degree and shall, upon conviction, be sentenced to pay a fine of not more than one thousand ($1,000) dollars.

(b) In addition to any other penalty provided for in subsection (a) or otherwise provided by law, including any suspension, revocation or refusal to renew a license, any person, firm, association or corporation violating any provision of this article shall be liable to a civil penalty not exceeding one thousand ($1,000) dollars for the first offense and not exceeding two thousand ($2,000) dollars for each succeeding offense.

(c) The penalties in this section are not exclusive remedies. Penalties may also be assessed under the act of July 22, 1974 (P.L. 589, No. 205), known as the "Unfair Insurance Practices Act," [1] and any other applicable statute.

1921, May 17, P.L. 682, No. 284, art. XVI, § 1625, added 1992, Dec. 18, P.L. 1519, No. 178, § 19, effective in 120 days.

1 40 P.S. § 1171.1 et seq.

Historical and Statutory Notes

Prior Laws:

1966, Jan. 24, P.L. (1965) 1509, § 16 (40 P.S. § 1006.16).

ARTICLE XVII. LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION.

§ 991.1701. Purpose

The purpose of this article is to protect, subject to certain limitations, the persons specified in section 1703(a)[1] against failure in the performance of contractual obligations, under life and health insurance policies and annuity contracts specified in section 1703(b),[2] because of the impairment or insolvency of the member insurer that issued the policies or contracts. To provide this protection, an association of insurers is created to pay benefits and to continue coverages as limited herein, and members of the association are subject to assessment to provide funds to carry out the purpose of this article.

1921, May 17, P.L. 682, No. 284, art. XVII, § 1701, added 1992, Dec. 18, P.L. 1519, No. 178, § 19, imd. effective.

1 40 P.S. § 991.1703(a).
2 40 P.S. § 991.1703(b).

Historical and Statutory Notes

Prior Laws:

1978, Nov. 26, P.L. 1188, No. 280, § 2 (40 P.S. § 1802).

§ 991.1702. Definitions

As used in this article the following words and phrases shall have the meanings given to them in this section:

"Account." Any of the two accounts created under section 1704.[1]

"Association." The Pennsylvania Life and Health Insurance Guaranty Association created under section 1704.

"Commissioner." The Insurance Commissioner of the Commonwealth.

"Contractual obligation." Any obligation under a policy or contract or certificate under a group policy or contract or portion thereof for which coverage is provided under section 1703.[2]

"Covered policy." Any policy or contract within the scope of this article under section 1703.

"Department." The Insurance Department of the Commonwealth.

"Employee Retirement Income Security Act of 1974" or "ERISA." The Employee Retirement Income Security Act of 1974 (Public Law 93–406, 29 U.S.C. § 1001 et seq.).

"Impaired insurer." A member insurer which, after the effective date of this article, is not an insolvent insurer and:

(1) is deemed by the Insurance Commissioner to be potentially unable to fulfill its contractual obligations; or

(2) is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

"Insolvent insurer." A member insurer which, after the effective date of this article, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

"Internal Revenue Code of 1986." The Internal Revenue Code of 1986 (Public Law 99–514, 26 U.S.C. § 1 et seq.).

"Member insurer." Any insurer licensed or which holds a certificate of authority to transact in this Commonwealth any kind of insurance for which coverage is provided under section 1703 and includes any insurer whose license or certificate of authority in this Commonwealth may have been suspended, revoked, not renewed or voluntarily withdrawn. The term does not include any of the following:

(1) A nonprofit hospital or medical service organization.

(2) A health maintenance organization.

(3) A fraternal benefit society.

(4) A mandatory State pooling plan.

(5) A mutual assessment company or any entity that operates on an assessment basis.

(6) An insurance exchange.

(7) Any entity similar to any of the above.

"Moody's Corporate Bond Yield Average." The Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

"Person." Any individual, corporation, partnership, association or voluntary organization.

"Premiums." The amounts received on covered policies or contracts less premiums, considerations and deposits returned thereon and less dividends and experience credits thereon. The term does not include any amounts received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided under section 1703(b) except that assessable premium shall not be reduced on account of sections 1703(b)(2)(iii) relating to interest limitations and 1703(c)(1)(ii) relating to limitations with respect to any one individual, any one participant and any one contract holder. The term does not include any premiums in excess of five million ($5,000,000) dollars on any unallocated annuity contract not issued under a governmental retirement plan established under section 401, 403(b) or 457 of the Internal Revenue Code of 1986 (Public Law 99–514, 26 U.S.C. § 1 et seq.).

