

## Chapter 15

### UNINSURED AND INSOLVENCY SITUATIONS

#### § 15.01 Uninsured Employers.

#### § 15.02 Insolvent Employers.

#### § 15.03 Insolvent Carriers.

#### § 15.01 Uninsured Employers.

Until the enactment of section 42-7-200, employees of uninsured employers faced serious hardships. Unless the employer capitulated and paid the appropriate benefits out of his/her pocket, the claimant had to proceed to a hearing, obtain an award, reduce it to judgment, and execute on the judgment. If the execution was returned nulla bona, he could then seek payment from the Insolvency Fund (part of the Second Injury Fund).

With the enactment of section 42-7-200 the process is slightly simpler. The Insolvency Fund is now the Uninsured Employers Fund (UEF). It steps in upon proof that the employer is uninsured. This proof normally consists of a capitulation agreement obtained by the commission's compliance department. The UEF acts as an insurance carrier, but only after a decision by the commission or with the agreement of the employer. If the employer is unavailable, or uncooperative, a decision must be obtained from the commission before the UEF will make payment. After the decision has been issued, the UEF will not request payment through the State Treasurer's Office until the time for appeal has passed. Oftentimes the employer, appearing pro se, can delay payment by filing an appeal.

#### § 15.02 Insolvent Employers.

If the employer is insolvent, has not filed bankruptcy, but has coverage, the claim should proceed as usual against the carrier. If the employer is insolvent (or solvent) without coverage, the UEF steps in. The claimant does not have to prove insolvency, only that the employer has no coverage or is an unqualified self-insured. This is usually established by the

commission's compliance division. However, if the compliance division does not issue a rule to show cause or obtain a capitulation agreement, the claimant's attorney should file a Form 50 and request a hearing to determine the compliance issues.

If the employer has filed or been forced into bankruptcy, the stay must be lifted before the UEF will step in. If the employer has filed bankruptcy but has coverage, there is a possibility that the case may continue without the bankruptcy stay being lifted. See section 42-5-70. However, the safer practice would be to file a bankruptcy claim and a motion to lift the stay.

**§ 15.03 Insolvent Carriers.**

Bankrupt insurance carriers pose a different problem. They do not fall under the UEF but rather the South Carolina Property and Casualty Guaranty Association. See sections 38-31-10, et. seq.