

**PROPOSED REGULATION OF THE  
COMMISSIONER OF INSURANCE**

**LCB File No. R165-05**

November 14, 2005

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-3, NRS 679B.130.

A REGULATION relating to claims against insolvent insurers; establishing the circumstances that must be proved by a person who is required to exhaust his rights under a policy of insurance before he may make a claim on the Nevada Insurance Guaranty Association; and providing other matters properly relating thereto.

**Section 1.** Chapter 687A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

**Sec. 2.** *As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 687A.031 to 687A.039, inclusive, have the meanings ascribed to them in those sections.*

**Sec. 3. 1.** *A person who is required, pursuant to NRS 687A.100, to exhaust his rights under a policy of insurance before he may make a claim on the Association must prove that he has no right under the policy that is:*

- (a) Available;*
- (b) Payable; or*
- (c) Being undertaken by the insurer.*

*↪ The person must prove exhaustion of his rights under each policy of insurance which may provide coverage for the claim or any portion of the claim.*

2. *A person has not exhausted his rights under a policy of insurance if the insurer is participating in the claim in any manner, including, without limitation, by:*

- (a) Investigating the claim;*
- (b) Providing coverage for the person under a reservation of right; or*
- (c) Defending or providing a defense against the claim.*

3. *As used in this section:*

*(a) "Claim" means a demand for compensation or other consideration under a policy of insurance for a loss or other occurrence if the demand is filed with an insurer or the Association or is asserted in a lawsuit or other legal proceeding. The term includes a claim that alleges a continuing loss.*

*(b) "Person" includes, without limitation, the holder of a policy of insurance and a claimant making a claim against a policyholder.*

*(c) "Policy of insurance" includes, without limitation, a policy of insurance that:*

- (1) Provides primary coverage, additional coverage or excess coverage;*
- (2) Is held by a person who is contractually obligated to provide insurance coverage to the insured of an insolvent insurer; or*
- (3) Is held by a person who by operation of law is responsible for the acts or conduct of the insured of an insolvent insurer.*

*(d) "Rights under a policy of insurance" includes, without limitation, a person's right to be:*

- (1) Defended in a lawsuit or other legal proceeding; and*
- (2) Indemnified, in whole or in part, after a determination of liability.*