

A PRIMER ON
STATE INSURANCE GUARANTY ASSOCIATIONS¹

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In the wake of our nation’s financial crisis, protection against insurer insolvency is more critical than ever to the insurance-buying public. All U.S. jurisdictions provide partial statutory protection in the event of insurer insolvency through the creation of various state insurance guaranty associations which are governed by statutes primarily based on a Model Act promulgated by the National Association of Insurance Commissioners.² Guaranty associations are an integral part of each state’s regulatory process for addressing insurer insolvency. Through a matrix of state-specific enabling statutes, state insurance guaranty associations levy and collect assessments from member insurers, pay statutorily-defined “covered” claims, and defend against appropriate claims that are in litigation. Together with the domestic regulator of the insolvent insurer (usually the commissioner or superintendent of insurance) and the deputy liquidator (typically approved by the court presiding over the liquidation process and selected by the commissioner or superintendent of insurance as statutory liquidator), the guaranty association community (comprised of associations located in virtually each state in which a policyholder resides) functions as a unified system to manage and at least partially mitigate the impact of an insurer insolvency.

¹ This article does not undertake to inform the reader as to all aspects, or all issues, relating to the purpose, structure, or operation of state insurance guaranty associations. The enabling act, regulations, and interpretive case law of the appropriate state guaranty association should be reviewed.

² For purposes of this article, the operation of the New Jersey Property-Liability Insurance Guaranty Association (“Guaranty Association”) will be addressed and referred to as a representative prototype. It is created as a private, non-profit, unincorporated, legal entity. See N.J.S.A. 17:30A-6 et seq. While most state insurance guaranty association enactments, including New Jersey’s, incorporate features not always having their origin in the NAIC Model Act, the fact remains that the Model Act is the single most dominant thread running through almost all U.S. enactments and provides a common baseline for implementation and interpretation of their provisions.

INTRODUCTION

Property and liability guaranty associations have been established by law in each of the 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands.³ Most of the laws are based on the Post-Assessment Property and Liability Insurance Guaranty Association Model Act adopted by the National Association of Insurance Commissioners. (NAIC Model Regulation Service (July 1996, at 540-41, et seq.) (the “NAIC Model Act”). The NAIC Model Act adopts a post-insolvency assessment approach to funding under which, after an insolvency has occurred and estimates of resulting claims obligations have been made, a guaranty association or its state regulator calculates assessments and the association then levies those assessments upon solvent insurers. New York is the only state which does not use a post-assessment system. To the contrary, New York maintains a “pre-insolvency assessment” fund under which insurers are assessed a specified amount each year until total assessments collected reach a statutory maximum. These assessed contributions are held against claims from insolvencies which could arise in the future. Each insurance company writing property and casualty lines of business covered by a guaranty association is required to be a member of the guaranty association in a particular state as a condition of its authority to transact business in that state. Guaranty associations assess member insurers based upon their proportionate share of premiums written on covered lines of business in that state, *i.e.*, net direct written premiums.

As a threshold matter, a state guaranty association has no obligation to pay claims if the insolvent insurer was not duly authorized in the state where the association is established. Guaranty associations are a primary source of funds for the payment of insurance policy-related claims and become one of, if not the largest, creditor of the insolvent insurer’s estate, to the

³ Most states also create, by separate statute, a guaranty association to respond to claims arising under life, health and annuity contracts. (See, e.g., N.J.S.A. 17B:32A-1, et seq.) However, these associations are not the subject of this article.

extent of the claims they pay. The guaranty association's so-called "covered claims" payments become claims against the insolvent estate, and in most states (including New Jersey), guaranty associations are entitled to the same priority within the state's statutory insurer liquidation scheme as policyholder claims.⁴ See N.J.S.A. 17:30C-26c(4). Expenses of administration, arguably including Guaranty Association expenses, are entitled to a priority above policyholder claims. See N.J.S.A. 17:30C-26c(1).

