

P.L. 2004, CHAPTER 175, *approved December 22, 2004*
Senate Committee Substitute for
Senate, Nos. 702 and 1580

1 AN ACT concerning the New Jersey Property-Liability Insurance
2 Guaranty Association and amending P.L.1974, c.17.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 2 of P.L.1974, c.17 (C.17:30A-2) is amended to read
8 as follows:

9 2. a. The purpose of this act is to provide a mechanism for the
10 payment of covered claims under certain insurance policies, to avoid
11 excessive delay in payment, to [avoid] minimize financial loss to
12 claimants or policyholders because of the insolvency of an insurer, to
13 assist in the detection and prevention of insurer insolvencies, to
14 provide an association to assess the cost of such protection among
15 insurers, and to provide a mechanism to run off, manage, administer
16 and pay claims asserted against the Unsatisfied Claim and Judgment
17 Fund, created pursuant to P.L.1952, c.174 (C.39:6-61 et seq.), the
18 New Jersey Automobile Full Insurance Underwriting Association,
19 created pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.), and the
20 Market Transition Facility, created pursuant to section 88 of P.L.1990,
21 c.8 (C.17:33B-11).

22 b. This act shall apply to all kinds of direct insurance, except life
23 insurance, accident and health insurance, workers' compensation
24 insurance, title insurance, annuities, surety bonds, credit insurance,
25 mortgage guaranty insurance, municipal bond coverage, fidelity
26 insurance, investment return assurance, ocean marine insurance and
27 pet health insurance.
28 (cf: P.L.2003, c.89, s.2)

29
30 2. Section 5 of P.L.1974, c.17(C.17:30A-5) is amended to read as
31 follows:

32 5. As used in this act:

33 [a. (Deleted by amendment.)

34 b.] "Affiliate" means a person who directly, or indirectly, through
35 one or more intermediaries, controls, is controlled by, or is under
36 common control with an insolvent insurer on December 31 of the year
37 immediately preceding the date the insurer becomes an insolvent
38 insurer;

39 "Association" means the New Jersey Property-Liability Insurance
40 Guaranty Association created under section 6;

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 [c.] "Commissioner" means the Commissioner of Banking and
2 Insurance of this State;

3 [d.] "Covered claim" means an unpaid claim, including one of
4 unearned premiums, which arises out of and is within the coverage,
5 and not in excess of the applicable limits of an insurance policy to
6 which this act applies, issued by an insurer, if such insurer becomes an
7 insolvent insurer after January 1, 1974, and (1) the claimant or insured
8 is a resident of this State at the time of the insured event provided that
9 for an entity other than an individual, the residence of the claimant or
10 insured is the state in which its principal place of business was located
11 at the time of the insured event; or (2) [the property from which the
12 claim arises is permanently located] the claim is a first party claim
13 made by an insured for damage to property with a permanent location
14 in this State.

15 "Covered claim" shall not include: (1) any amount due any
16 reinsurer, insurer, insurance pool, or underwriting association, as
17 subrogation recoveries or otherwise; provided, that a claim for any
18 such amount, asserted against a person insured under a policy issued
19 by an insurer which has become an insolvent insurer, which, if it were
20 not a claim by or for the benefit of a reinsurer, insurer, insurance pool,
21 or underwriting association, would be a "covered claim," may be filed
22 directly with the receiver of the insolvent insurer, but in no event may
23 any such claim be asserted in any legal action against the insured of
24 such insolvent insurer[.

25 A "covered claim" shall not include]; (2) amounts for interest on
26 unliquidated claims[,] ; (3) punitive damages unless covered by the
27 policy[,] ; (4) counsel fees for prosecuting suits for claims against the
28 association[, and] ; (5) assessments or charges for failure of such
29 insolvent insurer to have expeditiously settled claims[.

