

CS for EHB 2434

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THE STATE SENATE
Thursday, March 25, 2004

Committee Substitute for
ENGROSSED
House Bill No. 2434

COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 2434 - By: ASKINS
of the House and LASTER of the Senate.

[insurance - amending 36 O.S., Sections 2003, 2004 and 2007
- Property and Casualty Insurance Guaranty Association Act -
codification]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 36 O.S. 2001, Section 2003, is
amended to read as follows:

Section 2003. The Oklahoma Property and Casualty Insurance
Guaranty Association Act shall apply to workers' compensation
equivalent insurance products approved pursuant to Section ~~4~~ 65 of
~~this act~~ Title 85 of the Oklahoma Statutes and to all kinds of
direct insurance, except life, accident, and health, ~~ocean~~ marine
~~insurance~~, surety and title, as defined in Sections 702, 703, 705,
708 and 709 of this title, mortgage or financial guaranty insurance
or other forms of insurance offering protection against investment
risks, credit insurance, insurance of warranties or service
contracts, annuities, vendors single interest insurance, collateral
protection insurance, and any transaction or combination of
transactions between a person, including affiliates of such person,

1 and an insurer, including affiliates of such insurer, which involves
2 the transfer of investment or credit risk unaccompanied by transfer
3 of investment risk.

4 SECTION 2. AMENDATORY 36 O.S. 2001, Section 2004, is
5 amended to read as follows:

6 Section 2004. As used in the Oklahoma Property and Casualty
7 Insurance Guaranty Association Act:

8 1. "Affiliate" means a person who directly or indirectly,
9 through one or more intermediaries, controls, is controlled by, or
10 is under common control with an insolvent insurer on December 31 of
11 the year next preceding the date the insurer becomes an insolvent
12 insurer;

13 2. "Association" means the Oklahoma Property and Casualty
14 Insurance Guaranty Association;

15 3. "Claimant" means any insured making a first-party claim or
16 any person instituting a liability claim; provided that no person
17 who is an affiliate of the insolvent insurer may be a claimant;

18 4. "Commissioner" means the Commissioner of Insurance;

19 5. "Control" means the possession, direct or indirect, of the
20 power to direct or cause the direction of the management and
21 policies of a person whether through the ownership of voting
22 securities, by contract other than a commercial contract for goods
23 or nonmanagement services, or otherwise, unless the power is the

1 result of an official position with or corporate office held by the
2 person. Control shall be presumed to exist if any person, directly
3 or indirectly, owns, controls, holds with the power to vote, or
4 holds proxies representing ten percent (10%) or more of the voting
5 securities of any other person. This presumption may be rebutted by
6 a showing that control does not exist in fact;

7 6. "Covered claim" means an unpaid claim of an insured or third
8 party liability claimant, including one of unearned premiums, which
9 arises out of and is within the coverage and is subject to the
10 applicable limits of an insurance policy to which this act applies
11 issued by an insurer, if such insurer becomes an insolvent insurer
12 after the effective date of this act and (a) the claimant or insured
13 is a resident of this state at the time of the insured event,
14 provided that for entities other than an individual, the residence
15 of a claimant or insured is the state in which its principal place
16 of business is located at the time of the insured event; or (b) the
17 property from which the claim arises is permanently located in this
18 state. "Covered claim" shall not include any amount awarded as
19 punitive or exemplary damages; sought as a return of premium under
20 any retrospective rating plan; or due any reinsurer, insurer,
21 insurance pool, or underwriting association, as subrogation
22 recoveries or otherwise; provided, that a claim for any such amount,
23 asserted against a person insured under a policy issued by an

1 insurer which has become an insolvent insurer, which, if it were not
2 a claim by or for the benefit of a reinsurer, insurer, insurance
3 pool or underwriting association, would be a "covered claim" may be
4 filed directly with the receiver of the insolvent insurer, but in no
5 event may any such claim be asserted in any legal action against the
6 insured of such insolvent insurer. "Covered claim" shall not
7 include any first-party or third-party claim by or against an
8 insured whose net worth on December 31 of the year preceding the
9 date the insurer becomes an insolvent insurer exceeds Twenty-five
10 Million Dollars (\$25,000,000.00); provided that the net worth of the
11 insured shall be deemed to include the aggregate net worth of the
12 insured and all of its affiliates as calculated on a consolidated
13 basis on December 31 of the year preceding the date the insurer
14 becomes an insolvent insurer. "Covered claim" shall include third-
15 party claims against the insured where the insured has applied for
16 or consented to the appointment of a receiver, trustee, or
17 liquidator for all or a substantial part of the assets of the
18 insured, filed a voluntary petition in bankruptcy, filed a petition
19 or answer seeking a reorganization or arrangement with creditors or
20 pursuant to any insolvency law, or if an order, judgment, or decree
21 is entered by a court of competent jurisdiction, on the application
22 of a creditor, adjudicating the insured as bankrupt or insolvent or
23 approving a petition seeking reorganization of the insured or all or

