

# **Bond Case Briefs**

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## **INSURANCE - COLORADO**

### **Colorado Insurance Guaranty Association v. Sunstate Equipment Company, LLC**

**Colorado Court of Appeals, Div. III - April 21, 2016 - P.3d - 2016 WL 1593711 - 2016 COA 64**

Colorado Insurance Guaranty Association (CIGA) filed recoupment action against insured, seeking to recover claims paid on behalf of insolvent workers' compensation insurer. Insured filed counterclaims. The District Court entered summary judgment in favor of CIGA, but allowed insured offset. Insured appealed, and CIGA cross-appealed.

The Court of Appeals held that:

- Use of fixed date to determine insured's net worth for purposes of determining CIGA's right of recoupment under net worth statute did not violate equal protection as-applied to insured;
- Failure of net worth statute to adjust for inflation did not violate equal protection as-applied to insured;
- Net worth statute did not violate insured's procedural due process rights;
- As an issue of first impression, immunity statute did not violate constitutional prohibition on special legislation;
- As an issue of first impression, immunity statute barred insured's claims that CIGA's negligent handling of workers' compensation claim precluded it from recouping payments from insured;
- CIGA was not required to demonstrate that claims were covered under workers' compensation policy prior to seeking recoupment from insured; and
- Insured was not entitled to offset for early access distributions (EADs) CIGA received in insurer's liquidation proceedings.

Use of fixed date to determine insured's net worth, under statute authorizing Colorado Insurance Guaranty Association (CIGA) to recoup payments made on behalf of insolvent insurers from high net-worth insureds, was rationally related to legitimate legislative purposes of ease of administration and preservation of limited fund resources, and thus did not violate equal protection as applied to insured, which asserted its net worth had fluctuated below \$25 million threshold at certain times. Provision conserved resources available to pay claimants and protected CIGA's financial stability, requiring CIGA to determine insured's fluctuating net worth would consume its resources, and high net-worth could be considered proxy for sophistication in ability to be selective in purchasing insurance.

Failure of net worth statute, which authorized Colorado Insurance Guaranty Association (CIGA) to recoup payments made on behalf of insolvent insurers from high net-worth insureds, to adjust \$25 million net-worth threshold for inflation did not lack minimum rationality, and thus did not violate equal protection as applied to insured, even if \$25 million net worth equated to lower number three years after Act's enactment when insured's net worth was determined. There was no indication that difference was so great as to undercut basic rationale of such a provision of treating high net worth insureds differently to conserve limited resources.

Net worth statute, which authorized Colorado Insurance Guaranty Association (CIGA) to recoup payments made on behalf of insolvent insurers from high net-worth insureds, did not violate insured's procedural due process rights, though statute did not require CIGA to provide actual notice to insured when it took over workers' compensation insurance claim, and such notice would only have been minimal burden. Insured's interests were purely economic, there was only limited risk of erroneous deprivation of insured's interests, insured had constructive notice that CIGA would take over claim when insurer became insolvent, and insured could have challenged any workers' compensation benefits it did not think were reasonable and necessary.

Immunity statute, which provided Colorado Insurance Guaranty Association (CIGA) with immunity for any actions taken in performance of its powers and duties in stepping into the shoes of insolvent insurers, did not create illusory class of one, in violation of constitutional prohibition on special legislation, since immunity provision also applied to any member insurer as well as the state Insurance Commissioner or his representatives.

Immunity statute, which provided Colorado Insurance Guaranty Association (CIGA) with immunity for any actions taken in performance of its powers and duties in stepping into the shoes of insolvent insurers, was reasonably related to a legitimate government purpose of avoiding excessive delay in payment and financial loss to claimants or insureds because of insolvency of the insurer, and thus did not violate constitutional prohibition on special legislation.

Immunity statute, which provided Colorado Insurance Guaranty Association (CIGA) with immunity from liability for any actions taken in performance of its powers and duties in stepping into the shoes of insolvent insurers, barred insured's claims that CIGA's negligent payments of workers' compensation claim precluded it from recouping those payments from insured under net worth provision. Insured's claims all related to CIGA's alleged mishandling of workers' compensation claim, which fell within actions taken in CIGA's performance of its powers and duties, and permitting insured to assert that CIGA mishandled workers' compensation claim would result in liability to CIGA by limiting its ability to recoup payments.

Colorado Insurance Guaranty Association (CIGA) was not required to demonstrate that workers' compensation claims were covered under workers' compensation policy prior to seeking recoupment of claims paid on behalf of insolvent insurer from insured under net worth statute authorizing CIGA to recoup payments made on behalf of insolvent insurers from high net-worth insureds. Insured was required to maintain workers' compensation insurance obligating insurer to pay any compensation to the employer for which insured became statutorily liable, and in workers' compensation proceedings, either insurer or workers' compensation claimant could litigate necessity and reasonableness of specific medical payments based on that statutory requirement, not as a matter of policy limits.

Genuine issue of material fact existed as to whether amounts Colorado Insurance Guaranty Association (CIGA) paid on workers' compensation claim on behalf of insolvent workers' compensation insurer were covered claims, in that they were either specifically authorized in the underlying workers' compensation proceedings or were reasonably necessary if the orders from the underlying proceeding did not specify the nature of any future medical benefits that might be required, thus precluding summary judgment on CIGA's claims for recoupment against insured under net worth statute authorizing CIGA to recoup payments made on behalf of insolvent insurers from high net-worth insureds.

Recovery of workers' compensation claims paid by Colorado Insurance Guaranty Association (CIGA) on behalf of insolvent workers' compensation insurer from insured, under statute allowing for recoupment of such payments from high net worth insureds, would not result in impermissible

double recovery to CIGA, though CIGA has received early access distribution (EADs) in insurer's liquidation proceedings in California. Net worth claim was effectively a subrogation action, and thus to extent CIGA recovered its payments on workers' compensation claims from insured, under California law, it was required to return any EADs paid to insurer's liquidation estate, and those funds would become available to other creditors, including insured.