

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.1377 Liquidation or rehabilitation; recovery of certain distributions or payments.

Sec. 1377. (1) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer both of the following:

(a) From any parent corporation, holding company, or person who otherwise controls the insurer, the amount of distributions, other than distributions of shares of the same class of stock, paid by the insurer on its capital stock if made at any time during the 3 years preceding the petition for liquidation, conservation, or rehabilitation.

(b) Any payment in the form of an extraordinary bonus, termination settlement, or lump sum salary adjustment made by the insurer or its subsidiary to a director, officer, or employee if made at any time during the 3 years preceding the petition for liquidation, conservation, or rehabilitation.

(2) A distribution or payment shall not be recoverable under this section if the parent or affiliate or the director, officer, or employee 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 or payment might adversely affect the ability of the insurer to fulfill its contractual obligations. If payments were made to more than 1 director, officer, or employee, this subsection shall apply to the aggregate of those payments.

(3) A person who was a parent corporation, holding company, or a person who otherwise controlled the insurer or affiliate at the time the distribution was paid shall be liable up to the amount of distributions or payments under subsection (1) that the person received. A person who otherwise controlled the insurer at the time the distribution was declared shall be liable up to the amount of distributions he or she would have received if they had been paid immediately. If 2 or more persons are liable with respect to the same distribution, they are jointly and severally liable.

(4) The maximum amount recoverable under this section shall be 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 and to reimburse any guaranty funds.

(5) To the extent that any person liable under subsection (3) is insolvent or otherwise fails to pay claims due from it pursuant to subsection (3), its parent corporation, holding company, or person who otherwise controlled it at the time the distribution was paid, is jointly and severally liable for any resulting deficiency in the amount recovered from that person.

History: Add. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

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