

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 594

Session of
1977

INTRODUCED BY NOLAN, HANKINS, ARLENE, SMITH, MURRAY, FLEMING,
NOSZKA, HOLL AND COPPERSMITH, MARCH 28, 1977

SENATOR HANKINS, INSURANCE, AS AMENDED, JUNE 21, 1977

AN ACT

1 Amending the act of May 17, 1921 (P.L.789, No.285), entitled, as
2 amended, "An act relating to insurance; establishing an
3 insurance department; and amending, revising, and
4 consolidating the law relating to the licensing,
5 qualification, regulation, examination, suspension, and
6 dissolution of insurance companies, Lloyds associations,
7 reciprocal and inter-insurance exchanges, and certain
8 societies and orders, the examination and regulation of fire
9 insurance rating bureaus, and the licensing and regulation of
10 insurance agents and brokers; the service of legal process
11 upon foreign insurance companies, associations or exchanges;
12 providing penalties, and repealing existing laws," revising
13 and clarifying the procedures with regard to rehabilitation
14 and liquidation of insurers and providing sanctions.

15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 Section 1. Article V, act of May 17, 1921 (P.L.789, No.285),
18 known as "The Insurance Department Act of one thousand nine
19 hundred and twenty-one," is repealed.

20 Section 2. The act is amended by adding an article to read:

21 ARTICLE V

22 SUSPENSION OF BUSINESS - INVOLUNTARY DISSOLUTIONS

23 (a) General Provisions

24 Section 501. Construction and Purpose.--(a) This article

1 shall not be interpreted to limit the powers granted the
2 commissioner by other provisions of the law.

3 (b) This article shall be liberally construed to effect the
4 purpose stated in subsection (c).

5 (c) The purpose of this article is the protection of the
6 interests of insureds, creditors, and the public generally, with
7 minimum interference with the normal prerogatives of the owners
8 and managers of insurers, through (i) early detection of any
9 potentially dangerous condition in an insurer, and prompt
10 application of appropriate corrective measures; (ii) improved
11 methods for rehabilitating insurers, involving the cooperation
12 and management expertise of the insurance industry; (iii)
13 enhanced efficiency and economy of liquidation, through
14 clarification and specification of the law, to minimize legal
15 uncertainty and litigation; (iv) equitable apportionment of any
16 unavoidable loss; (v) lessening the problems of interstate
17 rehabilitation and liquidation by facilitating cooperation
18 between states in the liquidation process, and by extending the
19 scope of personal jurisdiction over debtors of the insurer
20 outside this Commonwealth; and (vi) regulation of the insurance
21 business by the impact of the law relating to delinquency
22 procedures and substantive rules on the entire insurance
23 business.

24 Section 502. Persons Covered.--The proceedings authorized by
25 this article may be applied to:

26 (1) All insurers who are doing, or have done, an insurance
27 business in this Commonwealth, and against whom claims arising
28 from that business may exist now or in the future.

29 (2) All insurers who purport to do an insurance business in
30 this Commonwealth.

1 (3) All insurers who have insureds ~~residing~~ RESIDENT in this <—
2 Commonwealth.

3 (4) All other persons organized or in the process of
4 organizing with the intent to do an insurance business in this
5 Commonwealth.

6 (5) All nonprofit service plans and all fraternal benefit
7 societies and beneficial societies subject to Title 40 of the
8 Pennsylvania Consolidated Statutes (relating to insurance).

9 (6) All title insurance companies, subject to Article VII of
10 the act of May 17, 1921 (P.L.682, No.284), known as "The
11 Insurance Company Law of 1921."

12 Section 503. Definitions.--The following words and phrases
13 when used in this act shall have, unless the context clearly
14 indicates otherwise, the meanings given to them in this section:

15 "Ancillary state" means any state other than a domiciliary
16 state.

17 "Commissioner" means the Insurance Commissioner of the
18 Commonwealth of Pennsylvania.

19 "Creditor" is a person having any claim, whether matured or
20 unmatured, liquidated or unliquidated, secured or unsecured,
21 absolute, fixed or contingent.

22 "Delinquency proceeding" means any proceeding instituted
23 against an insurer for the purpose of liquidating,
24 rehabilitating, reorganizing or conserving such insurer, and any
25 summary proceeding under sections 510 through 513.

26 "Doing business" shall include any of the following acts,
27 whether effected by mail or otherwise:

28 (1) the issuance or delivery of contracts OR CERTIFICATES of <—
29 insurance to persons resident in this Commonwealth;

30 (2) the solicitation of applications for such contracts, or

1 other negotiations preliminary to the execution of such
2 contracts;

3 (3) the collection of premiums, membership fees, assessments
4 or other consideration for such contracts; or

5 (4) the transaction of matters subsequent to execution of
6 such contracts and arising out of them.

7 "Domiciliary state" means the state in which an insurer is
8 incorporated or organized, or, in the case of an alien insurer,
9 its state of entry.

10 "Fair consideration" is given for property or obligation:

11 (1) when in exchange for such property or obligation, as a
12 fair equivalent therefor, and in good faith, property is
13 conveyed or services are rendered or an obligation is incurred
14 or an antecedent debt is satisfied; or

15 (2) when such property or obligation is received in good
16 faith to secure a present advance or antecedent debt in amount
17 not disproportionately small as compared to the value of the
18 property or obligation obtained.

19 "Foreign country" means any other jurisdiction not in any
20 state.

21 "General assets" means all property, real, personal, or
22 otherwise, not specifically mortgaged, pledged, deposited, or
23 otherwise encumbered for the security or benefit of specified
24 persons or classes of persons. As to specifically encumbered
25 property, "general assets" includes all such property or its
26 proceeds in excess of the amount necessary to discharge the sum
27 or sums secured thereby. Assets held in trust and on deposit for
28 the security or benefit of all policyholders and creditors shall
29 be treated as general assets.

30 "Guaranty association." The Pennsylvania Insurance Guaranty

1 Association provided for by the act of November 25, 1970
2 (P.L.716, NO.232), known as "The Pennsylvania Insurance Guaranty
3 Association Act," and the Workmen's Compensation Security Fund
4 provided for by the act of July 1, 1937 (P.L.2532, No.470),
5 known as the "Workmen's Compensation Security Fund Act," as
6 amended, and any other similar entity now or hereafter created
7 by the Legislature OF THIS OR ANY OTHER STATE for the payment of <—
8 claims of insolvent insurers.

9 "Insolvency" means:

10 (1) For an insurer issuing only assessable fire insurance
11 policies; (i) the inability to pay any obligation within thirty
12 days after it becomes payable, or (ii) if an assessment be made
13 within thirty days after such date, the inability to pay such
14 obligation thirty days following the date specified in the first
15 assessment notice issued after the date of loss pursuant to
16 section 808 of the act of May 17, 1921 (P.L.682, No.284), known
17 as "The Insurance Company Law of 1921."

18 (2) For any other insurer ~~that~~ WHICH is unable to pay its <—
19 obligations when they are due, or ~~that its~~ WHOSE admitted assets <—
20 do not exceed its liabilities plus the greater of (i) any
21 capital and surplus required by law for its organization or (ii)
22 its authorized and issued capital stock: Provided, That as to
23 any insurer licensed to do business in the Commonwealth as of
24 the effective date of this act which does not meet this standard
25 the term "insolvency" shall mean for a period not to exceed
26 three years from the effective date of this act that it is
27 unable to pay its obligations when they are due or that its
28 admitted assets do not exceed its liabilities plus any required
29 capital contribution ordered by the commissioner under
30 provisions of the insurance law.