In addition to the New Jersey Property-Liability Insurance Guaranty Association, New Jersey has the distinction of having the only surplus lines insurance guaranty fund in the nation. The New Jersey Surplus Lines Insurance Guaranty Fund (the "Guaranty Fund") provides protection against the insolvency of eligible surplus lines insurers exporting business to New Jersey through licensed surplus lines agents. Eligible surplus lines insurers are members of the Guaranty Fund as a condition of eligibility to export coverages into New Jersey.⁵

I. What Do Guaranty Associations Do?

The purpose of the Guaranty Association is to: provide a mechanism for the payment of "covered claims" under certain insurance policies; avoid excessive delay in that payment; minimize financial loss to claimants or policyholders because of the insolvency of an insurer; assist in the detection or prevention of insurer insolvencies; and to provide an organization to assess the cost of such protection among insurers doing business within the State. See N.J.S.A. 17:30A-2a. Additionally, the Guaranty Association is statutorily authorized to provide a mechanism to run-off, manage, administer and pay claims asserted against certain other

⁴ A state's insurer liquidation statute is almost universally created as separate legislation distinct from its guaranty association act. However, the two statutory schemes are complementary to one another and together create a comprehensive approach to the troubling issues presented by insurer insolvencies.

⁵ As noted, New Jersey is the only U.S. jurisdiction to provide a measure of statutory protection for claims left unpaid as a consequence of the insolvency of a surplus lines insurer. This is due in large measure to the fact that surplus lines insurers generally are operated, and their policies are marketed and regulated, under separate statutory schemes that are typically less rigorous than the regulatory environment that relates to fully authorized – *i.e.*, "licensed" – insurers. See N.J.S.A. 17:22-6.70 et seq.

statutory entities, specifically: (i) the Unsatisfied Claim and Judgment Fund (“UCJF”) created pursuant to N.J.S.A. 39:6-61 et seq.; (ii) the New Jersey Automobile Full Insurance Underwriting Association (“JUA”) created pursuant to N.J.S.A. 17:30E-1 et seq.; and (iii) the Market Transition Facility (“MTF”) created pursuant to N.J.S.A. 17:33B-11.

The Guaranty Association Act, N.J.S.A. 17:30A-1 et seq. applies to all property and casualty lines of direct insurance (not reinsurance) authorized under New Jersey law, 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. Additionally, with respect to the Guaranty Association, pet health insurance is an excluded line. See id.

II. What Claims Are Eligible For Guaranty Association Protection?

A. Insolvent Insurer.

While guaranty associations are an integral part of a state’s system for providing an orderly liquidation of insurance companies, not every claim is eligible to be presented to a state guaranty association as a so-called “covered claim.” First, the claim must arise out of a policy of insurance issued by an insurer which constitutes an “insolvent insurer” under that state’s guaranty association act. The New Jersey Guaranty Association Act defines “insolvent insurer” to mean:

- (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

admitted insurer whether or not deemed eligible for surplus lines pursuant to P.L. 1960, c. 32 (C. 17:22-6.37 et seq.)⁶

N.J.S.A. 17:30A-5.

B. Member Insurer.

Once it has been determined that the policy from which a claim arises was issued by an insolvent insurer, it must be established that the insolvent insurer was a “member insurer” of the Guaranty Association, which includes any person who: (1) writes any kind of insurance to which the Guaranty Association Act applies, including the exchange of reciprocal or inter-insurance contracts; and (2) is a licensed insurer admitted or authorized to transact the business of insurance in this State. “Member insurer” does not include unauthorized or non-admitted insurers.⁷ Moreover, a risk retention group is not a member insurer. Thus, its subscribers are not eligible for coverage of claims against them by the Guaranty Association in the event of an insolvency of a risk retention group. Aftab v. New Jersey Prop.-Liab. Ins. Guar. Ass’n, 386 N.J. Super. 41, 898 A.2d 1041 (App. Div. 2006), certif.. den. 188 N.J. 357, 901 A.2d 1016.

C. Covered Claim.

Finally, the claim at issue must fall within the purview of the statutory definition of “covered claim” set forth at N.J.S.A. 17:30A-5 . The Guaranty Association Act defines the term “covered claim” in pertinent part as follows:

An unpaid claim, including one of unearned premiums,⁸ 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

⁶ See also, R.R. Roofing & Bldg. Supply Co., Inc. v. Fin. Fire & Cas. Co., 85 N.J. 384, 427 A.2d 66 (1981). An unauthorized or non-admitted insurer which has secured eligible surplus lines status in New Jersey would, however, constitute an “insolvent insurer” within the scope of New Jersey’s separate Surplus Lines Insurance Guaranty Fund Act. See N.J.S.A. 17:22-6.72.

