

(3) For the purpose of carrying out its obligations under this Act, the Association shall be deemed to be a creditor of the impaired insurer to the extent of assets attributable to covered policies reduced by any amounts to which the Association is entitled as subrogee pursuant to subsection 511(9). All assets of the impaired insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired insurer as required by this Act. Assets attributable to covered policies, as used in this subsection, is that proportion of the assets which the reserves that should have been established for such policies bear to the ~~reserve~~ RESERVES that should have been established for all policies of insurance written by the impaired insurer.

(4)(a) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the Association, the shareholders and policyowners of the impaired insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such impaired insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(b) No distribution to stockholders, if any, of an impaired insurer shall be made until and unless the total amount of assessments levied by the Association with respect to such insurer have been fully recovered by the Association.

(5) It shall be a prohibited unfair method of competition, subject to the provisions of the Unfair Trade Practices Law (subtitle 15 of this Article), for any person to make use in any manner of the protection afforded by this Act in the sale of insurance.

(6)(a) If an order for liquidation or rehabilitation of an insurer domiciled in this State has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distribution, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of paragraphs (b) and (d).

(b) No such dividend shall be recoverable if the insurer 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.

(c) Any person who as an affiliate that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he received. Any person who was an affiliate that 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 persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(d) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the impaired insurer to pay the contractual obligations of the impaired insurer.

(e) If any person liable under paragraph (c) is insolvent, all its affiliates that controlled it at the time the dividend was paid shall be