

July 9, 2013

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**SENT VIA FACSIMILE – 803-734-1839**

The Honorable V. Claire Allen, Deputy Clerk  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

**RECEIVED**  
JUL 15 2013  
SC Court of Appeals

RE: Gary Jeter, Jr. v. All My Sons Moving & Storage  
WCC File No.: 1113278  
Appellate Case No.: 2013-000599

Dear Ms. Allen:

I am writing in response to your letter dated June 28, 2013 requesting a statement of position on the liquidation order involving ULLICO Casualty Company and its impact on the above-referenced appeal(s). First, by Order of the Court of Chancery of the State of Delaware, dated May 30, 2013, ULLICO Casualty Company was declared insolvent.

Second, because ULLICO Casualty Company operated as an insurer in the State of South Carolina, all covered claims filed prior to the date of insolvency currently falls under the direction and control of the South Carolina Property and Casualty Insurance Guaranty Association [hereinafter "the Guaranty Association" or "Guaranty Fund"]. *S.C. Code Ann. §§38-31-20(8) and 38-31-40* (2013). The Order of the South Carolina Workers' Compensation Commission dated June 10, 2013 confirms the insolvency of ULLICO Casualty Company and the power and authority of the Guaranty Fund to adjust claims on behalf of ULLICO Casualty Company, the insolvent insurer. *S.C. Code Ann. §38-31-20(7)* (2013).

Third, because the Guaranty Association now acts on behalf of the insolvent carrier, ULLICO Casualty Company, *Section 38-31-160* mandates that all proceedings involving a claim in which ULLICO Casualty Company is a party and is obligated to defend in any Court in this State be stayed for ninety (90) days from the date of insolvency. The Statute further states that the 90 day stay is afforded to the Guaranty

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Association in order to permit the association time to assess the claim and determine a proper defense.

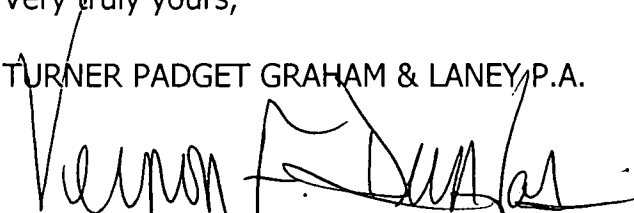
The instant case involving the coverage issue is inextricably intertwined with the merits appeal which is referenced by Appellate Case Number 2013-000764, which involves the compensability of the worker's compensation claim. Because of the relationship between the two appeals with regard to coverage and compensability, in the interest of judicial economy and in compliance with the Statute, the two claims should be stayed for ninety days. Therefore, the appeals in this case should be processed simultaneously.

Accordingly, Linda Byars McKenzie, counsel for Gary Jeter with respect to the appeal of the merits aspect of this claim, concurs with the position that the appeals in this case be stayed as required by statute until August 27, 2013. If the Guaranty Association has not performed all due diligence necessary to defend this appeal by August 27th, it will be incumbent upon Guaranty Association to request additional time in which to file its brief in accordance with the Court's discretion.

With kind and warm regards, I am

Very truly yours,

TURNER PADGET GRAHAM & LANEY, P.A.

  
Vernon F. Dunbar

VFD/jsm

Enclosures

cc: The Honorable Virginia L. Crocker (w/enclosures)  
Peter H. Dworjanyn, Esquire (w/enclosures)  
Linda B. McKenzie, Esquire (w/enclosures)  
Ms. Angie Green (w/enclosures)  
Mr. Mark Hicks **SENT VIA EMAIL** (w/enclosures)

## CHAPTER 31.

### SOUTH CAROLINA PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION

#### SECTION 38-31-10. Short title.

This chapter is known and may be cited as the "South Carolina Property and Casualty Insurance Guaranty Association Act".

**HISTORY:** Former 1976 Code Section 38-31-10 [1953 (48) 493; 1956 (49) 2146; 1962 Code Section 37-307] recodified as Section 38-65-210 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38-19-10 [1962 Code Section 37-838; 1971 (57) 1001] recodified as Section 38-31-10 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 632.