30 A "covered claim" shall not include]; (6) counsel fees and other
31 claim expenses incurred prior to the date of insolvency; (7) a claim
32 filed with the association, liquidator or receiver of an insolvent insurer
33 after the final date set by the court for the filing of claims against the
34 liquidator or receiver of an insolvent insurer or, in the event a final
35 date is not set by the court for the filing of claims against the
36 liquidator or receiver of an insolvent insurer, two years from the date
37 of the order of liquidation, unless the claimant demonstrates unusual
38 hardship and the commissioner approves of treatment of the claim as
39 a "covered claim." "Unusual hardship" shall be defined in regulations
40 promulgated by the commissioner. With respect to insurer
41 insolvencies pending as of the effective date of [this 1996 amendatory
42 act] P.L. , c. (now before the Legislature as this bill), a "covered
43 claim" shall not include a claim filed with the association, liquidator or
44 receiver of an insolvent insurer: [(1)] (a) more than one year after the
45 effective date of [this 1996 amendatory act] P.L. , c. (now before

1 the Legislature as this bill); or [(2)] (b) the date set by the court for
2 the filing of claims against the liquidator or receiver of the insolvent
3 insurer, whichever date occurs later;

4 [e.] and (8) any first party claim by an insured whose net worth
5 exceeds \$25 million on December 31 of the year prior to the year in
6 which the insurer becomes an insolvent insurer; provided that an
7 insured's net worth on that date shall be deemed to include the
8 aggregate net worth of the insured and all of its affiliates as calculated
9 on a consolidated basis;

10 "Credit insurance" means credit life, credit disability, credit
11 property, credit unemployment, involuntary unemployment, mortgage
12 life, mortgage guaranty, mortgage disability, automobile dealer gap
13 insurance and any other form of insurance offered in connection with
14 an extension of credit that the commissioner determines should be
15 designated a form of credit insurance.

16 "Exhaust" means with respect to other insurance, the application
17 of a credit for the maximum limit under the policy, except that in any
18 case in which continuous indivisible injury or property damage occurs
19 over a period of years as a result of exposure to injurious conditions,
20 exhaustion shall be deemed to have occurred only after a credit for the
21 maximum limits under all other coverages, primary and excess, if
22 applicable, issued in all other years has been applied. With respect to
23 health insurance and workers' compensation insurance, "exhaust"
24 means the application of a credit for the amount of recovery under the
25 insurance policy. With respect to another insurance guaranty
26 association or its equivalent, "exhaust" means the application of a
27 credit for the maximum statutory limit of recovery from that other
28 guaranty association or its equivalent. The amount of a covered claim
29 payable by the association shall be reduced by the amount of any
30 applicable credits;

31 "Insolvent insurer" means (1) a licensed insurer admitted pursuant
32 to R.S.17:32-1 et seq. or authorized pursuant to R.S.17:17-1 et seq.,
33 or P.L.1945, c.161 (C.17:50-1 et seq.) to transact the business of
34 insurance in this State either at the time the policy was issued or when
35 the insured event occurred, and (2) [which is determined to be
36 insolvent] against whom an order of liquidation has been entered with
37 a finding of insolvency by [the] a court of competent jurisdiction.
38 "Insolvent insurer" does not include any unauthorized or nonadmitted
39 insurer whether or not deemed eligible for surplus lines pursuant to
40 P.L.1960, c.32 (C.17:22-6.37 et seq.);

41 [f.] "Member insurer" means any person who (1) writes any kind
42 of insurance to which this act applies under section 2 b. including the
43 exchange of reciprocal or interinsurance contracts and (2) is a licensed
44 insurer admitted or authorized to transact the business of insurance in
45 this State. "Member insurer" does not include any unauthorized or
46 nonadmitted insurer whether or not deemed eligible for surplus lines

1 pursuant to P.L.1960, c.32 (C.17:22-6.37 et seq.);

2 [g.] "Net direct written premiums" means direct gross premiums
3 written in this State on insurance policies to which this act applies, less
4 return premiums thereon and dividends paid or credited to
5 policyholders on such direct business. "Net direct written premiums"
6 does not include premiums on contracts between insurers or
7 reinsurers, and does not include premiums on policies issued by an
8 insurer as a member of the New Jersey Insurance Underwriting
9 Association pursuant to P.L.1968, c.129 (C.17:37A-1 et seq.);

10 "Ocean marine insurance" means any form of insurance, regardless
11 of the name, label or marketing designation of the insurance policy,
12 which insures against maritime perils or risks and other related perils
13 or risks, which are usually insured against by traditional marine
14 insurance, such as hull and machinery, marine builders risk, and marine
15 protection and indemnity. Perils and risks insured against include,
16 without limitation, loss damage, expense or legal liability of the
17 insured for loss, damage or expense arising out of or incident to
18 ownership, operation, chartering, maintenance, use, repair or
19 construction of any vessel, craft or instrumentality in use in ocean or
20 inland waterways for commercial purposes, including liability of the
21 insured for personal injury, illness or death or for loss or damage to
22 the property of the insured or another person; and

23 "Person" means any individual, corporation, partnership, association
24 or voluntary organization.