1 a substantial part of the assets of the insured, regardless of the
2 net worth of the insured on December 31 of the year preceding the
3 date the insurer becomes an insolvent insurer. "Covered claim"
4 shall not include supplementary payment obligations including, but
5 not limited to, adjustment fees and expenses, ~~attorneys'~~ attorney
6 fees and expenses, court costs, interest and bond premiums incurred
7 prior to the determination that an insurer is an insolvent insurer
8 under this act. "Covered claim" shall also mean the claim of an
9 agent for amounts of unearned premiums advanced or paid by such
10 agent on behalf of a policyholder~~r;~~ however, payment of such covered
11 claims for unearned premiums advanced after the effective date of
12 this section shall be made jointly to such agent and policyholder
13 unless an unconditional written assignment has been executed by the
14 policyholder to the agent;

15 7. "Director" means any one of the directors of the Association
16 ~~created herein;~~

17 8. "Insolvent insurer" means an insurer licensed by the
18 Commissioner to transact insurance in this state either at the time
19 the policy was issued or when the insured event occurred and
20 determined to be insolvent and ordered liquidated by a court of
21 competent jurisdiction;

22 9. "Member insurer" means any person who (a) writes any kind of
23 insurance to which this act applies, including the exchange of

1 reciprocal or interinsurance contracts and (b) is licensed by the
2 Commissioner to transact insurance in this state, except those
3 insurers enumerated in Section 110 of ~~Title 36 of the Oklahoma~~
4 ~~Statutes~~ this title;

5 10. "Net direct written premiums" means direct gross premiums
6 written in this state on insurance policies to which this act
7 applies, less return premiums thereon and dividends paid or credited
8 to policyholders on such direct business. "Net direct written
9 premiums" does not include premiums on contracts between insurers or
10 reinsurers; and

11 11. "Person" means an individual, company, insurer,
12 association, organization, society, reciprocal or interinsurance,
13 exchange partnership, syndicate, business trust, corporation, Lloyds
14 association, voluntary association or entity and association, group
15 or department of underwriters.

16 SECTION 3. AMENDATORY 36 O.S. 2001, Section 2007, is
17 amended to read as follows:

18 Section 2007. A. The Association shall:

19 1. Be obligated to pay the covered claims existing prior to the
20 determination of insolvency if the claims arise within thirty (30)
21 days after the determination of insolvency, or before the policy
22 expiration date if less than thirty (30) days after the
23 determination, or before the insured replaces the policy or causes

1 its cancellation, if ~~he~~ the insured does so within thirty (30) days
2 of the determination. Such obligation shall be satisfied by paying
3 to the claimant an amount as follows:

- 4 a. the full amount of a covered claim for benefits under
5 a workers' compensation insurance coverage,
- 6 b. an amount not exceeding Ten Thousand Dollars
7 (\$10,000.00) per policy for a covered claim for the
8 return of unearned premium, and
- 9 c. an amount not exceeding One Hundred Fifty Thousand
10 Dollars (\$150,000.00) per claimant for all other
11 covered claims, but in no event shall the payment of
12 all covered claims, derivative or otherwise, exceed
13 Five Hundred Thousand Dollars (\$500,000.00).

14 In no event shall the Association be obligated to pay a claimant
15 an amount in excess of the obligation of the insolvent insurer under
16 the policy or coverage from which the claim arises or in excess of
17 the limits of the Association's obligation existing on the date on
18 which the order of liquidation is filed with the court clerk;

19 2. Be deemed the insurer to the extent of the obligations on
20 covered claims and to that extent shall have all rights, duties and
21 obligations of the insolvent insurer as if the insurer had not
22 become insolvent;

1 3. Allocate claims paid and expenses incurred among the three
2 accounts set out in Section 2005 of this title separately, and
3 assess member insurers separately for each account amounts necessary
4 to pay the obligations of the Association under this section
5 subsequent to a member insurer becoming an insolvent insurer, the
6 expenses of handling covered claims subsequent to an insolvency, the
7 cost of examinations under Section 2013 of this title, and other
8 expenses authorized by the Oklahoma Property and Casualty Insurance
9 Guaranty Association Act, ~~Sections 2001 et seq. of this title.~~ The
10 assessments of each member insurer shall be in the proportion that
11 the net direct written premiums of the member insurer for the
12 calendar year preceding the assessment on the kinds of insurance in
13 the account bear to the net direct written premiums of all
14 participating insurers for the calendar year preceding the
15 assessment on the kinds of insurance in the account. Each member
16 insurer shall be notified in writing of the assessment not later
17 than thirty (30) days before it is due. No member insurer may be
18 assessed in any year an amount greater than ~~two percent (2%)~~ three
19 percent (3%) of the net direct written premiums of that member or
20 one percent (1%) of that member insurer's surplus as regards
21 policyholders for the calendar year preceding the assessment on the
22 kinds of insurance in the account, whichever is less.

