

April 21, 2010

Dear Agent:

Over the past two years almost every agent I have visited has asked me about “joint and several” liability amongst self insured trusts. The concern was that financially deprived trusts would bring about the demise of fully funded trusts. First Cardinal, as a trust manager, cited their concern about this issue as one of their primary reasons for exiting the self insured trust industry in New York.

We are especially pleased to see last week’s news that Hon. Kimberly O’Connor, New York State Supreme Court Justice, ruled in favor of all solvent trusts in a case brought by 13 self insured trusts. This case started back in 2008. The judge ruled that the Board’s assessments of healthy trusts, for the losses of unhealthy trusts, was an “unconstitutional taking of their (the plaintiffs) private property without just compensation.” Further, the court vacated and nullified such assessments and enjoined the WCB from enforcing such assessments.

The Board has announced they will immediately file an appeal to the decision. There will be more litigation as there are two more levels within our court system. We are hopeful that future decisions will affirm the decision made at the State Supreme Court level. We also think there is much more that should be done by reaffirming the liabilities of those underfunded trust members and collecting already billed assessments.

We will continue to notify you as news on this litigation develops. The Special Trades Trust, which we manage, has fully complied with all Board assessments at this time. We have been able to fund the increased assessments internally within the Trust without ever making a special assessment on our trust members. We want to continue in this manner. This most recent ruling gives hope that the end is in sight for assessments based on the unfortunate results of other, financially encumbered, trusts.

Yours Truly,



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