25 (cf: P.L.1996, c.156, s.1)

26

27 3. Section 6 of P.L.1974, c.17 (C.17:30A-6) is amended to read as
28 follows:

29 6. There is created a private, nonprofit, unincorporated, legal entity
30 to be known as the New Jersey Property-Liability Insurance Guaranty
31 Association. All insurers defined as member insurers in [subsection]
32 section 5 [f.] shall be and remain members of the association as a
33 condition of their authority to transact insurance in this State. The
34 association shall perform its functions under a plan of operation
35 established and approved under section 9 and shall exercise its powers
36 through a board of directors established under section 7.

37 The association is also authorized and shall have all of the powers
38 necessary and appropriate for the management and administration of
39 the affairs of the New Jersey Surplus Lines Insurance Guaranty Fund,
40 in accordance with the provisions of the "New Jersey Surplus Lines
41 Insurance Guaranty Fund Act," P.L.1984, c.101 (C.17:22-6.70 et
42 seq.).

43 The association is also authorized and shall have all of the powers
44 necessary and appropriate for the management and administration of
45 the affairs of, and the payment of valid claims asserted against: the
46 Unsatisfied Claim and Judgment Fund, created pursuant to the

1 provisions of P.L.1952, c.174 (C.39:6-61 et seq.); the New Jersey
2 Automobile Full Insurance Underwriting Association, created pursuant
3 to the provisions of P.L.1983, c.65 (C.17:30E-1 et seq.); and the
4 Market Transition Facility created pursuant to the provisions of
5 section 88 of P.L.1990, c.8 (C.17:33B-11).
6 (cf: P.L.2003, c.89, s.3)

7

8 4. Section 8 of P.L.1974, c.17 (C.17:30A-8) is amended to read
9 as follows:

10 8. a. The association shall:

11 (1) Be obligated to the extent of the covered claims against an
12 insolvent insurer incurred [, in the case of private passenger
13 automobile insurance, prior to or after the determination of insolvency,
14 but before the policy expiration date or the date upon which the
15 insured replaces the policy or causes its cancellation, or in the case of
16 insurance other than private passenger automobile insurance, covered
17 claims against such insolvent insurer incurred] prior to or 90 days
18 after the determination of insolvency, or before the policy expiration
19 date if less than 90 days after said determination, or before the insured
20 replaces the policy or causes its cancellation, if he does so within 90
21 days of the determination, [but such] except that in the case of private
22 passenger automobile insurance, the commissioner may, depending
23 upon factors such as the level of that insurance written by the insolvent
24 insurer, the volume of claims arising under that insurance, and
25 conditions currently relating to the voluntary market for that insurance
26 in this State, order the association to treat all or a portion of claims
27 arising under that insurance as covered claims if they are incurred prior
28 to or after the determination of insolvency, but before the policy
29 expiration date or the date upon which the insured replaces the policy
30 or causes its cancellation, and otherwise qualify as covered claims
31 under the act. That obligation shall include only that amount of each
32 covered claim which is less than \$300,000.00 per claimant and subject
33 to any applicable deductible and self-insured retention contained in the
34 policy, except that the \$300,000.00 limitation shall not apply to a
35 covered claim arising out of insurance coverage mandated by section
36 4 of P.L.1972, c.70 (C.39:6A-4). In the case of benefits payable under
37 subsection a. of section 4 of P.L.1972, c.70 (C.39:6A-4), the
38 association shall be liable for payment of benefits in an amount not to
39 exceed the amount set forth in section 4 of P.L.1972, c.70
40 (C.39:6A-4). The commissioner may pay a portion of or defer the
41 association's obligations for covered claims based on the monies
42 available to the association. In no event shall the association be
43 obligated to a policyholder or claimant in an amount in excess of the
44 limits of liability stated in the policy of the insolvent insurer from
45 which the claim arises. Any obligation of the association to defend an
46 insured shall cease upon the association's payment or tender of an

1 amount equal to the lesser of the association's covered claim statutory
2 limit or the applicable policy limit;

3 (2) Be deemed the insurer to the extent of its obligation on the
4 covered claims and to such extent shall have all rights, duties, and
5 obligations of the insolvent insurer as if the insurer had not become
6 insolvent;

7 (3) Assess member insurers in amounts necessary to pay:

8 (a) The obligations of the association under paragraphs (1) and
9 (11) of this subsection;

10 (b) The expenses of handling covered claims;

11 (c) The cost of examinations under section 13; and

12 (d) Other expenses authorized by this act[, excluding expenses
13 incurred by the association pursuant to paragraphs (9) and (10) of this
14 subsection].

