

KEMPER UPDATE

In response to questions from clients and associates regarding Kemper's pending insolvency we wanted to let you know what we have learned from discussions with regulators and legal sources familiar with the situation.

The most recent financial statements released in mid-March indicate Kemper doesn't have much time left before it takes the next step into liquidation. Many clients have wanted to consider a disengagement transaction but the cost of such a transaction appeared, in most cases, to outweigh the economic value.

A new option proposed by Kemper is a trust structure which was referenced in a recent Business Insurance article.

MECHANICS OF THE TRUST OPTION

- Kemper will amend their policies to:
 - Make the deductible unlimited
 - Eliminate any aggregate retention if applicable
- The insured will fund expected losses into a trust account which will be established specifically for that client.
- If possible Kemper will contribute a percentage of excess claim reserves.
- Kemper will release the collateral held within three business days after the trust is established.
- This trust will be used to fund the losses administered by the insured's TPA. This is an area we need to clarify further as many claims are adjusted by Broadspire today versus a client's TPA.
- The insured will sign a Retained Loss Buy-Up and Indemnity Agreement.



INDEMNITY AGREEMENT

- The parties to the agreement are Lumbermens and all of its subsidiaries and the insured and all of its subsidiaries.
- The indemnity agreement becomes part of the policies to which it applies and supercedes any previously issued deductible or retention endorsements or agreements, program maximums or other agreements applying to loss payments.
- The agreement states that the insured's obligations under the agreement are independent of and survive any future legal or regulatory challenges that may arise.

- It is stipulated that Lumbermens will create an escrow account within three business days of the effective date which will include all funds held by Lumbermens owed to the insured including premium and audit adjustments, prefunded losses, interest if any, etc.
- During the transition period before all claim administration activities are assumed by the TPA, Kemper may still be administering and paying claims. Therefore, a provision is made in the agreement to reimburse Lumbermens from the escrow account within 10 business days for any such payments.
- Lumbermens retains control of claims including settlement authority and approval until the transition date when the TPA takes full control of claim administration.
- Lumbermens will deliver a letter acknowledging approval of the transaction by the Illinois Insurance Department within 20 days following the effective date. The insured may terminate the agreement and revert to original terms if such letter is not delivered.

GUARANTEE FUNDS

- The insured will be giving up any right it might otherwise have to access the state guarantee funds, as most of these funds typically participate excess of retained losses if they are available to the insured.
- In addition, the insured's claims would not be transferred to the guarantee fund for management either.

CONCLUSION

This is just a summary of the key provisions of the new option proposed by Kemper. Each client will need to make its own decisions regarding what will be best for it based on the full terms and conditions of any option Kemper offers to it. Each scenario has pros and cons, and the needs and objectives of each client may be different. Below is link to the website of the National Conference of Insurance Guarantee Funds – which may be a useful tool for the FAQ that a client may have for its own state.

Additional information can be found by clicking here: <http://www.ncigf.org/>

The Willis Casualty Practice is available to research and answer additional questions or issues you or your clients may have.

CONTACT

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