

No. 11-0039

Official Order
of the
Commissioner of Insurance
of the
State of Texas
Austin, Texas

Date: **JAN 13 2011**

Subject Considered:

AMENDMENTS TO
THE TEXAS PROPERTY AND CASUALTY INSURANCE
GUARANTY ASSOCIATION'S PLAN OF OPERATION

General remarks and official action taken:

On this day came on for consideration by the Commissioner of Insurance (Commissioner) the approval of amendment to the Plan of Operation of the Texas Property and Casualty Insurance Guaranty Association (the Association) under chapter 462 of the Texas Insurance Code.

Section 462.103 (4) (b) of the Texas Insurance Code provides that the association shall submit to the commissioner any amendment to the Plan of Operation necessary or suitable to ensure the fair, reasonable, and equitable administration of the Association. The amendment takes effect on the written approval of the Commissioner.

The Association on December 3, 2010, has submitted to the Commissioner for approval amendments to subsection (f) of section 5, entitled, Board of Directors, to bring the Association's Plan of Operation in line with the open meeting act. Such proposed amendments read as follows:

Section. 5. Board of Directors
(f) Meetings.

(1) General Provisions.

All meetings of the Board of Directors shall be conducted in compliance with the open meetings law, Chapter 551, Government Code. Notice of all meetings shall also be provided to the Commissioner.

(2) Regular Meetings.

(A) The board shall hold regular meetings at its main office in Travis County, Texas once each calendar quarter.

(B) At each regular meeting, the board may take any action permitted by law. A quorum shall be required for official action by the board.


(C) All policies of the association related to fulfilling its statutory duties must be approved by the board. For the purpose of this provision, a policy shall mean a general statement of the principles by which the association is guided in the management of its business. Policy shall not include the procedures developed by the association which prescribe the process by which the association fulfills its statutory duties

(3) Special Meetings. Special meetings of the board may be called by the chairperson and shall be called upon request of the commissioner or any two board members.

(4) Emergency Meetings. Emergency meetings of the board may be called by the chairperson and shall be called upon request of the commissioner or any two board members with not less than 2 hours oral notice to each board member and the commissioner of the place, day and time of the meeting and of the reason for the emergency meeting.

After careful consideration, the Commissioner is of the opinion that the revisions to the Plan of Operation as submitted by the Association and the Amendments to the Plan of Operation as set forth above should be approved.

IT IS THEREFORE ORDERED that the Amendment to the Plan of Operation as submitted by the Association on December 3, 2010 is hereby approved and the Plan of Operation as amended takes effect upon the date of this order.



s/ Mike Geeslin
Commissioner of Insurance

Plan of Operation

Sec. 1. General.

(a) The Texas Property and Casualty Insurance Guaranty Association is a non-profit, unincorporated legal entity created by Chapter 462, Texas Insurance Code, as amended.

(b) This plan of operation of the association is adopted pursuant to the requirements of the Act, and supersedes any prior plan of operation. This plan and any amendments to this plan shall be adopted and become effective as provided in the Act, and shall govern the association and its operations. Provisions of the Act which are not expressly stated in this plan are incorporated in this plan by reference.

Sec. 2. Definitions.

In this plan:

“Act” means the Texas Property and Casualty Insurance Guaranty Act (Chapter 462, Texas Insurance Code.)

“Association” means the Texas Property and Casualty Insurance Guaranty Association.

“Board” means the Board of Directors of the Texas Property and Casualty Insurance Guaranty Association.

“Commissioner” means the Commissioner of Insurance of the Texas Department of Insurance.

“Covered claim” has the meaning assigned by Subchapter E of the Act.

“Designated official” shall mean and include any member of the board of directors and any employee of the association.

“Impaired Insurer” has the meaning assigned by Section 462.004(5) of the Act.

“Member Insurer” has the meaning assigned by Section 462.004(6) of the Act.

“Plan” means this plan of operation.

“Receiver” means the Commissioner of Insurance in his capacity as receiver pursuant to Chapter 443, Texas Insurance Code, or a Special Deputy Receiver appointed by the Commissioner.

Any additional definitions provided in the Act apply to this plan.

Sec. 3. Association.

(a) Membership.

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(1) The Texas Property and Casualty Insurance Guaranty Association is a nonprofit, unincorporated legal entity composed of all member insurers, who must be members of the association as a condition of their authority to transact insurance in this state.