15 The assessments of each member insurer shall be in the proportion
16 that the net direct written premiums of the member insurer for the
17 calendar year preceding the assessment bears to the net direct written
18 premiums of all member insurers for the calendar year preceding the
19 assessment.

20 Each member insurer shall be notified of the assessment not later
21 than 30 days before it is due. No member insurer of the association
22 may be assessed pursuant to this paragraph (3) in any year in an
23 amount greater than 2% of that member insurer's net direct written
24 premiums for the calendar year preceding the assessment with regard
25 to the association's obligation to pay covered claims and related
26 expenses arising under coverages issued by insolvent insurers pursuant
27 to P.L.1974, c.17 (C.17:30A-1 et seq.).

28 The association may, subject to the approval of the commissioner,
29 exempt, abate or defer, in whole or in part, the assessment of any
30 member insurer, if the assessment would cause the member insurer's
31 financial statement to reflect amounts of capital or surplus less than
32 the minimum amounts required for a certificate of authority by any
33 jurisdiction in which the member insurer is authorized to transact
34 insurance. In the event an assessment against a member insurer is
35 exempted, abated, or deferred, in whole or in part, because of the
36 limitations set forth in this section, the amount by which such
37 assessment is exempted, abated, or deferred shall be assessed against
38 the other member insurers in a manner consistent with the basis for
39 assessments set forth in this section. If the maximum assessment,
40 together with the other assets of the association, does not provide in
41 any one year an amount sufficient to carry out the responsibilities of
42 the association, the necessary additional funds shall be assessed as
43 soon thereafter as it is permitted by this act. Each member insurer
44 serving as a servicing facility may set off against any assessment,
45 authorized payments made on covered claims and expenses incurred
46 in the payment of such claims by such member insurer;

1 (4) Investigate claims brought against the association and adjust,
2 compromise, settle, and pay covered claims to the extent of the
3 association's obligation and deny all other claims and may review
4 settlements, releases and judgments to which the insolvent insurer or
5 its insureds were parties to determine the extent to which such
6 settlements, releases and judgments may be properly contested;

7 (5) Notify such persons as the commissioner directs under
8 paragraph (1) of subsection b. of section 10 of P.L.1974, c.17
9 (C.17:30A-10);

10 (6) Handle claims through its employees or through one or more
11 insurers or other persons designated as servicing facilities. Designation
12 of a servicing facility is subject to the approval of the commissioner,
13 but such designation may be declined by a member insurer. The
14 association is designated as a servicing facility for the administration
15 of claim obligations of: (a) the New Jersey Surplus Lines Insurance
16 Guaranty Fund; (b) the New Jersey Medical Malpractice Reinsurance
17 Association; and (c) the Unsatisfied Claim and Judgment Fund. The
18 association may also be designated or may contract as a servicing
19 facility for any other entity which may be recommended by the
20 association's board of directors and approved by the commissioner;

21 (7) Reimburse each servicing facility for obligations of the
22 association paid by the facility and for expenses incurred by the facility
23 while handling claims on behalf of the association and shall pay the
24 other expenses of the association authorized by this act;

25 (8) Make loans to the New Jersey Surplus Lines Insurance
26 Guaranty Fund and the Unsatisfied Claim and Judgment Fund [is] in
27 such amounts and on such terms as the board of directors may
28 determine are necessary or appropriate to effectuate the purposes of
29 P.L.2003, c.89 (C.17:30A-2.1 et al.) in accordance with the plan of
30 operation; provided, however, no such loan transaction shall be
31 authorized to the extent the federal tax exemption of the association
32 would be withdrawn or the association would otherwise incur any
33 federal tax or penalty as a result of such transaction;

34 (9) [Assess member insurers in amounts necessary to make loans
35 pursuant to paragraph (10) of this subsection. The estimated
36 assessments of each member insurer shall be in the proportion that the
37 net direct written premiums of the member insurer for the calendar
38 year preceding the assessment bears to the net direct written premiums
39 of all member insurers for the calendar year preceding the assessment
40 with actual assessments adjusted in the succeeding year based on the
41 proportion that the assessed member insurer's net direct written
42 premiums in the year of assessment bears to the net direct written
43 premiums of all member insurers for that year.

