

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

500.8134 Proposal to make early access disbursements; effect of insufficient assets; report; provisions of proposal; notice of application; action on application; return of early access funds; limitation.

Sec. 8134. (1) Within 120 days of a final determination of insolvency of an insurer by a court of competent jurisdiction of this state, the liquidator shall make application to the court for approval of a proposal to make early access disbursements out of marshaled assets, to any guaranty association or foreign guaranty association having obligations because of the insolvency. If the liquidator determines that the estate will not have sufficient assets to make any early access disbursements to a guaranty association or foreign guaranty association under this section, the liquidator shall file a report with the court supporting this determination. Notice to the state insurance commissioners, guaranty associations, and foreign guaranty associations and court review of the report shall be provided under subsection (5). This report may be given instead of an application for a proposal to make early access disbursements. However, if at any time the estate obtains sufficient assets to support an early access disbursement under this section, the liquidator shall file an application for a proposal to make early access disbursements within 60 days of the estate obtaining those assets. If, within 120 days of a final determination of insolvency, the liquidator fails to file an application with the court for approval of a proposal to make early access disbursements or, alternatively, fails to file a report with the court supporting the determination that the estate will not have sufficient assets to make early access disbursements, any guaranty association or foreign guaranty association that may become obligated to pay claims as a result of the insolvency may file this application. An application filed by an association shall be reviewed by the court and, if the proposal submitted by the association meets the requirements set out in this section, the application shall be approved by the court. Upon court approval of the guaranty association or foreign guaranty association proposal, the liquidator shall begin making early access disbursements in accordance with the proposal.

(2) A proposal under subsection (1) shall at least include provisions for all of the following:

(a) Reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors, to the extent of the value of the security held, and claims falling within the priorities established in section 8142(1)(a) and (b) and (2). When a reserve for uncovered claims under section 8142(2) is appropriate, the amount of estate assets to be reserved for those claims shall be a percentage of the uncovered claims under section 8142(2), equal in proportion to the percentage of assets distributed, or proposed for distribution, to the guaranty association or foreign guaranty association with respect to covered obligations at the time the reserve for uncovered claims is calculated. Reserves shall be established based on the best available information at the time the distribution is calculated and modified from time to time as more refined information becomes available.

(b) Disbursement of the assets marshaled to date and subsequent disbursement of assets as they become available.

(c) Equitable allocation of disbursements to each of the guaranty associations and foreign guaranty associations entitled to disbursements.

(d) The securing by the liquidator from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the liquidator such assets, together with income earned on assets previously disbursed, as may be required to pay claims of secured creditors and claims falling within the priorities established in section 8142 in accordance with those priorities. A bond shall not be required of any such association.

(e) A full report to be made by each association to the liquidator accounting for assets disbursed to the association, all disbursements made from the assets, interest earned by the association on the assets, and any other matter as the court directs.

(3) The liquidator's proposal shall provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made thereby for which the associations could assert a claim against the liquidator, and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of claim payments made or to be made by the association, then disbursements shall be in the amount of available assets.

(4) The liquidator's proposal shall, with respect to an insolvent insurer writing life or health insurance or annuities, provide for disbursements of assets to any guaranty association or any foreign guaranty association covering life or health insurance or annuities or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the acts creating the associations.

(5) Notice of application shall be given to the association in each state and to the commissioners of

insurance of each state. Notice shall be considered to have been given when deposited in the United States certified mails, first-class postage prepaid, at least 30 days before submission of the application to the court. Action on the application may be taken by the court if the notice under this subsection has been given and if the liquidator's proposal complies with subsection (2)(a) and (b).

(6) The liquidator shall not offset the amount to be disbursed to any guaranty association or foreign guaranty association by any special or statutory deposit or any other asset of the insolvent insurer except to the extent the deposit or asset has been paid to the association for the purpose of satisfying the association's claims. If a guaranty association or foreign guaranty association has received an early access distribution and thereafter also receives a special or statutory deposit or any other asset of the insolvent insurer, the liquidator may request the return of the early access funds up to the amount of the special or statutory deposit or other asset of the insolvent insurer.

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