⁷ Id.

⁸ In Broadway Bank & Trust Co. v. New Jersey Prop.-Liab. Ins. Guar. Assn’, 166 N.J. Super. 80, 368 A.2d 983 (Law Div. 1976), the Court confirmed that unearned premiums represented a “covered claim” because they arise out of the coverage of an insurance policy.

after January 1, 1974, (1) the claimant or insured is a resident⁹ 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.¹⁰ (Emphasis added.)

D. Exceptions to Covered Claims

While the Guaranty Association provides a measure of protection in the event of insurer insolvency, it is not intended to be a panacea.¹¹ There are very significant limitations upon the statutory protections provided by the Guaranty Association Act as follows¹²:

Claims which are eligible for coverage are deemed “covered claims”, but do not include:

(1) Subrogation and Reinsurance Claims:

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 an insurer which has become an insolvent insurer, which, if it were not a claim by or for the benefit of a reinsurer,

⁹ See American Employers’ Ins. Co. v. Elf Atochem North America, Inc., 157 N.J. 580, 725 A.2d 1093 (1999), holding that a business entity is a “resident” of the state and is entitled to make a claim against the Guaranty Association when its principal place of business is within the state. A corporate insured, although incorporated under the laws of Delaware, which had been licensed to transact business in New Jersey since 1972, which maintained an executive office in New Jersey, which operated its principal place of business in New Jersey, and which allocated 100% of its corporate assets to the State of New Jersey for tax purposes and conducted substantially all of its business in this State, was a “resident” of the State entitled to maintain a claim against the Guaranty Association. See also, Eastern Seaboard Pile Driving Corp. v. New Jersey Prop.-Liab. Ins. Guar. Ass’n, 167 N.J. Super. 324, 400 A.2d 857 (Law Div. 1979), reversed on other grounds, 175 N.J. Super. 589, 421 A.2d 597.

¹⁰ In Eastern Seaboard Pile Driving Corp., *supra*, the Court gave definition to the phrase “permanently located” in the State of New Jersey by holding that property is so located when it has significant and continuing contacts with New Jersey and has no significant and continuing contacts with any other state. Moreover, the Court held that where property has significant and continuing contacts with more than one state, the property will be deemed to have no permanent location under the Guaranty Association Act.

¹¹ See Shaler ex rel. Shaler v. Toms River Obstetrics & Gynecology Associates, 383 N.J. Super. 650, 893 A.2d 53 (App. Div. 2006), *cert. den.* 187 N.J. 82, 899 A.2d 304. See also, Carpenter Tech. Corp. v. Admiral Ins. Co., 172 N.J. 504, 800 A.2d 54 (2002).

¹² N.J.S.A. 17:30A-5 and N.J.S.A. 17:22-6.72. There is a critical limitation on coverage by the Guaranty Fund applicable on and after June 25, 2002. The Guaranty Fund only provides 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 June 25, 2002.

insurer, insurance pool, or underwriting association, would be a “covered claim” may be filed directly with the receiver of the insolvent insurer.

This prohibition has long since been upheld (see Sandson’s Bakery v. Glover, 162 N.J. Super. 225, 392 A.2d 640 (Law Div. 1978). In Material Damage Adjustment Corp. v. New Jersey Prop.-Liab. Ins. Guar. Ass’n, 294 N.J. Super. 81, 682 A.2d 739 (App. Div. 1996), however, the Court held that the subrogation exclusion from the statutory definition of “covered claims” did not extend to claims by a JUA servicing carrier as a motorist’s personal automobile insurer, or against the Guaranty Association, as successor to the motorist’s employer’s insolvent automobile carrier. The Court required the Guaranty Association to participate in an arbitration of, and contribute on a pro-rata basis to, the motorist’s claim for uninsured motorist benefits for injuries sustained while driving the employer’s vehicle.