1 (3) For the purposes of this paragraph only such assets
2 shall be considered to be admitted as are owned by the insurer
3 and which consist of: (i) cash in the possession of the insurer,
4 or in transit under its control, and including the true balance
5 of any deposit in a solvent bank or trust company; (ii)
6 investments, securities, properties and loans acquired or held
7 in accordance with this code, and in connection therewith the
8 following items: (A) interest due or accrued on any bond or
9 evidence of indebtedness which is not in default and which is
10 not valued on a basis including accrued interest, (B) declared
11 and unpaid dividends on stock and shares, unless such amount has
12 otherwise been allowed as an asset, (C) interest due or accrued
13 upon a collateral ~~ban~~ LOAN in an amount not to exceed one year's <—
14 interest thereon, (D) interest due or accrued on deposits in
15 solvent banks and trust companies, and interest due or accrued
16 on other assets, if such interest is in the judgment of the
17 commissioner a collectible asset, (E) interest due or accrued on
18 a mortgage loan, in an amount not exceeding in any event the
19 amount, if any, of the excess of the value of the property less
20 delinquent taxes thereon over the unpaid principal, but in no
21 event shall interest accrued for a period in excess of twelve
22 months be allowed as an asset, (F) rent due or accrued on real
23 property if such rent is not in arrears for more than three
24 months, and rent more than three months in arrears if the
25 payment of such rent be adequately secured by property held in
26 the name of the tenant and conveyed to the insurer as
27 collateral, (G) the unaccrued portion of taxes paid prior to the
28 due date on real property; (iii) premium notes, policy loans,
29 and other policy assets and liens on policies and certificates
30 of life insurance and annuity contracts and accrued interest

1 thereon, in an amount not exceeding the legal reserve and other
2 policy liabilities carried on each individual policy; (iv) the
3 net amount of uncollected and deferred premiums and annuity
4 consideration in the case of a life insurer; (v) premiums in the
5 course of collection, other than for life insurance, not more
6 than three months past due, less commissions payable thereon.
7 The foregoing limitation shall not apply to premiums payable
8 directly or indirectly by the United States Government or by any
9 of its instrumentalities; (vi) installment premiums other than
10 life insurance premiums to the ~~extend~~ EXTENT of the unearned <—
11 premium reserve carried on the policy to which such premiums
12 apply; (vii) notes and like written obligations not past due,
13 taken for premiums other than life insurance premiums, on
14 policies permitted to be issued on such basis, to the extent of
15 the unearned premium reserves carried thereon; (viii) the full
16 amount of reinsurance recoverable by a ceding insurer from a
17 solvent reinsurer and which reinsurance is authorized under
18 section 319 of the act of May 17, 1921 (P.L.682, No.284), known
19 as "The Insurance Company Law of 1921"; (ix) amounts receivable
20 by an assuming insurer representing funds withheld by a solvent
21 ceding insurer under a reinsurance treaty; (x) deposits or
22 equities recoverable from underwriting associations, syndicates
23 and reinsurance funds, or from a suspended banking institution,
24 to the extent deemed by the commissioner available for the
25 payment of losses and claims and at values to be determined by
26 it; HIM; (xi) electronic and mechanical machines constituting a <—
27 data processing and accounting system if the cost of such system
28 is at least one hundred thousand dollars (\$100,000), which cost
29 shall be amortized in full over a period not to exceed ten
30 calendar years; (xii) all assets, whether or not consistent with

the provisions of this section, as may be allowed pursuant to the annual statement form approved by the commissioner for use in this Commonwealth for the kinds of insurance to be reported upon therein; (xiii) other assets, not inconsistent with the provisions of this section, deemed by the commissioner to be available for the payment of losses and claims, at values to be determined by it HIM.

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(4) The following shall not be considered admitted assets in any determination of the financial condition of an insurer: (i) good will, trade names and other like intangible assets; (ii) advances (other than policy loans) to officers, directors, and controlling stockholders, whether secured or not, and advances to employees, agents and other persons on personal security only; (iii) stock of such insurer, owned by it, or any material equity therein or loans secured thereby, or any material proportionate interest in such stock acquired or held through the ownership by such insurer of an interest in another firm, corporation or business unit. (iv) furniture fixtures, furnishings, safes, vehicles, libraries, stationery, literature and supplies (other than data processing and accounting systems authorized under Title 31, § 11.4, Pennsylvania Code, except in the case of title insurers such materials and plants as the insurer is expressly authorized to invest in section 732(21) of the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921," and except, in the case of any insurer, such property which is acquired through foreclosure of chattel mortgages acquired pursuant to sections 406, 519, 604, and 732 of "The Insurance Company Law of 1921," or which is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real

1 estate used by it for home office, branch office and similar
2 purposes; (v) the amount, if any, by which the aggregate book
3 value of investments as carried in the ledger assets of the
4 insurer exceeds the aggregate value thereof as determined under
5 this article.

6 (5) For purposes of this clause "liabilities" shall include
7 but not be limited to reserves required by statute or by
8 insurance department general regulations or specific
9 requirements imposed by the commissioner upon a subject company
10 at the time of admission or subsequent thereto, and any other
11 capital and surplus requirements.

12 "Insurer" means any person who IS DOING, has done, purports <—
13 to do, or is licensed to do an insurance business, and is or has
14 been subject to the authority of, or to liquidation,
15 rehabilitation, reorganization or conservation by any insurance
16 commissioner. For purposes of this article, any other persons
17 included under section 502 shall be deemed to be insurers.

18 "Preferred claim" means any claim with respect to which the
19 terms of this act accord priority of payment from the general
20 assets of the insurer.

21 "Receiver" means receiver, liquidator, rehabilitator, or
22 conservator as the context requires.

23 "Reciprocal state" means any state other than this
24 Commonwealth in which in substance and effect sections 520(a),
25 555, 556 and 558 through 560 are in force, and in which
26 provisions are in force requiring that the commissioner or
27 equivalent official be the receiver of a delinquent insurer, and
28 in which some provision exists for the avoidance of fraudulent
29 conveyances and preferential transfers.

30 "Secured claim" means any claim secured by mortgage, trust

1 deed, pledge, deposit as security, escrow or otherwise, but not
2 including special deposit claims or claims against general
3 assets. The term also includes claims which have become liens
4 upon specific assets by reason of judicial process.

5 "Special deposit claim" means any claim secured by a deposit
6 made pursuant to statute for the security or benefit of a
7 limited class or classes of persons, but not including any claim
8 secured by general assets.

9 "State" means any state, district or territory of the United
10 States and the Panama Canal Zone.

11 "Transfer" shall include the sale and every other and
12 different mode, direct or indirect, of disposing of or of
13 parting with property or with an interest therein, or with the
14 possession thereof or of fixing a lien upon property or upon an
15 interest therein, absolutely or conditionally, voluntarily, by
16 or without judicial proceedings. The retention of a security
17 title to property delivered to a debtor shall be deemed a
18 transfer suffered by the debtor.

19 Section 504. Jurisdiction and Venue.--(a) ~~Except as~~ <—
20 ~~provided in subsection (b) no delinquency proceeding shall be~~
21 ~~commenced under this article by anyone other than the~~
22 ~~commissioner.~~ No court of this Commonwealth shall have
23 jurisdiction to entertain, hear or determine any delinquency
24 proceeding commenced by any other person, except as otherwise <—
25 OTHER THAN AS provided in this act ARTICLE. <—

26 ~~(b) The judgment creditors of three or more unrelated~~ <—
27 ~~judgments may commence proceedings under the conditions and in~~
28 ~~the manner hereinafter prescribed in this subsection, by serving~~
29 ~~notice upon the commissioner and the insurer of intention to~~
30 ~~file a petition for liquidation under section 519 or section~~

~~551. Each of the aforementioned judgments shall:~~

~~(1) have been rendered against the insurer by a court in this Commonwealth having jurisdiction over the subject matter and the insurer;~~

~~(2) have been entered more than sixty days before the service of notice and the time for appeal or review has expired;~~

~~(3) not have been paid in full;~~

~~(4) not be the subject of a valid contract between the insurer and any judgment creditor for payment of the judgment, unless the contract has been breached by the insurer; and~~

~~(5) not be a judgment on which an appeal or review is pending.~~

~~If any one of the judgments in favor of a petitioning creditor remains unpaid for sixty days after service of the notice, and the commissioner has not then filed a petition for liquidation, the creditor may file in the name of the commissioner a verified petition for liquidation of the insurer under section 519 or section 554 alleging the conditions stated in this section. The commissioner shall be served and joined in the action.~~

~~(e) (B) In addition to other grounds for jurisdiction provided by the law of this Commonwealth, a court of this Commonwealth having jurisdiction of the subject matter has jurisdiction over a person served pursuant to the Pennsylvania Rules of Civil Procedure or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this Commonwealth (i) if the person served is obligated to the insurer in any way as an incident to any agency or brokerage arrangement that may exist or has existed between the insurer and the agent or broker, in any~~

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1 action on or incident to the obligation; or (ii) if the person
2 served is a reinsurer who has at any time written a policy of
3 reinsurance for an insurer against which a rehabilitation or
4 liquidation order is in effect when the action is commenced, or
5 is an agent or broker of or for the reinsurer, in any action on
6 or incident to the reinsurance contract; or (iii) if the person
7 served is or has been an officer, manager, trustee, organizer,
8 promoter or person in a position of comparable authority or
9 influence in an insurer against which a rehabilitation or
10 liquidation order is in effect when the action is commenced, in
11 any action resulting from the relationship with the insurer.

