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## Investigations continue in CRM case

### Trust management, subsidiary sale probed

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As the stock price of a Poughkeepsie-based company tumbled and red ink enveloped the insurance funds it managed, some perplexing messages began to appear in June and November 2008 on an online forum hosted by Yahoo. com's finance division.

Despite all evidence to the contrary, the messages said, CRM Holdings Ltd. had an unabashedly bright future. "Screaming buy," recommended one posting. "I was a buyer today," said another. "Looks like they've put all the recent turmoil in the rearview mirror," said a third.

While some of the messages may have been legitimate, others - it isn't known which - proved to be inside jobs, posted by a corporate consultant at the behest of the chief executive officer, Daniel G. Hickey Jr., according to Securities and Exchange Commission filings.

Shortly after the scheme was revealed in February, Hickey resigned his job at the company he helped found in 1999, one that saw the huge growth - and then collapse - of seven insurance funds it managed for workers injured on the job. The collapse left some \$250 million in unfunded claims, according to state figures.

Today, CRM, which like Hickey declined comment for this article, is a humbled and transformed company - right down to the letters "CRM" that have been removed from atop its gleaming Town of Poughkeepsie offices. The Yahoo postings - and subsequent referral to the Securities and Exchange Commission for possible investigation - are just one problem. Indeed, more than a year after CRM surrendered its license to manage so-called group self-insured trust funds in New York, the trouble is clearly not over for this once high-flying startup - nor is it for the businesses involved in its fall.

Among the company's ongoing problems:

The company's stock price, though up considerably since March, now hovers at around \$1.10 a share, down from \$13 in 2005 and \$4 only a year ago. CRM just announced the loss of \$2.1 million in the second quarter of 2009, 12 cents per share.

Although little is known of its scope, timing or progress, an investigation by the criminal division of the state attorney general's office continues into CRM's management of the failed trusts.

The company also is under investigation by the fraud inspector general of the Workers' Compensation Board over the sale by a CRM subsidiary to one of its trusts of insurance to cover catastrophic claims, a potential conflict of interest. The Journal previously reported CRM trusts paid twice as much for such insurance than the average of 51 other trusts.

## 2 California trusts shut

Since December, two of five CRM-managed trusts have closed in California, where the company had hoped after the New York collapse to secure a future in self-insured trust management.

Finally, CRM is facing what it calls "extensive litigation and potential liability" in the form of four lawsuits by former trust members and a notice by the Workers' Compensation Board that it, too, intends to sue. The company has acknowledged in public filings that its own insurance may be insufficient to cover potential damages.

As its own latest annual report put it, "By the time 2008 came, CRM was a very different company from the one that had offered its shares to the public in 2005."

One glint of good news on the CRM front is that a small New York trust, representing 30 members of the cemetery industry, has been deemed not to be insolvent like the others. But another much larger trust - the Elite Contractors Trust of New York, representing 2,600 building contractors - has been found to have a \$60 million deficit, an especially poignant development because Elite was the only one of CRM's eight trusts to be considered healthy.

The investigations, lawsuits and high-level upheaval followed revelations last year that seven of eight New York trusts managed by CRM had far less in assets than was needed to cover injury claims. All have been shut down amid state charges, denied by the company, that CRM failed to set aside adequate money to cover losses and filed false information. CRM has said it stands by its business practices and has blamed its problems on a difficult economic landscape.

That landscape is no more formidable than for the many New York businesses caught up in CRM's implosion. According to just-released figures from the Workers' Compensation Board, which regulates group trusts, 1,789 companies that belonged to six CRM trusts have been billed \$132.6 million - an average of \$74,110 each - to cover unfunded claims. This is on top of premiums they already paid; the billings do not include invoices being sent separately to members of the Elite trust.

"To us, it's just a calamity," said Richard Herrick, president of the New York State Health Facilities Association, an organization of 300 nursing homes, about a fifth of which have received such bills from their membership in CRM's Healthcare Industry Trust of New York. "It certainly has created a great deal of anxiety and concern."

In the early 2000s, CRM enticed thousands of companies in health care, contracting, retailing and real estate to join the trusts, in which employers banded together to self-insure with the promise of low-cost workers' compensation insurance. Now, those companies are being held responsible, under a liability clause in their contracts, for millions in current and future employee claims, wiping out any savings they had realized and saddling them with the uncertainty of future bills.

"Quite a few companies are teetering on financial collapse," said Art Wilcox, public employee division director for the state AFL-CIO. "It's going to put some of them under."

As the ramifications of the CRM debacle come into focus, some express anger at the Workers Compensation Board, some at CRM and some at CRM's Hickey, who walked away from a crippled company and troubled industry with a \$3.3 million severance package and nearly 2 million of the company's shares, about 9.9 percent of the total; they are currently worth about \$1.8 million.

CRM officials have defended Hickey's compensation package, under which he earned \$1.7 million a year, as typical of executives at similarly situated companies. But others say such packages reward undeniably poor performance - and are taken from those who can least afford to give.

