# *Understanding the Risks of Self-Insured Pools*

Self-Insuring for Workers' Compensation has always been an option for New York businesses. If a business did not wish to purchase coverage from a traditional insurance carrier or the State Insurance Fund, employers had the option to either self-insure individually or join together with other like businesses and operate as a group self-insured trust. These Group Trusts offered members Cost Savings, Safety Training, Enhanced Coverage Options and Claims Handling. These Groups had been running smoothly for years until 2006 when several Group Trusts were found to be either insolvent or closed due to pending insolvency.

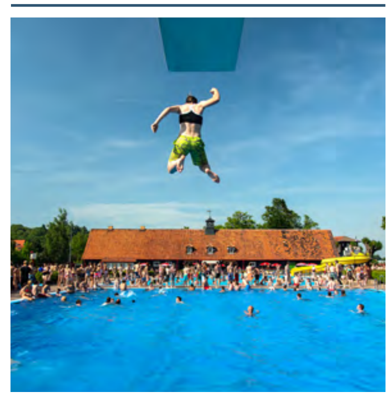
In 2009 the State of New York appointed a Task Force to review the self-insured trust system and to quantify the exposure the NY Workers' Compensation system was facing based on the revelation of the failing trusts. After thorough analysis of Group Trusts, the Task Force published their findings and found that there was a $498 million funding shortfall in the system. Based on the joint and several liability structure of self-insured pools, all Group Trusts (even solvent Groups) were hit with significant assessments in an attempt to make the system whole. Because of this substantial flaw in the oversight of Group Trusts, the State of New York imposed significant financial requirements and regulations on the self-insurance system. In part, this caused the demise of most self-insured trusts in New York State.

***I am Public Entity and am currently in a self-insured pool. How did these new financial requirements and regulations affect my Group?***

Groups that consist solely of State or local public entities are considered to be exempt from many of the annual report filings and the financial requirements applicable to private group trusts. This exemption is based upon the premise that the employer members of these public groups have taxing authority which supports the payment of their claims[1]. In layman's terms, there is little oversight of your group because if your pool does become insolvent and/or you are assessed due to financial shortfalls of the Group, your ability to pay any such assessment from your tax base eliminates any potential burden to the Worker's Compensation system.

***What are the negatives of a self-insured pool?***

Joint and Severable Liability is the most significant negative aspect of this structure. Your contribution amount for a given year is never final until the pool can reconcile that enough funds have been collected from group members to offset claims. Because Workers' Compensation claims can last for an extended period of time, it could be years until a shortfall is discovered and members would be assessed additional contributions in order to make the Group whole. Unless your Group Administrator can provide satisfactory audited financials as to the solvency of the Group, you may be undertaking an unnecessary risk which is only perpetuated by continued membership.



***If my pool becomes insolvent, what are my options?***

Typically the Joint and Several Liability outcome is most prevalent. By collecting the additional funds needed from members in order to make the Group solvent, the

## *Understanding the Risks of Self-Insured Pools*

the Group may be able to continue operations. An alternative to Joint and Several Liability in the case of insolvency would be (after liquidating all assets of the Group Administrator) the member's claims (and the liability for said claims) would be distributed back to the member. This could generate a significant financial burden to the member as not only would they have to find coverage on a going forward basis, they would have to hire a Third Party Administrator and pay the liabilities from past claims.

### *Has this ever happened to a Public Entity Pool?*

Yes. Compensation Risk Managers administered the Public Entity Trust of New York. In 2007 their Group became insolvent and went bankrupt. This caused the Workers' Compensation Board to levy a $7.6 million deficit assessment against the Group members. Some of the most significant assessments were $834,920 to the Town of Greenburgh and $611,841 to the Mount Vernon School District[2]. In 2010, a Connecticut Public Entity insurance pool, Municipal Interlocal Risk Management Agency (MIRMA) assessed 60 member municipalities $9.5 million in retroactive fees to cover losses[3]. Several other New York County run self-insurance pools have recently ceased operations causing members to find coverage elsewhere and take on the financial burden of past claims.

### *How is the NY State Insurance Fund different?*

As with a traditional insurance carrier, there is no Joint and Several Liability or risk of assessments due to financial shortfalls. The premium you pay for a policy year is final (subject to payroll audit) and will NEVER be adjusted due to claims activity or a funding shortfall. Traditional insurance carriers are subject to strict financial requirements and their solvency is graded periodically by several independent companies. They also pay into a Guarantee Fund to go toward paying claims in the event an insurance carrier becomes insolvent. As a State Agency, the State Insurance Fund does not pay into the Guarantee Fund. Nor are their financials independently reviewed by a rating agency. They are offline of the State budget and the premiums collected are used to pay current and future claims as well as administrative costs. The financial stability of the New York State Insurance Fund is backed by the full faith and credit of the State of New York.

Whether you are a current member of a self-insured pool or considering membership, it is important to know and understand all of the risks. Self-insurance groups were established when traditional insurance coverage was too expensive or difficult to acquire. In today's marketplace, traditional coverage is not only easily available to Public Entities, it is often more affordable than self-insured pools. Insurance coverage is only as good as the financial stability of the company you are buying it from. Understand that in the event of a Group Self-Insurance Pool's insolvency (even if the chance of that insolvency is remote) you as a Group member are retaining a potentially significant exposure.

*Sources:*

1. *Task Force on Group Self-Insurance: Report to Governor Paterson and the New York State Legislature, 2010 <http://www.wcb.ny.gov/content/main/TheBoard/SelfInsuranceTaskForceReport.pdf> (August 14, 2012).*
2. *"Greenburgh, Mount Vernon Taxpayers must pay for self-insurance default", The Journal News, October 11, 2010.*
3. *"Westbrook to pay $26G insurance fee", New Haven Register, August 24, 2010.*