

# FLORIDA

## UNDERWRITER

### FEATURE STORY

#### INSOLVENCY GAP INSURANCE

# Peace of Mind for Agents and Brokers

## New Coverage Pays Legal Bills

By Mechlin Moore

In today's litigious environment, if you're an agent and the insurer you represent becomes insolvent, you could be subject to lawsuits from policyholders — your clients — claiming you placed their coverage with a carrier that became insolvent. If that happens, don't be surprised if your Errors & Omissions policy will not defend you against this potentially serious exposure. You could be saddled with the cost of paying for your own legal defense or hit with a big-dollar settlement. In any case, your reputation would suffer, something no agent can afford.

In many cases, your customers would not even have access to a guaranty fund to pay their claims. State guaranty funds only cover admitted carriers. Excess and Surplus Lines insurers, Risk Retention Groups, Captives, and other Alternative Risk Transfer mechanisms do not have access to these funds. Even if the insolvent company is an admitted carrier, neither you nor your clients want to go through the hassle of trying to recover from a guaranty fund bureaucracy.

Most E&O markets exclude insurance company insolvency exposure if the damages or claims expense arise directly or indirectly out of the insolvency, bankruptcy, receivership, rehabilitation, or liquidation of risk-bearing entities that are non-rated or low-rated (under B+, A-, or better) by the A.M. Best Company, or below a particular financial size category. According to attorneys Janice DiGennaro and Lawrence Levy of Long Island, NY, experts on liability issues, courts generally have upheld the liability exclusion. Clearly, the exclusion

can create confusion and tension between an insurance company and its agency force. It also influences perceptions of the carrier's image.

### New Gap Insurance Covers Defense Fees

A product has just been introduced that will bring you peace of mind if you're placing coverage in the Excess and Surplus Lines markets or with other non-admitted carriers, including risk retention groups. Ask your insurer if it has Insolvency Gap Insurance, known officially as "Insurance Agent's Errors and Omissions Insurer Insolvency Gap Defense Costs Insurance."

Insolvency Gap Insurance permits a designated insurance company to cover each of its duly appointed and licensed agents by purchasing a single policy that provides legal defense coverage in the unlikely event that the designated carrier is liquidated. This means you don't have to worry about defending your agency if the insurance company goes under. Your legal defense costs will be covered by the Insolvency Gap policy. It won't cost you a dime; your insurer pays the premium.

Gap policies are written only for financially stable insurance companies so you can breathe easier when you know your company qualifies for a gap policy. The target markets for this new form of coverage are Excess and Surplus Lines carriers, companies that are stable but low-rated by A. M. Best, or companies that have not been in business long enough to obtain a Best rating, including many risk retention groups.

A side note here on risk retention groups: In Florida a few years ago, the lawsuit crisis caused

a number of traditional carriers to stop writing certain lines of liability insurance, to non-renew existing policies, or establish prohibitively restrictive terms and conditions. In the long-term care field, for example, the state required nursing homes to obtain professional liability insurance, but it was practically unavailable.

In this hostile climate, owners/operators banded together to form risk retention groups. One such entity was Florida's Ponce de Leon LTC RRG, Inc., the first in the nation to cover long-term care facilities. Today, the company has more than 700 facilities insured. Rated "A Exceptional" by Demotech, Ponce was one of the first insurers to secure Insolvency Gap Insurance. "We're pleased to provide this added protection to our agents," said Sanford "Sandy" Elsass, president and CEO-underwriting manager for Ponce de Leon.

### Uni-Ter Teams With U.S. RE and Century

Ponce's gap coverage was facilitated through an MGA, Uni-Ter Underwriting Management Corporation, Atlanta ([www.uni-ter.com](http://www.uni-ter.com)). U.S. RE Corporation, Pearl River, NY, brokers the coverage; policies are issued by Century Surety Company of Columbus, Ohio. Demotech, Inc., also located in Columbus, did the underwriting through a process that includes financial

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analysis to qualify companies, cost of coverage, and on-going monitoring of insured companies' financial stability.

Any carrier earning a Financial Stability Rating® of A or better from Demotech, Inc. is eligible to purchase this insolvency gap legal defense insurance to protect its producers. Uni-Ter offers a limit of liability up to \$2,000,000; coverage is first-dollar with no deductible or coinsurance. The pricing is company-specific. In the unlikely event of a loss, the producer selects its own counsel.

“Plugging the insolvency coverage gap for a

targeted group of financially stable, insurers and their producers levels the playing field,” according to Joseph Petrelli, president of Demotech. He pointed out that as of December 31, 2006, there were 7,525 risk-bearing entities adversely impacted by insolvency exclusions. The largest category is composed of single-state carriers writing property insurance coverage. Most members of this market segment have been in continuous operation for decades, many over a hundred years. Often they report financial data only to their state of domicile. An additional 1,785 property/casualty and life/health insurers are

not eligible for a Best rating, due to size, limited operating experience, presentation of financial data, inapplicability of Best's rating procedure or because the company is not formally followed.

What's the bottom line? For non-admitted carriers, including the rapidly growing risk retention groups and other financially strong carriers that for one reason or another are not rated by Best – plus the agents who represent them – Insolvency Gap Insurance is a win-win proposition. As an agent, you may want to ask carriers you represent whether they have looked into this new category of coverage. ▲