"Resident." Any person who resides in this Commonwealth at the time a member insurer is determined to be an impaired or insolvent insurer and to whom a contractual obligation is owed. A person may be a resident of only one state, which in the case of a person other than a natural person, shall be its principal place of business.

"Supplemental contract." Any agreement entered into for the distribution of policy or contract proceeds.

"Unallocated annuity contract." Any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.

1921, May 17, P.L. 682, No. 284, art. XVII, § 1702, added 1992, Dec. 18, P.L. 1519, No. 178, § 19, imd. effective.

[1] 40 P.S. § 991.1704.

[2] 40 P.S. § 991.1703.

Historical and Statutory Notes

Prior Laws:

1978, Nov. 26, P.L. 1188, No. 280, § 4 (40 P.S. § 1804).

Notes of Decisions

Covered policy 1
Resident 2

1. Covered policy

Contracts purchased by trustee of defined contribution plan from insurer which subsequently went insolvent were "annuity contracts" and thus "covered policies" under statutes governing Pennsylvania Life and Health Insurance Guaranty Association (PLHIGA); contracts were identified as group annuity contracts, defined term "annuitant" as individual upon whose life amount and duration of benefits depended, provided that trustee could withdraw annuity value and purchase individual annuity for plan participant, and provided participant with option to choose from three types of annuity benefit payments in addition to determining periodic benefit payment amounts; insurance commissioner had earlier approved contracts as "annuity contracts." Unisys Corp. v. Pennsylvania Life and Health Ins. Guar. Ass'n, 667 A.2d 1199, Cmwlth.1995.

2. Resident

Corporation as trustee of defined contribution plans and legal owner of guaranteed investment contracts issued by insurer who subsequently went insolvent was "resident" to whom contractual obligations were owed by Pennsylvania Life and Health Insurance Guaranty Association (PLHIGA). Unisys Corp. v. Pennsylvania Life and Health Ins. Guar. Ass'n, 667 A.2d 1199 Cmwlth.1995.

Resident participants in defined contribution plans who were equitable owners of guaranteed investment contracts issued by insurer who subsequently went insolvent and which contracts were held in trust for their benefit were "residents" for purposes of statutory obligations owed by Pennsylvania Life and Health Insurance Guaranty Association (PLHIGA). Unisys Corp. v. Pennsylvania Life and Health Ins. Guar. Ass'n, 667 A.2d 1199, Cmwlth.1995.

§ 991.1703. Coverage and limitations

(a) This article shall provide coverage to the following persons for the policies and contracts specified in subsection (b):

(1) To persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees or payees of the persons covered under paragraph (2).

(2) To persons who are owners of or certificate holders under these policies or contracts or, in the case of unallocated annuity contracts, to the persons who are the contract holders and who:

(i) are residents; or

(ii) are not residents, but only under all of the following conditions:

(A) the insurers which issued such policies or contracts are domiciled in this Commonwealth;

(B) such insurers never held a license or certificate of authority in the states in which such persons reside;

(C) these states have associations similar to the association created by this article; and

(D) these persons are not eligible for coverage by those associations.

(b)(1) This article shall provide coverage to the persons specified in subsection (a) for direct, nongroup life, health, annuity and supplemental policies or contracts, for certificates under direct group policies and contracts and for unallocated annuity contracts issued by member insurers, except as limited by this article. Annuity contracts and certificates under group annuity contracts include, but are not limited to, guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement agreements, lottery contracts and any immediate or deferred annuity contracts.

(2) This article shall not provide coverage for any of the following:

(i) Any portion of a policy or contract not guaranteed by the insurer or under which the risk is borne by the policy or contract holder.

(ii) Any policy or contract of reinsurance, unless assumption certificates have been issued.

(iii) Any portion of a policy or contract to the extent that the rate of interest on which it is based:

(A) averaged over the period of four (4) years prior to the date on which the association becomes obligated with respect to such policy or contract, exceeds a rate of interest determined by subtracting two (2) percentage points from Moody's Corporate Bond Yield Average averaged for the same four-year period or for such lesser period if the policy or contract was issued less than four (4) years before the association became obligated; and

(B) on and after the date on which the association becomes obligated with respect to such policy or contract, exceeds the rate of interest determined by subtracting three (3) percentage points from Moody's Corporate Bond Yield Average as most recently available.

