trust Members:

In July 2008, Governor Paterson signed into law important new legislation governing group workers' compensation self-insurance programs in New York State. A controversial component of the legislation now makes it explicitly clear that the Workers' Compensation Board can impose assessments on the Empire State Transportation Workers' Compensation Trust for other, unrelated self-insurance groups that have defaulted on their workers' compensation obligations, assessments that we challenged earlier this year in court. This means that members of the trust would see an increase in future premiums, and members could also begin receiving bills in the future caused by unfunded liabilities of unrelated group self-insurers. The 2008 workers' compensation legislation causes a future, but incalculable, liability for members of the Trust.

As you know, we as Trustees believed that when you joined the Trust, you signed an agreement that makes each member joint and severally liable for deficiencies of the Empire State Transportation Workers' Compensation Trust, but not for unrelated, defaulted groups. We still believe this, but we have now been overruled by the new legislation.

Consequently, we are writing to deliver the disappointing news that we, the Board of Trustees, believe it is in the best interests of our Trust members to commence steps toward the dissolution of the Trust. We have voted unanimously to do so, with a target date of November 1, 2008, but in any event no later than December 31, 2008. Notwithstanding that the Trust will continue to be assessed for liabilities of other, unrelated defaulting self-insurance groups even after the Trust becomes inactive, the Board of Trustees could not support the continued existence of your Trust under this new regulatory scheme in New York State. We will be mailing you a proxy statement in September 2008 with a more complete explanation.

We understand that these developments will create difficulties for your firm, but the decision coincides with a new, competitive rating structure in New York State, effective October 1, 2008, so we are confident that there are a number of viable workers' compensation alternatives for you, and we intend to work with you on alternatives.

No action is required by you at the moment— your workers' compensation coverage remains in full force and effect through the end of 2008. We have also kept your insurance broker apprised of the situation, and they will receive a copy of this correspondence.

Finally, it's important to know that we as Trustees have not, however, given up the struggle. The Empire State Transportation Workers' Compensation Trust and 12 other New York State self-insurance groups have challenged the assessments and the new legislation in a judicial challenge in New York State Supreme Court, on both statutory and constitutional bases, and that process is ongoing. We will keep you informed on its progress.

On behalf of over 200 dedicated employees at First Cardinal, and your Board of Trustees, we appreciate your continued support and confidence. With questions, please start with your licensed insurance broker or you may call Dennis Mellan at First Cardinal, 518.213.1553, or dmellan@firstcardinal.com.

Sincerely,
The Board of Trustees
Empire State Transportation Trust

Greg DeLorenzo, Chairman, Board of Trustees
Wade Tours, Inc. Schenectady, N.Y.

James P. McPartlon III, Board Member
Parkland Ambulance Service, Inc. Schenectady, N.Y.

Michael Schwegler, Board Member
Blue Star Bus, Inc. Brooklyn, N.Y.

Michael Minerva, Board Member
Emergacare NY, LLC Yonkers, N.Y.