

### **304.33-430 Order of distribution.**

The order of distribution of claims from the insurer's estate shall be as stated in this section. The first fifty dollars (\$50) of the amount allowed on each claim in the classes under subsections (3) to (7), inclusive, of this section, shall be deducted from the claim and included in the class under subsection (9) of this section. Claims may not be cumulated by assignment to avoid application of the fifty dollars (\$50) deductible provision. Subject to the fifty dollars (\$50) deductible provision, 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. No claim by a shareholder, policyholder, or other creditor shall be permitted to circumvent the priority classes through the use of equitable remedies.

- (1) 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.
- (2) Health maintenance organization and limited health service organization out-of-network claims. In a liquidation of a health maintenance organization or limited health service organization, any claims for health plan benefits or for limited health service contract benefits for out-of-network claims that would have otherwise been covered.
- (3) Loss and unearned premium claims. Claims by policyholders, beneficiaries, and insureds arising from and within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company, and liability claims against insureds which claims are within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company, and claims of guaranty associations or foreign guaranty associations. Notwithstanding the foregoing, the following claims shall be excluded from Class 2 priority:
  - (a) Obligations of the insolvent insurer arising out of reinsurance contracts;
  - (b) Obligations incurred after the expiration date of the insurance policy or after the policy has been replaced by the insured or canceled at the insured's request or after the policy has been canceled as provided in this chapter. Notwithstanding this subsection, earned premium claims on policies, other than reinsurance agreements, shall not be excluded;
  - (c) Obligations to insurers, insurance pools, or underwriting associations and their claims for contribution, indemnity, or subrogation, equitable or otherwise;
  - (d) Any claim which is in excess of any applicable limits provided in the insurance policy issued by the insolvent insurer;
  - (e) Any amount accrued as punitive or exemplary damages unless expressly covered under the terms of the policy; and
  - (f) Tort claims of any kind against the insurer, and claims against the insurer for bad faith or wrongful settlement practices.
- (4) Claims of the federal government other than those claims included in Class 2.

- (5) Wages.
  - (a) Debts due to employees for services performed, not to exceed one thousand dollars (\$1,000) to each employee which have been earned within one (1) year before the filing of the petition for liquidation. Officers shall not be entitled to the benefit of this priority.
  - (b) This priority shall be in lieu of any other similar priority authorized by law as to wages or compensation of employees.
- (6) Residual classification. All other claims including claims of the federal or 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 subsection (9) of this section.
- (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 by the liquidator who shall give the judgment such weight as he deems appropriate. The claim as allowed 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.
- (8) Interest on claims already paid. Interest at the legal rate compounded annually on all claims in the classes under subsections (1) to (7) of this section, inclusive, 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.
- (9) Miscellaneous subordinated claims. The remaining claims or portions of claims not already paid, with interest as in subsection (8) of this section:
  - (a) The first fifty dollars (\$50) of each claim in the classes under subsections (3) to (7), inclusive, of this section, subordinated under this section;
  - (b) Claims under subsection (2) of KRS 304.33-380;
  - (c) Claims subordinated by KRS 304.33-600;
  - (d) Claims filed late;
  - (e) Portions of claims subordinated under subsection (6) of this section; and
  - (f) Claims or portions of claims, payment of which is provided by other benefits or advantages recovered or recoverable by the claimant.
- (10) Preferred ownership claims. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Interest at the legal rate shall be added to each claim, as in subsections (8) and (9) of this section.
- (11) Proprietary claims. The claims of shareholders or other owners.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 166, sec. 10, effective July 15, 2010. -- Amended 2002 Ky. Acts ch. 105, sec. 21, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 255, sec. 4, effective July 14, 2000. -- Amended 1996 Ky. Acts ch. 287, sec. 1, effective July 15, 1996. -- Amended 1990 Ky. Acts ch. 422, sec. 23, effective July 13, 1990. -- Amended 1978 Ky. Acts ch. 325, sec. 1, effective June 17, 1978. -- Created 1970 Ky. Acts ch. 301, subtit. 33, sec. 43, effective June 18, 1970.