

40-3641. Claims; priority of distribution; classes established. The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class. The order of distribution of claims shall be:

(a) Class 1. The costs and expenses of administration during rehabilitation and liquidation including, but not limited to, the following;

- (1) The actual and necessary costs of preserving or recovering the assets of the insurer;
- (2) compensation for all authorized services rendered in the rehabilitation and liquidation;
- (3) any necessary filing fees;
- (4) the fees and mileage payable to witnesses;
- (5) authorized reasonable attorney fees and other professional services rendered in the rehabilitation and liquidation;

(6) the reasonable expenses of a guaranty association or foreign guaranty association in handling claims.

(b) Class 2. All claims under policies including claims for unearned premium or other premium refunds and such claims of the federal or any state or local government for losses incurred, ("loss claims") including third-party claims and all claims of a guaranty association or foreign guaranty association other than those claims included in Class 1. All claims under life insurance policies, funding agreements, guaranteed investment contracts, synthetic guaranteed investment contracts and annuity policies, whether for death proceeds, annuity proceeds or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to an employee shall be treated as a gratuity.

(c) Class 3. Claims of the federal government not included in Class 2.

(d) Class 4. Reasonable compensation to employees for services performed to the extent they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation or, if rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation. Principal officers and directors shall not be entitled to the benefits of this priority except as otherwise approved by the liquidator and the court. Such priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees. Where there are no claims and no potential claims of the federal government in the estate, claims in this class will have priority over claims in Class 2 and below.

(e) Class 5. Claims of general creditors including claims of ceding and assuming companies in their capacity as such.

(f) Class 6. Claims of any state or local government except those under Class 2. Claims, including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to be equal to the class of claims under subsection (i).

(g) Class 7. Claims filed late or any other claims other than claims under subsections (h) and (i).

(h) Class 8. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with law.

(i) Class 9. The claims of shareholders or other owners in their capacity as shareholders.

The provisions of this section, as amended, shall apply to all claims which have not been paid prior to the effective date of this act.

History: L. 1991, ch. 125, § 37; L. 2005, ch. 92, § 5; L. 2005, ch. 186, § 11; July 1.

Revisor's Note:

Section was also amended by L. 2005, ch. 42, § 3, but that version was repealed by L. 2005, ch. 186, § 23.