(iv) Any plan or program of an employer, association or similar entity to provide life, health or annuity benefits to its employes or members to the extent that such plan or program is self-funded or uninsured, including, but not limited to, benefits payable by an employer, association or similar entity under:

(A) a Multiple Employer Welfare Arrangement as defined in section 514 of the Employee Retirement Income Security Act of 1974;

(B) a minimum premium group insurance plan;

(C) a stop-loss group insurance plan; or

(D) an administrative services only contract.

(v) Any portion of a policy or contract to the extent that it provides dividends or experience rating credits or provides that any fees or allowances to be paid to any person, including the policyholder or contract holder, in connection with the service to or administration of such policy or contract.

(vi) Any policy or contract issued in this Commonwealth by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in this Commonwealth.

(vii) Any unallocated annuity contract issued to an employe benefit plan protected under the Federal Pension Benefit Guaranty Corporation.

(viii) Any portion of any unallocated annuity contract which is not issued to or in connection with a specific employe, union or association of natural persons benefit plan or a government lottery.

(c)(1) The benefits for which the association may become liable shall in no event exceed the lesser of:

(i) the contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(ii)(A) With respect to any one life, regardless of the number of policies or contracts, the following shall apply:

(I) Three hundred thousand ($300,000) dollars in life insurance death benefits, but not more than one hundred thousand ($100,000) dollars in net cash surrender and net cash withdrawal values for life insurance.

(II) One hundred thousand ($100,000) dollars in health insurance benefits, including any net cash surrender and net cash withdrawal values.

(III) Three hundred thousand ($300,000) dollars in annuity benefits, including one hundred thousand ($100,000) dollars in net cash surrender and net cash withdrawal values.

(B) With respect to each individual participating in a governmental retirement plan established under section 401, 403(b) or 457 of the Internal Revenue Code of 1986 covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate, three hundred thousand ($300,000) dollars in annuity benefits, including one hundred thousand ($100,000) dollars in net cash surrender and net cash withdrawal values.

(C) With respect to any one contract holder covered by any unallocated annuity contract not included in clause (B), five million ($5,000,000) dollars in benefits, irrespective of the number of such contracts held by that contract holder.

(2) The association shall not, however, be liable to expend more than three hundred thousand ($300,000) dollars in the aggregate with respect to any one individual under subparagraph (ii)(A) and (B) of paragraph (1).

1921, May 17, P.L. 682, No. 284, art. XVII, § 1703, added 1992, Dec. 18, P.L. 1519, No. 178, § 19, imd. effective.

Historical and Statutory Notes

Prior Laws:

1978, Nov. 26, P.L.1188, No. 280, § 3 (40 P.S. § 1803).

§ 991.1704. Creation of association

(a) There is hereby created a nonprofit, unincorporated association to be known as the Pennsylvania Life and Health Insurance Guaranty Association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this Commonwealth. The association shall perform its functions under the plan of operation established and approved under section 1708 [1] and shall exercise its powers through a board of directors established under section 1705.[2] For purposes of administration and assessment the association shall maintain two accounts:

(1) The life insurance and annuity account which includes the following subaccounts:

(i) Life insurance account.

(ii) Annuity account.

(iii) Unallocated annuity account which shall include contracts qualified under section 403(b) of the Internal Revenue Code of 1986.

(2) The health insurance account.

(b) The association shall come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the insurance laws of this Commonwealth. Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association.

1921, May 17, P.L. 682, No. 284, art. XVII, § 1704, added 1992, Dec. 18, P.L. 1519, No. 178, § 19, imd. effective.

[1] 40 P.S. § 991.1708.

[2] 40 P.S. § 991.1705.

Historical and Statutory Notes

Prior Laws:

1978, Nov. 26, P.L. 1188, No. 280, § 5 (40 P.S § 1805).

§ 991.1705. Board of directors

(a) The board of directors of the association shall consist of not less than five (5) nor more than nine (9) member insurers serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the

remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner. To select the initial board of directors and initially organize the association, the commissioner shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting, each member insurer shall be entitled to one (1) vote in person or by proxy. If the board of directors is not selected within sixty (60) days after notice of the organizational meeting, the commissioner may appoint the initial members.

(b) In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(c) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors but members of the board shall not otherwise be compensated by the association for their services.

1921, May 17, P.L. 682, No. 284, art. XVII, § 1705, added 1992, Dec. 18, P.L. 1519, No. 178, § 19, imd. effective.

Historical and Statutory Notes

Prior Laws:

1978, Nov. 26, P.L. 1188, No. 280, § 6 (40 P.S. § 1806).

