LOUISIANA INSURANCE GUARANTY ASSOCIATION

CITATION & EFFECTIVE DATE

La. Rev. Stat. Ann. Title 22, ch. 1, Part XXIX-A, § 1375 et seq. (1970 La. Acts, No. 81 §1); 9/1/70.

MODEL OR SIMILAR ACT

Yes

COVERED CLAIMS

COVERED LINES OF BUSINESS

All kinds of direct insurance except life, annuity, health and accident, title, disability, mortgage guaranty, financial guaranty, or other insurance offering protection against investment risks, credit insurance, and any transaction(s) which involve the transfer of investment or credit risks unaccompanied by the transfer of insurance risk, vendor's single interest insurance, collateral protection insurance, or any similar insurance which protects the interests of a creditor arising out of a creditor-debtor transaction, warranty, or service contracts including vehicle mechanical break down insurance or other insurance that provides for the repair, replacement or service for the operational or structural failure of the goods or property due to a defect in materials, workmanship or normal wear and tear, or provides for the liability incurred by the issuer of agreements or service contracts that provide such benefits, ocean marine insurance (except inland marine), fidelity or surety, bail bond contracts, or any other bonding obligation and government, property residual value insurance. Workers’ compensation is covered.

UNEARNED PREMIUM

is covered, up to $10,000, per policy.

COVERED CLAIM

is an unpaid claim under a covered insurance policy of an insolvent insurer, and the policy was issued by such insurer and the claimant or insured is a resident of the state at the time of the insured event, provided that for entities, the residence of the claimant or insured is the state in which its principal place of business is located at the time of the insured event, the claimant is an self insurer or the claim is the first party claim for damage to the property with a permanent location. Insurance policy defined to exclude agreement whereby insurer agrees to carry out obligations of another insurer, such as cut-through endorsements or reinsurance agreements, when such insurers are affiliated with each other. Association is obligated to the extent of covered claims existing prior to the determination of insolvency, and arising within 30 days thereafter. The association also assume or guarantee policies of insurers in rehabilitation upon joint motion of the association and the receiver. Covered claim shall not include a claim filed with the association after the earlier of five years after the date of the order of liquidation of the insolvent insurer or the final date set by the domiciliary court for the filing of claims against the liquidator or receiver of an insolvent insurer. A covered claim shall also not include any claim filed with the association or a liquidator for incurred-but-not reported losses or unspecified potential losses.

ASSESSMENTS

SEPARATE ACCOUNTS

None

MAXIMUM ANNUAL %

1/1/90-12/31/02: 2% of total premiums; thereafter 1% of total premiums.

RECOUPMENT PROVISION

Premium tax offset 10% per year for ten years, beginning with year of assessment. Total assessment cannot exceed offset.

BASE YEAR

Year preceding year of assessment

LIMITS ON CLAIMS

DEDUCTIBLE OR MINIMUM PER CLAIM

$100, with no deductible for unearned premium, or workers' compensation claims.

MAXIMUM PER CLAIM

An amount which is in excess of one hundred dollars and is less than five hundred thousand dollars, per claim, subject to a maximum limit of five hundred thousand dollars per accident or occurrence for all other covered claims. No limit for workers' comp, $10,000 unearned premium.

NET WORTH PROVISION

For purposes of this Part "high net worth insured" shall mean any policyholder or named insured, other than any state or local governmental agency or subdivision thereof, whose net worth exceeds twenty-five million dollars on December thirty-first 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 subsidiaries and affiliates as calculated on a consolidated basis. The consolidated net worth of the insured and all of its affiliates shall be calculated on the basis of their fair market values. The members of a group self-insurance fund formed under Subpart J of Part 1 of Chapter 10 of Title 23 of the Revised Statutes of 1950 shall not be deemed to be affiliates of the fund, and shall not be included in the determination of the net worth of the fund. For the purposes of this section, a group self-insurance fund, and each individual member of the fund upon whose behalf a claim is submitted, shall be deemed to be policyholders or named insureds of any policy of insurance issued to the fund.

The association shall not be obligated to pay any claims or provide a defense to any claims asserted for coverage under a policy when the insured is a high net worth insured.

The association shall have the right to recover from a high net worth insured all costs incurred and all amounts paid by the association to or on behalf of such insured, whether for indemnity, defense or otherwise, including attorney fees, administrative costs, court costs, settlement, or other defense costs.

The association shall not be obligated to pay any claim that would otherwise be a covered claim that is an obligation to or on behalf of a person who has a net worth greater than that allowed by the insurance guaranty association law of the state of residence of the claimant at the time specified by that state's applicable law, and which association has denied coverage to that claimant on that basis.