(2) Interest:

Amounts for interest on unliquidated claims;

Prejudgment interest is tantamount to an unliquidated claim and is not generally assessed against the Guaranty Association. See Wilton v. Cycle Trucking, Inc., 240 N.J. Super. 326, 573 A.2d. 462 (App. Div. 1984). Courts have also held that insureds whose insurer was later declared insolvent were similarly not liable for prejudgment interest on a tort award where the Guaranty Association was exempted from such responsibility. See Lehmann v. O’Brien, 240 N.J. Super. 242, 573 A.2d 171 (App. Div. 1989), and Hendricks v. A.J. Ross Co., 232 N.J. Super. 243, 556 A.2d 1267 (App. Div. 1989). Interestingly, this rationale for a ban on prejudgment interest was not extended to a medical association defending a medical malpractice action where defense counsel repeatedly represented throughout trial and settlement negotiations that it was uninsured. The Court held that the medical association was equitably

estopped from asserting protection from prejudgment interest under the Guaranty Association Act because establishment of insurance status was solely within the medical association's knowledge and control, and plaintiffs relied to their detriment on repeated assertions that there was no coverage for the claim because they were forced to go to verdict and risk that the verdict would be lesser than the settlement offer, which, indeed, it was. Delgado v. Epstein, 2005 WL 3693200 (App. Div. 2006).

(3) Punitive Damages:

Punitive damages unless covered by the policy ; ¹³

(4) Attorney Fees:

Counsel fees for prosecuting suits for claims against the fund; ¹⁴

(5) Untimely Settlement:

Assessments or charges for failure by an insolvent insurer to have expeditiously settled claims;

(6) Pre-insolvency Expenses:

Counsel fees and other claim expenses incurred prior to the date of insolvency;

(7) Late Filed Claims:

A claim filed with the fund, liquidator or receiver of an insolvent insurer after the final date set by the court for the filing of claims against the liquidator of an insolvent insurer or, if a final date is not set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer [the so-called "bar date"], two years from

¹³ See ARCNET Architects, Inc. v. New Jersey Prop.-Liab. Ins. Guar. Ass'n, 377 N.J. Super. 102, 871 A.2d 728 (App. Div. 2005).

¹⁴ ARCNET Architects, Inc. v. New Jersey Prop.-Liab. Ins. Guar. Ass'n, 377 N.J. Super. 102, 871 A.2d 728 (App. Div. 2005). Counsel fees incurred in connection with a professional liability action and prior to the insolvency of a liability insurer were not considered "covered claims." The insurer had retained counsel on the insured's behalf. The Court held *quantum meruit* or unjust enrichment did not apply to make the insured liable for the fees because the insured paid counsel through the policy premium; therefore, counsel was not in the class of entities that the Guaranty Association was designed to protect.

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.”¹⁵

See N.J.S.A. 17:30A-5.

A claimant may show “unusual hardship” as referenced above by filing information that demonstrates any of the following:

- (1) the claimant never received notice of the due date for filing claims, but the claimant shall be presumed to have received such notice if notice was timely mailed to the claimant’s address currently on file with the insurer;
- (2) the mailing address of the claimant in the insurer’s records is erroneous, and the claimant demonstrates that he or she notified the insurer or its agent of a change in address;
- (3) the claimant was incapable of responding to the notice due to an emergent and extreme medical event or similar emergent and extreme circumstances or;
- (4) the claimant is deceased, and the claimant’s estate demonstrates that the death occurred within such a period that the representative of the claimant’s estate did not have sufficient time to advise the insurer or its agent of such circumstances.

See N.J.S.A. 17:30A-5 and 17:22-6.72, and N.J.A.C. 11:1-43.21, et seq.

E. Net Worth

An insured’s net worth can also impact the ability to secure Guaranty Association or Guaranty Fund protection. Any first party claim made by an insured whose net worth exceeds \$25 million as of December 31 of the year prior to which the insurer becomes insolvent is beyond the scope of a “covered claim”. The net worth of an insured expressly includes the aggregate net worth of the insured and all of its affiliates as calculated on a consolidated basis.

See N.J.S.A. 17:30A-5 and 17:22-6.72.

¹⁵ For purposes of the Guaranty Association, with respect to insurer insolvencies pending as of December 2004, a so-called “covered claim” does not include a claim filed with the Association, liquidator or receiver of an insolvent insurer: (a) more than one year after December 2004; 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. See N.J.S.A. 17:30A-5.

