

## CHAPTER 30

AN ACT concerning surplus lines insurance and amending and supplementing P.L.1984, c.101.

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

C.17:22-6.70a Findings, declarations relative to surplus lines insurance.

1. The Legislature finds and declares:
  - a. The "New Jersey Surplus Lines Insurance Guaranty Fund Act," P.L.1984, c.101 (C.17:22-6.70 et seq.), enacted 18 years ago in the face of an imminent threat of declaration of insolvency of Ambassador Insurance Company of Vermont, has provided valuable benefits by covering claims of certain claimants against insolvent property and casualty insurers selling insurance in New Jersey as surplus lines.
  - b. That act was amended 15 years ago to include, as covered claims, those claims arising from the declared insolvency of Northeastern Fire Insurance Company of Pennsylvania.
  - c. Claims covered by the New Jersey Surplus Lines Insurance Guaranty Fund included claims by New Jersey residents or claims arising from property permanently located in New Jersey, in an amount up to the lesser of the policy limit or \$300,000, subject to policy deductibles, thereby redistributing some of the economic burden of surplus lines insurer failures.
  - d. The New Jersey Surplus Lines Insurance Guaranty Fund currently contains a balance of approximately \$80,000,000 and \$40,000,000 is sufficient to satisfy existing covered claims.
  - e. The Legislature believes that, beyond the payment of existing covered claims, it is good public policy to maintain surplus lines insurance guaranty benefits for certain lines of insurance in the future.

2. Section 1 of P.L.1984, c 101 (C 17:22-6.71) is amended to read as follows:

C.17:22-6.71 Purpose, application of act.

1. The purpose of this act is to provide a mechanism for the payment of covered claims under certain insurance policies issued by eligible surplus lines insurers; to avoid excessive delays in the payment of the covered claims against insolvent, eligible, nonadmitted insurers; and to avoid financial loss to claimants or policyholders because of the insolvency of an eligible, nonadmitted insurer.

On and after July 27, 1984 and before June 25, 2002, P.L.1984, c.101 (C.17:22-6.70 et seq.) shall apply to all property and casualty lines of direct insurance authorized under R.S.17:17-1, except workers' compensation insurance, title insurance, surety bonds, credit insurance, mortgage guaranty insurance, municipal bond coverage, fidelity insurance, investment return assurance, and ocean marine insurance. This act shall also not apply to reinsurance of any kind.

On or after June 25, 2002, P.L.1984, c.101 (C.17:22-6.70 et seq.) shall apply only to medical malpractice liability insurance as defined in subsection d. of section 3 of P.L.1975, c.301 (C.17:30D-3) and property insurance covering owner occupied dwellings of less than four dwelling units. On or after June 25, 2002, P.L.1984, c.101 (C.17:22-6.70 et seq.) shall not apply to reinsurance of any kind.

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. 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, but prior to June 25, 2002, 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. A "covered claim" which arises because of an insolvency occurring on or after June 25, 2002 shall be limited to an unpaid claim, including a claim for unearned premiums, which arises out of either medical malpractice liability insurance

coverage or property insurance covering owner occupied dwellings of less than four dwelling units within the coverage, and not in excess of the applicable limits, of an insurance policy to which P.L.1984, c.101 (C.17:22-6.70 et seq.) 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 25, 2002, 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 4 of P.L.1984, c.101 (C.17:22-6.73) is amended to read as follows:

#### C.17:22-6.73 Surplus Lines Insurance Guaranty Fund.

4. There is created a private, nonprofit, unincorporated, legal entity to be known as the New Jersey Surplus Lines Insurance Guaranty Fund. All surplus lines insurers shall be and remain member insurers of the fund as a condition of their continued eligibility pursuant to section 11 of P.L.1960, c.32 (C.17:22-6.45). The fund shall be managed and administered by the New