44 (a) For the purposes of this paragraph, "net direct written
45 premiums" shall not include medical malpractice liability insurance
46 premiums paid to member insurers to which an additional charge has

1 been applied for deposit in the New Jersey Medical Malpractice
2 Reinsurance Recovery Fund as provided in the "Medical Malpractice
3 Liability Insurance Act," P.L.1975, c.301 (C.17:30D-1 et seq.) and the
4 regulations promulgated pursuant thereto.

5 (b) In the event that the commissioner certifies that loans in
6 amounts less than \$160 million per calendar year as provided in
7 paragraph (10) of this subsection will satisfy the current and
8 anticipated financial obligations of the Market Transition Facility,
9 without reference to the amount of funds remaining from the sale of
10 the Market Transition Facility Senior Lien Revenue Bonds, a member
11 insurer, and all of its affiliates as defined in subsection a. of section 1
12 of P.L.1970, c.22 (C.17:27A-1), shall be subject to a reduced
13 assessment pursuant to this paragraph if the member insurer and all
14 such affiliates: (I) did not issue or renew a policy of private passenger
15 automobile insurance in this State on or after January 1, 1973; (ii)
16 were not assessed as members of the Market Transition Facility as
17 established by section 88 of P.L.1990, c.8 (C.17:33B-11); and (iii) had
18 not relinquished voluntarily any expectation they may have had for the
19 repayment of loans made pursuant to paragraph (10) of this
20 subsection, as provided by paragraph (2) of subsection b. of section 6
21 of P.L.1983, c.65 (C.17:29A-35), pursuant to any court order or
22 settlement agreement approved by any court of competent jurisdiction,
23 on or before the effective date of this 1995 amendatory act. The
24 reduced assessment of such members shall be equal to their
25 proportionate share of the difference between the amount certified by
26 the commissioner and the total of the assessment of all other insurers
27 subject to such assessment. If the amount of such difference is zero
28 or less, the reduced assessment shall be zero] (Deleted by amendment,
29 P.L. . . . , c. . . .)

30 (10) [Make loans in the amount of \$160 million per calendar year,
31 beginning in calendar year 1990, or upon certification by the
32 commissioner, as provided by paragraph (b) of subsection (9) of this
33 section, that lesser amounts will satisfy the current and anticipated
34 financial obligations of the Market Transition Facility, such lesser
35 amounts as may be collected pursuant to paragraph (9) of this
36 subsection, to the New Jersey Automobile Insurance Guaranty Fund
37 created pursuant to section 23 of P.L.1990, c.8 (C.17:33B-5), except
38 that no loan shall be made pursuant to this paragraph after December
39 31, 1997. In no event shall member insurers subject to assessments
40 have their financial obligation increased due to reductions granted
41 pursuant to paragraph (9) of this subsection] (Deleted by amendment,
42 P.L. . . . , c. . . .)

43 (11) Reimburse an insurer for medical expense benefits in excess
44 of \$75,000 per person per accident as provided in section 2 of
45 P.L.1977, c.310 (C.39:6-73.1) for injuries covered under an
46 automobile insurance policy issued prior to January 1, 2004;

1 (12) Undertake all of the management, administrative, and claims
2 activities of the Unsatisfied Claim and Judgment Fund, created
3 pursuant to P.L.1952, c.174 (C.39:6-61 et seq.), the New Jersey
4 Automobile Full Insurance Underwriting Association, created pursuant
5 to P.L.1983, c.65 (C.17:30E-1 et seq.), and the Market Transition
6 Facility, created pursuant to section 88 of P.L.1990, c.8
7 (C.17:33B-11).

