

304.36-050 Definitions for subtitle.

As used in this subtitle, unless the context otherwise requires:

- (1) "Affiliate" means a person who directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year immediately preceding the date that the insurer becomes an insolvent insurer;
- (2) "Association" means the Kentucky Insurance Guaranty Association created under KRS 304.36-060;
- (3) "Claimant" means any insured making a first-party claim or any person instituting a liability claim, provided that no person who is an affiliate of the insolvent insurer may be a claimant;
- (4) "Commissioner" means the commissioner of the Department of Insurance of Kentucky;
- (5) "Control" means the possession, direct or indirect, of 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 loan contract or 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 shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of any other person. This presumption may be rebutted by a showing that control does not exist in fact;
- (6) (a) "Covered claim" means an unpaid claim, including one for unearned premiums, submitted by a claimant, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this subtitle applies issued by an insurer, if the insurer becomes an insolvent insurer after June 16, 1972, and:
 1. The claimant or insured is a resident of this state at the time of the insured event, provided that for entities other than an individual, the residence of a claimant, insured, or policyholder is the state in which its principal place of business is located at the time of the insured event; or
 2. The claim is a first-party claim for damage to property with a permanent location in this state.
- (b) "Covered claim" shall not include the following:
 1. Any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise;
 2. Any amount sought as a return of premium under any retrospective rating plan or dividends plan;
 3. Legal expenses for policyholders who were not Kentucky residents on the date of the insured event;
 4. Legal expenses for policyholders who were Kentucky residents at the time of the insured event if the legal expenses exceed the association's

statutory cap;

5. Any first-party claim by an insured whose net worth exceeds twenty-five million dollars (\$25,000,000) on December 31 of the year prior to the year in which the insurer becomes an insolvent insurer, provided that an insurer's net worth on that date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries as calculated on a consolidated basis;
6. Any first-party claim by an insured that is an affiliate of an insolvent insurer; or
7. Any amount awarded as punitive or exemplary damages;

(7) "Insolvent insurer" means:

- (a) An insurer licensed to transact insurance in this state either at the time the policy was issued or when the insured event occurred;
- (b) Against whom a final order of liquidation, with a finding of insolvency, has been entered by a court of competent jurisdiction in the company's state of domicile after June 16, 1972; and
- (c) With respect to which no order, decree, or finding relating to the solvency of the insurer, whether preliminary or temporary in nature or otherwise has been issued by a court of competent jurisdiction or by any insurance commissioner, insurance office, or department or similar official or body before June 16, 1972, or which was in fact insolvent before June 16, 1972, and the de facto insolvency was known by the chief insurance regulatory official of the state of its domicile;

(8) "Member insurer" means:

- (a) Any person who writes any kind of insurance to which this subtitle applies under KRS 304.36-030, including the exchange of reciprocal or inter-insurance contracts; and
- (b) Any person who is licensed to transact insurance in this state. For purposes of determining a withdrawing member's assessment liability, an insurer shall cease to be a member insurer effective on the day following the termination or expiration of his or her license to transact the kinds of insurance to which this subtitle 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, that relate to any insurer that became an insolvent insurer prior to the termination or expiration of the insurer's license;

(9) "Net direct written premiums" means direct gross premiums written, or in the case of an insurer organized under KRS Chapter 299, assessments, membership fees, and policy fees levied and collected in this state, less returns thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers;

(10) "Ocean marine insurance" includes any form of insurance, regardless of name, label, or marketing designation of the insurance policy, that insures against maritime

perils or risks and other related perils or risks, that are usually insured against by traditional marine insurance such as hull and machinery, marine builders risk, and marine protection and indemnity. These perils and risks 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. "Ocean marine insurance" includes that coverage written in accordance with the following:

- (a) The Jones Act (46 U.S.C. sec. 688);
 - (b) The Longshore and Harbor Workers' Compensation Act D (33 U.S.C. secs. 901 et seq.); or
 - (c) Any other similar federal statutory enactment, or any endorsement or policy affording protection and indemnity coverage; and
- (11) "Insured event," in an occurrence policy and claims-made policy, means the act that gave rise to the claim.

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History: Amended 2010 Ky. Acts ch. 24, sec. 1464, effective July 15, 2010. -- Amended 1998 Ky. Acts ch. 99, sec. 4, effective July 15, 1998. -- Amended 1982 Ky. Acts ch. 209, sec. 3, effective July 15, 1982. -- Created 1972 Ky. Acts ch. 137, sec. 5, effective June 16, 1972.