

§ 58-30-200. Special provisions for third party claims.

(a) 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.

(b) Whether or not the third party files a claim, the insured may file a claim on his 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 G.S. 58-30-125, whichever is later, he is an unexcused late filer.

(c) The liquidator shall make his recommendations to the Court under G.S. 58-30-225 for the allowance of an insured's claim under subsection (b) of this section 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, he shall reconsider the claim on the basis of additional information and amend his 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 property, based on the lesser of (i) the amount actually recovered from the insured by action or paid by agreement plus the reasonable costs and expense of defense, or (ii) 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.

(d) No claim may be presented under this section if it is or may be covered by any domestic or foreign guaranty association. (1989, c. 452, s. 1; 2003-221, s. 14.)