§ 991.1706. Powers and duties of association

(a) If a member insurer is an impaired domestic insurer, the association may, in its discretion and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer that are approved by the commissioner and that are, except in cases of court-ordered conservation or rehabilitation, also approved by the impaired insurer:

(1) guarantee, assume or reinsure or cause to be guaranteed, assumed or reinsured any or all of the policies or contracts of the impaired insurer;

(2) provide such moneys, pledges, notes, guarantees or other means as are proper to effectuate paragraph (1) and assure payment of the contractual obligations of the impaired insurer pending action under paragraph (1); or

(3) loan money to the impaired insurer.

(b)(1) If a member insurer is an impaired insurer, whether domestic, foreign or alien, and the insurer is not paying claims timely; then subject to the preconditions specified in paragraph (2), the association shall, in its discretion, either:

(i) take any of the actions specified in subsection (a), subject to the conditions therein; or

(ii) provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for health claims, periodic annuity benefit payments, death benefits, supplemental benefits and cash withdrawals for policy or contract owners who petition therefor under claims of emergency or hardship in accordance with standards proposed by the association and approved by the commissioner.

(2) The association shall be subject to the requirements of paragraph (1) only if:

(i) the laws of its state of domicile provide that until all payments of or on account of the impaired insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all such payments and expenses, shall have been repaid to the guaranty associations or a plan of repayment by the impaired insurer shall have been approved by the guaranty associations:

(A) the delinquency proceeding shall not be dismissed;

(B) neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management;

(C) it shall not be permitted to solicit or accept new business or have any suspended or revoked license restored;

(ii) in the case where the impaired insurer is a domestic insurer, it has been placed under an order of rehabilitation by a court of competent jurisdiction in this Commonwealth; or

(iii) in the case where the impaired insurer is a foreign or alien insurer, it has been prohibited from soliciting or accepting new business in this Commonwealth, its certificate of authority has been suspended or revoked in this Commonwealth, and a petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by the commissioner of the state.

(c) If a member insurer is an insolvent insurer, the association shall, in its discretion, either:

(1) guarantee, assume or reinsure or cause to be guaranteed assumed or reinsured the policies or contracts of the insolvent insurer;

(2) assure payment of the contractual obligations of the insolvent insurer and provide such moneys, pledges, guarantees or other means as are reasonably necessary to discharge such duties; or

(3) with respect only to life and health insurance policies, provide benefits and coverages in accordance with subsection (d).

(d)(1) When proceeding under subsection (b)(1)(ii) or (c)(3), the association shall, with respect to only life and health insurance policies, do all of the following:

(i) Assure payment of benefits for premiums identical to the premiums and benefits (except for terms of conversion and renewability) that would have been payable under the policies of the insolvent insurer, for claims incurred as follows:

(A) With respect to group policies, not later than the earlier of the next renewal date under such policies or contracts or forty-five (45) days, but in no event less than thirty (30) days, after the date on which the association becomes obligated with respect to such policies.

(B) With respect to individual policies, not later than the earlier of the next renewal date (if any) under such policies or one year, but in no event less than thirty (30) days, from the date on which the association becomes obligated with respect to such policies.

(ii) Make diligent efforts to provide all known insureds or group policyholders with respect to group policies thirty (30) days notice of the termination of the benefits provided.

(iii) With respect to individual policies, make available to each known insured or owner if other than the insured, and with respect to an individual formerly insured under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of paragraph (2), if the insureds had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.

(2)(i) In providing the substitute coverage required under paragraph (1)(iii), the association may offer either to reissue the terminated coverage or to issue an alternative policy.

(ii) Alternative or reissued policies shall be offered without requiring evidence of insurability and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.

(iii) The association may reinsure any alternative or reissued policy.

(3)(i) Alternative policies adopted by the association shall be subject to the approval of the commissioner. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.

(ii) Alternative policies shall contain at least the minimum statutory provisions required in this Commonwealth and provide benefits that shall not be unreasonable in

relation to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy was last underwritten.

(iii) Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

(4) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the commissioner or by a court of competent jurisdiction.

(5) The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date such coverage or policy is replaced by another similar policy by the policyholder, the insured or the association.

(e) When proceeding under subsection (b)(1)(ii) or (c) with respect to any policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with section 1703(b)(2)(iii).[1]

(f) Nonpayment of premiums within thirty-one (31) days after the date required under the terms of any guaranteed, assumed, alternative or reissued policy or contract or substitute coverage shall terminate the association's obligations under such policy or coverage under this article with respect to such policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this article.

(g) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association, and the association shall be liable for unearned premiums due to policy or contract owners arising after the entry of such order.