1 If the maximum assessment, together with the other assets of the
2 Association, does not provide in any one (1) year in any account an
3 amount sufficient to make all necessary payments from that account,
4 ~~the funds available~~ Association ~~may be prorated and the unpaid~~
5 ~~portion shall be paid as soon thereafter as funds become available~~
6 assess member insurers for the other accounts an amount not to
7 exceed one percent (1%) of the net direct written premiums of that
8 member for the calendar year preceding the assessment on the kinds
9 of insurance in the other accounts. The Association shall pay
10 claims in any order which it deems reasonable, including the payment
11 of claims as the claims are received from the claimants or in groups
12 or categories of claims. The Association may exempt or defer, in
13 whole or in part, the assessment of any member insurer, if the
14 assessment would cause the member insurer's financial statement to
15 reflect amounts of capital or surplus less than the minimum amounts
16 required for a certificate of authority by any jurisdiction in which
17 the member insurer is authorized to transact insurance. During the
18 period of deferment, no dividends shall be paid to shareholders or
19 policyholders. Deferred assessments shall be paid when such
20 payments will not reduce capital or surplus below required minimums.
21 Such payments may be refunded to those companies receiving larger
22 assessments by virtue of such deferment, or, at the election of any
23 such company credited against future assessments. Each member

1 insurer serving as a servicing facility may set off against any
2 assessment authorized payments made on covered claims and expenses
3 incurred in the payment of such covered claims by such member
4 insurer if they are chargeable to the account for which the
5 assessment is made;

6 4. Investigate claims brought against the Association and
7 adjust, compromise, settle and pay covered claims to the extent of
8 the obligation of the Association and deny all other claims and may
9 review settlements, releases and judgments on covered claims to
10 which the insolvent insurer or its insureds were parties to
11 determine the extent to which such settlements, releases and
12 judgments may be properly contested;

13 5. Notify such persons as the Commissioner directs as provided
14 for in Section 2009 of this title;

15 6. Handle claims through employees or through one or more
16 insurers or other persons incorporated and resident in the State of
17 Oklahoma designated as servicing facilities. Designation of a
18 servicing facility is subject to approval of the Commissioner, but
19 such designation may be declined by a member insurer;

20 7. Reimburse each servicing facility for obligations of the
21 Association paid by the facility and for reasonable expenses
22 incurred by the facility while handling claims on behalf of the
23 Association and pay the other expenses of the Association authorized

1 by the Oklahoma Property and Casualty Insurance Guaranty Association
2 Act; and

3 8. Have standing to appear before any court of this state which
4 has jurisdiction over an impaired or insolvent insurer for whom the
5 Association is or may become obligated pursuant to the provisions of
6 the Oklahoma Property and Casualty Insurance Guaranty Association
7 Act. Such standing shall extend to all matters germane to the
8 powers and duties of the Association including, but not limited to,
9 proposals for rehabilitation, acquisition, merger, reinsuring, or
10 guaranteeing the covered policies of the impaired or insolvent
11 insurer, and the determination of covered policies and contractual
12 obligations of the impaired or insolvent insurer.

13 B. The Association may:

14 1. Employ or retain such persons as are necessary to handle
15 claims and perform other duties of the Association;

16 2. Borrow funds necessary to effect the purposes of the
17 Oklahoma Property and Casualty Insurance Guaranty Association Act in
18 accordance with the plan of operation;

19 3. Sue or be sued;

20 4. Negotiate and become a party to such contracts as are
21 necessary to carry out the purpose of the Oklahoma Property and
22 Casualty Insurance Guaranty Association Act;

1 5. Refund to member insurers in proportion to the contribution
2 of each member insurer that amount by which the assets of the
3 Association exceed its liabilities, if at the end of any calendar
4 year the board of directors finds that the assets of the Association
5 exceed the liabilities as estimated by the board of directors for
6 the coming year;

7 6. Lend monies to an insurer declared to be impaired by the
8 Commissioner. The Association, with approval of the Commissioner,
9 shall approve the amount, length and terms of the loan. "Impaired
10 ~~insurer~~ insurer" for purposes of this paragraph shall mean an
11 insurer potentially unable to fulfill its contractual obligations,
12 but shall not mean an insolvent insurer;

13 7. Perform such other acts as are necessary or proper to
14 effectuate the purpose of the Oklahoma Property and Casualty
15 Insurance Guaranty Association Act; and

16 8. Intervene as a party in interest in any supervision,
17 conservation, liquidation, rehabilitation, impairment or
18 receivership in which policyholders' interests and interests of the
19 Association may be or are affected.

20 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-23-04 - DO
21 PASS, As Amended.