12 ~~(d)~~ (C) If the court on motion of any party finds that any <—
13 action should as a matter of substantial justice be tried in a
14 forum outside this Commonwealth, the court may enter an
15 appropriate order to stay further proceedings on the action in
16 this Commonwealth.

17 ~~(e)~~ (D) All action herein authorized shall be brought in the <—
18 Commonwealth Court of the Commonwealth of Pennsylvania.

19 ~~(b)~~ Remedies <—

20 Section 505. Injunctions and Orders.--(a) Any receiver
21 appointed in a proceeding under this article may at any time
22 apply for and the Commonwealth Court may grant, such restraining
23 orders, preliminary and permanent injunctions, and other orders
24 as may be deemed necessary and proper to prevent: (i) the
25 transaction of further business; (ii) the transfer of property;
26 (iii) interference with the receiver or with the proceeding;
27 (iv) waste of the insurer's assets; (v) dissipation and transfer
28 of bank accounts; (vi) the institution or further prosecution of
29 any actions or proceedings; (vii) the obtaining of preferences,
30 judgments, attachments, garnishments, or liens against the

1 insurer its assets or its policyholders; (viii) the levying of
2 execution against the insurer its assets or its policyholders;
3 (ix) the making of any sale or deed for nonpayment of taxes or
4 assessments that would lessen the value of the assets of this
5 insurer; (x) the withholding from the receiver of books,
6 accounts, documents or other records relating to the business of
7 the insurer; or (xi) any other threatened or contemplated action
8 that might lessen the value of the insurer's assets or prejudice
9 the rights of policyholders, creditors, or shareholders, or the
10 administration of the proceeding.

11 (b) The receiver may apply to any court outside of the
12 Commonwealth for the relief described in subsection (a) or
13 suspension of any insurance licenses issued by the commissioner.

14 Section 506. Cooperation of Officers and Employees.--(a) Any
15 EMPLOYEE, officer, manager, trustee, or general agent of any <—
16 insurer, and any other person with executive authority over or
17 in charge of any segment of the insurer's affairs shall
18 cooperate with the commissioner in any proceeding under this
19 article or any investigation preliminary or incidental to the
20 proceeding. The term "person" as used in this section, shall
21 include any ~~other~~ person who exercises control directly or <—
22 indirectly over activities of an insurer through any holding
23 company or other affiliate of the insurer. "To cooperate" shall
24 include, but shall not be limited to the following:

25 (1) to reply promptly in writing to any inquiry from the
26 commissioner requesting such a reply; and

27 (2) to make available and deliver to the commissioner any
28 books, accounts, documents, or other records, or information or
29 property of or pertaining to the insurer and in his possession,
30 custody or control.

1 (b) No person shall obstruct or interfere with the
2 commissioner in the conduct of any delinquency proceeding or any
3 investigation preliminary or incidental thereto.

4 (c) This section shall not ~~render it illegal~~ BE CONSTRUED TO <—
5 ABRIDGE OTHERWISE LEGAL RIGHTS to resist by legal proceedings <—
6 the A petition for liquidation or other delinquency proceedings. <—
7 or other orders. <—

8 (I) AN INSURER SHALL HAVE THE RIGHT TO ENGAGE LEGAL COUNSEL <—
9 FOR DEFENSE OF AND APPEAL WITH RESPECT TO A DELINQUENCY
10 PROCEEDING. REASONABLE COSTS AND FEES THEREFORE MAY BE PAID FROM
11 THE GENERAL ASSETS OF THE INSURER, SUBJECT TO THE APPROVAL OF
12 THE ADMINISTRATIVE OR JUDICIAL BODY TO WHICH APPEAL WAS MADE.

13 IN THE EVENT THAT SUCH PROCEEDINGS RESULT IN A DECLARATION OF
14 SOLVENCY OR ARE SUBSEQUENT THERETO, THE APPROVED COSTS THEREOF
15 SHALL BE ADMINISTRATIVE COSTS OR EXPENSES AS PROVIDED UNDER
16 SECTION 544(B).

17 (II) IF A STAY OF PROCEEDINGS OR ORDER IS SPECIFICALLY
18 REQUESTED IN A PETITION FILED BY AN INSURER, THE ADMINISTRATIVE
19 AGENCY OR COURT TO WHICH SUCH PETITION IS MADE MAY, IN ITS
20 DISCRETION, GRANT SUCH STAY.

21 (d) Any person included within subsection (a) who fails to
22 cooperate with the commissioner, or any person who obstructs or
23 interferes with the commissioner in the conduct of any
24 delinquency proceeding or any investigation preliminary or
25 incidental thereto, or who violates any valid order the
26 commissioner issued under this article may be sentenced to pay a
27 fine not exceeding ten thousand dollars (\$10,000) or to undergo
28 imprisonment for a term of not more than one year, or both, or
29 any person shall, after a hearing, be subject to the imposition
30 by the commissioner, of a civil penalty not to exceed ten

1 thousand dollars (\$10,000) and shall be subject further to the
2 revocation or suspension of any insurance license issued by the
3 commissioner.

4 Section 507. Bonds.--In any proceeding under this article,
5 the commissioner and his deputies shall be responsible on their
6 official bonds for the faithful performance of their duties. If
7 the court deems it desirable for the protection of the assets,
8 it may at any time require an appropriate ADDITIONAL bond from <—
9 the commissioner or his deputies. SUCH ADDITIONAL BOND SHALL BE <—
10 PAID FOR OUT OF THE ASSETS OF THE INSURER AS A COST OF
11 ADMINISTRATION.

12 Section 508. Commissioner's Reports.--The commissioner shall
13 include in his annual report: <—

14 (1) the names of the insurers proceeded against under
15 sections 514, 519, 523, 553, 554, 556 and 558 and such other
16 facts as shall indicate in reasonable detail his formal
17 proceedings under this article; and

18 (2) such facts as shall generally indicate the utilization
19 and effectiveness of proceedings under sections 510, 511 and
20 512. AS RECEIVER MAKE SUCH REPORTS TO THE COURT AT SUCH TIMES <—
21 AND IN SUCH MANNER AS THE COURT SHALL REQUIRE.

22 Section 509. Continuation of Delinquency.--Every proceeding
23 heretofore commenced under the laws in effect before the
24 enactment of THE AMENDMENT OF this article EFFECTIVE <—
25 1977, shall be deemed to have commenced under this article SO <—
26 AMENDED for the purpose of conducting the proceeding henceforth,
27 except that in the discretion of the commissioner the proceeding
28 may be continued, in whole or in part, as it would have been
29 continued had this article not been enacted. SO AMENDED. <—

30 (B) SUMMARY PROCEEDINGS <—

1 Section 510. Commissioner's Summary Orders.--(a) Whenever
2 the commissioner has reasonable cause to believe, and
3 determines, after a hearing held as prescribed in subsection
4 (c), that any insurer has committed or engaged in any act,
5 practice or transaction that would subject it to formal
6 delinquency proceedings under this article, he may make and
7 serve upon the insurer and any other persons involved, such
8 orders other than seizure orders under sections 511 and 512 <—
9 including an order suspending the business of an insurer as are
10 reasonably necessary to correct, eliminate or remedy such
11 conduct, condition or ground.

12 (b) If the conditions of subsection (a), other than notice
13 and hearing, are satisfied, and if it appears to the <—
14 ~~commissioner~~ THE COMMISSIONER HAS REASONABLE GROUNDS TO BELIEVE <—
15 that irreparable harm to the property or business of the insurer
16 or to the interests of its ~~policyholders~~, POLICY OR CERTIFICATE <—
17 HOLDERS, creditors or the public may occur unless he issues with
18 immediate effect the orders described in subsection (a), he may
19 make and serve such orders without notice and before hearing,
20 simultaneously serving upon the insurer notice of hearing under
21 subsection (c).