(h) The protection provided by this article shall not apply where any guaranty protection is provided to residents of this Commonwealth by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this Commonwealth.

(i) In carrying out its duties under subsections (b) and (c) and subject to approval by the court, the association may do the following:

(1) Impose permanent policy or contract liens in connection with any guarantee, assumption or reinsurance agreement if the association finds that the amounts which can be assessed under this article are less than the amounts needed to assure full and prompt performance of the association's duties under this act or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens to be in the public interest.

(2) Impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value.

(j) If the association fails to act within a reasonable period of time as provided in subsections (b)(1)(ii), (c) and (d), the commissioner shall have the powers and duties of the association under this article with respect to impaired or insolvent insurers.

(k) The association may render assistance and advice to the commissioner, upon his request, concerning rehabilitation, payment of claims, continuance of coverage or the performance of other contractual obligations of any impaired or insolvent insurer.

(*l*) The association shall have standing to appear before any court in this Commonwealth with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this article. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, modifying or guaranteeing the policies or contracts

of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association shall also have the right to appear or intervene before a court in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over a third party against whom the association may have rights through subrogation of the insurer's policyholders.

(m)(1) Any person receiving benefits under this article shall be deemed to have assigned the rights under and any causes of action relating to the covered policy or contract to the association to the extent of the benefits received because of this article, whether the benefits are payments of or on account of contractual obligations, continuation of coverage or provision of substitute or alternative coverages. The association may require an assignment to it of such rights and cause of action by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this article upon such person.

(2) The subrogation rights of the association under this subsection shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this article.

(3) In addition to paragraphs (1) and (2), the association shall have all common law rights of subrogation and any other equitable or legal remedy which would have been available to the impaired or insolvent insurer or holder of a policy or contract with respect to such policy or contracts.

(n) The association may do the following:

(1) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this article.

(2) Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under section 1707[2] and to settle claims or potential claims against it.

(3) Borrow money to effect the purposes of this article; any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets.

(4) Employ or retain such persons as are necessary to handle the financial transactions of the association and to perform such other functions as become necessary or proper under this article.

(5) Take such legal action as may be necessary to avoid payment of improper claims.

(6) Exercise, for the purposes of this article and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its obligations under this article.

(o) The association may join an organization of one or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the association.

1921, May 17, P.L. 682, No. 284, art. XVII, § 1706, added 1992, Dec. 18, P.L. 1519, No. 178, § 19, imd. effective.

[1] 40 P.S. § 991.1703(b)(2)(iii).

[2] 40 P.S. § 991.1707.

Historical and Statutory Notes

Prior Laws:

1978, Nov. 26, P.L. 1188, No. 280, § 7 (40 P.S. § 1807).

Notes of Decisions

Construction and application 1
Residents 2

1. Construction and application

Statutory coverage limits of $100,000 for cash or $300,000 for total benefits with "respect to any one life" by Pennsylvania Life and Health Insurance Guaranty Association (PLHIGA) applied to each resident participant or beneficiary in defined contribution plan with respect to guaranteed investment contracts purchased by plan trustee from insurer that subsequently became insolvent; to interpret coverage limitations as applying only to corporate trustee would have been contrary to principles of statutory construction and rendered meaningless purpose of PLHIGA to protect Pennsylvania residents from insurer insolvencies. Unisys Corp. v. Pennsylvania Life and Health Ins. Guar. Ass'n, 667 A.2d 1199, Cmwlth.1995.

2. Residents

Resident participants in defined contribution plans who were equitable owners of guaranteed investment contracts issued by insurer who subsequently went insolvent and which contracts were held in trust for their benefit were "residents" for purposes of statutory obligations owed by Pennsylvania Life and Health Insurance Guaranty Association (PLHIGA). Unisys Corp. v. Pennsylvania Life and Health Ins. Guar. Ass'n, 667 A.2d 1199, Cmwlth.1995.

Nonresident participants in defined contribution plan of which resident corporation served as trustee did not satisfy Pennsylvania residency requirement for coverage through Pennsylvania Life and Health Insurance Guaranty Association (PLHIGA) by virtue of trustee's residency so as to be eligible for coverage in connection with guaranteed investment contracts issued to trustee as legal owner by insurer who subsequently went insolvent; statutes defined resident as any person residing in Commonwealth and it was not legislature's intent to apply assessments from insurance companies based upon business written in Commonwealth to benefit nonresident participants under contracts based upon residency of trustee. Unisys Corp. v. Pennsylvania Life and Health Ins. Guar. Ass'n, 667 A.2d 1199, Cmwlth.1995.