F. Exhaustion of Claims

Any policyholder or claimant who has an otherwise covered claim which may be recovered from more than one guaranty association or its equivalent will 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 the claim is a first party claim for damaged property with a permanent location, the claimant or policyholder shall seek recovery first from the association where the property is located. Only if recovery is denied or deferred by the resident guaranty association, can the person proceed to seek recovery from any other state guaranty association or its equivalent. See N.J.S.A. 17:30A-12a (Guaranty Association Act) and N.J.S.A. 17:22-6.79a (Guaranty Fund Act). Additionally, other than claims for coverage for personal injury protection benefits issued pursuant to N.J.S.A. 39:6A-4 or N.J.S.A. 39:6A-3.1 (“PIP benefits”), all policyholders and claimants must first exhaust their rights under any other policy before accessing Guaranty Association or Guaranty Fund coverage. See N.J.S.A. 17:30A-12b. Claims under “other insurance policies” include claims under kinds of insurance policies such as 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 PIP benefits and those set forth at N.J.S.A. 39:6A-3.1.

Exhaustion and set-off of other solvent carriers’ coverages, as well as the order of coverage where multiple policies and multiple guaranty associations are available to respond to a claim or claims, are often implicated in disputes involving environmental or toxic tort-type claims where trigger of coverage, whether coverage applies “per claim” or “per occurrence” and similar issues, can be dispositive of coverage matters. Often with environmental claims

involving multiple sites and hundreds, or even thousands, of claimants, the goal of maximizing available coverage and protection to those claimants results in a litany of disputes between and among solvent insurers and, occasionally, guaranty associations.

III. Funding.

In order to secure funds necessary to pay its obligations on covered claims for insolvent insurers, the expense of handling those covered claims, the costs of certain examinations of member insurers in financial distress, and other expenses authorized by the Guaranty Association Act, the Guaranty Association is statutorily obligated to assess each of its member insurers 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 premium of all member insurers for the calendar year preceding the assessment.¹⁶ See N.J.S.A. 17:30A-8a(3). Additionally, the Guaranty Association may borrow and separately account for funds from any source, including, but not limited to, certain other statutorily created insurance funds, in such amounts and on such terms as the Board of Directors of the Guaranty Association may determine are necessary or appropriate to effectuate the statutory purposes of the Guaranty Association in accordance with the terms of its Plan of Operation. See N.J.S.A. 17:30A-8b(2). Those inter-account borrowings are needed in certain circumstances on an interim basis to assure appropriate cash flow for the Guaranty Association to satisfy its own statutory obligations.

¹⁶ Pursuant to N.J.S.A. 17:30A-16a, and subject to rules or orders of the Commissioner, member insurers are permitted to recoup, over a reasonable length of time, a sum reasonably calculated to recoup assessments paid by member insurers pursuant to N.J.S.A. 17:30A-8, by way of a surcharge on premiums charged for insurance policies. Member insurers are required to recoup assessments within two years of the date they are paid. See N.J.S.A. 17:30A-16. In certain other jurisdictions, the impact of the statutory assessments upon solvent insurers is sometimes addressed in the form of rate relief or premium tax offsets.

IV. The Guaranty Association Administers the Operation of Certain Statutorily Created Entities.

Unique to the New Jersey Guaranty Association is its role as the statutory administrator for certain other statutorily-created entities, including the Guaranty Fund and the Unsatisfied Claim and Judgment Fund (“UCJF”).¹⁷ As noted above, the Guaranty Fund is managed and administered by the Guaranty Association, which exercises all of the powers vested in the Fund under the Guaranty Fund Act, pursuant to both the Guaranty Association Act, the Guaranty Fund Act and the Guaranty Association’s Plan of Operation.¹⁸

V. When Is Guaranty Association Or Guaranty Fund Protection Available, And Is There A Cap On Benefits?

Both the Guaranty Association and the Guaranty Fund are obligated to the extent of “covered claims” asserted against an insolvent insurer that 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 statutory cap on the Association or Fund’s obligation on any covered claim is \$300,000. The \$300,000 cap applies with respect to the Guaranty Association per claimant and is subject to any applicable deductible and self-insured retention contained in the policy. This \$300,000 limitation shall not apply to a covered claim asserted against the Guaranty Association if that claim arises out of insurance coverage

¹⁷ This centralized administration of similar-purpose funds adds economy of scale and efficiency of costs to the operation of each statutory fund. It is a concept to be commended to other state insurance guaranty associations. The availability of a common existing management team, administrative apparatus, and claims staff proves beneficial to all parties involved. With respect to the Association’s obligations to undertake the management, administration and claims activities of the UCJF, those obligations are funded by separate assessment levied pursuant to the UCJF Act at N.J.S.A. 39:6-61, et seq.

