

By: Carona

S.B. No. 1192

A BILL TO BE ENTITLED

AN ACT

relating to the operation of the Texas Property and Casualty Insurance Guaranty Association.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 5(8) and (9), Article 21.28-C, Insurance Code, are amended to read as follows:

(8) "Covered claim" means an unpaid claim of an insured or third-party liability claimant that 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 or assumed (whereby an assumption certificate is issued to the insured) by an insurer licensed to do business in this state, if that insurer becomes an impaired insurer and the third-party claimant or liability claimant or insured is a resident of this state at the time of the insured event, or the claim is a first-party claim for damage to property that is permanently located in this state. A corporation or other entity that is not an individual is considered to be a resident of the state in which the entity's principal place of business is located. "Covered claim" shall also include unearned premiums, but in no event shall a covered claim for unearned premiums exceed \$25,000. Individual covered claims (including any and all derivative claims by more than one person which arise from the same occurrence, which shall be considered collectively as a single claim under this Act) shall be limited to \$300,000, except

1 that the association shall pay the full amount of any covered claim
2 arising out of a workers' compensation claim made under a workers'
3 compensation policy. "Covered claim" shall not include any amount
4 sought as a return of premium under a retrospective rating plan or
5 any amount due any reinsurer, insurer, self-insurer, insurance
6 pool, ~~or~~ underwriting association, self-insured governmental
7 entity, or self-insurance pool or joint insurance fund created by
8 one or more political subdivisions under Chapter 791, Government
9 Code, or Chapter 504, Labor Code, as subrogation recoveries,
10 reinsurance recoveries, contribution, indemnification, or
11 otherwise, and the insured of an impaired insurer is not liable, and
12 the reinsurer, insurer, self-insurer, insurance pool, underwriting
13 association, self-insured governmental entity, or self-insurance
14 pool or joint insurance fund is not entitled to sue or continue a
15 suit against that insured, for any subrogation recovery,
16 reinsurance recovery, contribution, or indemnity [~~asserted by a~~
17 ~~reinsurer, insurer, insurance pool, or underwriting association~~]
18 to the extent of the applicable liability limits of the policy
19 written and issued to the insured by the insolvent insurer.
20 "Covered claim" shall not include supplementary payment
21 obligations, including adjustment fees and expenses, attorney's
22 fees and expenses, court costs, interest and penalties, and
23 interest and bond premiums incurred prior to the determination that
24 an insurer is an impaired insurer under this Act. "Covered claim"
25 shall not include any prejudgment or postjudgment interest that
26 accrues subsequent to the determination that an insurer is an
27 impaired insurer under this Act. "Covered claim" shall not

1 include, and the association shall not be liable for, any
2 attorney's fees, interest, or other amount sought by or on behalf of
3 an insured or claimant, or any other provider of goods or services
4 retained by an insured or claimant, in connection with the
5 assertion or prosecution of any covered or other claim, against the
6 insured of an impaired insurer, the impaired insurer, the guaranty
7 association, the receiver, the special deputy receiver, the
8 commissioner, or the liquidator. "Covered claim" shall not include
9 any claim for recovery of punitive, exemplary, extracontractual, or
10 bad-faith damages, whether sought as a recovery against the
11 insured, insurer, guaranty association, receiver, special deputy
12 receiver, or commissioner, awarded in a court judgment against an
13 insured or insurer. "Covered claim" shall not include shareholder
14 derivative actions or any claim under a policy of insurance placed
15 in force on or after January 1, 1992, for economic or other loss
16 incurred by a claimant in its capacity as a shareholder. "Covered
17 claim" shall not include, and the association shall not have any
18 liability to an insured or third-party liability claimant, for its
19 failure to settle a liability claim within the limits of a covered
20 claim under this Act. With respect to a covered claim for unearned
21 premiums, both persons who were residents of this state at the time
22 the policy was issued and persons who are residents of this state at
23 the time the company is found to be an impaired insurer shall be
24 considered to have covered claims under this Act. If the impaired
25 insurer has insufficient assets to pay the expenses of
26 administering the receivership or conservatorship estate, that
27 portion of the expenses of administration incurred in the

1 processing and payment of claims against the estate shall also be a
2 covered claim under this Act.