22 (c) The notice of hearing under subsections (a) or (b) and
23 the summary order issued under subsections (a) or (b) shall be
24 served pursuant to the applicable rules of civil or
25 administrative procedure. The notice of hearing under subsection
26 (a) shall state the time and place of hearing, and the conduct,
27 condition or ground upon which the commissioner would base his
28 order; the notice of hearing under subsection (b) shall state
29 the time and place of hearing. Unless mutually agreed between
30 the commissioner and the insurer, the hearing shall occur not

~~less than ten days nor more than thirty~~ FIFTEEN days after
notice is served and shall be either in Dauphin County or in
some other place convenient to the parties to be designated by
the commissioner. The commissioner shall NOT PUBLICIZE SUCH
HEARINGS AND SHALL hold all hearings in summary proceedings
privately unless the insurer requests a public hearing, in which
case the hearing shall be public.

~~(d) If the commissioner issues a summary order before
hearing under subsection (b), the insurer may at any time waive
the commissioner's hearing and apply for immediate judicial
relief by means of any remedy afforded by law without first
exhausting administrative remedies. Subsequent to a hearing any
party to the proceedings whose interests are substantially
affected shall be entitled to judicial review of any order
issued by the commissioner.~~

~~(e) Any suspension order made by the commissioner under the
provisions of subsection (a) shall prohibit issuance of
policies, transfers of property, and payments of moneys, without
prior written approval of the commissioner. Notice of such
suspension shall be given, by first class mail within fifteen
days thereof, by the suspended organization to those who were
creditors, policyholders, members and certificate holders at the
date of suspension. Notice of such suspension shall be given,
within fifteen days thereof, by the commissioner to creditors,
policyholders, members and certificate holders by advertising
the same by one publication in a newspaper of general
circulation in the county where the suspended organization has
its principal office.~~

~~(D) ANY SUSPENSION ORDER MADE BY THE COMMISSIONER UNDER THE
PROVISIONS OF SUBSECTION (A) SHALL PROHIBIT ISSUANCE OF~~

POLICIES, TRANSFERS OF PROPERTY, AND PAYMENTS OF MONEYS, WITHOUT
PRIOR WRITTEN APPROVAL OF THE COMMISSIONER. NOTICE OF SUCH
SUSPENSION SHALL BE GIVEN, BY FIRST CLASS MAIL WITHIN FIFTEEN
DAYS THEREOF, BY THE SUSPENDED ORGANIZATION TO THOSE WHO WERE
CREDITORS, POLICYHOLDERS, MEMBERS AND CERTIFICATE HOLDERS AT THE
DATE OF SUSPENSION. NOTICE OF SUCH SUSPENSION SHALL BE GIVEN,
WITHIN FIFTEEN DAYS THEREOF, BY THE COMMISSIONER TO CREDITORS,
POLICYHOLDERS, MEMBERS AND CERTIFICATE HOLDERS BY ADVERTISING
THE SAME BY ONE PUBLICATION IN A NEWSPAPER OF GENERAL
CIRCULATION IN THE COUNTY WHERE THE SUSPENDED ORGANIZATION HAS
ITS PRINCIPAL OFFICE. FROM THE DATE OF SUCH SUSPENSION ON THE
GROUND THAT THE INSURER IS INSOLVENT, OR IS IN SUCH CONDITION
THAT ITS FURTHER TRANSACTION OF BUSINESS WILL BE HAZARDOUS
FINANCIALLY TO ITS POLICYHOLDERS, CREDITORS, OR THE PUBLIC, NO
ACTION AT LAW OR EQUITY SHALL BE COMMENCED OR PROSECUTED NOR
SHALL ANY JUDGMENT BE ENTERED AGAINST NOR SHALL ANY EXECUTION OR
ATTACHMENT BE ISSUED OR PROSECUTED AGAINST THE SUSPENDED
INSURER, OR AGAINST ITS PROPERTY, IN ANY COURT OF THIS
COMMONWEALTH: PROVIDED, THAT IF SUCH SUSPENSION ORDER BE VACATED
BY THE COMMONWEALTH COURT FOR THE REASON THAT THE SUSPENDED
INSURER IS NO LONGER INSOLVENT, OR IN SUCH CONDITION THAT ITS
FURTHER TRANSACTION OF BUSINESS WILL BE HAZARDOUS TO ITS
POLICYHOLDERS OR TO ITS CREDITORS OR TO THE PUBLIC, THESE
RESTRAINTS UPON LEGAL PROCESS REGARDING THE INSURER SHALL
THEREAFTER CEASE TO BE OPERATIVE.

(E) IF THE COMMISSIONER ISSUES A SUMMARY ORDER BEFORE
HEARING UNDER THIS SECTION, THE INSURER MAY AT ANY TIME WAIVE
THE COMMISSIONER'S HEARING AND APPLY FOR IMMEDIATE JUDICIAL
RELIEF BY MEANS OF ANY REMEDY AFFORDED BY LAW WITHOUT FIRST
EXHAUSTING ADMINISTRATIVE REMEDIES.

1 (f) If any person has violated any order issued under this
2 section which as to him was then still in effect, he shall be
3 liable to pay a civil penalty imposed by the Commonwealth Court
4 not to exceed ten thousand dollars (\$10,000).

5 (g) The commissioner may apply for and any court of general
6 jurisdiction may grant, such restraining orders, preliminary and
7 permanent injunctions, and other orders as may be deemed
8 necessary and proper to enforce a summary order.

9 Section 511. Commissioner's Supervision.--(a) If upon
10 examination or at any other time it appears to or is in the <—
11 opinion of the commissioner that any insurance company is
12 insolvent, or its condition is such as to render the continuance
13 of its business hazardous to the public or to holders of its
14 policies or certificates of insurance, or if such company
15 appears to have exceeded its powers or has failed to comply with
16 the law, THE COMMISSIONER HAS REASONABLE CAUSE TO BELIEVE, AND <—
17 DETERMINES, THAT AN INSURER HAS COMMITTED, ENGAGED, OR IS ABOUT
18 TO ENGAGE IN ANY ACT, PRACTICE, OR TRANSACTION THAT WOULD
19 SUBJECT IT TO FORMAL DELINQUENCY PROCEEDINGS UNDER THIS ARTICLE,
20 or if such insurance company gives its consent, then the
21 commissioner shall upon his determination notify the insurance <—
22 company INSURER of his determination AND furnish to the <—
23 insurance company INSURER AN ORDER OR ORDERS CONTAINING a <—
24 written list of the commissioner's requirements to abate his
25 determination. and if IF the commissioner AFTER A HEARING HELD <—
26 AS PROVIDED IN SUBSECTION 510(C) makes a further determination
27 to supervise he shall notify the insurance company, HE SHALL <—
28 ISSUE AN ORDER TO THE INSURER NOTIFYING IT that it is under the
29 supervision of the commissioner and that the commissioner is
30 applying and effecting the provisions of this section. Such <—

1 ~~insurance company~~ THE COMMISSIONER MAY ISSUE AN ORDER UNDER THIS <—
2 SECTION WITHOUT A HEARING UNDER THE CONDITIONS PROVIDED UNDER
3 SECTION 510(B), AND SHALL SIMULTANEOUSLY SERVE UPON THE INSURER
4 NOTICE OF A HEARING TO BE HELD IN ACCORDANCE WITH THE PROVISIONS
5 OF SECTION 510(C), AND IN SUCH EVENT, THE INSURER MAY FILE AN
6 APPEAL IN ACCORDANCE WITH THE PROVISIONS OF SECTION 510(E). SUCH
7 INSURER shall comply with the lawful requirements of the
8 commissioner and, if placed under AN ORDER OF supervision shall <—
9 have ~~sixty~~ NINETY days from the date of ~~notice~~ SERVICE OF SUCH <—
10 ORDER within which to comply with the requirements of the
11 commissioner. In the event of such ~~insurance company's~~ INSURER'S <—
12 failure to comply within such time, the commissioner ~~shall~~ MAY <—
13 institute proceedings in the Commonwealth Court to have a
14 rehabilitator or liquidator appointed under the provisions of
15 this article, ~~as he may deem appropriate.~~ OR ISSUE AN ORDER <—
16 EXTENDING AN EXISTING ORDER OF SUPERVISION. SUCH ORDER EXTENDING
17 ANY EXISTING ORDER SHALL BE ISSUED PRIOR TO THE END OF EACH
18 NINETY-DAY PERIOD, UNLESS OTHERWISE AGREED TO BY THE INSURER.
19 (b) The commissioner may appoint a supervisor to supervise
20 such ~~insurance company~~ INSURER and may provide that the <—
21 ~~insurance company~~ INSURER may not do any of the following ~~things~~ <—
22 ACTS, during the period of supervision, without the prior <—
23 WRITTEN approval of the commissioner or his supervisor: (i) <—
24 dispose of, convey or encumber any of its assets or its business
25 in force; (ii) withdraw any of its bank accounts; (iii) lend any
26 of its funds; (iv) invest any of its funds; (v) transfer any of
27 its property; (vi) incur any debit, obligation or liability;
28 (vii) merge or consolidate with another company; or (viii) enter
29 into any new reinsurance contract or treaty.