§ 991.1707. Assessments

(a) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than thirty (30) days after prior written notice to the member insurers and shall accrue interest at eight per centum (8%) per annum on and after the due date.

(b) There shall be two assessments, as follows:

(1) Class A assessments shall be made for the purpose of meeting administrative and legal costs and other expenses and examinations conducted under the authority of section 1710(e).[1] Class A assessments may be made whether or not related to a particular impaired or insolvent insurer.

(2) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 1706 [2] with regard to an impaired or an insolvent insurer.

(c)(1) The amount of any Class A assessment shall be determined by the board and may be made on a pro rata or non-pro rata basis. If pro rata, the board may provide that it be credited against future Class B assessments. A non-pro rata assessment shall not exceed two hundred ($200) dollars per member insurer in any one calendar year. The amount of any Class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.

(2) Class B assessments against member insurers for each account and subaccount shall be in the proportion that the premiums received on business in this Commonwealth by each assessed member insurer for policies or contracts covered by each account for the three (3) most recent calendar years for which information is available preceding the year in which the insurer became impaired or insolvent, as the case may be, bears to such premiums received on business in this Commonwealth for such calendar years by all assessed member insurers.

(3) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the

purposes of this article. Classification of assessments under subsection (b) and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(d) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

(e)(1) The total of all assessments upon a member insurer for the life and annuity account and for each subaccount thereunder shall not in any one (1) calendar year exceed two per centum (2%) and for the health account shall not in any one (1) calendar year exceed two per centum (2%) of such insurer's average premiums received in this Commonwealth on the policies and contracts covered by the account during the three (3) calendar years preceding the year in which the insurer became an impaired or insolvent insurer. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one (1) year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this article.

(2) The board may provide in the plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(3) If a one per centum (1%) assessment for any subaccount of the life and annuity account in any one (1) year does not provide an amount sufficient to carry out the responsibilities of the association, then pursuant to subsection (c)(2), the board shall access all subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in subsection (e)(1).

(f) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from assignment, subrogation, net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses.

(g) It shall be proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this article, to consider the amount reasonably necessary to meet its assessment obligations under this article, provided that such insurer has not elected to take tax credits as provided in section 1711(a).[3]

(h) The association shall issue to each insurer paying an assessment under this article, other than class A assessment, a certificate of contribution, in a form prescribed by the commissioner, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

1921, May 17, P.L. 682, No. 284, art. XVII, § 1707, added 1992, Dec. 18, P.L. 1519, No. 178, § 19, imd. effective.

[1] 40 P.S. § 991.1710(e).

[2] 40 P.S. § 991.1706.

[3] 40 P.S. § 991.1711(a).

Historical and Statutory Notes

Prior Laws:

1978, Nov. 26, P.L. 1188, No. 280, § 8 (40 P.S. § 1808).

§ 991.1708. Plan of operation

(a)(1) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon the commissioner's written approval or unless he has not disapproved it within thirty (30) days.

(2) If the association fails to submit a suitable plan of operation within one hundred twenty (120) days following the effective date of this article or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this article. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(b) All member insurers shall comply with the plan of operation.

(c) The plan of operation shall, in addition to requirements enumerated elsewhere in this article, contain the following:

(1) Establish procedures for handling the assets of the association.

(2) Establish the amount and method of reimbursing members of the board of directors under section 1705.[1]

(3) Establish regular places and times for meetings, including telephone conference calls of the board of directors.

(4) Establish procedures for records to be kept of all financial transactions of the association, its agents and the board of directors.

(5) Establish the procedures whereby selections for the board of directors will be made and submitted to the commissioner.

(6) Establish any additional procedures for assessments under section 1707.[2]

(7) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(d) The plan of operation may provide that any or all powers and duties of the association, except those under sections 1706(n)(3) and 1707,[3] are delegated to a corporation, association or other organization which performs or will perform functions similar to those of this association or its equivalent in two or more states. Such a corporation, association or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner and may be made only to a corporation, association or organization which extends protection not substantially less favorable and effective than that provided by this article.

1921, May 17, P.L. 682, No. 284, art. XVII, § 1708, added 1992, Dec. 18, P.L. 1519, No. 178, § 19, imd. effective.

[1] 40 P.S. § 991.1705.

[2] 40 P.S. § 991.1707.

[3] 40 P.S. §§ 991.1706(n)(3); 991.1707.

