

60B.44 ORDER OF DISTRIBUTION.

Subdivision 1. **Deductible provision.** The distribution of claims from the insurer's estate shall be in the order stated in this section with a descending degree of preference for each subdivision. Every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. No subclasses shall be established within any class.

Subd. 2. **Administration costs.** The costs and expenses of administration, including but not limited to the following: The actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; and reasonable attorney's fees.

Subd. 3. [Repealed, 1999 c 177 s 88]

Subd. 4. **Loss claims; including claims not covered by a guaranty association.** All claims under policies or contracts of coverage for losses incurred including third-party claims, and all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies or contracts. All claims under life insurance and annuity policies, including funding agreements issued pursuant to section 61A.276, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. That portion of any loss for which indemnification is provided by other benefits or advantages recovered or recoverable by the claimant shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment made by an employer to an employee shall be treated as a gratuity. Claims not covered by a guaranty association are loss claims.

Subd. 4a. **Unearned premiums.** Claims under nonassessable policies or contracts of coverage for unearned premiums or subscription rates or other refunds.

Subd. 4b. **Federal government.** Claims of the federal government.

Subd. 4c. **Wages.** (a) Debts due to employees for services performed, not to exceed \$1,000 to each employee, that have been earned within one year before the filing of the petition for liquidation, subject to payment of applicable federal, state, or local government taxes required by law to be withheld from the debts. Officers are not entitled to the benefit of this priority. In cases where there are no claims and no potential claims of the federal government in the estate, these claims will have priority over claims in subdivision 4.

(b) The priority in paragraph (a) is in lieu of other similar priority authorized by law as to wages or compensation of employees.

Subd. 5. [Repealed, 1999 c 177 s 88]

Subd. 6. **Residual classification.** All other claims including claims of any state or local government, not falling within other classes under this section. 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 the class of claims under subdivision 9.

Subd. 7. **Judgments.** Claims based solely on judgments. If a claimant files a claim and bases it both on the judgment and on the underlying facts, the claim shall be considered first by the liquidator on the basis of the underlying facts, giving the judgment such weight as the liquidator

deems appropriate. The claim as allowed on the underlying facts shall receive the priority it would receive in the absence of the judgment. If the judgment is larger than the allowance on the underlying claim, the remaining portion of the judgment shall be treated as if it were a claim based solely on a judgment.

Subd. 8. Interest on claims already paid. Interest at the legal rate compounded annually on all claims in the classes under subdivisions 2 to 7 from the date of the petition for liquidation or the date on which the claim becomes due, whichever is later, until the date on which the dividend is declared. The liquidator, with the approval of the court, may make reasonable classifications of claims for purposes of computing interest, may make approximate computations, and may ignore certain classifications and time periods as de minimis.

Subd. 9. Miscellaneous subordinated claims. The remaining claims or portions of claims not already paid, with interest as in subdivision 8.

(a) claims under section 60B.39, subdivision 2;

(b) claims subordinated by section 60B.61;

(c) except to the extent excused or otherwise permitted pursuant to section 60B.37, claims filed late;

(d) portions of claims subordinated under subdivision 6; and

(e) claims or portions of claims payment of which is provided by other benefits or advantages recovered or recoverable by the claimant.

Subd. 10. Preferred ownership claims. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited to the amount set forth in section 60B.46, subdivision 2, clause (b). Interest at the legal rate shall be added to each claim, as in subdivisions 8 and 9.

Subd. 11. Proprietary claims. The claims of shareholders or other owners.

History: 1969 c 708 s 44; 1985 c 255 s 1; 1986 c 444; 1987 c 337 s 27-30; 1999 c 177 s 23-27; 2001 c 131 s 6