30 (c) In the event that any person, subject to the provisions

of this article including those persons described in section 506(a), shall violate any valid order of the commissioner issued under the provisions of this section and, as a result, the net worth of the insurer shall be reduced or the insurer shall otherwise suffer loss said person shall become personally liable to the insurer for the amount of any such reduction or loss. The commissioner or supervisor is authorized to bring an action on behalf of the insurer in the Commonwealth Court to recover the amount of the reduction or loss together with any costs.

Section 512. Court's Seizure Order.--(a) Upon the filing by the commissioner in the Commonwealth Court of this Commonwealth of a petition alleging, (i) any ground that would justify a court order for a formal delinquency proceeding against an insurer under this article, and (ii) that the interests of policyholders, creditors or the public will be endangered by delay, and (iii) setting out the order deemed necessary by the commissioner, the court ~~shall~~ MAY issue forthwith, ex parte and without a hearing, the requested order which ~~may~~ SHALL direct the commissioner to take possession and control of all or a part of the property, books, accounts, documents, and other records of an insurer, and of the premises occupied by it for the transaction of its business, and until further order of the court enjoin the insurer and its officers, managers, agents, and employes from disposition of its property and from transaction of its business except with the written consent of the commissioner.

(b) The court shall specify in the order what its duration shall be, which shall be such time as the court deems necessary for the commissioner to ascertain the condition of the insurer. SUCH INITIAL DURATION OR ANY EXTENSION THEREOF SHALL NOT EXCEED

1 NINETY DAYS. On motion of either party or on its own motion, the
2 court may from time to time hold such hearings as it deems
3 desirable after such notice as it deems appropriate, and may
4 extend, shorten, or modify the terms of the seizure order. The
5 court shall vacate the seizure order if the commissioner fails
6 to commence a formal proceeding under this article after having <—
7 had a reasonable opportunity to do so. PRIOR TO THE EXPIRATION <—
8 OF A SEIZURE ORDER OR ANY EXTENSION THEREOF. An order of the
9 court pursuant to a formal proceeding under this article shall
10 ipso facto vacate the seizure order.

11 (c) Entry of a seizure order under this section shall not
12 constitute an anticipatory breach of any contract of the
13 insurer.

14 (D) AN INSURER SUBJECT TO AN EX PARTE ORDER OF THE <—
15 COMMONWEALTH COURT ISSUED UNDER THE PROVISIONS OF THIS SECTION
16 MAY PETITION THE COURT AT ANY TIME AFTER THE ISSUANCE OF SUCH
17 ORDER FOR A HEARING AND REVIEW OF THE ORDER, AND THE COURT SHALL
18 GRANT SUCH A HEARING AND REVIEW WITHIN TEN DAYS OF THE FILING OF
19 SUCH PETITION.

20 Section 513. Conduct of Hearings in Summary Proceedings.-- <—

21 (a) An insurer subject to an ex parte order of the Commonwealth <—
22 Court issued under the provisions of section 512 shall have the
23 right to petition the court at any time after the issuance of
24 such order for a hearing and review of the order and the court
25 shall grant such a hearing and review as promptly as it may deem
26 appropriate.

27 (b) (A) The Commonwealth Court may hold all hearings in <—
28 summary proceedings and judicial review thereof privately in
29 chamber, and shall do so on request of the insurer proceeded
30 against.

1 ~~(e)~~ (B) In all summary proceedings and judicial reviews <—
2 thereof, all records of the ~~company~~ INSURER, other documents, <—
3 and all Insurance Department files and court records and papers,
4 so far as they pertain to or are a part of the record of the
5 summary proceedings, shall be and remain confidential except as
6 is necessary to obtain compliance therewith, unless and until
7 the Commonwealth Court, after hearing arguments from the parties
8 in chambers, shall order otherwise, or unless the insurer
9 requests that the matter be made public. Until such court order,
10 all papers filed with the clerk of the Commonwealth Court shall
11 be held by him in a confidential file.

12 ~~(d)~~ (C) Any person having possession or custody of and <—
13 refusing to deliver any of the property, books, accounts,
14 documents or other records of or relating to an insurer against
15 which a seizure order or a summary order has been issued by the
16 commissioner or by the Commonwealth Court, may be fined not more
17 than ten thousand dollars (\$10,000) or sentenced to undergo
18 imprisonment for not more than one year, or both.

19 (c) Formal Proceedings

20 A. Rehabilitation

21 Section 514. Grounds for Rehabilitation.--~~The commissioner~~ <—
22 ~~may apply by verified petition to the Commonwealth Court for an~~
23 ~~order authorizing him to rehabilitate a domestic insurer or an~~
24 ~~alien insurer domiciled in this Commonwealth on any one or more~~
25 ~~of the following grounds:~~ AN ORDER OF REHABILITATION MAY BE <—
26 BASED ON ONE OR MORE OF THE FOLLOWING GROUNDS.

27 (1) The insurer is insolvent, or is in such condition that
28 the further transaction of business would be hazardous,
29 financially ~~or otherwise~~, to its policyholders, creditors or the <—
30 public.

1 (2) There is reasonable cause to believe that there has been
2 embezzlement from the insurer, wrongful sequestration or
3 diversion of the insurer's assets, forgery or fraud affecting
4 the insurer or other illegal conduct in, by, or with respect to
5 the insurer that if established would endanger assets in an
6 amount threatening the solvency of the insurer.

7 (3) The insurer has failed to remove any person who in fact
8 has executive authority in the insurer, whether an officer,
9 manager, general agent, employe, or other person, if the person
10 has been found after notice and hearing to be dishonest or
11 untrustworthy in a way affecting the insurer's business.

12 (4) Control of the insurer, whether by stock ownership or
13 otherwise, and whether direct or indirect, is in a person or
14 persons found after notice and hearing to be dishonest or
15 untrustworthy.

16 (5) Any person who in fact has executive authority in the
17 insurer, whether an officer, manager, general agent, employe, or
18 other person, has refused to be examined under oath by the
19 commissioner concerning its affairs, whether in this
20 Commonwealth or elsewhere, and after reasonable notice of the
21 fact the insurer has failed promptly and effectively to
22 terminate the employment and status of the person and all his
23 influence on management.

24 (6) After demand, the insurer has failed to submit promptly
25 any of its own property, books, accounts, documents or other
26 records, or those of any subsidiary or related company within
27 the control of the insurer, or those of any person having
28 executive authority in the insurer so far as they pertain to the
29 insurer, to examination. If the insurer is unable to submit the
30 property, books, accounts, documents or other records of a

person having executive authority in the insurer, it shall be excused from doing so if it promptly and effectively terminates the relationship of the person to the insurer.

(7) Without first obtaining his written consent of the commissioner, the insurer has transferred, or attempted to transfer, substantially its entire property or business, or has entered into any transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person.

(8) The insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator or sequestrator or similar fiduciary of the insurer or its property otherwise than as authorized under the insurance laws of this Commonwealth, and such appointment has been made or is imminent, and such appointment might oust the courts of this Commonwealth of jurisdiction or prejudice orderly delinquency proceedings under this article.

(9) Within the previous four years the insurer has willfully violated its charter or articles of incorporation or its bylaws or any insurance law IN A MANNER WHICH MAY RESULT OR HAS RESULTED IN SUBSTANTIAL HARM TO THE PROPERTY OR BUSINESS OF AN INSURER OR TO THE INTERESTS OF ITS POLICY OR CERTIFICATE HOLDERS, CREDITORS, OR THE PUBLIC, or any valid order of the commissioner under ~~section 510~~ SECTIONS 510 AND 511.

(10) The insurer has failed to pay within sixty days after due date any obligation to this Commonwealth or any subdivision thereof or any judgment entered in this Commonwealth, except that such nonpayment shall not be a ground until sixty days after any good faith effort by the insurer to contest the

obligation has been terminated, whether it is before the
commissioner or in the courts, or the insurer has systematically
attempted to compromise or renegotiate previously agreed
settlements with its creditors on the ground that it is
financially unable to pay its obligations in full.

