

304.37-140 Recovery of distributions.

- (1) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order shall have the right to recover on behalf of the insurer, from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions, other than distribution of shares of the same class of stock paid by the insurer on its capital stock, or any payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment made by the insurer, or its subsidiary, or subsidiaries to a director, officer, or employee if the distribution or payment is made at any time during one (1) year preceding the petition for liquidation, conservation, or rehabilitation, as the case may be, subject to the limitations of subsections (2), (3), and (4) of this section.
- (2) No distribution shall be recoverable if the parent or affiliate shows that when paid, the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.
- (3) Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time the distributions were paid shall be liable up to the amount of distributions or payment under subsection (1) of this section received by that person. Any person who otherwise controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions he would have received if they had been paid immediately. If two (2) or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.
- (4) The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty fund.
- (5) To the extent that any person liable under subsection (3) of this section is insolvent or otherwise fails to pay claims due from it, its parent corporation, holding company, or person who otherwise controlled it at the time the distribution was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation, holding company, or person who otherwise controlled it.

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