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TECHNICAL ADVISORY

TA-212 **AUGUST 21, 2002**

SUBJECT: Louisiana Insurance Guaranty Association (LIGA)

BACKGROUND: State guaranty funds such as the Louisiana Insurance Guaranty Association (LIGA) were created to serve as a safety net for policyholders, in cases of insurer insolvency.

The first guaranty funds in the United States were developed in the 1940's and 1950's. They were usually narrowly focused on a particular line or area of insurance, with the earliest guaranty funds covered such lines as workers compensation and automobile insurance. New York had one of the first guaranty funds, the Motor Vehicle Liability Security Fund, created in 1947.

In 1969, the National Association of Insurance Commissioners (NAIC) proposed a Model Act for guaranty funds, which states could use as a guide for their own legislative creations.

Louisiana adopted guaranty fund legislation in 1970, and LIGA was born. By 1982, all fifty states had created guaranty funds.

While state guaranty funds are generally similar in design and scope, each state has adopted its own version.

MAIN POINTS: Here is a summary and analysis of the key provisions of the Louisiana Insurance Guaranty Association (LIGA) statute – Title 22, Section 1375, et seq. (See also the LIGA web site: www.laiga.org).

Lines of insurance covered by LIGA. The provisions of the LIGA statute apply to the broad spectrum of property and casualty lines. [22:1377.]

§ *1377.* *Scope; policy coverage determination*

A. *This Part shall apply to all kinds of direct insurance, except life, health and accident, title, disability, mortgage guaranty, financial guaranty, or other insurance offering protection against investment risks, credit insurance, and any transaction or combination of transactions which involve the transfer of investment or credit risks unaccompanied by the transfer of the 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, vehicle mechanical breakdown insurance, and ocean marine insurance. It shall likewise not apply to fidelity and surety insurance nor to bail bond contracts*.

While life and health are specifically exempted from the LIGA statute, there is a separate guaranty fund for these lines – the Louisiana Life and Health Guaranty Association (LHIGA). For a summary of each state's life and health guaranty fund statutes and provisions, go to the web site for the National Organization of Life and Health Guaranty Associations (NOLHGA) (www.nolhga.com).

Insolvent insurer. The only insurers covered by LIGA are those that are "authorized," meaning licensed by the Louisiana Department of Insurance. [22:1379.(4)].

§ 1379. *Definitions*

(4) (a) "Insolvent insurer" means:

(i) An insurer authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred, and

(ii) Against whom an order of liquidation with a finding of insolvency has been entered by a final judgment of a court of competent jurisdiction in the insurer's state of domicile or of this state, and which order of liquidation has not been stayed or been the subject of a perfected suspensive appeal or other comparable order.

(b) Any person, and any attorney who represents a person, who files a petition against the association alleging as a basis for the claim the insolvency of an insurer, where said insurer is not an insolvent insurer within the meaning of R.S. 22:1379(4)(a), shall pay the reasonable expenses incurred because of the filing of the petition, including a reasonable attorney's fee, subject to the following conditions:

(i) The association shall furnish to either the person or his attorney, by ordinary service of process, hand delivery, or certified mail, return receipt requested, written notification that the insurer is not an insolvent insurer within the meaning of R.S. 22:1379(4)(a); and

(ii) If, within sixty days of the receipt of such notification, the person or his attorney has not dismissed the petition, with prejudice and at plaintiff's cost. Amended by Acts 1980, No. 486, § 1; Acts 1990, No. 254, § 1.

Surplus lines. The provisions of LIGA do not apply to surplus lines, as they are not "authorized" insurers, as stipulated in 22:1379.(4)(a)(i) above.

Of all the state guaranty funds in the United States, only New Jersey has a fund for surplus lines.

Since surplus lines policies are not covered by LIGA, Louisiana law requires that policyholders be notified of this fact in writing. The Louisiana surplus lines statute mandates that specific language be stamped onto the face of the policy. [22:1258].

