60B.40 SPECIAL PROVISIONS FOR THIRD-PARTY CLAIMS.

Subdivision 1. **Third-party's claim.** Whenever any 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. The filing of the claim shall release the insured's liability to the third party on that cause of action in the amount of the applicable policy or contract limit, but the liquidator shall also insert in any form used for the filing of third-party claims appropriate language to constitute such a release. The release shall be void if the coverage is avoided by the liquidator.

Subd. 2. **Insured's claim.** Whether or not the third party files a claim, the insured may file a claim on the insured's 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 60B.26, subdivision 1, paragraph (b), whichever is later, the insured is an unexcused late filer.

Subd. 3. **Procedure for insured's claim.** The liquidator shall make recommendations to the court under section 60B.45 for the allowance of an insured's claim under subdivision 2 after consideration of the probable outcome of any 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 any dividends payable on the claim, pending the outcome of litigation and negotiation with the insured. Whenever it seems appropriate, the liquidator shall reconsider the claim on the basis of additional information and amend the 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 its initial determination. The court may amend its allowance as it thinks 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 priority, based on the lesser of (a) the amount actually recovered from the insured by action or paid by agreement plus the reasonable costs and expenses of defense, or (b) 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 subdivision shall not be a reason for unreasonable delay of final distribution and discharge of the liquidator.

Subd. 4. **Multiple claims.** If several claims founded upon one policy or contract of coverage 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 or contract is applicable exceeds that limit, each claim as allowed shall be reduced in the same proportion so that the total equals the policy or contract limit. Claims by the insured shall be evaluated as in subdivision 3. If any insured's claim is subsequently reduced under subdivision 3, the amount thus freed shall be apportioned ratably among the claims which have been reduced under this subdivision.

History: *1969 c 708 s 40; 1986 c 444; 2020 c 83 art 1 s 8*