The State of South Carolina

Office of the Attorney General

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The Honorable John Courson
Member, South Carolina Senate
Post Office Box 11619
Columbia, South Carolina 29211

Dear Senator Courson:

Your letter of October 20, 1987 to Attorney General Medlock has been referred to me for response. In your letter, you have inquiried about the obligations of the South Carolina Insurance Guaranty Association, an organization created pursuant to, and governed in its operation by, the provisions of Section 38-19-10, et seq. of the 1976 S. C. Code of Laws, as amended.

QUESTIONS PRESENTED:

It appears that your questions may be stated as follows: What is the obligation of the Association with respect to a policy written by an insolvent insurance carrier to cover a ten-unit Horizontal Property Regime, or condominium, for $3,000,000.00? Secondly, would the obligation of the Association be altered, in any way, if the policy were a master policy in which each unit owner was named as a policyholder?

DISCUSSION:

Section 38-19-60(1)(a), Code, in pertinent part, requires that the Association shall:

> "Be obligated to the extent of the covered claim existing prior to the determination of insolvency and arising within thirty days after the determination of insolvency, or before the policy expiration date if less than thirty days after the determination, or

> before the insured replaces the policy or causes its cancellation, if he does so within thirty days of the determination, but such obligation shall include only that amount of each covered claim which is in excess of one hundred dollars and is less than three hundred thousand dollars...."

By the plain and unambiguous language of this subsection, the Association is obligated to the extent of any covered claim that meets the additional criteria[1] set forth in the remainder of the subsection. The Association's obligation, of course, is limited to only the amount of each covered claim that exceeds one hundred dollars and is less than three hundred thousand dollars.

Section 38-19-20(4), Code, in pertinent part, defines a covered claim as an unpaid claim which:

> "arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this chapter applies...."

The provisions of Section 38-19-30, Code, make the chapter applicable to "all kinds of direct insurance, except life, title, surety, disability, credit mortgage guaranty and ocean marine insurance." From the facts which you have set forth, it seems clear that the policies of insurance in question would be the kind of policies to which the chapter would be applicable.

Thus, the analysis must now focus on whether the unpaid claims, in your examples, "arise out of and are within the coverage and not in excess of the applicable limits of" the

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[1]The additional criteria, although not relevant to this discussion, requires that the covered claim exist prior to the determination of insolvency and (1) arise within thirty days after the determination of insolvency, or (2) before the policy expiration date if less than thirty days after the determination, or (3) before the insured replaces the policy or causes its cancellation, if he does so within thirty days of the determination.

policies. The resolution of this issue, and the answers to your questions, would, of necessity, depend upon a reading and construction of the terms of the insurance policies involved.

The facts of your first question appear to present a situation in which the insolvent carrier had written a policy which, by its terms, insured an entire condominium, consisting of ten individual units, for a sum of $3,000,000.00. Under these facts, the policy covers only the entire condominium. Therefore, assuming a total loss, the Association, in accordance with the policy terms and statutory provisions, would be obligated only to the extent of a maximum amount of $299,999.99 on the entire unit.

Your second question presupposes the existence of a master policy, in which each of the owners of the ten individual units in the condominium, is named as a policyholder. A master policy is an insurance policy which covers a group of persons as in health or life insurance written as group insurance. Black's Law Dictionary, 5th Edition, 1979. McFarland v. Business Men's Assurance Company of America, 105 Ga. App. 209, 124 S.E.2d 432, (1962).

In the case at hand, it is assumed that the master policy was written so as to provide coverage for each unit in the ten unit complex. Thus, while there would be only one policy, an unpaid claim resulting from a loss to either or any of the individual units would form the basis of a "covered claim." Assuming further that the terms of the policy were such that each unit was covered for the sum of $300,000.00 with total coverage for the entire condominium in the amount of $3,000.000.00, a total loss would result in the Association being obligated to the extent of $299,999.99 on each of the individual units.

SUMMATION:

As the foregoing analysis demonstrates, the Association's obligation, up to and including the sum of $299,999.99, largely depends on the terms of the policy written by the insolvent insurance carrier. Here, with respect to your first question, it has been assumed that the policy terms provide coverage on only the entire condominium and do not provide separate coverage for each individual unit. Given these facts, this Office concludes that the Association would be obligated to the extent of one covered claim, up to a maximum amount of $299,999.99.

With respect to the second inquiry, the hypothesis is that the terms of the master policy provide separate coverage for each individual unit. On those facts, we conclude that a loss sustained by either or any of the individual units would give rise to a separate covered claim. As a result, the Association would be obligated to a maximum amount of $299,999.99 on each unit.

Please be advised that this opinion is not intended as a comment on a specific factual situation; nor is it predicated upon an examination of actual insurance policies. Of course, policy provisions and other relevant facts differing from those set forth hereinabove could result in conclusions dissimilar to those reached in this opinion.

I trust that you will find this information to be responsive to your concerns. Please contact me if I may be of any further assistance.

Very truly yours,

Wilbur E Johnson

Wilbur E. Johnson
Assistant Attorney General

WEJ/fc

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