(11) The insurer has failed to file its annual report or
other report within the time allowed by law and, after written
demand by the commissioner, has failed to give an adequate A
SATISFACTORY explanation immediately.

(12) The board of directors or the holders of a majority of
the shares entitled to vote, or a majority of those individuals
entitled to the control of those entities specified in section
502, request or consent to rehabilitation under this article.

Section 515. Rehabilitation Orders.--(a) An order to (A)
THE COMMISSIONER MAY APPLY BY PETITION TO THE COMMONWEALTH
COURT, FOR AN ORDER AUTHORIZING HIM TO REHABILITATE A DOMESTIC
INSURER OR AN ALIEN INSURER DOMICILED IN THIS COMMONWEALTH,
ALLEGING THAT THE INSURER HAS COMMITTED ONE OR MORE ACTS WHICH
MAY CONSTITUTE GROUNDS FOR REHABILITATION AS SET FORTH IN
SECTION 514 OF THIS ARTICLE.

(B) AN ORDER OF THE COMMONWEALTH COURT TO REHABILITATE THE
BUSINESS OF AN INSURER SHALL BE ISSUED ONLY AFTER A HEARING
BEFORE THE COURT OR PURSUANT TO A WRITTEN CONSENT OF THE
INSURER.

(C) AN ORDER TO rehabilitate the business of a domestic
insurer, or an alien insurer domiciled in this Commonwealth,
shall appoint the commissioner and his successors in office the
rehabilitator, and shall direct the rehabilitator forthwith to
take possession of the assets of the insurer including any
deposits held by the commissioner, and to administer them under

1 the orders of the court. The filing or recording of the order
2 with the clerk of the Commonwealth Court or recorder of deeds of
3 the county in which the principal business of the company is
4 conducted, or the county in which its principal office or place
5 of business is located, shall impart the same notice as a deed,
6 bill of sale or other evidence of title duly filed or recorded
7 with that recorder of deeds would have imparted.

8 ~~(b)~~ (D) Entry of an order of rehabilitation shall not <—
9 constitute an anticipatory breach of any contracts of the
10 insurer.

11 Section 516. Powers and Duties of the Rehabilitator.--(a)
12 The commissioner as rehabilitator ~~shall~~ MAY appoint a special <—
13 deputy who shall have all the powers of the rehabilitator
14 granted under this section. The commissioner shall make such
15 arrangements for compensation as are necessary to obtain a
16 special deputy of proven ability. The special deputy shall serve
17 at the pleasure of the commissioner.

18 (b) The rehabilitator may take such action as he deems
19 necessary or expedient to ~~reform and revitalize~~ CORRECT THE <—
20 CONDITION OR CONDITIONS WHICH CONSTITUTED THE GROUNDS FOR THE
21 ORDER OF THE COURT TO REHABILITATE the insurer. He shall have
22 all the powers of the directors, officers and managers, whose
23 authority shall be suspended, except as they are redelegated by
24 the rehabilitator. He shall have full power to direct and
25 manage, to hire and discharge employes subject to any contract
26 rights they may have, and to deal with the property and business
27 of the insurer.

28 (c) If it appears to the rehabilitator that there has been
29 criminal or tortious conduct, or breach of any contractual or
30 fiduciary obligation detrimental to the insurer by any officer,

1 manager, agent, broker, employe, or other person, he may pursue
2 all appropriate legal remedies on behalf of the insurer.

3 (d) The rehabilitator may prepare a plan for the
4 reorganization, consolidation, conversion, reinsurance, merger
5 or other transformation of the insurer. Upon application of the
6 rehabilitator for approval of the plan, and after such notice
7 and hearing as the court may prescribe, the court may either
8 approve or disapprove the plan proposed, or may modify it and
9 approve it as modified. If it is approved, the rehabilitator
10 shall carry out the plan. In the case of a life insurer, the
11 plan proposed may include the imposition of liens upon the
12 equities of policyholders of the company, provided that all
13 rights of shareholders are first relinquished. A plan for a life
14 insurer may also propose imposition of a moratorium upon loan
15 and cash surrender rights under policies, for such period and to
16 such an extent as may be necessary.

17 (e) The rehabilitator shall have the power to avoid
18 fraudulent transfers under sections 528 and 529.

19 Section 517. Actions By and Against Rehabilitator.--(a) On
20 request of the rehabilitator, any court in this State before
21 which any action or proceeding by or against an insurer is
22 pending when a rehabilitation order against the insurer is
23 entered shall stay the action or proceeding for such time as is
24 necessary for the rehabilitator to obtain proper representation
25 and prepare for further proceedings. The Commonwealth Court
26 shall order the rehabilitator to take such action respecting the
27 pending litigation as the court deems necessary in the interests
28 of justice and for the protection of creditors, policyholders,
29 and the public. The rehabilitator shall immediately consider all
30 litigation pending outside this Commonwealth and shall petition

1 the courts having jurisdiction over that litigation for stays
2 whenever necessary to protect the estate of the insurer.

3 (b) The time between the filing of a petition for
4 rehabilitation against an insurer and denial of the petition or
5 an order of rehabilitation shall not be considered to be a part
6 of the time within which any action may be commenced by or
7 against the insurer. Any action by or against the insurer that
8 might have been commenced when the petition was filed may be
9 commenced for at least sixty days after the order of
10 rehabilitation is entered.

11 Section 518. Termination of Rehabilitation.--(a) Whenever
12 he ~~believes~~ HAS REASONABLE CAUSE TO BELIEVE that further <—
13 attempts to rehabilitate an insurer would substantially increase
14 the risk of loss to creditors, ~~policyholders~~, POLICY AND <—
15 CERTIFICATE HOLDERS, or the public, or would be futile, the
16 rehabilitator may petition the Commonwealth Court for an order
17 of liquidation. A petition under this subsection shall have the
18 same effect as a petition under section 519. The Commonwealth
19 Court ~~may~~ SHALL permit the directors to take such actions as are <—
20 reasonably necessary to defend against the petition and may
21 order payment from the estate of the insurer of such costs and
22 other expenses of defense as justice may require.

23 (b) The rehabilitator may at any time petition the
24 Commonwealth Court for an order terminating rehabilitation of an
25 insurer. If the Commonwealth Court finds that rehabilitation has
26 been accomplished and that grounds for rehabilitation under
27 section 514 no longer exists, it shall order that the insurer be
28 restored to possession of its property and the control of its
29 business. The Commonwealth Court may also make that finding and
30 issue that order at any time upon its own motion.

1 B. Liquidation

2 1. Initiation of Proceeding

3 Section 519. Grounds for Liquidation.--~~The commissioner may~~ <—
4 ~~apply by petition to the Commonwealth Court for an order~~
5 ~~directing him to liquidate a domestic insurer or an alien~~
6 ~~insurer domiciled in this State on following grounds:~~

7 ~~Any ground on which he may apply for an order of~~
8 ~~rehabilitation as specified in section 514, whether or not there~~
9 ~~has been a prior order directing the rehabilitation of the~~
10 ~~insurer.~~ ANY GROUND ON WHICH AN ORDER OF REHABILITATION MAY BE <—
11 BASED, AS SPECIFIED IN SECTION 514, WHETHER OR NOT THERE HAS
12 BEEN A PRIOR ORDER OF REHABILITATION OF THE INSURER SHALL BE
13 GROUNDS FOR LIQUIDATION.

14 Section 520. Liquidation Orders.--~~(a) An order to liquidate~~ <—
15 (A) THE COMMISSIONER MAY APPLY BY PETITION TO THE COMMONWEALTH <—
16 COURT FOR AN ORDER DIRECTING HIM TO LIQUIDATE A DOMESTIC
17 INSURER, DOMICILED IN THIS COMMONWEALTH, ALLEGING THAT THE
18 INSURER HAS COMMITTED ONE OR MORE ACTS WHICH MAY CONSTITUTE
19 GROUNDS FOR LIQUIDATION AS SET FORTH IN SECTIONS 514 AND 519 OF
20 THIS ARTICLE.

21 (B) AN ORDER OF THE COMMONWEALTH COURT TO LIQUIDATE THE
22 BUSINESS OF AN INSURER SHALL BE ISSUED ONLY AFTER A HEARING
23 BEFORE THE COURT OR PURSUANT TO A WRITTEN CONSENT OF THE
24 INSURER.