"Daniel Hickey is like the Bernie Madoff of the workers' comp industry," said Troy Rosasco, a Garden City, Nassau County, attorney who represents injured workers before the Compensation Board. "Unfortunately, like most of these Ponzi-like schemes, it is the little guy who gets crushed."

"The injured workers dealing with that company are trying to get the most basic of needs met while he skates with millions of dollars," agreed Mary Jeffords, coordinator of the advocacy group Injured Workers of New York Inc.

Tim Dean, president of Marshall and Sterling Inc., a Poughkeepsie brokerage that sold CRM products to local companies, also finds Hickey's buyout incomprehensible.

In an e-mailed statement, he wrote, "Many people have questioned why CRM would reward Mr. Hickey with such a generous severance in light of the allegations about a misinformation campaign made in CRM's own SEC filings" - a reference to the Yahoo postings - "as well as the poor performance of the trusts under CRM's management."

While Hickey is "cooperating fully with CRM" in lawsuits against the company, said Donald Brown, a Poughkeepsie attorney representing the former CEO, he isn't talking publicly. "Upon my advice he's not going to comment in the papers on any of that litigation," he said.

## Declining trusts

Today the state has only 32 active self-insured trusts, down from 64 in 2006. Some blame laissez-faire government for the failure both of CRM's trusts and many others shuttered as members fled in the wake of the CRM scandal.

Nancy Richard, risk manager for Darlind Construction in LaGrangeville, which belonged to a non-CRM trust that has shut down, asserted that some of the trust failures could have been avoided with more effective regulation, administration and oversight by the state.

Indeed, CRM had shown signs of trouble that were picked up by the Workers' Compensation Board long before the trusts fell. According to a board analysis, CRM failed to submit paperwork and delayed so many cases that it earned more in fines in a three-year period than all other trusts combined.

Wilcox, the state AFL-CIO official, believes the failure of the Elite trust proves the inability of the Workers' Compensation Board to oversee the group trust industry. The board had said last year that Elite had assets equal to 92 percent of future claims, considered plenty to cover losses. Instead, it has assets enough to cover about 30 percent, an audit recently found.

Workers' Comp officials defended their incorrect characterization of Elite, saying the board relied on audits provided by firms hired by the trust - which to Wilcox is part of the problem.

"It's like you ask a question to a group of people and they point in other directions, never at themselves," he said. "If they didn't know, how is it ever going to work?"

An 11-member task force, convened by Gov. David Paterson under legislation passed last year, has met nine times with the mission to reform the trust system in New York. A key outcome, favored by Wilcox, may be that the Workers' Compensation Board will be relieved of trust oversight, which would be transferred to the state Insurance Department, the traditional regulator of large insurance companies.

"That's a very pivotal question that we're wrestling with," said task force member Charles Fitz-Gerald, retired insurance director for the New York Auto Dealers Association, who said regulations lacked "the necessary teeth to be really effective."

## Lawsuits pending

The regulatory system aside, others are clearly setting their sights on CRM itself. Four lawsuits have been filed in three counties; the Compensation Board has promised to file a fifth, and potentially three investigations loom.

Two Erie County suits, filed in late 2008 and early 2009, contend that CRM was "unjustly enriched," according to CRM's SEC reports, and seek class-action status on behalf of the members of two trusts, including trade industry and wholesale-retail workers. Two more, filed in 2007 in Ulster County and Manhattan, alleged various CRM failures.

CRM officials declined for this article to comment on the lawsuits and other issues related to the trust failures, instead referring a reporter to SEC filings. "That will be the extent of our statement at this time," spokesman Andrew Blazier said.

When the 2008 Erie County suit was filed, the company said, "The agreements made with each of the self-insurance groups it managed in the state of New York clearly set out CRM's obligations under these agreements, and in each and every case, CRM has fulfilled those duties."

If all this weren't bad enough, CRM's difficulties are mounting in California, where two trusts that once represented 30 vintners and 152 auto dealers closed last December and March. "Group members decided it was no longer cost-effective," said Jamie Meyers, a compliance supervisor in the California Department of Industrial Relations, where officials said the groups had no reported deficits.

Perhaps most significant for CRM are the official probes. In addition to the Attorney General and Compensation Board investigations, CRM, by its own public filings, is facing a potential inquiry by the state Insurance Department on the acquisition of former trust members by a CRM subsidiary, Majestic Insurance Company, the same company at the heart of the board's fraud probe.

CRM, for its part, clearly wants closure. Last October, it filed its own lawsuit against the state and the trusts, still pending, seeking a judgment stipulating that it fulfilled its duties and did not act to enrich itself or deceive.

The question is when or if CRM can get that - whether it will soon put its troubles, as the Yahoo posting put it, "in the rearview mirror."

While the state Insurance Department declined to say whether its investigation continues, officials of the state Attorney General said, carefully, that media reports of a state probe of CRM are unchanged. A Workers' Compensation spokesman, Brian Keegan, said he could not get into specifics of the fraud unit's probe other than to say it continued.

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