Historical and Statutory Notes

Prior Laws:

1978, Nov. 26, P.L. 1188, No. 280, § 9 (40 P.S. § 1809).

§ 991.1709. Powers and duties of the commissioner

(a) In addition to the powers and duties enumerated elsewhere in this article, the commissioner shall:

(1) Upon request of the board of directors, provide the association with a statement of the premiums in this and any other appropriate states for each member insurer.

(2) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time; notice to the impaired insurer shall constitute notice to its shareholders, if any; the failure of the insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this article.

(3) In any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator.

(b) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this Commonwealth of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed five per centum (5%) of the unpaid assessment per month, but no forfeiture shall be less than one hundred ($100) dollars per month.

(c) Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within sixty (60) days of the final action being appealed. If a member company is appealing an assessment, the amount assessed shall be paid to the association and available to meet association obligations during the pendency of an appeal. If the appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member company. Any final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction.

(d) The liquidator, rehabilitator or conservator of any impaired insurer may notify all interested persons of the effect of this article.

1921, May 17, P.L. 682, No. 284, art. XVII, § 1709, added 1992, Dec. 18, P.L. 1519, No. 178, § 19, imd. effective.

Historical and Statutory Notes

Prior Laws:

1978, Nov. 26, P.L. 1188, No. 280, § 10 (40 P.S. § 1810).

§ 991.1710. Prevention of insolvencies

(a) To aid in the detection and prevention of insurer insolvencies or impairments, it shall be the duty of the commissioner:

(1) To notify the commissioners of all the other states, territories of the United States and the District of Columbia when he takes any of the following actions against a member insurer:

(i) revocation of license;

(ii) suspension of license; or

(iii) makes any formal order that such company restrict its premium writing, obtain additional contributions to surplus, withdraw from the Commonwealth, reinsure all or any part of its business or increase capital, surplus or any other account for the security of policyholders or creditors.

This notice shall be mailed to all commissioners within thirty (30) days following the action taken or the date on which such action occurs.

(2) To report to the board of directors when he has taken any of the actions set forth in paragraph (1) or has received a report from any other commissioner indicating that

any such action has been taken in another state. Such report to the board of directors shall contain all significant details of the action taken or the report received from another commissioner.

(3) To report to the board of directors when he has reasonable cause to believe from any examination, whether completed or in process, of any member company that such company may be an impaired or insolvent insurer.

(4) To furnish to the board of directors the National Association of Insurance Commissioners' (NAIC) Insurance Regulatory Information System (IRIS) ratios and listing of companies not included in the ratios developed by the National Association of Insurance Commissioners, and the board may use the information contained therein in carrying out its duties and responsibilities under this section. Such report and the information contained therein shall be kept confidential by the board of directors until such time as made public by the commissioner or other lawful authority.

(b) The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting his duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this Commonwealth.

(c) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this Commonwealth. Such reports and recommendations shall not be considered public documents.

(d) It shall be the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating any member insurer may be an impaired or insolvent insurer.

(e)(1) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be an impaired or insolvent insurer. Within thirty (30) days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association, and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection (a).

(2) The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner, but it shall not be open to public inspection prior to the release of the examination report to the public.

(f) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(g) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report to the commissioner containing such information as it may have in its possession bearing on the history and causes of such insolvency. The board shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes of insolvency of a particular insurer, and may adopt by reference any report prepared by such other associations.

1921, May 17, P.L. 682, No. 284, art. XVII, § 1710, added 1992, Dec. 18, P.L. 1519, No. 178, § 19, imd. effective.

Historical and Statutory Notes

Prior Laws:

1978, Nov. 26, P.L. 1188, No. 280, § 11 (40 P.S. § 1811).

§ 991.1711. Credits for assessments paid

(a) A member insurer may offset against its premium tax liability to this Commonwealth a proportionate part of the assessments described in section 1707 [1] to the extent of twenty per centum (20%) of the amount of such assessment for each of the five (5) calendar years following the year in which such assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

(b) The proportionate part of an assessment which may be offset against a member company's premium tax liability to the Commonwealth shall be determined according to a fraction of which the denominator is the total premiums received by the company during the calendar year immediately preceding the year in which the assessment is paid and the numerator is that portion of the premiums received during such year on account of policies of life or health and accident insurance in which the premium rates are guaranteed during the continuance of the respective policies without a right exercisable by the company to increase said premium rates.

(c) Any sums which are acquired by refund, pursuant to section 1707(f), from the association by member insurers, and which have theretofore been offset against premium taxes as provided in this section and are not then needed for the purposes of this act, shall be paid by such insurers to this Commonwealth in such manner as the tax authorities may require. The association shall notify the commissioner that such refunds have been made.