25 (C) AN ORDER TO LIQUIDATE the business of a domestic insurer
26 shall appoint the commissioner and his successors in office
27 liquidator and shall direct the liquidator forthwith to take
28 possession of the assets of the insurer and to administer them
29 under the orders of the court. The liquidator shall be vested by
30 operation of law with the title to all of the property,

1 contracts and rights of action and all of the books and records
2 of the insurer ordered liquidated, wherever located, as of the
3 date of the filing of the petition for liquidation. He may
4 recover and reduce the same to possession except that ancillary
5 receivers in reciprocal states shall have, as to assets located
6 in their respective states, the rights and powers which are
7 prescribed in section 556(c) for ancillary receivers appointed
8 in this Commonwealth as to assets located in this Commonwealth.
9 The filing or recording of the order with the Clerk of the
10 Commonwealth Court or with the recorder of deeds of the county
11 in which the principal business of the company is conducted, or
12 the county in which its principal office or place of business is
13 located, shall impart the same notice as a deed, bill of sale or
14 other evidence of title duly filed or recorded with that
15 recorder of deeds would have imparted.

16 ~~(b)~~ (D) Upon issuance of the order, the rights and <—
17 liabilities of any such insurer and of its creditors,
18 policyholders, shareholders, members and all other persons
19 interested in its estate shall become fixed as of the date of
20 filing of the petition for liquidation, except as provided in
21 sections 521 and 539.

22 ~~(c)~~ (E) An order to liquidate the business of an alien <—
23 insurer domiciled in this Commonwealth shall be in the same
24 terms and have the same legal effect as an order to liquidate a
25 domestic insurer, except that the assets and the business in the
26 United States shall be the only assets and business included
27 therein.

28 ~~(d)~~ (F) At the time of petitioning for an order of <—
29 liquidation, or at any time thereafter, the commissioner, after
30 making appropriate findings of an insurer's insolvency,

1 following an administrative hearing, may petition the court for
2 a judicial declaration of such insolvency. After providing such
3 notice and hearing as are permitted for appeals from
4 administrative agencies, the court may make the declaration.

5 Section 521. Continuance of Coverage.--All insurance in
6 effect at the time of issuance an order of liquidation shall
7 continue in force only with respect to the risks in effect, at
8 that time (i) for a period of thirty days from the date of entry
9 of the liquidation order; (ii) until the normal expiration of
10 the policy coverage; (iii) until the insured has replaced the
11 insurance coverage with equivalent insurance in another insurer
12 or otherwise terminated the policy; or (iv) until the liquidator
13 has effected a transfer of the policy obligation pursuant to
14 section 523(8), whichever time is less.

15 Section 522. Dissolution of Insurer.--The commissioner may
16 petition for an order dissolving the corporate existence of a
17 domestic insurer or the United States branch of an alien insurer
18 domiciled in this Commonwealth at the time he applied for a
19 liquidation order. The court shall order dissolution of the
20 corporation upon petition by the commissioner upon or after the
21 granting of a liquidation order. If the dissolution has not
22 previously been ordered, it shall be effected by operation of
23 law upon the discharge of the liquidator.

24 2. Powers and Duties of Liquidators and Others.

25 Section 523. Powers of Liquidator.--The liquidator shall
26 have the power:

27 (1) To appoint a special deputy to act for him under this
28 article, and to determine his compensation. The special deputy
29 shall have all powers of the liquidator granted by this section.
30 The special deputy shall serve at the pleasure of the

1 commissioner.

2 (2) To employ employes and agents, legal counsel, actuaries,
3 accountants, appraisers, consultants and such other personnel as
4 he may deem necessary to assist in the liquidation.

5 (3) To fix the compensation of employes and agents, legal
6 counsel, actuaries, accountants, appraisers and consultants
7 without complying with civil service regulations.

8 (4) To pay compensation to persons appointed and to defray
9 all expenses of taking possession of, conserving, conducting,
10 liquidating, disposing of or otherwise dealing with the business
11 and property of the insurer. In the event that the property of
12 the insurer does not contain sufficient cash or liquid assets to
13 defray the costs incurred, the commissioner shall advance the
14 costs so incurred out of the appropriation for the maintenance
15 of the Insurance Department. Any amounts so paid shall be deemed
16 expense of administration and shall be repaid to the
17 commissioner for the use of the Insurance Department out of the
18 first available moneys of the insurer.

19 (5) To hold hearings, to subpoena witnesses, to compel their
20 attendance, to administer oaths, to examine any person under
21 oath, and to compel any person to subscribe to his testimony
22 after it has been correctly reduced to writing, and in
23 connection therewith to require the production of any books,
24 papers, records or other documents which he deems relevant to
25 the inquiry.

26 (6) To collect all debts and moneys due and claims belonging
27 to the insurer WHICH IT IS ECONOMICAL TO COLLECT, wherever
28 located, and for this purpose to institute timely action in
29 other jurisdictions, in order to forestall garnishment and
30 attachment proceedings against such debts; to do such other acts

<—

1 as are necessary or expedient to collect, conserve or protect
2 its assets or property, including the power to sell, compound,
3 compromise or assign for purposes of collection upon such terms
4 and conditions as he deems best, any bad or doubtful debts; to
5 pursue any creditor's remedies available to enforce his claims.

6 (7) To conduct public and private sales of the property of
7 the insurer.

8 (8) To use assets of the estate to transfer policy
9 obligations to a solvent assuming insurer, if the transfer can
10 be arranged without prejudice to applicable priorities under
11 section 542 544.

<—

12 (9) To acquire, hypothecate, encumber, lease, improve, sell,
13 transfer, abandon or otherwise dispose of or deal with, any
14 property of the insurer at its market value or upon such terms
15 and conditions as are fair and reasonable. He shall also have
16 power to execute, acknowledge and deliver any and all deeds,
17 assignments, releases and other instruments necessary or proper
18 to effectuate any sale of property or other transaction in
19 connection with the liquidation is pending, the liquidator shall
20 cause to be filed with the recorder of deeds for the county in
21 which the property is located a certified copy of the order
22 appointing him liquidator.

23 (10) To borrow money on the security of the insurer's assets
24 or without security and to execute and deliver all documents
25 necessary to that transaction for the purpose of facilitating
26 the liquidation.

27 (11) To enter into such contracts as are necessary to carry
28 out the order to liquidate, and to affirm or disavow any
29 contracts to which the insurer is a party.

30 (12) To continue to prosecute and to institute in the name

1 of the insurer or in his own name any and all suits and other
2 legal proceedings, in this Commonwealth or elsewhere, and to
3 abandon the prosecution of claims he deems unprofitable to
4 pursue further. If the insurer is dissolved under section 522,
5 he shall have the power to apply to any court in this State or
6 elsewhere for leave to substitute himself for the insurer as
7 plaintiff.

8 (13) To prosecute any action which may exist in behalf of
9 the creditors, members, policyholders or shareholders of the
10 insurer against any officer of the insurer, or any other person.

11 (14) To remove any or all records and property of the
12 insurer to the offices of the commissioner or to such other
13 place as may be convenient for the purposes of efficient and
14 orderly execution of the liquidation.

15 (15) To deposit in one or more banks in this Commonwealth
16 such sums as are required for meeting current administration and
17 operating costs.

18 (16) To invest, all sums not currently needed, unless the
19 court orders otherwise.

20 (17) To file any necessary documents for record in the
21 office of any recorder of deeds or record office in this
22 Commonwealth or elsewhere where property of the insurer is
23 located.

24 (18) To assert all defenses available to the insurer as
25 against third persons, including statutes of limitation,
26 statutes of frauds and the defense of usury; a waiver of any
27 defense by the insurer after a petition in liquidation has been
28 filed shall not bind the commissioner. WHEN A GUARANTY

29 ASSOCIATION HAS AN OBLIGATION TO DEFEND A SUIT, THE LIQUIDATOR
30 SHALL GIVE PRECEDENCE TO SUCH OBLIGATIONS AND SHALL DEFEND ONLY

<—

1 IN THE ABSENCE OF A DEFENSE BY THE GUARANTY ASSOCIATION.

2 (19) To exercise and enforce all the rights, remedies, and
3 powers of any creditor, shareholder, policyholder or member,
4 including any power to avoid any transfer or lien that may be
5 given by the general law and that is not included with sections
6 528 through 530.