8 b. The association may:

9 (1) Employ or retain such persons as are necessary to handle claims
10 and perform such other duties of the association;

11 (2) Borrow and separately account for funds from any source,
12 including, but not limited to, the New Jersey Surplus Lines Insurance
13 Guaranty Fund and the Unsatisfied Claim and Judgment Fund, in such
14 amounts and on such terms, as the board of directors may determine
15 are necessary or appropriate to effectuate the purpose of this act in
16 accordance with the plan of operation; provided, however, no such
17 borrowing transaction shall be authorized to the extent the federal tax
18 exemption of the association would be withdrawn or the association
19 would otherwise incur any federal tax or penalty as a result of such
20 transaction;

21 (3) Sue or be sued;

22 (4) Negotiate and become a party to such contracts as are
23 necessary to carry out the purpose of this act;

24 (5) Perform such other acts as are necessary or proper to
25 effectuate the purpose of this act;

26 (6) Refund to the member insurers in proportion of the
27 contribution of each member insurer that amount by which the assets
28 exceed the liabilities if, at the end of any calendar year, the board of
29 directors finds that the assets of the association exceed the liabilities,
30 as estimated by the board of directors for the coming year.

31 (cf: P.L.2003, c.89, s.4)

32
33 5. Section 10 of P.L.1974, c.17 (C.17:30A-10) is amended to read
34 as follows:

35 10. a. The commissioner shall:

36 (1) Notify the association of the existence of an insolvent insurer
37 not later than 3 days after he receives notice of the determination of
38 the insolvency. The association shall be entitled to a copy of any
39 complaint seeking an order of liquidation with a finding of insolvency
40 against a member insurer at the same time that such complaint is filed
41 with a court of competent jurisdiction;

42 (2) Upon request of the board of directors, provide the association
43 with a statement of the net direct written premiums of each member
44 insurer.

45 b. The commissioner may:

46 (1) Require that the association notify the insureds of the insolvent

1 insurer and any other interested parties of the determination of
2 insolvency and of their rights under this act. Such notification [may
3 be by mail at their last known address, where available, but if
4 sufficient information for notification by mail is not available, notice]
5 shall be by publication in [a newspaper] newspapers of general
6 circulation [shall be sufficient] as the commissioner shall direct;

7 (2) Suspend or revoke, after notice and hearing, the certificate or
8 authority to transact insurance in this State of any member insurer
9 which fails to pay an assessment when due or fails to comply with the
10 plan of operation. As an alternative, the commissioner may levy a fine
11 on any member insurer which fails to pay an assessment when due.
12 Such fine shall not exceed 5% of the unpaid assessment per month,
13 except that no fine shall be less than \$100.00 per month;

14 (3) Revoke the designation of any servicing facility if he finds
15 claims are being handled unsatisfactorily.

16 (cf: P.L.1979, c.448, s.5)

17
18 6. Section 11 of P.L.1974, c.17 (C.17:30A-11) is amended to read
19 as follows:

20 11. a. Any person recovering under this act shall be deemed to
21 have assigned his rights under the policy to the association to the
22 extent of his recovery from the association. Every insured or claimant
23 seeking the protection of this act shall cooperate with the association
24 to the same extent as such person would have been required to
25 cooperate with the insolvent insurer. The association shall have no
26 cause of action against the insured of the insolvent insurer for any
27 sums it has paid out except such causes of action as the insolvent
28 insurer would have had if such sums had been paid by the insolvent
29 insurer. In the case of an insolvent insurer operating on a plan with an
30 assessment liability, payments of claims of the association shall not
31 operate to reduce the liability of insureds to the receiver, liquidator, or
32 statutory successor for unpaid assessments;

33 b. The receiver, liquidator, or statutory successor of an insolvent
34 insurer shall be bound by settlements of covered claims by the
35 association or its representatives. The court having jurisdiction shall
36 grant such claims priority equal to that which the claimant would have
37 been entitled in the absence of this act against the assets of the
38 insolvent insurer. The expenses of the association or similar
39 organization in handling claims shall be accorded the same priority as
40 the liquidator's expenses;

41 c. The association shall periodically file with the receiver or
42 liquidator of the insolvent insurer statements of the covered claims
43 paid by the association and estimates of anticipated claims on the
44 association which shall preserve the rights of the association against
45 the assets of the insolvent insurer;

46 d. The liquidator, receiver, or statutory successor of an insolvent

1 insurer covered by this act shall permit access by the board or its
2 representative to all of the insolvent insurer's records which would
3 assist the board in carrying out its functions under this act with regard
4 to covered claims. In addition, the liquidator, receiver, or statutory
5 successor shall provide the board or its representative with copies or
6 permit it to make copies of such records upon the request of the board
7 and at the expense of the board.

