

Plan 2 Deposits

History

A security deposit requirement for Plan No. 2 insurers existed from 1915 until 1997. The requirement was put into place as a backstop to Plan 2 insurers that went bankrupt so benefits to injured workers would continue.

In 1997, the security deposit requirement was amended out in a DLI “housekeeping” bill (SB 349). The amendment was intended to eliminate security deposits for Plan 2 insurers because of the establishment of the Property and Casualty Guarantee Fund.

“It was amended to eliminate security deposits for Plan 2 insurers. Testimony- (Jacqueline Lenmark)(based on the fact that this section of code was enacted before there was an Insurance Commissioner and before there was a Property and Casualty Guarantee Fund. Testimony- (Jacqueline Lenmark) (Under the current law those deposits are simply turned over to the Guaranty Fund).”

In 2007, the Plan No. 2 security deposit requirement was again amended to add back a requirement of a Plan 2 insurer. ((DLI “housekeeping” bill (SB 108)). The bill referenced language about “insolvent insurers” and captive reciprocal insurers (which are not members of the Guaranty Fund). Evidently there were some claims when Valor Insurance Company became insolvent around 2005 that were not transferred expediently to the Western Guaranty Fund which raised concerns about payment of benefits.

General Plan 2 Security Facts

In the state of Montana Plan 2 insurers are approved to write premium by the Insurance Commissioner. The Department of Labor regulates the Plan 2’s to make sure they are adhering to statutory requirements of writing work comp premium in MT. The Department currently requires a security deposit of the Plan 2 upon their approval of the Insurance Commissioner. This security is held in Trust at US Bank. When a Plan 2 goes insolvent, the Western Guaranty Fund gets notice right away from the Insurance Commissioner and the process gets picked up by them.

Western Guaranty Fund Process

The Western Guaranty Fund (“Fund”) follows a very structured process when an insurer becomes insolvent. The Fund is notified by the Insurance Commissioner as soon as they are determined to be insolvent by the court.

The Insurance Guaranty Association Act and the requirements of the Guaranty Association through their agent, the Western Guaranty Fund, makes clear that the Guaranty Association is legally charged with absorbing the insolvent insurers responsibility to pay claims. Specifically, the Act says in 33-10-105 (1) (a) (ii) (B) that the association shall pay the full amount of any covered claim arising out of a workers’ compensation policy. It goes on to say the association is considered the insurer to the extent of its obligation on the covered claims and the Act covers notifications to DLI and notifications for occupational disease claims.

The Fund is set up following the notification to contact the insurer’s representative, sign a post liquidation agreement, pay indemnity benefits for 8 weeks, and then receive claim files so medical

payments can be made. The Guaranty Fund fully secures and guarantees all benefits to injured workers of an insolvent company. If the Guaranty Fund does fall short of funding the claims, they have the ability by statute to assess all insurers to cover the deficiency.

Department of Labor Process

The Department is also notified by the Insurance Commissioner as soon as they are determined to be insolvent by the court and acts to cash the security deposit it has on hand. The only role the Department plays is to manage security deposits that by statute are required to ensure payment of liabilities of a Plan 2 insurer that becomes insolvent or bankrupt. The department is not designed to handle claims.

From 1984 to 2006 there were 54 companies that went insolvent. From 2007 to 2020 there have been 27 insolvencies. Of those insolvent insureds the Department has cashed security deposits for six insolvent insureds since 2008 but never released funds immediately to the Western Guaranty Fund for payment of any claims. In 2020 the department sent \$157,279.43 to the Western Guaranty Fund for four insolvent companies that the Western Guaranty Fund has paid all claims in full on and the company is no longer in existence. The most recent was Guarantee Insurance out of Florida that went insolvent. The Department received several calls from claimants immediately after the insolvency and those calls were referred on to the Western Guaranty Fund and those claimants were taken care of.

In 2008 there were 153 insurers with security deposits of \$8,901,000 and has grown to 280 insurers and \$24,656,500 over the past twelve years. The monies just sit in Trust with US Bank and the interest earned goes back to the Plan 2. The Department performs an annual analysis based on premium to increase or decrease deposits as insurers premiums increase or decrease. The security deposits are audited annually by accounting and the legislative auditor. We feel that this whole process is an unnecessary use of state resources and opens the Department up to unnecessary audit findings

The Department feels the need for a deposit is redundant because the Guaranty Fund fully secures and guarantees all benefits to injured workers of an insolvent company. Because of the changes in technology and the structure of the Guaranty Fund we feel the need for deposits for Plan 2 insurers is obsolete. The Guaranty fund has the mechanisms in place to handle the urgency of the continuation of benefits for workers whose insurance company has become insolvent. If the Guaranty Fund does fall short of funding the claims, they have the ability by statute to assess all insurers to cover the deficiency.

The Montana Insurers Guaranty Association agrees that it is a duplication