22:1258*. Endorsement of contract*

Every insurance contract procured and delivered as a surplus line coverage pursuant to this Part shall have stamped upon it and be signed by the surplus lines broker who procured it, in bold type and the face of which shall not be less than ten-point type, the following:

NOTICE

This insurance policy is delivered as a surplus line coverage under the Insurance Code of the State of Louisiana.

In the event of insolvency of the company issuing this contract, the policyholder or claimant is not covered by the Louisiana Insurance Guaranty Association which guarantees only specific policies issued by an insurance company authorized to do business in Louisiana.

This surplus lines policy has been procured by the following licensed Louisiana surplus lines broker: (Insert name and signature of licensed surplus lines broker.)

Covered claim. The two key provisions of claims covered by LIGA are:

(1) The claimant or insured is a resident of Louisiana at the time of the insured event; or
(2) The property from which the claim arises is permanently located in this state;

For all other claims, policyholders and claimants usually have to get in line with other creditors to recover their claims from the insurer's assets, which are usually being managed by the department of insurance in the state of the insurer's domicile.

The LIGA statute defines "covered claims" as follows:
§ 1379. *Definitions*

(3) (a) "Covered claim" means an unpaid claim, including one for unearned premiums by or against the insured or agent, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Part applies issued by an insurer, if such insurer becomes an insolvent insurer after September 1, 1970, and:

(i) The claimant or insured is a resident of this state at the time of the insured event; or

(ii) The property from which the claim arises is permanently located in this state.

(b) "Covered claim" shall not include any amount due any reinsurer, insurer, health maintenance organization or plan, preferred provider organization or plan, employee retirement fund including but not limited to plans subject to the Employee Retirement Income Security Act of 1974, Medicare, Medicaid, any insurance pool, or any underwriting association, or within the coverage represented, replaced, or both by a certificate of self insurance as subrogation recoveries or otherwise. In addition, the insured of an insolvent insurer shall likewise not be liable for any subrogation claim asserted by any reinsurer, insurer, health maintenance organization or plan, preferred provider organization or plan, employee retirement fund including but not limited to plans subject to the Employee Retirement Income Security Act of 1974, Medicare, Medicaid, any insurance pool, or any underwriting association or within the coverage represented, replaced, or both by a certificate of self-insurance to the extent of the applicable liability limits previously provided to such insured by the insolvent insurer.

(c) "Covered claim" shall not include any amount due under or arising from a bail bond contract.

(d) "Covered claim" shall not include any claim based on or arising from a preinsolvency obligation of an insolvent insurer, including but not limited to contractual attorneys' fees and expenses, statutory penalties and attorneys' fees, court costs, interest and bond premiums, or any other expenses incurred prior to the determination of insolvency.

(e) Notwithstanding any other provision of this Part, a "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. Amended by Acts 1987, No. 172, § 1, eff. June 19, 1987; Acts 1989, No. 620, § 1; Acts 1990, No. 105, § 1; 1999 LA H.B. 1834; 1999 LA H.B. 1835; 1999 LA H.B. 1837.

(f) "Covered claim" shall not include any claim by any insured whose net worth exceeds twenty-five million dollars on December thirty-first of the year immediately preceding the date of the determination of the insolvency of the insurer. However, an insured's net worth on such 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. An insured for the purposes of this provision shall not include any state or local governmental agency or subdivision thereof.

Two additional provisions of the "covered claims" definition bear discussion. First, in 22:1379.(3)(d), preinsolvency legal expenses are not covered. While LIGA does provide a defense under any covered policy which has defense provisions (auto, homeowners, general liability, etc.), LIGA does not cover such expenses that were incurred prior to the insurer's insolvency. That is, in cases where litigation was on-going prior to insolvency, those legal expenses must be paid from insurer's liquidated assets. Upon insolvency, LIGA then covers the legal expenses from that point forward. However, it is common for LIGA to select legal counsel of its choosing, which may or may not be the same legal counsel that was handling a particular case prior to insolvency.