(2) Member insurers shall comply with this plan and the Act and failure to comply with this plan or the Act or to pay an assessment when due shall subject the member insurer to sanctions as provided in the Act.

(b) General Powers and Duties.

The powers and duties of the association are as set forth in this plan and more fully set forth in the Act.

(c) Right of Appeal.

A member insurer aggrieved by any final action or decision of the association regarding assessments may appeal to the board. After a final decision by the board, a member insurer may appeal that action or decision to the commissioner not later than the 30th day after the date of the action or decision.

Sec. 4. Participation in the Insolvency Process.

The board recognizes that, along with the commissioner, receiver and the receivership court, the association is a participant in the insolvency process created by the legislature in Chapters 443 and 462, Texas Insurance Code, and, as such, shall endeavor to work with the commissioner, receiver and the receivership court to facilitate the effective and efficient administration of receivership estates and to carry out their respective powers and duties in Chapters 443 and 462, Texas Insurance Code.

Sec. 5. Board of Directors.

(a) Composition.

(1) The association is governed by a board of directors composed of nine persons.

(2) The composition of the board shall always be five industry members and four public members.

(3) If at any time during the period of service on the association's board of directors, any member ceases to be eligible to serve pursuant to Sections 462.053 and 462.054 of the Act, that member shall immediately vacate his or her position on the board of directors.

(b) Selection.

(1) Industry members

The five industry members shall be elected by the member insurers. Each industry board member may select one nominee for each position to be filled by election. All nominees will appear on the ballot. The ballots will also contain a blank for member insurers to vote for a candidate whose name does not appear on the ballot. Ballots will be sent to the member insurers by the association to be returned by a date certain, which shall appear on the ballot. Ballots shall be counted by the association and the name of the person elected will be forwarded to the commissioner by letter for approval.

If the commissioner does not approve a member insurer selected for membership on the board by the member insurers, the member insurers shall select and the board shall submit in writing to the commissioner the name of another member insurer selected to serve on the board as provided above.

(2) The four public members of the board shall be appointed as provided by the Act.

(3) If a vacancy occurs on the board, the members of the board shall elect, by majority vote, a person to fill the vacancy for the unexpired term and shall submit to the commissioner for approval the name of the person elected. Nominations for public members will be made by the remaining public members and submitted to the board for its approval. Nomination for industry members will be made by the remaining industry members and submitted to the board for its approval. If the commissioner fails to approve a person elected by the board to fill a vacancy, the board shall elect and submit to the commissioner another person to serve as a board member.

(c) Terms of Office.

(1) Each term shall run from the beginning of the calendar year to the end of the sixth calendar year after the beginning of the member's term.

(2) The terms of three members of the board shall expire at the end of each odd-numbered calendar year.

(3) Directors shall be eligible to succeed themselves in office.

(4) If a director's term expires pursuant to (c)(1), the director shall serve until the Commissioner appoints such director's successor.

(d) Officers.

(1) The board shall elect from its membership a chairperson, a vice-chairperson, and a secretary-treasurer, and such other officers of the board as it deems necessary. At least one officer must be a public member.

(2) The chairperson shall preside at all meetings of the board and perform such other duties as may be prescribed by the board. When the chairperson is absent from a meeting, is unable to act, or refuses to act, the vice-chairperson shall perform the duties of the chairperson.

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(3) The term of office for each officer of the board shall be one year, coinciding with the fiscal year of the association. An officer shall continue in office until his or her successor is elected.

(e) General Duties and Authority.

The board shall carry out the duties required by the Act and may exercise the powers authorized by the Act. Except as limited by the Act, the board may exercise its powers and carry out its duties through its executive director or other persons designated by the board. The board may take such actions as are necessary to exercise the powers and carry out the duties provided in the Act and in this plan. The executive director or any designee of the board, to the extent authorized by the board, may take such actions as are necessary to exercise the powers and carry out the duties provided in the Act and this plan.

(f) Meetings.

(1) General Provisions.

All meetings of the Board of Directors shall be conducted in compliance with the open meetings law, Chapter 551, Government Code. Notice of all meetings shall also be provided to the Commissioner.

(2) Regular Meetings.

(A) The board shall hold regular meetings at its main office in Travis County, Texas once each calendar quarter.

