

## CHAPTER 156

AN ACT concerning the New Jersey Property-Liability Insurance Guaranty Association and the New Jersey Surplus Lines Insurance Guaranty Fund and amending P.L.1974, c.17 and P.L.1984, c.101.

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

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

C.17:30A-5 Definitions relative to the Property-Liability Insurance Guaranty Association.

5. As used in this act:

a. (Deleted by amendment.)

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

c. "Commissioner" means the Commissioner of Banking and Insurance of this State;

d. "Covered claim" means an unpaid claim, including one of unearned premiums, which arises out of and is within the coverage, and not in excess of the applicable limits of an insurance policy to which this act applies, issued by an insurer, if such insurer becomes an insolvent insurer after January 1, 1974, and (1) the claimant or insured is a resident of this State at the time of the insured event; or (2) the property from which the claim arises is permanently located in this State. "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise; provided, that a claim for any such amount, asserted against a person insured under a policy issued by an insurer which has become an insolvent insurer, which, if it were not a claim by or for the benefit of a reinsurer, insurer, insurance pool, or underwriting association, would be a "covered claim," may be filed directly with the receiver of the insolvent insurer, but in no event may any such claim be asserted in any legal action against the insured of such insolvent insurer.

A "covered claim" shall not include amounts for interest on unliquidated claims, punitive damages unless covered by the policy, counsel fees for prosecuting suits for claims against the association, and assessments or charges for failure of such insolvent insurer to have expeditiously settled claims.

A "covered claim" shall not include a claim filed with the association after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer unless the claimant demonstrates unusual hardship and the commissioner approves of treatment of the claim as a "covered claim." "Unusual hardship" shall be defined in regulations promulgated by the commissioner. With respect to insurer insolvencies pending as of the effective date of this 1996 amendatory act, a "covered claim" shall not include a claim filed with the association: (1) more than one year after the effective date of this 1996 amendatory act or (2) the date set by the court for the filing of claims against the liquidator or receiver of the insolvent insurer, whichever date occurs later;

e. "Insolvent insurer" means (1) a licensed insurer admitted pursuant to R.S.17:32-1 et seq. or authorized pursuant to R.S.17:17-1 et seq., or P.L.1945, c.161 (C.17:50-1 et seq.) to transact the business of insurance in this State either at the time the policy was issued or when the insured event occurred, and (2) which is determined to be insolvent by the court of competent jurisdiction. "Insolvent insurer" does not include any unauthorized or nonadmitted insurer whether or not deemed eligible for surplus lines pursuant to P.L.1960, c.32 (C.17:22-6.37 et seq.);

f. "Member insurer" means any person who (1) writes any kind of insurance to which this act applies under section 2 b. including the exchange of reciprocal or interinsurance contracts and (2) is a licensed insurer admitted or authorized to transact the business of insurance in this State. "Member insurer" does not include any unauthorized or nonadmitted insurer whether or not deemed eligible for surplus lines pursuant to P.L.1960, c.32 (C.17:22-6.37 et seq.);

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

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

C.17:30A-12 Recovery of covered claims, exhaustion of other sources.

12. a. Any person having a covered claim which may be recovered from more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured at the time of the insured event except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property. Any recovery under this act shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent. However, if recovery is denied or deferred by the association, a person may proceed to recover from any other insurance guaranty association or its equivalent from which recovery may be legally sought.

b. Any person having a claim against an insurer, whether or not the insurer is a member insurer, under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his right under that other policy. An amount payable on a covered claim under P.L.1974, c.17 (C.17:30A-1 et seq.) shall be reduced by the amount of recovery under any such insurance policy.

3. Section 3 of P.L.1984, c.101 (C.17:22-6.72) is amended to read as follows:

C.17:22-6.72 Definitions relative to the Surplus Lines Insurance Guaranty Fund.