3 (9) "Impaired insurer" means:

4 (A) a member insurer that is placed in temporary
5 or permanent receivership or liquidation under an order of a court
6 of competent jurisdiction, including the courts of any other state,
7 based on a finding of insolvency and that has been designated an
8 impaired insurer by the commissioner; or

9 (B) a member insurer placed in conservatorship
10 after it has been determined by the commissioner to be insolvent and
11 that has been designated an impaired insurer by the commissioner.

12 SECTION 2. Section 8(d), Article 21.28-C, Insurance Code,
13 is amended to read as follows:

14 (d) The association shall investigate and adjust,
15 compromise, settle, and pay covered claims to the extent of the
16 association's obligation and deny all other claims. The association
17 may review settlements, releases, and judgments to which the
18 impaired insurer or its insureds were parties to determine the
19 extent to which those settlements, releases, and judgments may be
20 properly contested. Any judgment taken by default or consent
21 against an insured or the impaired insurer, and any settlement,
22 release, or judgment entered into by the insured or the impaired
23 insurer, is not binding on the association, and may not be
24 considered as evidence of liability or of damages in connection
25 with any claim brought against the association or any other party
26 under this Act. Notwithstanding any other provision of this Act,
27 except in the case of a claim for workers' compensation benefits, an

1 obligation of the guaranty association to or on behalf of an insured
2 and the insured's affiliates on covered claims terminates at the
3 time aggregate payments totaling \$10 million have been paid by the
4 association and one or more other similar associations of other
5 states, to or on behalf of that insured, the insured's affiliates,
6 or additional insureds on covered claims arising under the policy
7 or policies of one insolvent insurer. Notwithstanding any other
8 provision of this Act, a covered claim shall not include any claim
9 filed with the guaranty association after the later of the final
10 date for filing claims against the liquidator or receiver of an
11 insolvent insurer or eighteen months after the order of
12 liquidation.

13 SECTION 3. Section 11(b), Article 21.28-C, Insurance Code,
14 is amended to read as follows:

15 (b) The association is entitled to recover from the
16 following persons the amount of any covered claim and costs of
17 defense paid on behalf of that person under this Act:

18 (1) any insured, other than an insured who is exempt
19 from federal income tax under Section 501(a) of the Internal
20 Revenue Code of 1986 (26 U.S.C. Section 501(a)) by being described
21 by Section 501(c)(3) of that code, whose net worth, as computed
22 under Section 11A(b) of this Act, on December 31 of the year next
23 preceding the date the insurer becomes an impaired insurer exceeds
24 \$50 million and whose [~~liability~~] obligations under a liability or
25 workers' compensation [~~to other persons under a~~] policy or contract
26 of insurance written, issued, and placed in force after January 1,
27 1992, are satisfied in whole or in part by payments made under this

1 Act; and

2 (2) any person who is an affiliate of the impaired
3 insurer and whose liability obligations to other persons are
4 satisfied in whole or in part by payments made under this Act.

5 SECTION 4. Article 21.28-C, Insurance Code, is amended by
6 adding Section 11A to read as follows:

7 Sec. 11A. NET WORTH EXCLUSION. (a) The association is not
8 liable to pay a first-party claim of an insured whose net worth on
9 December 21 of the year next preceding the date the insurer becomes
10 an impaired insurer exceeds \$50 million.

11 (b) The net worth of an insured for purposes of Section
12 11(b)(1) of this Act and Subsection (a) of this section includes the
13 aggregate net worth of the insured and all of the insured's
14 affiliates computed on a consolidated basis.

