CHAPTER 175

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

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

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

C.17:30A-2 Payment of covered claims.

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

b. This act shall apply to all kinds of direct insurance, except life insurance, accident and health insurance, workers' compensation insurance, title insurance, annuities, surety bonds, credit insurance, mortgage guaranty insurance, municipal bond coverage, fidelity insurance, investment return assurance, ocean marine insurance and pet health insurance.

2. 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:

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

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

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

"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 provided that for an entity other than an individual, the residence of the claimant or insured is the state in which its principal place of business was located at the time of the insured event; or (2) the claim is a first party claim made by an insured for damage to property with a permanent location in this State.

"Covered claim" shall not include: (1) 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; (2) amounts for interest on unliquidated claims; (3) punitive damages unless covered by the policy; (4) counsel fees for prosecuting suits for claims against the association;(5) assessments or charges for failure of such insolvent insurer to have expeditiously settled claims; (6) counsel fees and other claim expenses incurred prior to the date of insolvency; (7) a claim filed with the association, liquidator or receiver of an insolvent insurer after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer or, in the event a final date is not set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer, two years from the date of the order of liquidation, 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 P.L.2004, c.175, a "covered claim" shall not include a claim filed with the association, liquidator or receiver of an insolvent insurer: (a) more than one year after the effective date of P.L.2004, c.175; or (b) the date set by the court for the filing of claims against the liquidator or receiver of the insolvent insurer, whichever date occurs later;

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

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

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

"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) against whom an order of liquidation has been entered with a finding of insolvency by a 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.);

"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.);

"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.);

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

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

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

C.17:30A-6 New Jersey Property-Liability Insurance Guaranty Association.

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

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

The association is also authorized and shall have all of the powers necessary and appropriate for the management and administration of the affairs of, and the payment of valid claims asserted against: the Unsatisfied Claim and Judgment Fund, created pursuant to the provisions of P.L.1952, c.174 (C.39:6-61 et seq.); the New Jersey Automobile Full Insurance Underwriting Association, created pursuant to the provisions of P.L.1983, c.65 (C.17:30E-1 et seq.); and the Market Transition Facility created pursuant to the provisions of section 88 of P.L.1990, c.8 (C.17:33B-11).

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

C.17:30A-8 Association's obligations, powers and duties.

8. a. The association shall:

(1) Be obligated to the extent of the covered claims against an insolvent insurer incurred prior to or 90 days after the determination of insolvency, or before the policy expiration date if less than 90 days after said determination, or before the insured replaces the policy or causes its cancellation, if he does so within 90 days of the determination, except that in the case of private passenger automobile insurance, the commissioner may, depending upon factors such as the level of that insurance written by the insolvent insurer, the volume of claims arising under that insurance, and conditions currently relating to the voluntary market for that insurance in this State, order the association to treat all or a portion of claims arising under that insurance as covered claims if they are incurred prior to or after the determination of insolvency, but before the policy expiration date or the date upon which the insured replaces the policy or causes its cancellation, and otherwise qualify as covered claims under the act. That obligation shall include only that amount of each covered claim which is less than $300,000.00 per claimant and subject to any applicable deductible and self-insured retention contained in the policy, except that the $300,000.00 limitation shall not apply to a covered claim arising out of insurance coverage mandated by section 4 of P.L.1972, c.70 (C.39:6A-4). In the case of benefits payable under subsection a. of section 4 of P.L.1972, c.70 (C.39:6A-4), the association shall be liable for payment of benefits in an amount not to exceed the amount set forth in section 4 of P.L.1972, c.70 (C.39:6A-4). The commissioner may pay a portion of or defer the association’s obligations for covered claims based on the monies available to the association. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the limits of liability stated in the policy of the insolvent insurer from which the claim arises. Any obligation of the association to defend an insured shall cease upon the association’s payment or tender of an amount equal to the lesser of the association’s covered claim statutory limit or the applicable policy limit;

(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 amounts necessary to pay:

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

(b) The expenses of handling covered claims;

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

(d) Other expenses authorized by this act.

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

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

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

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

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

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

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

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

(9) (Deleted by amendment, P.L.2004, c.175.)

(10) (Deleted by amendment, P.L.2004, c.175.)

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

(12) Undertake all of the management, administrative, and claims activities of the Unsatisfied

Claim and Judgment Fund, created pursuant to P.L.1952, c.174 (C.39:6-61 et seq.), the New Jersey Automobile Full Insurance Underwriting Association, created pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.), and the Market Transition Facility, created pursuant to section 88 of P.L.1990, c.8 (C.17:33B-11).

b. The association may:

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

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

(3) Sue or be sued;

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

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

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

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

C.17:30A-10 Insolvent insurers; notices; revocation or suspension of certificate or authority.

10. a. The commissioner shall:

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

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

b. The commissioner may:

(1) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this act. Such notification shall be by publication in newspapers of general circulation as the commissioner shall direct;

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

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

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

C.17:30A-11 Subrogation; cooperation of claimant; settlement of claims; filing statements of claims paid; access to records.

11. a. Any person recovering under this act shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this act shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The

association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with an assessment liability, payments of claims of the association shall not operate to reduce the liability of insureds to the receiver, liquidator, or statutory successor for unpaid assessments;

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

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

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

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

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

(2) Any person who is an affiliate of the insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under P.L.1974, c.17 (C.17:30A-1 et seq.).

7. 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 be required to exhaust first his rights under the statute governing 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. If recovery is denied or deferred by that association, a person may proceed to seek recovery from any other insurance guaranty association or its equivalent from which recovery may be legally sought.

b. Any person having a claim, except for a claim for coverage for personal injury protection benefits issued pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4) and section 4 of P.L.1998, c.21 (C.39:6A-3.1), under an insurance policy other than a policy of an insolvent insurer, shall be required to exhaust first his right under that other policy.

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

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

C.17:30A-18 Stay of actions or set aside of judgments against insolvent insurers, certain.

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

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

Approved December 22, 2004.