(B) At each regular meeting, the board may take any action permitted by law. A quorum shall be required for official action by the board.

(C) All policies of the association related to fulfilling its statutory duties must be approved by the board. For the purpose of this provision, a policy shall mean a general statement of the principles by which the association is guided in the management of its business. Policy shall not include the procedures developed by the association which prescribe the process by which the association fulfills its statutory duties.

(3) Special Meetings.

Special meetings of the board may be called by the chairperson and shall be called upon request of the commissioner or any two board members.

(4) Emergency Meetings.

Emergency meetings of the board may be called by the chairperson and shall be called upon request of the commissioner or any two board members with not less than 2 hours oral notice to each board member and the commissioner of the place, day and time of the meeting and of the reason for the emergency meeting.

(g) Expenses.

- (1) Upon approval of the board, members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board.
- (2) Each member of the board is entitled to receive reimbursement for amounts actually spent in performing duties as a member of the board.
- (3) The board shall adopt a form for and procedures to be followed for the reimbursement of expenses.
- (4) Before a member of the board is reimbursed for his or her expenses, the member of the board must submit to the executive director a statement of expenses on a form approved by the board.
- (5) Members of the board shall not otherwise be compensated by the association for their services.

(h) Audit.

The board will adopt an audit plan annually.

(i) Delegation of authority.

- (1) The chairman of the board of directors may create committees or task forces and assign responsibilities to the committee or task force.
- (2) The committee or task force may meet outside of a regular meeting of the board to consider the matters assigned to it.
- (3) The committee or task force shall report its activities and recommendations to the board at a regular board meeting.

(j) Training.

Each member of the board shall receive training, including but not limited to, overviews of:

- (1) the board members' statutory and fiduciary responsibilities;
- (2) the association's investment policy;
- (3) the Guaranty Act; and,
- (4) open meetings.

Sec. 6. Operations.

(a) General.

(1) The official address of the association is the address of the main office of the association in Travis County, Texas.

(2) The fiscal year of the association is the calendar year.

(3) The association shall procure goods and services in accordance with its purchasing policy which shall include provisions for competitive bidding and competitive selection.

(4) The association's agent for service of process is its executive director, who may be served at the main office of the association in Travis County, Texas.

(b) Procedures Relating to Claims.

(1) The association shall exercise its powers and discharge its duties pursuant to the Act. Further, the association shall establish a claim filing procedure which includes, but is not limited to, notice by the association to claimants, procedures for filing claims seeking recovery from the association, and a procedure for appealing the denial of claims by the association.

(2) Upon the commissioner's request, the association shall provide initial notice of impairment to insureds and other interested parties in a format which has been presented to the commissioner for review and comment. The association shall maintain a list of persons notified pursuant to this section.

(3) Acceptable claim forms shall include claims submitted on an accepted form of the impaired insurer prior to impairment or a proof of claim acceptable to the receiver subsequent to the impairment.

(4) Covered claims are considered filed with the association if :

(A) the claim existed in the company's records at the time of impairment;

(B) the claim is filed or received prior to the claim filing deadline applicable to the association, including claims referred by the receiver; or

(C) (i) the claim is for recovery of statutory workers' compensation benefits under the Texas Workers' Compensation Act, Texas Labor Code Chapter 401, *et seq.* and its predecessor statute, V.T.C.S. art. 8306, *et seq.*, or the United States Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C.A. §901, *et seq.*; and

(ii) the claim arises under "Coverage A" or "Part 1" of the Uniform Workers' Compensation Policy, or the Longshoremen's and Harbor Workers' Endorsement; and

(iii) proper notice of the claim was given in accordance with the Texas Workers' Compensation Act, Texas Labor Code Chapter 401, *et seq.* and its predecessor statute, V.T.C.S. art. 8306, *et seq.*, or the United States Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C.A. §901, *et seq.*; or

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(D) the claim is timely filed and the claimant follows written procedures established by the association.

(5) In response to the receipt of a claim, the association shall provide the claimant with a statement of the claimant's rights and obligations under the Act including an explanation of the claimant's statutory obligation to exhaust other insurance accompanied by an "affidavit of other insurance" and the association's procedure for appealing the denial of a claim.

(6) Any denial of a claim, whether in whole or in part, by the association shall be made in writing. The claimant shall be informed of the reason for denial and notified that the denial does not preclude any rights or remedies which may be available to the claimant.