¹⁸ In order to assist the Association in administration of the Fund, there is an advisory body created to assist the Board of Directors of the Guaranty Association 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 Guaranty Association consults the advisory body on matters relating to administration of the Fund.

mandated by N.J.S.A. 39:6A-4, *i.e.*, no fault personal injury automobile insurance. As to such claims, the Commissioner may, by order, require the Association to treat all or a portion as if it were 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 cancellation, and otherwise qualifies as a covered claim under the Guaranty Association Act. In the case of benefits payable pursuant to N.J.S.A. 39:6A-4, the Association shall be liable for payment of benefits in an amount not to exceed the amount set forth at N.J.S.A. 39:6A-4.

VI. Statutory Immunity.

Pursuant to N.J.S.A. 17:30A-17, the Guaranty Association, its Board of Directors, agents, employees, and the Commissioner or his representatives are immune from liability or any cause of action of any nature with respect to action taken by them in the performance of their statutory powers and duties. Of course, as to actions that are taken *ultra vires* or beyond the scope of the statute, the argument exists that the immunity does not apply and liability could conceivably attach. Some associations procure directors and officers insurance coverage as an additional layer of protection.

VII. Stay of Proceedings in Pending Causes of Action.

In all proceedings in which an insolvent insurer is a party or is obligated to defend a party in court in New Jersey, such proceedings shall be stayed for 120 days, or any additional time thereafter as may be determined by the Court, from the date of order of liquidation or any ancillary proceeding initiated in New Jersey, whichever is later, to permit proper defense by the Guaranty Association or the Guaranty Fund, whichever is applicable, of all pending causes of action. See N.J.S.A. 17:30A-18. Public notice of the stay is published in three newspapers of

general circulation in New Jersey within ten days of the date of the order of liquidation.¹⁹ Significantly, the Guaranty Association may effect a full or partial waiver of the statutory stay in specific cases involving covered claims, within the discretion of the Association.

CONCLUSION

While coverage by guaranty associations is intended to soften the blow to policyholders and claimants of insolvent insurers, resources are not unlimited and the scope of statutory relief is not, nor is it intended to be, complete. Thus, the express statutory limitations of each association should be scrutinized carefully by those seeking to avail themselves of such protection. Guaranty association funds are to be preserved for the association's express statutory obligations and are essentially "recycled" as insolvent insurer liquidation estates make distributions to guaranty associations to reimburse them for "covered" claims paid by them under the insolvent carrier's policies. These periodic distributions are characterized as "early access payments" to guaranty associations, and are themselves vital to the efficient and timely discharge of the guaranty association's statutory obligations. At the very end of the liquidation process, a final distribution is made, which generally includes a final distribution to guaranty associations to the extent earlier distributions have not been sufficient and if adequate funds are available in the insolvent estate.

Specific coverage questions should be directed to the applicable guaranty association staff or the commissioner or superintendent of insurance in the relevant state. Contact

¹⁹ Notice of the statutory stay is generally part of a broader public notice effected by the Guaranty Association with respect to the determination of insolvency, the order of liquidation or rehabilitation, as applicable, and a summary of the Association's statutory obligations with respect to "covered claims." This notice includes reference to the liquidator's bar date with respect to claims if one has been imposed by the liquidator.

information can often be accessed from the department of insurance website or from the liquidation estate.²⁰

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²⁰ The views expressed herein, while believed to be factually accurate, are personal to the authors, and do not necessarily reflect the views of the law firm or of any of the firm's clients. Nothing contained herein is intended to constitute any form or type of legal opinion or advice. The reader should consult his or her legal or other professional advisors for guidance as to any particular question or issue.