#### SECTION 38-31-20. Definitions.

As used in this chapter:

- (1) "Account" means any one of the four accounts created by Section 38-31-40.
- (2) "Affiliate" means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December thirty-first of the year next preceding the date the insurer becomes an insolvent insurer.
- (3) "Affiliate of the insolvent insurer" means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December thirty-first of the year next preceding the date the insurer becomes an insolvent insurer.
- (4) "Association" means the South Carolina Property and Casualty Insurance Guaranty Association created under Section 38-31-40.
- (5) "Association similar to the association" means any guaranty association, security fund, or other insolvency mechanism which affords protection similar to that of the association. The term also includes any property/casualty insolvency mechanism which obtains assessments or other contributions from insurers on a pre-insolvency basis.
- (6) "Claimant" means any insured making a first party claim or any person instituting a liability claim. However, no person who is an affiliate of the insolvent insurer may be a claimant.
- (7) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact.
- (8) "Covered claim" means an unpaid claim, including one of unearned premiums, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if the insurer is an insolvent insurer and (a) the claimant or insured is a resident of this State at the time of the insured event, if for entities other than an individual, the residence of a claimant or insured is the state in which its principal place of business is located at the time of the insured event or (b) the claim is for first-party benefits for damage to property permanently located in this State. 'Covered claim' does not include:
  - (a) any amount awarded as extra-contractual damages unless awarded against the association;
  - (b) any amount sought as a return of premium under any retrospective rating plan;
  - (c) any amount due any reinsurer, insurer, insurance pool, or underwriting association as subrogation recoveries, reinsurance recoveries, contribution, indemnification, or otherwise. No such claim for any amount due any reinsurer, insurer, insurance pool, or underwriting association may be asserted against a

claimant or a person insured under a policy issued by an insolvent insurer other than to the extent such a claim exceeds the association obligation limitations set forth in Section 38-31-60;

(d) any first party claim by an insured whose net worth exceeds ten million dollars on December thirty-first of the year next preceding the date the insurer becomes an insolvent insurer; provided that an insured's net worth on such date must be deemed to include the aggregate net worth of the insured and all of its subsidiaries as calculated on a consolidated basis;

(e) any first party claims by an insured which is an affiliate of the insolvent insurer;

(f) any fee or other amount relating to goods or services sought by or on behalf of any attorney or other provider of goods or services retained by the insolvent insurer or an insured prior to the date it was determined to be insolvent;

(g) any fee or other amount sought by or on behalf of any attorney or other provider of goods or services retained by any insured or claimant in connection with the assertion or prosecution of any claim, covered or otherwise, against the association; or

(h) any claims for interest.

(9) "Insolvent insurer" means an insurer (a) licensed to transact insurance in this State either at the time the policy was issued or when the insured event occurred and (b) determined to be insolvent by a court of competent jurisdiction in the insurer's state of domicile or of this State and which the director or his designee has found fails to meet its obligation to policyholders in this State.

(10) "Insured" means any named insured, any additional insured, any vendor, lessor, or any other party identified as an insured under the policy.

(11) "Member insurer" means any person who (a) writes any kind of insurance to which this chapter applies under Section 38-31-30, including the exchange of reciprocal or interinsurance contracts, and (b) is licensed to transact insurance in this State. An insurer shall cease to be a member insurer effective on the day following the termination or expiration of its license to transact the kinds of insurance to which this chapter applies; however, the insurer shall remain liable as a member insurer for any and all obligations, including obligations for assessments levied prior to the termination or expiration of the insurer's license and assessments levied after the termination or expiration, which relate to any insurer which became an insolvent insurer prior to the termination or expiration of such insurer's license.

(12) "Net direct written premiums" means direct gross premiums written in this State on insurance policies to which this chapter applies, less return premiums on the policies and dividends paid or credited to policyholders on the direct business. It does not include premiums on contracts between insurers or reinsurers.

(13) "Person" means an individual, corporation, partnership, association, voluntary organization, or governmental entity.

**HISTORY:** Former 1976 Code Section 38-31-20 [1962 Code Section 37-307.1; 1970 (56) 2505] recodified as Section 38-65-30 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38-19-20 [1962 Code Section 37-822; 1971 (57) 1001] recodified as Section 38-31-20 by 1987 Act No. 155, Section 1; 1988 Act No. 402, Section 1; 1993 Act No. 181, Section 632; 1995 Act No. 97, Section 1; 2001 Act No. 82, Section 9, eff July 20, 2001.

### **SECTION 38-31-30. Application of chapter.**

This chapter applies to all kinds of direct insurance but does not apply to the following:

- (1) life, annuity, health, or accident insurance;
- (2) mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks;
- (3) fidelity or surety bonds, or any other bonding obligations;
- (4) credit insurance, vendors' single interest insurance, collateral protection insurance, or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;
- (5) insurance of warranties or service contracts;

(6) insurance written on a retroactive basis to cover known losses which have resulted from an event with respect to which a claim has already been made, and the claim is known to the insurer at the time the insurance is bound;

(7) title insurance;

(8) ocean marine insurance; ocean marine insurance includes marine insurance as defined in Section 38-1-20(28), except for inland marine, and includes any other form of insurance, regardless of the name, label, or marketing designation of the insurance policy, which insures against maritime perils or risks and other related perils or risks, which are usually insured against by traditional marine insurance, such as hull and machinery, marine builders risk, and marine protection and indemnity. Such perils and risk insured against include without limitation loss, damage, or expense or legal liability of the insured for loss, damage, or expense arising out of or incident to ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft, or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death or for loss or damage to the property of the insured or another person;

(9) any transaction or combination of transactions between a person, including affiliates of the person, and an insurer, including affiliates of the insurer, which does not effect a transfer of risk from the person, including affiliates of the person, to the insurer, including affiliates of the insurer, to the extent there is not a transfer of risk.

