

508C.13 Miscellaneous provisions.

1. This chapter does not reduce the liability for unpaid assessments of the insureds on an impaired or insolvent insurer operating under a plan with assessment liability other than the plan of this chapter.

2. Records shall 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 508C.8. Records of the negotiations or meetings shall be made public pursuant to chapter 22 only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. This subsection does not limit the duty of the association to render a report of its activities under section 508C.14.

3. For the purpose of carrying out its obligations under this chapter, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled pursuant to its subrogation rights under section 508C.8, subsection 7. Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this chapter. As used in this subsection, “*assets attributable to covered policies*” means that proportion of the assets which the reserves that should have been established for the policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

4. a. Prior to the termination of a liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, similar associations of other states, the shareholders and policyowners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer. When considering the contributions, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

b. A distribution to stockholders, if any, of an impaired or insolvent insurer shall not be made until the total amount of valid claims of the association and of similar associations of other states for funds expended in carrying out its powers and duties under section 508C.8 with respect to the insurer have been fully recovered by the association and the similar associations.

5. a. Subject to the limitations of paragraphs “b”, “c”, and “d”, if an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under the order may 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 five years preceding the petition for liquidation or rehabilitation.

b. Distributions are not recoverable if the insurer shows that when paid the distributions were lawful and reasonable and that the insurer did not know and could not reasonably have known that the distributions might adversely affect the ability of the insurer to fulfill its contractual obligations.

c. A person who was an affiliate that controlled the insurer at the time the distributions were paid is liable up to the amount of distributions received. A person who was an affiliate that controlled the insurer at the time the distributions were declared is liable up to the amount of distributions that would have been received if they had been paid immediately. If two persons are liable with respect to the same distributions, they are jointly and severally liable.

d. The maximum amount recoverable under this subsection is the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

e. If a person liable under paragraph “c” is insolvent, all its affiliates that controlled it at the time the dividend was paid are jointly and severally liable for a resulting deficiency in the amount recovered from the insolvent affiliate.

87 Acts, ch 223, §13; 90 Acts, ch 1234, §26