

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

500.8138 Third party claim; claim by insured; insured as unexcused late filer; recommendations of liquidator; withholding dividends; hearing; payment of insured; reversions to undistributed assets; delay in final payment; filing of several claims founded on 1 policy; prohibited claims.

Sec. 8138. (1) If a third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator.

(2) Whether or not the third party files a claim, the insured may file a claim on his or her own behalf in the liquidation. If the insured fails to file a claim by the date for filing claims specified in the order of liquidation or within 60 days after mailing of the notice required by section 8122, whichever is later, he or she is an unexcused late filer.

(3) The liquidator shall make his or her recommendations to the court under section 8142 for the allowance of an insured's claim under subsection (1) after consideration of the probable outcome of a pending action against the insured on which the claim is based, the probable damages recoverable in the action, and the probable costs and expenses of defense. After allowance by the court, the liquidator shall withhold dividends payable on the claim pending the outcome of litigation and negotiation with the insured. If appropriate, the liquidator shall reconsider the claim on the basis of additional information and amend his or her recommendations to the court. The insured shall be afforded the same notice and opportunity to be heard on all changes in the recommendation as in the initial determination. The court may amend the allowance as the court considers appropriate. As claims against the insured are settled or barred, the insured shall be paid from the amount withheld the same percentage dividend as was paid on other claims of like property, based on the lesser of the amount actually recovered from the insured by action or paid by agreement plus the reasonable costs and expense of defense, or the amount allowed on the claims by the court. After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed assets of the insurer. Delay in final payment under this subsection shall not be a reason for unreasonable delay of final distribution and discharge of the liquidator.

(4) If several claims founded upon 1 policy are filed, whether by third parties or as claims by the insured under this section, and the aggregate allowed amount of the claims to which the same limit of liability in the policy is applicable exceeds that limit, each claim as allowed shall be reduced in the same proportion so that the total equals the policy limit. Claims by the insured shall be evaluated as in subsection (3). If any insured's claim is subsequently reduced under subsection (3), the amount thus freed shall be apportioned ratably among the claims which have been reduced under this subsection.

(5) A claim may not be presented under this section if it is or may be covered by a guaranty association or foreign guaranty association.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218