

West's Louisiana Statutes Annotated Louisiana Revised Statutes Title 22. Insurance Code (Refs & Annos)  
Chapter 9. Rehabilitation, Liquidation, Conservation (Refs & Annos)

LSA-R.S. 22:2013.1  
§ 2013.1. Administration of large deductible policies and insured collateral  
Effective: January 1, 2020

Currentness

A. This Section shall apply to workers' compensation large deductible policies issued by an insurer subject to delinquency proceedings pursuant to this Chapter; however, this Section shall not apply to first-party claims or to claims funded by a guaranty association net of the deductible unless Subsection C of this Section applies. Large deductible policies shall be administered in accordance with their terms, except to the extent the terms conflict with this Section.

B. For purposes of this Section, the following terms have the following meanings:

(1) "Collateral" means any cash, letters of credit, surety bond, or any other form of security posted by the insured, or by a captive insurer or reinsurer, to secure the insured's obligation under a large deductible policy to pay deductible claims or to reimburse the insurer for deductible claim payments. Collateral may also secure an insured's obligation to reimburse or pay to the insurer as may be required for other secured obligations.

(2) "Commercially reasonable" means to act in good faith using prevailing industry practices and making all reasonable efforts considering the facts and circumstances of the matter.

(3) "Deductible claim" means any claim, including a claim for loss and defense and cost containment expense, unless the expenses are excluded, under a large deductible policy that is within the deductible.

(4)(a) "Large deductible policy" means any of the following:

(i) Any combination of one or more workers' compensation policies and endorsements issued to an insured, and contracts or security agreements entered into between an insured and the insurer in which the insured has agreed with the insurer to do either of the following:

(aa) Pay directly the initial portion of any claim under the policy up to a specified dollar amount, or the expenses related to any claim.

(bb) Reimburse the insurer for its payment of any claim or related expenses under the policy up to the specified dollar amount of the **deductible**.

(ii) Any policy that contains an aggregate limit on the **insured's** liability for all **deductible** claims in addition to a per claim **deductible** limit.

(iii) Any policy that shifts a portion of the ultimate financial responsibility to pay claims from the insurer to the **insured**, even though the obligation to initially pay claims may remain with the insurer.

(iv) Any policy with a **deductible** of one hundred thousand dollars or greater.

(b) "Large **deductible** policy" shall not include any of the following:

(i) Policies, endorsements, or agreements that provide for the initial portion of any covered claim to be self-**insured** and further that the insurer shall have no payment obligation within the self-**insured** retention.

(ii) Policies that provide for retrospectively rated premium payments by the **insured** or reinsurance arrangements or agreements, except to the extent the arrangements or agreements assume, secure, or pay the policyholder's large **deductible** obligations.

(5) "Other secured obligations" means obligations of an **insured** to an insurer other than those under a large **deductible** policy, including but not limited to those under a reinsurance agreement or other agreement involving retrospective premium obligations, the performance of which is secured by **collateral** that also secures an **insured's** obligations under a large **deductible** policy.

C. Unless otherwise agreed by the responsible guaranty association, all large **deductible** claims, which are also covered claims as defined by the applicable guaranty association law, including those that may have been funded by an **insured** before liquidation, shall be turned over to the guaranty association for handling. To the extent the **insured** funds or pays the **deductible** claim, pursuant to an agreement by the guaranty fund or otherwise, the **insured's** funding or payment of a **deductible** claim will extinguish the obligations, if any, of the receiver or any guaranty association to pay the claim. No charge of any kind shall be made against the receiver or a guaranty association on the basis of an **insured's** funding or payment of a **deductible** claim.

D. (1) To the extent a guaranty association pays any **deductible** claim for which the insurer would have been entitled to

reimbursement from the **insured**, a guaranty association shall be entitled to the full amount of the reimbursement, and available **collateral** as provided for in this Section to the extent necessary to reimburse the guaranty association. Reimbursements paid to the guaranty association pursuant to this Subsection shall not be treated as distributions pursuant to [R.S. 22:2025](#) or as early access payments pursuant to [R.S. 22:2008\(C\)](#), 2034, and 2037.

(2) To the extent that a guaranty association pays a **deductible** claim that is not reimbursed either from **collateral** or by **insured** payments, or incurs expenses in connection with large **deductible** policies that are not reimbursed pursuant to this Section, the guaranty association shall be entitled to assert a claim for those amounts in the delinquency proceeding.