**HISTORY:** Former 1976 Code Section 38-31-30 [1953 (48) 493; 1959 (51) 302; 1962 Code Section 37-301; 1976 Act No. 732 Section 1] recodified as Section 38-65-40 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38-19-30 [1962 Code Section 37-821; 1971 (57) 1001] recodified as Section 38-31-30 by 1987 Act No. 155, Section 1; 1988 Act No. 402, Section 2; 1993 Act No. 181, Section 632; 1994 Act No. 367, Section 1.

**SECTION 38-31-40.** Association created; membership as condition of authority to transact insurance; accounts.

There is created a nonprofit unincorporated legal entity to be known as the South Carolina Property and Casualty Insurance Guaranty Association. All insurers defined as member insurers in Section 38-31-20(8) are members of the association as a condition of their authority to transact insurance in this State. The association shall perform its functions under a plan of operation established and approved under Section 38-31-70 and shall exercise its powers through a board of directors established under Section 38-31-50. For purposes of administration and assessment, the association is divided into four separate accounts:

- (a) the workers' compensation insurance account;
- (b) the automobile insurance account;
- (c) the homeowners multiple peril and farmowners multiple peril insurance account;
- (d) the account for all other insurance to which this chapter applies.

**HISTORY:** Former 1976 Code Section 38-31-40 [1953 (48) 493; 1956 (49) 2146; 1962 Code Section 37-302; 1976 Act No. 732 Section 2; 1981 Act No. 45] recodified as Section 38-65-40 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38-19-40 [1962 Code Section 37-823; 1971 (57) 1001] recodified as Section 38-31-40 by 1987 Act No. 155, Section 1; 1988 Act No. 402, Section 3; 1993 Act No. 181, Section 632.

**SECTION 38-31-50.** Board of directors.

(1) The board of directors of the association shall consist of not less than five nor more than nine persons who shall serve terms as established in the plan of operation. Member insurers shall select the

[1962 Code Section 37-831; 1971 (57) 1001] recodified as Section 38-31-120 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 632.

**SECTION 38-31-130.** Exemption of Association from fees and taxes.

The association is exempt from payment of all fees and all taxes levied by this State or any of its political subdivisions, except taxes levied on real or personal property.

**HISTORY:** Former 1976 Code Section 38-31-130 [1962 Code Section 37-312.2; 1969 (56) 699] recodified as Section 38-65-330 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38-19-130 [1962 Code Section 37-832; 1971 (57) 1001] recodified as Section 38-31-130 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 632.

**SECTION 38-31-140.** Rates.

The rates and premiums charged for insurance policies to which this chapter applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association. These rates may not be considered excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

**HISTORY:** Former 1976 Code Section 38-31-140 [1962 Code Section 37-312.3; 1969 (56) 699] recodified as Section 38-65-340 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38-19-140 [1962 Code Section 37-833; 1971 (57) 1001] recodified as Section 38-31-140 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 632.

**SECTION 38-31-150.** Immunity from liability for action taken under chapter.

There is no liability on the part of, and no cause of action of any nature may arise against, any member insurer, the association's agents or employees, the board of directors, or the director or his representatives for any act or omission in the performance of their powers and duties under this chapter. This section does not relieve the association of any of its liability.

**HISTORY:** Former 1976 Code Section 38-31-150 [1962 Code Section 37-312.4; 1969 (56) 699] recodified as Section 38-65-350 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38-19-150 [1962 Code Section 37-834; 1971 (57) 1001] recodified as Section 38-31-150 by 1987 Act No. 155, Section 1; 1988 Act No. 402, Section 7; 1993 Act No. 181, Section 632.

**SECTION 38-31-160.** Stay of proceedings involving insolvent insurers; rights of Association in these proceedings.

All proceedings involving covered claims in which the insolvent insurer is a party or is obligated to defend a party in any court in this State must be stayed ninety days from the date insolvency is determined to permit proper defense by the association. The court may stay the proceedings for a longer period of time if the court finds the additional time is necessary to permit proper defense by the association. As to any judgment, decision, order, verdict, or finding based on the insurer's default or failure to defend the insured, the association may apply to have the judgment, decision, order, verdict, or finding set aside by the same court or administrator which made it and must be permitted to defend against the claim on its merits.