15 SECTION 5. Section 12, Article 21.28-C, Insurance Code, is
16 amended to read as follows:

17 Sec. 12. NONDUPLICATION OF RECOVERY. (a) Any [A] person
18 who has a claim [against an insurer] under [any provision in] an
19 insurance policy, without regard to whether the policy is issued by
20 a member insurer, other than a policy of an impaired insurer, that
21 arises from the same facts, injury, or loss that gave rise to a
22 claim against an impaired insurer or its insured, is required to
23 first [is also a covered claim shall] exhaust [first] the person's
24 rights under the policy, including any claim for indemnity or
25 medical benefits under any workers' compensation, health,
26 disability, uninsured motorist, personal injury protection,
27 medical payment, liability, or other policy, and the right to

1 defense under the policy. An amount payable as a covered claim
2 under this Act is reduced by the full applicable limits of the other
3 insurance policy and the association shall receive a full credit in
4 the amount of the full applicable limits. [~~The association shall~~
5 ~~have a credit or setoff against any amount of benefits which would~~
6 ~~otherwise be payable by the association to the claimant under this~~
7 ~~Act, in the amount of the claimant's recovery under any policy~~
8 ~~issued by an unimpaired insurer.~~] Subject to the provisions of
9 Subsection (a-1) below, the association's credit or setoff under
10 this section shall be deducted from damages incurred by the
11 claimant, and the remaining sum shall be the maximum amount payable
12 by the association, except that the association's liability shall
13 not exceed \$300,000 [~~\$100,000~~] or the limits of the policy under
14 which the claim is made, whichever is less. To the extent that the
15 association's obligation is reduced by the application of this
16 subsection, the liability of the person insured by the impaired
17 insurer's policy for the claim is reduced in the same amount.

18 (a-1) Notwithstanding Subsection (a) of this section, if a
19 claimant is seeking recovery of policy benefits that, but for the
20 insolvency of the impaired insurer, would be subject to lien or
21 subrogation by a workers' compensation insurer, health insurer or
22 any other insurer, whether impaired or not, then the association's
23 credit or offset shall be deducted from the damages incurred by the
24 claimant or the limits of the policy under which the claim is made,
25 whichever is less. In no event shall a claimant's recovery under
26 this Act result in a total recovery to the claimant that is greater
27 than that which would have resulted but for the insolvency of the

1 impaired insurer. [~~Subject to Section 5(8) of this Act, a~~
2 ~~claimant's recovery under this Act may not result in a recovery to~~
3 ~~the claimant that is less than that which would have resulted but~~
4 ~~for the insolvency of the impaired insurer.]~~

5 (b) A person who has a claim that may be recovered under more
6 than one insurance guaranty association or its equivalent shall
7 seek recovery first from the association of the place of residence
8 of the insured, except that if it is a first-party claim for damage
9 to property with a permanent location, the person shall seek
10 recovery first from the association of the location of the
11 property, and if it is a workers' compensation claim the person
12 shall seek recovery first from the association of the residence of
13 the claimant. The association shall have a credit or setoff against
14 any amount of benefits under this Act, in the amount of the
15 claimant's recovery from the guaranty association or equivalent.
16 Subject to the provisions of Subsection (b-1) below, the
17 association's credit or setoff under this Section shall be deducted
18 from the damages incurred by the claimant, and the remaining sum
19 shall be the maximum amount payable by the association, except that
20 the association's liability shall not exceed \$300,000 [~~\$100,000~~].

