

**§4614. Miscellaneous provisions**

**1. Liability for unpaid assessments of insureds of an impaired insurer.** Nothing in this chapter may be construed to reduce the liability for unpaid assessments of the insureds of an impaired insurer operating under a plan with assessment liability.

[PL 1983, c. 846 (NEW).]

**2. Records.** Records must be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under section 4608. Records of the negotiations or meetings may be made public only upon the termination of a liquidation, rehabilitation or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection limits the duty of the association to render a report of its activities under section 4615.

[PL 2005, c. 346, §12 (AMD); PL 2005, c. 346, §16 (AFF).]

**3. Association deemed to be creditor of impaired or insolvent insurer.** For the purpose of carrying out its obligations under this chapter, the association is deemed to be a creditor of the impaired insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to section 4608, subsection 9. All assets of the impaired insurer attributable to covered policies must be used to continue all covered policies and pay all contractual obligations of the impaired insurer as required by this chapter. Assets attributable to covered policies, as used in this subsection, are to be construed as that proportion of the assets that the reserves that should have been established for these policies bear to the reserve that should have been established for all policies of insurance written by the impaired insurer.

As creditors of the impaired or insolvent insurer, the association and other similar associations are entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available to reimburse it, as a credit against contractual obligations under this chapter. If the liquidator has not, within 120 days of a final determination of insolvency of an insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, then the association is entitled to make application to the receivership court for approval of its own proposal to disburse these assets.

[PL 2005, c. 346, §12 (AMD); PL 2005, c. 346, §16 (AFF).]

**4. Factors considered in distributing assets.** In distributing assets, the following factors must be considered.

A. Prior to the termination of any liquidation, rehabilitation or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, policy owners, contract owners, certificate holders and enrollees of the impaired or insolvent insurer and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the impaired or insolvent insurer. In such a determination, consideration must be given to the welfare of the policy owners, contract owners, certificate holders and enrollees of the continuing or successor insurer. [PL 2017, c. 382, §28 (AMD).]

B. No distribution to stockholders, if any, of an impaired or insolvent insurer may be made until and unless the total amount of assessments levied by the association with respect to the insurer have been fully recovered by the association. [PL 2005, c. 346, §12 (AMD); PL 2005, c. 346, §16 (AFF).]

[PL 2017, c. 382, §28 (AMD).]

**5. Unfair trade practice.**

[PL 2005, c. 346, §12 (RP); PL 2005, c. 346, §16 (AFF).]

**6. Recovery procedure; provisions.** The recovery procedure must provide that:

A. If an order for liquidation or rehabilitation of an insurer domiciled in this State has been entered, the receiver appointed under that order has a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the 5 years preceding the petition for liquidation or rehabilitation subject to the limitations of paragraphs B to D; [PL 2005, c. 346, §12 (AMD); PL 2005, c. 346, §16 (AFF).]

B. No distribution may be recoverable if the insurer shows that when paid the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations; [PL 2005, c. 346, §12 (AMD); PL 2005, c. 346, §16 (AFF).]

C. Any person who was an affiliate that controlled the insurer at the time the distributions were paid is liable up to the amount of distributions the person received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared is liable up to the amount of distributions the person would have received if they had been paid immediately. If 2 or more persons are liable with respect to the same distributions they are jointly and severally liable; [PL 2005, c. 346, §12 (AMD); PL 2005, c. 346, §16 (AFF).]

D. The maximum amount recoverable under this section is the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer on a fair and equitable basis; and [PL 2005, c. 346, §12 (AMD); PL 2005, c. 346, §16 (AFF).]

E. If any person liable under paragraph C is insolvent, all its affiliates that controlled it at the time the distribution was paid are jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate. [PL 2005, c. 346, §12 (AMD); PL 2005, c. 346, §16 (AFF).]

[PL 2005, c. 346, §12 (AMD); PL 2005, c. 346, §16 (AFF).]

**SECTION HISTORY**

PL 1983, c. 846 (NEW). PL 2005, c. 346, §12 (AMD). PL 2005, c. 346, §16 (AFF). PL 2017, c. 382, §28 (AMD).

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