Jersey Property-Liability Insurance Guaranty Association. The association shall exercise all of the powers vested in the fund under this act, and such other powers as may be necessary or appropriate to the fulfilling of its responsibilities under this act. The association shall administer the affairs of the fund in accordance with the "New Jersey Property-Liability Guaranty Association Act," P.L.1974, c.17 (C.17:30A-1 et seq.) and its plan of operation adopted pursuant to section 9 (C.17:30A-9), insofar as the provisions of that act and that plan are not thereof inconsistent with the provisions of this act, and subject to any amendments to the plan as may be necessary or appropriate to effectuate the purposes of this act. After the excess moneys in the fund are transferred to the General Fund pursuant to section 5 of P.L.1984, c.101 (C.17:22-6.74), the association shall be responsible for the run-off and wind-up of all covered claims existing before June 25, 2002. On or after June 25, 2002, the operations and obligations of the fund pursuant to P.L.1984, c.101 (C.17:22-6.70 et seq.), with respect to eligible surplus lines insurers determined to be insolvent after that date, other than eligible surplus lines insurers issuing policies for medical malpractice liability insurance or property insurance covering owner occupied dwellings of less than four dwelling units, shall be terminated. On or after June 25, 2002, the fund shall only provide coverage for eligible surplus lines insurers issuing medical malpractice liability insurance or property insurance covering owner occupied dwellings of less than four dwelling units determined to be insolvent after that date.

In order to assist the association in implementing the provisions of this act, there is created an advisory body to the board of directors of the association to be comprised of two members representing eligible surplus lines insurers and two members representing surplus lines agents, to be appointed by and to serve at the pleasure of the commissioner. The association shall consult the advisory body on any matter relating to the provisions of P.L.1984, c.101 (C.17:22-6.70 et seq.).

5. Section 5 of P.L.1984, c.101 (C.17:22-6.74) is amended to read as follows:

C.17:22-6.74 Powers, duties and obligations.

5. a. The fund shall:

(1) Be obligated to the extent of the covered claims against an insolvent insurer incurred prior to or 30 days after the determination of insolvency, or before the policy expiration date, if less than 30 days after that determination, or before the policyholder replaces the policy or causes its cancellation, if he does so within 30 days of the determination. The fund's obligation for covered claims shall not be greater than \$300,000.00 per occurrence, subject to any applicable deductible contained in the policy. The commissioner may adjust the fund's obligations for covered claims based on the moneys available in the fund. In no event shall the fund be obligated to a policyholder or claimant in excess of the limits of liability of the insolvent insurer stated in the policy from which the claim arises;

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

(3) Assess member insurers in accordance with section 6 of this act in amounts necessary to pay:

(a) Obligations of the fund under paragraph (1) of this subsection,

(b) Expenses of handling covered claims,

(c) Any other expenses incurred in the implementation of the provisions of this act;

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

(5) Notify those persons as the commissioner directs under section 8 of this act;

(6) Handle claims through the association's employees or representatives, or through one or more insurers or other persons designated as servicing facilities;

(7) Pay the other expenses of the association in administering the provisions of this act; and

(8) Within 60 days of enactment of P.L.2002, c.30 (C.17:22-6.70a et al.), transfer to the General Fund any and all moneys in excess of \$40,000,000 in the fund as of June 24, 2002.

b. The fund may:

(1) Sue or be sued;

(2) Negotiate and become a party to those contracts which are necessary to carry out the purpose of this act;

(3) Perform those other acts which are necessary or appropriate to effectuate the purpose of this act;

(4) (Deleted by amendment, P.L.2002, c.30.)

(5) With the approval of the commissioner, borrow moneys from any source, including but not limited to the New Jersey Property-Liability Insurance Guaranty Association, in accordance with subsection b. of section 6 of P.L.1984, c.101 (C.17:22-6.75), as may be necessary to effectuate the purposes of that act, except that the use of the proceeds of any loans shall be limited to the payment of covered claims, including claim adjustment expenses; and

(6) Make loans to the New Jersey Property-Liability Insurance Guaranty Association in accordance with the provisions of the "New Jersey Property-Liability Insurance Guaranty Association Act," P.L.1974, c.17 (C.17:30A-1 et seq.).

6. This act shall take effect immediately and be retroactive to June 24, 2002.

Approved July 1, 2002.