3. As used in this act:

a. "Association" means the New Jersey Property-Liability Insurance Guaranty Association created pursuant to P.L.1974, c.17 (C.17:30A-1 et seq.).

b. "Covered claim" means an unpaid claim, including a claim for unearned premiums, which arises out of and is within the coverage, and not in excess of the applicable limits of an insurance policy to which this act applies, and which was issued by a surplus lines insurer which was eligible to transact insurance business in this State at the time the policy was issued and which has been determined to be an insolvent insurer on or after June 1, 1984, if (1) the claimant or policyholder is a resident of this State at the time of the occurrence of the insured event for which a claim has been made, or (2) the property from which the claim arises is permanently located in this State.

"Covered claim" shall not include any amount due any reinsurer, insurance pool or underwriting association, as subrogation recoveries or otherwise, except that a claim for any such amount, asserted against a person insured under a policy issued by a surplus lines insurer which has become an insolvent insurer, which, if it were not a claim by or for the benefit of a reinsurer, insurer, insurance pool, or underwriting association, would be a "covered claim," may be filed directly with the receiver of the insolvent insurer, but in no event may any such claim be asserted in any legal action against the insured of that insolvent insurer. "Covered claim" shall also not include amounts for interest on unliquidated claims, punitive damages unless covered by the policy, counsel fees for prosecuting suits for claims against the fund, and assessments or charges for failure by an insolvent insurer to have expeditiously settled claims.

A "covered claim" shall not include a claim filed with the fund after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer unless the claimant demonstrates unusual hardship and the commissioner approves of treatment of the claim as a "covered claim." "Unusual hardship" shall be defined in regulations promulgated by the commissioner. With respect to insurer insolvencies pending as of the effective date of this 1996 amendatory act, a "covered claim" shall not include a claim filed with the fund: (1) more than one year after the effective date of this 1996 amendatory act or (2) the date set by the court for the filing of claims against the liquidator or receiver of the insolvent insurer, whichever date occurs later.

c. "Fund" means the New Jersey Surplus Lines Insurance Guaranty Fund created pursuant to section 4 of this act.

d. "Insolvent insurer" means an insurer which was an eligible surplus lines insurer at the time

the insurance policy was issued or when the insured event occurred, and which is determined to be insolvent by a court of competent jurisdiction in this State or the state or place in which the surplus lines insurer is domiciled. "Insolvent insurer" does not include an admitted insurer issuing insurance pursuant to section 10 of P.L.1960, c.32 (C.17:22-6.44).

e. "Member insurer" means an eligible, nonadmitted or surplus lines insurer required to be a member of, and that is subject to, assessments by the fund.

f. "Net direct written premiums" means direct gross premiums on insurance policies written by a surplus lines insurer to which this act applies, less return premiums thereon and dividends paid or credited to policyholders on that direct business. If a policy issued by a surplus lines insurer covers risks or exposures only partially in this State, the "net direct written premiums" shall be computed, for assessment purposes, on that portion of the premium subject to the premium receipts tax levied in accordance with section 25 of P.L.1960, c.32 (C.17:22-6.59). "Net direct written premiums" do not include premiums on contracts between insurers or reinsurers.

g. "Surplus lines insurer" means a nonadmitted insurer approved as an eligible, nonadmitted or unauthorized insurer pursuant to section 11 of P.L.1960, c.32 (C.17:22-6.45) at the time the policies were issued against which a covered claim may be filed in accordance with this act.

4. Section 10 of P.L.1984, c.101 (C.17:22-6.79) is amended to read as follows:

C.17:22-6.79 Recovery of covered claims, exhaustion of other sources.

10. a. Any person having a covered claim that may be recovered from more than one insurance guaranty association, or its equivalent, shall seek recovery first from the association of the place of residence of the policyholder at the time of the insured event, except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the jurisdiction in which the property is located. Any recovery under this act shall be reduced by the amount of recovery from any other insurance guaranty association; except that, if recovery is denied or deferred by that association, a person may proceed to recover from any other insurance guaranty association from which recovery may be legally sought.

b. Any person having a claim against an insurer, whether or not the insurer is a member insurer, under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his right under that other policy. An amount payable on a covered claim under P.L.1984, c.101 (C.17:22-6.70 et seq.) shall be reduced by the amount of recovery under any such insurance policy.

5. This act shall take effect immediately and shall apply to all pending unpaid claims and all claims filed on or after the effective date of this act.

Approved January 8, 1997.