OTHER

NONCOVERED CLAIMS

Any amount awarded as penalties, punitive or exemplary damages. Any amount sought as a return of premium under any retrospective rating plan, any amount due any reinsurer, insurer, insurance pool or underwriting association, health maintenance organization or plan, preferred provider organization or plan, hospital plan corporation, professional health service corporation, employee retirement fund including but not limited to plans subject to the Employee Retirement Income Security Act of 1974, Medicare or Medicare Advantage, Medicaid, or the self-insured portion due any self-insurer as subrogation recoveries, reinsurance recoveries, contribution, indemnification or otherwise. Any claims excluded due to the high net worth of an insured. Any first party claims by an insured that is an affiliate of the insolvent insurer. Any fee or other amount relating to goods or services sought by or on behalf of any attorney or other provider of goods or services retained by the insolvent insurer or an insured prior to the date it was determined to be insolvent. Any fee or other amount sought by or on behalf of any attorney or other provider of goods or services retained by any insured or claimant in connection with the assertion or prosecution of any claim, covered or otherwise, against the association. Any claim for interest. Any claim filed with the association or a liquidator for protection afforded under the insured's policy for incurred-but-not-reported losses. Any claim the payment of which exceeds the powers and duties of the association. Any claim by a group self-insurance fund for the amount within the self-insured retention, deductible, co-pay, any other obligation or liability of the group self-insurance fund, stated in the policy of the insolvent insurer, or for the first three hundred thousand dollars of each claim, whichever is greater, or any claim by any agency or program of the federal government or of any state or political subdivision thereof.

CLAIMS COVERED BY OTHER INSURANCE AND OTHER GUARANTY ASSOCIATIONS

Any person having a claim against an insurer shall be required first to exhaust all coverage provided by any other policy, including the right to a defense under the other policy, if the claim under the other policy arises from the same facts, injury or loss that gave rise to the covered claim against the association. The requirement to exhaust shall apply without regard to whether or not the other insurance policy is a policy written by a member insurer. However, no person shall be required to exhaust any right under the policy of an insolvent insurer or any right under a life insurance policy or annuity. Any amount payable on a covered claim under this Part shall be reduced by the full applicable limits stated in the other insurance policy, or by the amount of the recovery under the other insurance policy as provided herein. The association and the insured shall receive a full credit for the stated limits, unless the claimant demonstrates that the claimant used reasonable efforts to exhaust all coverage and limits applicable under the other insurance policy. If the claimant demonstrates that the claimant used reasonable efforts to exhaust all coverage and limits applicable under the other insurance policy, or if there are no applicable stated limits under the policy, the association and the insured shall receive a full credit for the total recovery. The credit shall be deducted from the lesser of, the association's covered claim limit or the amount of the judgment or settlement of the claim. In no case, however, shall the obligation of the association exceed the covered claim limit of this Part. Provisions awarding credit for the applicable limits of or amount of recovery under another insurance policy shall not apply to uninsured or underinsured motorist policies.

Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured 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, and if it is a workers’ compensation claim, he shall seek recovery first from the association of the residence of the claimant. For purposes of this Section, the "residence of the insured" shall be the residence, on the date of insolvency of the insurer or self-insurer, of the first named or primary insured or the state to which the insolvent insurer or self-insurer was or would have been liable for the payment of a surcharge or assessment on the subject insurance policy to an insurance guaranty association or its equivalent.

A claimant alleging personal injury or death caused by exposure to asbestos fibers or other claim resulting from exposure to, release of, or contamination from any environmental pollutant or contaminant, asserted against the association must either be a domiciliary of the state of Louisiana at the time of the exposure or allege that his exposure to asbestos or other environmental hazard, which is a substantial contributing factor to the physical impairment upon which the claim is based, occurred in Louisiana. Where more than one claimant is joined, each claimant must independently establish that Louisiana is either his domicile or place in which the alleged exposure occurred.

Any recovery under this Part by any claimant not a resident of the state of Louisiana at the time such claim arose shall not exceed the lesser of the recovery allowed under this Part or that payable by the insurance guaranty association or its equivalent in the claimant's state of residence. As to the association, any amount payable by such other insurance guaranty association or its equivalent shall act as a credit against the damages of the claimant, and the association shall not be liable for that portion of the damages of the claimant.

TERMINATION PROVISION

None

MISCELLANEOUS

Insolvent insurer defined as licensed insurer against whom an order of liquidation with a finding of insolvency has been entered, by a court of competent jurisdiction in the insurer’s state of domicile or in this state and which order of liquidation has not been stayed or been the subject of a perfected suspensive appeal or other comparable order.

Association is nonprofit, unincorporated legal entity.

Notice of claims to the receiver shall be deemed notice to the association.

Expenses of association in handling claims shall be accorded the same priority as liquidator's expenses.

No cause of action shall arise against any member insurer, the association or its agents or employees, the board of directors, or the commissioner or his representatives for any action taken under this Part. This immunity shall extend to the participation in any organization of one or more other state associations of similar purposes and to any such organization and its agents or employees.

All proceedings in which the insolvent insurer is a party or is obligated to defend a party shall be stayed for 6 months in such additional time as may be determined by the court from the date of the insolvency.

Association financial records subject to review by Senate and House Committees on Insurance.

Cut off duty to defend upon association payment or tender of limits.

Association has the right to pursue and retain salvage and subrogation.