65A.23 WHEN CLAIMS EXCEED GUARANTY SURPLUS AND CAPITAL STOCK.

(1) When the claims upon the company shall exceed the amount of its capital stock and of guaranty surplus fund, provided for by sections 65A.16 to 65A.24, and of its surplus funds, other than the special reserve fund, the company shall notify the commissioner of the fact, who shall then make, or cause to be made, an examination of the company, and issue a certificate of the result, showing the amounts of capital, of guaranty surplus fund, of special reserve fund, of reinsurance liability, and of other assets, and upon the commissioner's issuing this certificate, in duplicate, one copy to be given to the company and one to be recorded in the Department of Commerce, the special reserve fund shall be immediately held to protect all policyholders of the company, other than such as are claimants upon it at the date of the certificate, and the special reserve fund, together with other assets, certified by the commissioner as equal in value to the amount of the unearned premiums of the company, to be ascertained, as hereinbefore provided, shall constitute the capital and assets of the company for the protection of policyholders, other than these claimants, and for the further conduct of its business, and any official certificate of the commissioner, herein provided for, shall be binding and conclusive upon all parties interested in the company, whether as stockholders, creditors, or policyholders, and upon the payment to claimants who are such at the date of the certificate, of the full amount of the capital of the company and of its guaranty surplus fund and of its assets at that date, excepting only the special reserve fund and an amount of its assets equal to the liability of the company for unearned premiums, as so certified by such commissioner of commerce, the company shall be forever discharged from any and all further liability to these claimants, and to each of them, and the commissioner shall, after issuing a certificate, upon the demand of the company, transfer to it all such securities as shall have been deposited by the company as a special reserve fund and, if the amount of this special reserve fund be less than 50 percent of the full amount of the capital of the company, if the capital be $2,000,000, or less, or if the amount of the special reserve fund be less than $1,000,000, if the capital be over $2,000,000, a requisition shall be issued by the commissioner upon the stockholders, to make up the capital to that proportion of its full amount, not exceeding $1,000,000; provided, that any capital so impaired shall be made up at least to the sum of $100,000, and in case the company, after this requisition, shall fail to make up its capital at least to the sum of $100,000, as therein directed, the special reserve fund shall still be held as security and liable for any and all losses occurring upon policies of the company.

(2) If, after this application of the special reserve fund and requisition on the stockholders, the par value of outstanding shares of stock shall exceed the new amount of capital so established, outstanding shares, to the amount of the excess, shall be surrendered by the stockholders pro rata.

(3) The company shall, in its annual statement to the commissioner, set forth the amount of the special reserve fund and of its guaranty surplus fund.

(4) If, in consequence of the payment of losses by fires, or of the expenses of the business, or of the interest or dividends payable under the provisions of sections 65A.16 to 65A.24 to stockholders, or from any cause, the guaranty surplus fund shall be reduced in amount below the amount of the special reserve fund, the directors of the corporation shall make no additions to the special reserve fund until the guaranty surplus fund is equal to the special reserve fund.

(5) The policy registers, insurance maps, books of record, and other books in use by the company in its business, and its policy and other blanks, office furniture, fixtures, and supplies are not to be considered as assets, but shall be held by the company for its use in the protection of its policyholders.

(6) If any amount greater than a sum equal to one-half of its capital stock shall, by the company under the provisions of sections 65A.16 to 65A.24, have been deposited with the commissioner, the commissioner shall retain of these securities an amount equal to one-half of what amount the commissioner shall so hold

thereof in excess of a sum equal to such one-half of such capital stock if the capital be $2,000,000, or less, or in excess of $3,000,000 if the capital be over $2,000,000, and the commissioner shall transfer the balance thereof to the company, as herein provided, and the amount so transferred to the company shall, from the time of the transfer, provided the amount thereof shall not be less than $100,000, constitute the capital stock of the company for the further conduct of its business, as hereinbefore provided, and the securities so retained shall be regarded as the special reserve fund of the company, to which additions may be made, as herein provided, and shall be held in the same manner, and for the same purpose, and under the same conditions, as the original special reserve fund of the company was held. The provisions of this section, providing for discharge of the company from further liability to existing claimants upon application to the payment of such claims of its capital, surplus, and assets, excepting the special reserve fund, and an amount equal to the liability for unearned premiums, shall not be construed to relieve the stockholders of the corporation from any liability imposed by the constitution of this state.

History: *1967 c 395 art 6 s 23; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1997 c 7 art 1 s 19*