21 (b-1) Notwithstanding Subsection (b) of this section, if a
22 claimant is seeking recovery of policy benefits that, but for the
23 insolvency of the impaired insurer, would be subject to lien or
24 subrogation by a workers' compensation insurer, health insurer or
25 any other insurer, whether impaired or not, then the association's
26 credit or offset shall be deducted from the damages incurred by the
27 claimant or the limits of the policy under which the claim is made,

1 whichever is less. In no event shall a claimant's recovery under
2 this Act result in a total recovery to the claimant that is greater
3 than that which would have resulted but for the insolvency of the
4 impaired insurer. [~~Subject to Section 5(8) of this Act, a~~
5 ~~claimant's recovery under this Act shall not result in a recovery to~~
6 ~~the claimant that is less than that which would have resulted but~~
7 ~~for the insolvency of the impaired insurer.]~~

8 SECTION 6. Section 17, Article 21.28-C, Insurance Code, is
9 amended to read as follows:

10 Sec. 17. STAY OF PROCEEDINGS. (a) All proceedings in which
11 an impaired insurer is a party or is obligated to defend a party in
12 any court in this state, except proceedings directly related to the
13 receivership or instituted by the receiver, shall be stayed as to
14 all parties and for all purposes for six months and any additional
15 time thereafter as may be determined by the court from the date of
16 the designation of impairment or an ancillary proceeding is
17 instituted in the state, whichever is later, to permit proper
18 defense by the receiver or the association of all pending causes of
19 action. A deadline imposed under the Texas Rules of Civil Procedure
20 or the Texas Rules of Appellate Procedure is tolled during the stay.
21 The court in which the delinquency proceeding is pending has
22 exclusive jurisdiction regarding the application, enforcement, and
23 extension of the stay. If delinquency proceedings are not pending
24 in a court in this state, a district court of Travis County has
25 exclusive jurisdiction, and an original action may be brought in
26 that court by the association, the insured, or the claimant to
27 determine the application, enforcement, or extension of the stay.

1 A district court of Travis County may issue injunctions or other
2 orders as considered necessary to enforce the court's
3 determinations under this subsection.

4 (b) As to any covered claims arising from a judgment under
5 any decision, verdict, or finding based on the default of the
6 impaired insurer or its failure to defend an insured, the
7 association either on its own behalf or on behalf of the insured
8 shall be entitled, upon application, to have the judgment, order,
9 decision, verdict, or finding set aside by the same court or
10 administrator that made the judgment, order, decision, verdict, or
11 finding and shall be permitted to defend the claim on the merits.
12 The receiver or statutory successor of an impaired insurer covered
13 by this Act shall permit access by the board or its authorized
14 representative to records of the impaired insurer as are necessary
15 for the board in carrying out its functions under this Act with
16 regard to covered claims. In addition, the receiver or statutory
17 successor shall provide the board or its representative with copies
18 of the records on request of the board and at the expense of the
19 board.

20 SECTION 7. Section 25, Article 21.28-C, Insurance Code, is
21 amended to read as follows:

22 Sec. 25. CONTROLLING LAW. If [~~(a) Except as provided in~~
23 ~~subsection (b) of this section, if~~] a conflict exists between this
24 Act and any other statutory provision relating to the association,
25 this Act shall control.

26 [~~(b) This section does not apply to a conflict between this~~
27 ~~Act and~~]

1 ~~[(1) the Texas Workers' Compensation Act (Article~~
2 ~~8308-1.01, et seq., Vernon's Texas Civil Statutes);~~
3 ~~[(2) Subchapter D, Chapter 5, of this code; or~~
4 ~~[(3) Article 5.76-2, 5.76-3, 5.76-4, or 5.76-5 of this~~
5 ~~code.]~~

6 SECTION 8. This Act applies only to covered claims that
7 accrue on or after the effective date of this Act. Covered claims
8 that accrue before the effective date of this Act are governed by
9 the law as it existed at the time the covered claim accrued and that
10 law is continued in effect for that purpose.

11 SECTION 9. The change in law made by this Act to Section
12 12(a), Article 21.28-C, Insurance Code, to the liability of a
13 person insured by an impaired insurer's policy, applies only to a
14 cause of action that accrues on or after the effective date of this
15 Act. A cause of action that accrues before the effective date of
16 this Act is governed by the law in effect at the time the cause of
17 action accrues and that law is continued in effect for this purpose.

18 SECTION 10. This Act takes effect September 1, 2003.