(7) The association shall establish an internal procedure for claimants to appeal the denial of a claim. The appeal shall include review by association management.

(c) Reporting.

(1) The association shall provide all information requested by the receiver or special deputy receiver regarding claims processed by the association.

(2) Upon the closure of an estate, the association shall provide certification of the status of the association's discharge of its duties under the Act relative to that estate.

(d) Assets and Deposits.

(1) The association may open and maintain accounts for funds of the association in one or more banks, savings and loan associations, and other financial institutions and also, may deposit funds into the Texas Treasury Safekeeping Trust Company. Except for the Texas Treasury Safekeeping Trust Company, funds maintained in these financial institutions must be insured by a federal agency that provides for deposit insurance or must be fully secured with bonds, notes, securities, or other evidences of indebtedness supported by the full faith and credit of the United States or guaranteed as to principal and interest by the United States. If the balance in an association account under the subsection insured by a federal agency exceeds the amount of the federal insurance, the board must enter into an agreement with the financial institution requiring security as described in this subdivision that is equivalent to the amount that exceeds the maximum amount insured.

(2) Funds of the association may be invested and reinvested by the board or its authorized representative in any manner approved by the board in its investment policy.

(3) The association may delegate deposit and withdrawal authority relating to its accounts to specified officers and employees and shall require those officers and employees to be covered by appropriate bonds. Money may be withdrawn from any of the association accounts, provided that signatures of at least two persons authorized by the board shall be required on any withdrawals and transfers to accounts other than those of the association.

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(4) All assets of the association deposited in accounts under Subdivision (1) of this subsection shall be deposited in the name of the association and all other assets of the association must be owned or held in the name of the association. An up-to-date, current inventory of the assets of the association, describing the type and location of assets, shall be kept as a part of the financial records of the association, properly accounting for the cost or value of the assets and their depreciation, if any. The board may establish any additional procedures consistent with the Act for the handling of any assets of the association.

(5) A record shall be maintained at the main office of the association of all assets and deposits of the association and all financial transactions of the association, its agents, and the board relating to the association. Documentation relating to all such assets, deposits, and transactions shall be made and maintained by the association in accordance with generally accepted accounting standards.

(e) Assessments.

(1) Purpose of Assessments.

(A) The association shall assess member insurers for amounts necessary to pay:

(i) the obligations of the association under Section 462.302 of the Act;

(ii) the expenses of handling covered claims;

(iii) administrative expenses as authorized by the Act; and

(iv) other expenses as authorized by the Act.

(B) Assessments shall be determined pursuant to an assessment policy adopted by the board. A copy of the association's assessment policy shall be provided to association members at their request.

(2) Collection of Assessments.

The association shall calculate and collect assessments from its member insurers pursuant to the Act. The association shall report to the commissioner any delinquencies in the payment of assessments by any member insurers.

(3) Special authority to assess.

In the event of a natural disaster or other catastrophic event which creates substantial covered claim liability for the association, the board shall authorize the chairman to contact the commissioner of insurance to review the association's ability to meet its liability obligations under the Act.

If the chairman and the commissioner determine by this review that the association is in need of funds beyond its ability to assess member insurers, the chairman and the commissioner of

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insurance shall make application to the governor in accordance with the Act for the authority to assess an additional 2% in the other lines category.

This authority to assess is limited to the year in which it is granted. If additional funds are required to discharge the association's statutory obligations resulting from the natural disaster or catastrophic event in the following year, the chairman and the commissioner of insurance will be required to seek additional authority from the governor in the above described manner.

(f) Borrowing Funds.

(1) On a majority vote of the members of the board, the board may authorize the chairperson or another designated member of the board to borrow funds necessary to carry out the powers and duties of the association.

(2) At the time the board authorizes the chairperson or other member of the board to borrow funds on behalf of the association, the board shall establish the terms and conditions under which the chairperson or the other designated member of the board will borrow the funds.

(3) The chairperson, or other person designated by the board to borrow funds on behalf of the association shall report to the board regarding borrowed funds at its next regular meeting following completion of the loan transaction, unless required to report at an earlier time. The association shall maintain detailed written records relating to all borrowed funds.

Sec. 7. Indemnification.

Indemnification Against Liability.

The association shall indemnify designated officials pursuant to an indemnification policy adopted by the board.