The second provision of the "covered claims" definition excludes claims by any insured whose net worth exceeds $25 million [22:1379.(3)(f)]. This was prompted by a change made in 1986 to the NAIC Model Act, following national discussions about whether or not guaranty funds should cover large commercial lines policyholders. In the revised NAIC Model Act of 1986, coverage under a guaranty fund was not allowed for insureds whose net worth was over $50 million. Since that time, about 20 states have amended their guaranty fund statutes to include some sort of cap on net worth, although not all adopted the $50 million cap.

Coverage limits. Here are the key provisions of the amounts recoverable from LIGA:

(1) Maximum limits are $150,000 per claim, $300,000 per accident or occurrence;
(2) Maximum $10,000 for unearned premiums;
(3) Claims are subject to $100 deductible;
(4) Workers compensation claims are paid in full, as provided in Title 23 (Louisiana workers compensation statute).

Section 1382 contains the statutory provisions for these coverage limits:
§ 1382. *Powers and duties of the association*

A. The association shall:

(1)(a) Be obliged to the extent of the covered claims existing prior to the determination of the insurer's insolvency, or upon order of the court as provided in R.S. 22:735, or arising after such determination but prior to the first to occur of the following events:

(i) Expiration of thirty days after the date of such determination of insolvency,

(ii) Expiration of the policy, or

(iii) Replacement or cancellation of the policy at the instance of the insured if he does so within thirty days of the determination, but such obligation shall include only that amount of each covered claim, except return premiums, which is in excess of one hundred dollars and is less than one hundred fifty thousand dollars, per claim, subject to a maximum limit of three hundred thousand dollars per accident or occurrence, nor shall a claim for the portion of unearned premiums in excess of ten thousand dollars be allowed.

(b) The applicable limit per claim and per accident or occurrence shall be exhaustive of the entire liability of the association under this Part, however arising, without regard to the nature of or basis for that liability, except court costs incurred subsequent to the date of insolvency.

(c) Excepting claims for unearned premiums, which shall be subject to the ten thousand dollar limitation provided herein, the association shall pay the full amount of any covered claim arising out of a worker's compensation policy.

(d) In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

(e) "Accident or occurrence" in this Section means one proximate, uninterrupted, or continuing cause which results in all of the injuries or damages even though several discrete items of damage result, and even though multiple claims and claimants may arise as a result of one such accident or occurrence. A series of claims arising from the same accident or occurrence shall be treated as due to that one accident or occurrence and thus shall be subject to the aggregate liability limit established herein.

(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; however, when the liability of the association under this Part has been exhausted by payment, the obligation of the association to provide a defense to the insured of an insolvent insurer shall cease.

It is important to note that the $150,000/$300,000 limits do not apply to defense costs, unless the policy under which a defense is provided stipulates otherwise (usually found only in certain professional policies). That is, for ordinary auto, homeowners, general liability, etc., the coverage limits apply just as they would as if the insurer was still operating and covering the claim (defense is "outside limits").

According to LIGA's web site (www.laiga.org), since its creation in 1970, LIGA has paid 133,427 claims totaling $707,484,284.

Advertising ban. Louisiana Statutes prohibit advertising LIGA protection for the insolvency of admitted insurers.

No advertisement is permitted which refers to the fact that LIGA coverage exists. [22:1393.]

§ 1393. *Advertisements*

A. Advertisements which include a reference to the coverage or protection by the Insurance Guaranty Association are specifically prohibited.

B. As used in this Section, "advertisements" means any communication by print, television, radio, or other means for mass distribution of information.

C.(1) Whoever violates this Section shall, upon conviction, be fined not less than five hundred dollars nor more than one thousand dollars for a first offense, and not less than one thousand dollars nor more than two thousand dollars for a second offense.

(2) Conviction for violations of this Section as a second offense shall be grounds for suspension or revocation of the license of the violator by the commissioner. Added by Acts 1970, No. 81, § 1. Amended by Acts 1990, No. 260, § 1.

NECESSARY ACTION: Distribute this Technical Advisory to all appropriate agency staff.