WORKERS’ COMPENSATION SELF-INSURED GROUP PLANS

Many states, including Michigan, have group workers’ compensation self-insured trusts. Under these types of plans, similar employers can pool their workers’ compensation dollars, buy excess insurance, pay claims and return the balance to the members by way of surplus. These plans are controlled by various workers’ compensation statutes and regulated by state authorities.

Unfortunately, these plans can fail.

A good example is the crisis occurring in the state of New York. Multiple funds have recently become insolvent in New York on top of seven other funds that became insolvent in 2006 and 2007. As a result, the state of New York faces a crisis in its group self-insured workers’ compensation trusts which have a shortfall of at least $600,000,000. Eighty-two percent of this is attributable to one plan referred to as CRM.

Even though the state is responsible for regulating these plans, the state is in fact holding responsible the 4,500 New York based small businesses that were participants in the CRM trusts. One member received a notice that he owed $87,000 to cover his share of the liabilities even though he was no longer a member of the CRM trust. The state indicated that if the business owner did not pay, they would charge a 22% penalty.

The CRM plan won business by underpricing workers’ compensation premiums from standard insurers and other self-insured plans. As a result, the company collected at least $70,000,000 from its members from 2001 to 2007, but the steep discounts which it offered to its members eventually meant that the fund did not have enough money to pay the claims as workers got injured on the job.

The crisis in New York has decimated the group self-insured trust industry. In 1999, 6,614 employers participated in group self-insured trusts statewide in New York, and today it is down to approximately 4,000 employers.

The question is whether or not this type of situation could occur in Michigan. Would the members of these self-insured plans have joint and several liability for other members in the plan? Would they have liability for assessments by the state to replenish the Self Insurers Security Fund? (The answer to both is yes.)
Let’s look at the Michigan statutes.

- Employers may be self-insured individually or as a member of a self-insured group. Either way, employers participating individually or as part of a self-insured group are considered “self-insurers.”

- Group self-insurance is subject to joint and several liability. If the plan fails for some reason, each member has to pay the claims of other members without any limitation of liability.

- Group self-insurers are responsible to pay the annual assessment by the Self Insurers Security Fund made by the State of Michigan. This is paid for by the plan administrator each year while the plan is viable, but could be billed to the members of the plan if the plan is unable to pay. Failure to pay will result in the imposition of the cost of collection and reasonable attorney’s fees.

- Group self-insured members are also liable for additional assessments, if necessary, to keep the Self Insurers Security Fund solvent.

- No operations outside of the state of Michigan are covered, and any casual labor hired by a Michigan employer outside of the state of Michigan would not be covered.

With all of this in mind, think about the worst case scenario.

- The excess insurance purchased by the Fund fails because of the insolvency of the insurance carrier.

- The excess insurance purchased was not sufficient in that the claims exceeded the aggregate limit.

- The administrator of the Fund absconds with the money.

- A large individual self-insured or the self-insured group itself goes bankrupt, requiring assessments of surviving self-insurers in order to pay claims.

We saw this in 2009 when Chrysler, General Motors and others went bankrupt. There were all self-insureds for workers’ compensation. The Attorney General of Michigan Michael Cox indicated the following in a motion related to the Chrysler bankruptcy:

“If the Michigan Self Insurers Security Fund was forced to assume Chrysler’s workers’ compensation obligations, enough funds exist only to make benefit payments for a matter of weeks before this fund becomes insolvent itself.”

“The concern applies not only to Chrysler’s injured employees but to all injured employees in Michigan entitled to benefits from an insolvent self-insured employer. If the proposed sale order is approved and the debtors are unable or unwilling to continue paying their workers’ compensation obligations, the Self Insurers Security Fund would eventually become insolvent.”
The Attorney General went on to say that other self-insured employers in Michigan (which include members of group self-insured plans) could face additional assessments to help shore up the security fund in Michigan, but that would fall short.

(In addition to the Chrysler bankruptcy, General Motors also filed for bankruptcy. At that time, about 12,500 claims were pending with the total amount still payable at $1.47 billion with cash payments for the twelve month period after bankruptcy expected to be $240 million. General Motors did maintain letters of credit, security deposits or a surety bond totaling $453 million for workers’ compensation in the twenty-six states in which it self-insured its benefits, plus it had an umbrella policy to pay other claims.)

The point here is that in the event of a major economic downfall, multiple self-insured companies can become bankrupt. In that type of situation, the remaining self-insureds in Michigan can be assessed.

Assessments in Michigan are governed by Section 418.551 of the Workers’ Compensation Act. Assessments are made against all self-insurers under a formula indicated in the statute. Section 4 of this section of the statute indicates that the state can make additional assessments upon private self-insurers as the trustee considers necessary to keep the Self Insurers Security Fund solvent. This assessment shall not exceed 3%. This 3% assessment would be applied to the total paid losses of each self-insurer divided by the total paid losses of all self-insurers during the previous calendar year.

So with all of these problems in mind, such as the joint and several liability, the possibility of an assessment by the state and the possibility of a fund failing because of reinsurance or theft, we need to look at what the situation is in Michigan.

New York apparently did not have sufficient oversight over the funds that were approved to do business in New York; furthermore, those funds were not limited to writing homogeneous types of businesses.

In Michigan, the state administrator supervising these plans is very conservative in allowing the investment of premium dollars for these funds. Furthermore, these funds are audited each year by the state to be certain that they are following the guidelines of the state, their investment portfolio is in accordance with those guidelines, and they have appropriate reinsurance. Michigan funds are also limited to writing homogeneous risks that meet specific acceptability standards.

Let us examine the largest fund that we do business with: the Metalworking Industries of Michigan Workers’ Compensation Fund.

This fund has been in business since 1981. It has collected over $104 million in premiums since that period of time and currently has $16 million in surplus in the bank. Its premiums for 2010 were $3.75 million with losses of $938,121. Their worst ever year was 2002 when they had $6.5 million in claims with $7,250,000 in audited premiums.

They have reinsurance that begins paying when the fund has paid out 75% of its premium dollars in claims. From a regulatory standpoint in Michigan, the fund cannot charge more than 25% of its premiums for reinsurance and administrative costs, including commissions. This means that they
have $0.75 on the dollar which to pay claims. When that $0.75 on the dollar fund is expended, the reinsurance will pay until the $10 million aggregate is used.

Should the aggregate be exceeded, MIMs would have to utilize its surplus reserve fund, which is $16 million currently, in order to meet the shortfall. Based upon their premium writings and claims experience, it would seem that their utilizing the entire aggregate on their excess insurance is highly unlikely. If this did happen, they have significant funds to pay the shortage.

From a dishonesty standpoint, every check is signed by a trustee of the plan and the administrator. The administrator indicates that they have a significant amount of employee dishonesty coverage to cover employee dishonesty.

Excess insurance is provided by Citizens. Only four insurance carriers currently write excess insurance for group self-insured trusts in Michigan: Citizens Insurance Company (rated A), Midwest Insurance Company (rated A+), Safety National (rated A), and Employers (rated A). There are approximately 35 self-insured group trusts in Michigan.

It is important before we decide to do business with a particular group that we understand their history, whether they have significant amounts of retained surplus, and whether they are profitable from an underwriting standpoint. We also look at the experience and integrity of the administrator of the fund. Fund administrators are approved by Michigan regulators.

The bottom line is that there is some risk to members of self-insured plans in Michigan. However, from a practical standpoint, no one can recall where there has been an assessment of any member either by way of joint and several liability or otherwise in Michigan. The plans that we do business with in Michigan are managed well, and we can confidently recommend them to our clients.

However, new entrants into this field and competitors must be examined carefully.