8 e. The association shall have the right to recover from the
9 following persons the amount of any covered claim paid to or on
10 behalf of that person pursuant to P.L.1974, c.17 (C.17:30A-1 et seq.):

11 (1) An insured whose net worth on December 31 of the year
12 immediately preceding the date the insurer becomes an insolvent
13 insurer exceeds \$25 million and whose liability obligations to other
14 persons are satisfied in whole or in part by payments made under
15 P.L.1974, c.17 (C.17:30A et seq.); and

16 (2) Any person who is an affiliate of the insolvent insurer and
17 whose liability obligations to other persons are satisfied in whole or in
18 part by payments made under P.L.1974, c.17 (C.17:30A et seq.).

19 (cf: P.L.1979, c.448, s.6)

20
21 7. Section 12 of P.L.1974, c.17 (C.17:30A-12) is amended to read
22 as follows:

23 12. a. Any person having a covered claim which may be recovered
24 from more than one insurance guaranty association or its equivalent
25 shall ~~seek recovery~~ be required to exhaust first ~~from~~ his rights
26 under the statute governing the association of the place of residence
27 of the insured at the time of the insured event except that if it is a first
28 party claim for damage to property with a permanent location, he shall
29 seek recovery first from the association of the location of the property.
30 ~~Any recovery under this act shall be reduced by the amount of~~
31 ~~recovery from any other insurance guaranty association or its~~
32 ~~equivalent. However, if~~ If recovery is denied or deferred by ~~the~~
33 that association, a person may proceed to ~~recover~~ seek recovery
34 from any other insurance guaranty association or its equivalent from
35 which recovery may be legally sought.

36 b. Any person having a claim ~~against an insurer, whether or not~~
37 ~~the insurer is a member insurer, under any provision in~~ , except for
38 a claim for coverage for personal injury protection benefits issued
39 pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4) and section 4 of
40 P.L.1998, c.21 (C.39:6A-3.1), under an insurance policy other than a
41 policy of an insolvent insurer ~~which is also a covered claim~~, shall be
42 required to exhaust first his right under that other policy. ~~An amount~~
43 ~~payable on a covered claim under P.L.1974, c.17 (C.17:30A-1 et seq.)~~
44 shall be reduced by the amount of recovery under any such insurance
45 policy.]

1 For purposes of this subsection b., a claim under an insurance
2 policy shall include a claim under any kind of insurance, whether it is
3 a first-party or third-party claim, and shall include without limitation,
4 general liability, accident and health insurance, workers'
5 compensation, health benefits plan coverage, primary and excess
6 coverage, if applicable, and all other private, group or governmental
7 coverages except coverage for personal injury protection benefits
8 issued pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4) and section
9 4 of P.L.1998, c.21 (C.39:6A-3.1).

10 (cf: P.L.1996, c.156, s.2)

11

12 8. Section 18 of P.L.1974, c.17 (C.17:30A-18) is amended to read
13 as follows:

14 18. **[Upon application and notice all]** All proceedings in which the
15 insolvent insurer is a party or is obligated to defend a party in any
16 court in this State shall, subject to full or partial waiver by the
17 association in specific cases involving covered claims, be stayed for
18 120 days and such additional time thereafter as may be determined by
19 the court from the date **[the insolvency is determined]** of the order of
20 liquidation or any ancillary proceeding **[is]** initiated in the State,
21 whichever is later, to permit proper defense by the association of all
22 pending causes of action. Public notice of the stay shall be by
23 publication in three newspapers of general circulation in this State
24 within 10 days of the order of liquidation. With respect to any
25 covered claims arising from a judgment under any decision, verdict or
26 finding based on the default of the insolvent insurer or its failure to
27 defend an insured, the association either on its own behalf or on behalf
28 of such insured may apply to have such judgment, order, decision,
29 verdict or finding set aside by the court in which such judgment, order,
30 decision, verdict or finding is entered and shall be permitted to defend
31 against such claim on the merits.

32 (cf: P.L.1979, c.448, s.8)

33

34 9. This act shall take effect immediately and shall apply to covered
35 claims resulting from insolvencies occurring on or after that date.

36

37

38

39

40 _____
41 Makes various revisions to the "New Jersey Property-Liability
Insurance Guaranty Association Act."