(d) No offset against premium tax liability shall be permitted to the extent that a member insurer's rates or policyholder dividends have been adjusted as permitted in section 1707.

1921, May 17, P.L. 682, No. 284, art. XVII, § 1711, added 1992, Dec. 18, P.L. 1519, No. 178, § 19, imd. effective.

[1] 40 P.S. § 991.1707.

Historical and Statutory Notes

Prior Laws:

1978, Nov. 26, P.L. 1188, No. 280, § 12 (40 P.S. § 1812).

§ 991.1712. Miscellaneous provisions

(a) Nothing in this article shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

(b) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under section 1706.[1] Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the association to render a report of its activities under section 1713.[2]

(c) For the purpose of carrying out its obligations under this article, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to section 1706. Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this article. Assets attributable to covered policies, as used in this subsection, are that proportion of the assets which the reserves that should have been established for such policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

(d)(1) Prior to the termination of any liquidation, rehabilitation or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders and policyowners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such insolvent insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(2) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of valid claims of the association with interest thereon for funds expended in carrying out its powers and duties under section 1706 with respect to such insurer have been fully recovered by the association.

(e)(1) If an order for liquidation or rehabilitation of an insurer domiciled in this Commonwealth has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five (5) years preceding the petition for liquidation or rehabilitation subject to the limitations of paragraphs (2) to (4).

(2) No such distribution shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who was an affiliate that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions he would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(4) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

(5) If any person liable under paragraph (3) is insolvent, all its affiliates that controlled it at the time distribution was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

1921, May 17, P.L. 682, No. 284, art. XVII, § 1712, added 1992, Dec. 18, P.L. 1519, No. 178, § 19, imd. effective.

[1] 40 P.S. § 991.1706.

[2] 40 P.S. § 991.1713.

Historical and Statutory Notes

Prior Laws:

1978, Nov. 26, P.L. 1188, No. 280, § 13 (40 P.S. § 1813).

§ 991.1713. Examination of the association and annual report

The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner each year, not later than one hundred twenty (120) days after the association's fiscal year, a financial report in a form approved by the commissioner and a report of its activities during the preceding fiscal year.

1921, May 17, P.L. 682, No. 284, art. XVII, § 1713, added 1992, Dec. 18, P.L. 1519, No. 178, § 19, imd. effective.

Historical and Statutory Notes

Prior Laws:

1978, Nov. 26, P.L. 1188, No. 280, § 14 (40 P.S. § 1814).

§ 991.1714. Tax exemptions

The association shall be exempt from payment of all fees and all taxes levied by this Commonwealth or any of its subdivisions, except taxes levied on real property.

1921, May 17, P.L. 682, No. 284, art. XVII, § 1714, added 1992, Dec. 18, P.L. 1519, No. 178, § 19, imd. effective.

Historical and Statutory Notes

Prior Laws:

1978, Nov. 26, P.L. 1188, No. 280, § 15 (40 P.S. § 1815).

§ 991.1715. Immunity

There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employes, the association or its agents or employes, members of the board of directors, or the commissioner or his representatives for any action or omission by them in the performance of their powers and duties under this article. Such immunity shall extend to the participation in any organization of one or more other state associations of similar purposes and to any such organization and its agents or employes.

1921, May 17, P.L. 682, No. 284, art. XVII, § 1715, added 1992, Dec. 18, P.L. 1519, No. 178, § 19, imd. effective.

Historical and Statutory Notes

Prior Laws:

1978, Nov. 26, P.L. 1188, No. 280, § 16 (40 P.S. § 1816).

§ 991.1716. Stay of proceedings and reopening default judgments

All proceedings in which the insolvent insurer is a party in any court in this Commonwealth shall be stayed sixty (60) days from the date an order of liquidation, rehabilitation or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to judgment under any decision, order, verdict or finding based on default, the association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.

1921, May 17, P.L. 682, No. 284, art. XVII, § 1716, added 1992, Dec. 18, P.L. 1519, No. 178, § 19, imd. effective.

Historical and Statutory Notes

Prior Laws:

1980, Oct. 5, P.L. 693, No. 142, § 326.

1978, Nov. 26, P.L. 1188, No 280, § 17 (40 P.S. § 1817).

§ 991.1717. Prohibited advertisement or Insurance Guaranty Association Act in insurance sales

(a) No person, including an insurer, agent or affiliate of an insurer shall make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in any