(3) Nothing in this Subsection shall limit any rights of the receiver or a guaranty association that may otherwise exist pursuant to applicable law to obtain reimbursement from **insureds** for claims payments made by the guaranty association under policies of the insurer or for the guaranty association's related expenses, including but not limited to those provided for in [R.S. 22:2061.1](#), or existing under similar laws of other states.

E. (1) The receiver shall collect reimbursements owed for **deductible** claims as provided for in this Section, and shall take all commercially reasonable actions to collect the reimbursements. The receiver shall promptly bill **insureds** for reimbursement of **deductible** claims that are any of the following:

(a) Paid by the insurer prior to the commencement of delinquency proceedings.

(b) Paid by a guaranty association upon receipt by the receiver of notice from a guaranty association of reimbursable payments.

(c) Paid or allowed by the receiver.

(2) If the **insured** does not make payment within the time specified in the large **deductible** policy, or within sixty days after the date of billing if no time is specified, the receiver shall take all commercially reasonable actions to collect any reimbursements owed.

(3) Neither the insolvency of the insurer, nor its inability to perform any of its obligations under the large **deductible** policy, shall be a defense to the **insured's** reimbursement obligation under the large **deductible** policy.

(4) Any contract, counter letter, or other agreement between the insurer and the **insured** that in any manner seeks to reduce or eliminate the **insured's** obligation to reimburse the insurer for the **deductible** shall be null and void as against public policy and shall not be eligible to be used by the **insured** as a defense to the efforts by the receiver or guaranty association to collect any unpaid **deductible**.

(5) Except for gross negligence, an allegation of improper handling or payment of a **deductible** claim by the insurer, the receiver, or any guaranty association shall not be a defense to the **insured's** reimbursement obligations under the large **deductible** policy.

F. (1) Subject to the provisions of this Subsection, the receiver shall use **collateral**, when available, to secure the **insured's** obligation to fund or reimburse **deductible** claims or other secured obligations or other payment obligations. A guaranty association shall be entitled to **collateral** as provided for in this Subsection to the extent needed to reimburse a guaranty association for the payment of a **deductible** claim. Any distributions made to a guaranty association pursuant to this Subsection shall not be treated as distributions pursuant to [R.S. 22:2025](#) or as early access payments pursuant to [R.S. 22:2008\(C\)](#), 2034, and 2037.

(2) All claims against the **collateral** shall be paid in the order received and no claim of the receiver, including those described in this Subsection, shall supersede any other claim against the **collateral** as provided for in Paragraph (4) of this Subsection.

(3) The receiver shall draw down **collateral** to the extent necessary in the event that the **insured** fails to do any of the following:

(a) Perform its funding or payment obligations under any large **deductible** policy.

(b) Pay **deductible** claim reimbursements within the time specified in the large **deductible** policy or within sixty days after the date of the billing if no time is specified.

(c) Pay amounts due to the estate for preliquidation obligations.

(d) Timely fund any other secured obligation.

(e) Timely pay expenses.

(4) Claims that are validly asserted against the **collateral** shall be satisfied in the order in which the claims are received by the receiver. However, if more than one creditor has a valid claim against the same **collateral** and the available **collateral**, along with billing collection efforts and to the extent that the **collateral** is subject to other known secured obligations, are together insufficient to pay each creditor in full, the receiver may prorate payments based on the ratio of the amount of claims each creditor has to the total claims paid by all the creditors.

(5) Excess **collateral** may be returned to the **insured** as determined by the receiver after a periodic review of claims paid, outstanding case reserves, and a factor for incurred but not reported claims.

G. The receiver may **deduct** from the **collateral** or from the **deductible** reimbursements reasonable and actual expenses incurred in connection with the collection of the **collateral** and **deductible** reimbursements.

H. This Section shall not limit or adversely affect any rights or powers a guaranty association may have pursuant to applicable state law to obtain reimbursement from certain classes of policyholders for claims payments made by the guaranty association under policies of the insolvent insurer, or for related expenses the guaranty association incurs.

### Credits

Added by [Acts 2019, No. 109, § 1, eff. Jan. 1, 2020](#).

LSA-R.S. 22:2013.1, LA R.S. 22:2013.1  
Current through the 2019 Regular Session.

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