WEST VIRGINIA CODE: §33-10-29

§33-10-29. Allowance of certain claims.

(a) No contingent claim may share in a distribution of the assets of an insurer which has been adjudicated to be insolvent by an order made pursuant to this article, except that such claim shall be considered, if properly presented, and may be allowed to share where:

(1) It does not prejudice the orderly administration of the liquidation; or

(2) There is a surplus and the liquidation is thereafter conducted upon the basis that the insurer is solvent.

(b) Where an insurer has been so adjudicated to be insolvent any person who has a cause of action against an insured of the insurer under a policy issued by the insurer shall have the right to file a claim in the liquidation proceeding, regardless of the fact that the claim may be contingent and the claim may be allowed:

(1) If it may be reasonably inferred from the proof presented upon the claim that such person would be able to obtain a judgment upon the cause of action against the insured; and

(2) If such person furnishes suitable proof, unless the court for good cause shown otherwise directs, that no further valid claim against the insurer arising out of his or her cause of action other than those already presented can be made; and

(3) If the total liability of the insurer to all claimants arising out of the same act of its insured is no greater than its maximum liability would be were it not in liquidation.

(c)(1) No judgment against such an insured taken after the date of entry of the liquidation order may be considered in the liquidation proceedings as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the entry of the liquidation order may be considered as conclusive evidence in the liquidation proceedings, either of the liability of the insured to the person upon the cause of action or of the amount of damages to which the person is therein entitled.

(2) A claim by a third party founded upon a policy may be allowed without requiring the claim to be reduced to judgment, provided it can be reasonably inferred from the proof presented that the claimant would be able to obtain a judgment upon his or her cause of action against the insured and that the judgment would represent a liability of the insurer in liquidation under the policy upon which the claim is founded.

(d) No claim of any secured claimant may be allowed at a sum greater than the difference between the value of the claim without security and the value of the security itself as of the date of the entry of the order of liquidation or such other date set by the court for determining rights and liabilities as provided in section twenty-five of this article unless the

WV Legislature

claimant surrenders his or her security to the commissioner, in which event the claim shall be allowed in the full amount for which it is valued.

(e) Whenever a creditor, whose claim against an insurer is secured, in whole or in part, by the undertaking of another person, fails to prove and file that claim, the other person may do so in the creditor's name and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent that he or she discharges the undertaking. In the absence of an agreement with the creditor to the contrary, the other person shall not be entitled to any distribution, however, until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. Any excess received by the creditor shall be held by him or her in trust for such other person. The term "other person", as used in this section, is not intended to apply to a guaranty association or foreign guaranty association.

(f) Unless such claim is filed in the manner and within the time provided in sections eighteen and thirty of this article, it shall not be entitled to filing or allowance and no action may be maintained thereon. In the liquidation, pursuant to the provisions of this article, of any domestic insurer which has issued policies insuring the lives of persons, the commissioner shall, within thirty days after the last day set for the filing of claims, make a list of the persons who have not filed proofs of claim with him or her and to whom, according to the books of the insurer, there are amounts owing under such policies and he or she shall set opposite the name of each person the amount so owing to the person. Each person whose name appears upon the list shall be considered to have duly filed, prior to the last day set for the filing of claims, a claim for the amount set opposite his or her name on the list.

(g)(1) Claims founded upon unliquidated or undetermined demands must be filed within the time limit provided in this article for the filing of claims, but claims founded upon such demands shall not share in any distribution to creditors of a person proceeded against under section nineteen-a of this article until the claims have been definitely determined, proved and allowed. Thereafter, the claims shall share ratably with other claims of the same class in all subsequent distributions.

(2) An unliquidated or undetermined claim or demand within the meaning of this article shall be considered to be any claim or demand upon which a right of action has accrued at the date of the order of liquidation and upon which the liability has not been determined or the amount thereof liquidated.

(h) The commissioner may require, as a condition of payment of the final liquidation dividend to a lender, or his or her assignee, who has filed a claim for an unearned premium as an assignee of the insured for valuable consideration:

(1) That such assignee of the insured shall assign to the liquidator all his or her right, title and interest in any unsatisfied debt of the insured to the assignee, pertaining to policies of the insolvent insurer, remaining unpaid after crediting the final liquidation dividend, if the

amount of the unsatisfied debt is less than $100.01; and

(2) That all of the documents giving rise to the debt be delivered to him or her.

(i) The commissioner may determine whether or not it will be feasible to attempt to collect any assigned debt. If the commissioner determines not to pursue collection of any such debt, he or she shall file a declaration to that effect with the liquidation court and be relieved of any further responsibility in respect to the debt.

(j) As used in this section, "insured" means a natural person who purchased insurance or coverage from the insolvent insurer for personal, family, or household purposes.

WV Legislature