7 (20) To intervene in any proceeding wherever instituted that
8 might lead to the appointment of a receiver or trustee, and to
9 act as the receiver or trustee whenever the appointment is
10 offered.

11 (21) To enter into agreements with any receiver or
12 commissioner of any other state relating to the rehabilitation,
13 liquidation, conservation or dissolution of an insurer doing
14 business in both states.

15 (22) To exercise all powers now held or hereafter conferred
16 upon receivers by the laws of this Commonwealth not inconsistent
17 with the provisions of this article.

18 (23) The enumeration, in this section, of the powers and
19 authority of the liquidator shall not be construed as a
20 limitation upon him, nor shall it exclude in any manner his
21 right to do such other acts not herein specifically enumerated,
22 or otherwise provided for, as may be necessary or expedient for
23 the accomplishment of or in aid of the purpose of liquidation.

24 Section 524. Notice to Creditors and Others.--(a) The
25 liquidator shall give notice of the liquidation order as soon as
26 possible by first class mail and either by telegram or telephone
27 to the insurance commissioner of each jurisdiction in which the
28 insurer is licensed to do business, by first class mail and by
29 telephone to any responsible guaranty association of this
30 Commonwealth by first class mail to all insurance agents having

a duty under section 525 and to all known policy holders,
creditors and claimants.

(b) Notice to potential claimants under subsection (a) shall
require claimants to file with the liquidator their claims
together with proper proofs thereof under section 538, on or
before a date the liquidator shall specify in the notice. All
claimants shall have a duty to keep the liquidator informed of
any change of address.

Section 525. Duties of Agents.--(a) Every person who
receives notice in the form prescribed in section 524 that an
insurer which he represents as an independent agent is the
subject of a liquidation order, shall within fifteen days of
such notice give notice of the liquidation order. The notice
shall be sent by first class mail to the last address contained
in the agent's records to each policyholder or other person
named in any policy issued through the agent by the insurer, if
he has a record of the address of the policyholder or other
person. A policy shall be deemed issued through an agent if the
agent has a property interest in the expiration of the policy;
or if the agent has had in his possession a copy of the
declarations of the policy at any time during the life of the
policy, except where the ownership of the expiration of the
policy has been transferred to another. The written notice shall
include the name and address of the insurer, the name and
address of the agent, identification of the policy impaired and
the nature of the impairment including termination of coverage,
as described in section 521. Notice by a general agent satisfies
the notice requirement for any agents under contract to him.

(b) Any agent failing to give notice as required in
subsection (a) may be subject to payment of a penalty of not

1 more than one thousand dollars (\$1000) and may have his license
2 suspended, said penalty to be imposed after a hearing held by
3 the insurance commissioner.

4 Section 526. Actions By and Against Liquidator.--(a) Upon
5 issuance of an order appointing the commissioner liquidator of a
6 domestic insurer or of an alien insurer domiciled in this
7 Commonwealth, no action at law or equity shall be brought by or
8 against the insurer, whether in this Commonwealth or elsewhere,
9 nor shall any such existing actions be continued after issuance
10 of such order. Whenever in the liquidator's judgment, protection
11 of the estate of the insurer necessitates intervention in an
12 action against the insurer that is pending outside this
13 Commonwealth, with approval of the court he may intervene in the
14 action. The liquidator may defend any action in which he
15 intervenes under this section at the expense of the estate of
16 the insurer.

17 (b) The liquidator may, upon or after an order for
18 liquidation, within ~~such~~ TWO YEARS OR SUCH ADDITIONAL time as <—
19 applicable law may permit, institute an action or proceeding on
20 behalf of the estate of the insurer upon any cause of action
21 against which the period of limitation fixed by applicable law
22 has not expired at the time of the filing of the petition upon
23 which such order is entered. Where, by any agreement, a period
24 of limitation is fixed for instituting a suit or proceeding upon
25 any claim, or for filing any claim, proof of claim, proof of
26 loss, demand, notice, or the like, or where in any proceeding,
27 judicial or otherwise, a period of limitation is fixed, either
28 in the proceeding or by applicable law, for taking any action,
29 filing any claim or pleading, or doing any act, and where in any
30 such case the period had not expired at the date of the filing

1 of the petition, the liquidator may, for the benefit of the
2 estate, take any such action or do any such act, required of or
3 permitted to the insurer, within a period of one hundred and
4 eighty days subsequent to the entry of an order for liquidation,
5 or within such further period as is shown to the satisfaction of
6 the court not to be unfairly prejudicial to the other party.

7 (c) The time between the filing of a petition for
8 liquidation against an insurer and the denial of the petition
9 shall not be considered to be a part of the time within which
10 any action may be commenced against the insurer. Any action
11 against the insurer that might have been commenced when the
12 petition was filed may be commenced for at least sixty days
13 after the petition is denied.

14 3. Estate of Insurer

15 Section 527. Collection and List of Assets.--(a) As soon as
16 practicable after the liquidation order, the liquidator shall
17 prepare in duplicate a list of the insurer's assets. The list
18 shall be amended or supplemented from time to time as the court
19 shall require. One copy shall be filed in the office of the
20 clerk of the Commonwealth Court and one copy shall be retained
21 for the liquidator's files. All amendments and supplements shall
22 be similarly filed.

23 (b) The liquidator shall reduce the assets to a degree of
24 liquidity that is consistent with the effective execution of the
25 liquidation as rapidly and economically as he can.

26 Section 528. Fraudulent Transfers Prior to Petition.--(a)
27 Every transfer made or suffered and every obligation incurred by
28 an insurer within one year prior to the filing of a successful
29 petition for rehabilitation or liquidation under this article is
30 fraudulent as to then existing and future creditors if made or

1 incurred without fair consideration, or with actual intent to
2 hinder, delay, or defraud either existing or future creditors. A
3 transfer made or an obligation incurred by an insurer ordered to
4 be rehabilitated or liquidated under this article, which is
5 fraudulent under this section, may be avoided by the receiver,
6 except as to a person who in good faith is a purchaser, lienor,
7 or obligee for a present fair equivalent value, and except that
8 any purchaser, lienor, or obligee, who in good faith has given a
9 consideration less than fair for such transfer, lien, or
10 obligation, may retain the property, lien or obligation as
11 security for repayment. The court may, on due notice, order any
12 such transfer or obligation to be preserved for the benefit of
13 the estate, and in that event, the receiver shall succeed to and
14 may enforce the rights of the purchaser, lienor, or obligee.

15 (b) A transfer of property other than real property shall be
16 deemed to be made or suffered when it becomes so far perfected
17 that no subsequent lien obtainable by legal or equitable
18 proceedings on a simple contract could become superior to the
19 rights of the transferee, under section 530(c).

20 A transfer of real property shall be deemed to be made or
21 suffered when it becomes so far perfected that no subsequent
22 bona fide purchaser from the insurer could obtain rights
23 superior to the rights of the transferee.

24 A transfer which creates an equitable lien shall not be
25 deemed to be perfected if there are available means by which a
26 legal lien could be created.

27 Any transfer not perfected prior to the filing of a petition
28 for liquidation shall be deemed to be made immediately before
29 the filing of the successful petition.

30 The provisions of this subsection apply whether or not there

1 are or were creditors who might have obtained any liens or
2 persons who might have become bona fide purchasers.

3 (c) Any transaction of the insurer with a reinsurer shall be
4 deemed fraudulent and may be avoided by the receiver under
5 subsection (a) if (i) the transaction consists of the
6 termination, adjustment or settlement of a reinsurance contract
7 in which the reinsurer is released from any part of its duty to
8 pay the originally specified share of losses that had occurred
9 prior to the time of the transaction, unless the reinsurer gives
10 a present fair equivalent value for the release; and (ii) any
11 part of the transaction took place within one year prior to the
12 date of filing of the petition through which the receivership
13 was commenced.

14 Section 529. Fraudulent Transfers After Petition.--(a)
15 After a petition for rehabilitation or liquidation a transfer of
16 any of the real property of the insurer made to a person acting
17 in good faith shall be valid against the receiver if made for a
18 present fair equivalent value, or, if not made for a present
19 fair equivalent value, then to the extent of the present
20 consideration actually paid therefor, for which amount the
21 transferee shall have a lien on the property so transferred. The
22 commencement of a proceeding in rehabilitation or liquidation
23 shall be constructive notice upon the recording of a copy of the
24 petition for or order of rehabilitation or liquidation with the
25 recorder of deeds in the county where any real property in
26 question is located. The exercise by a court of the United
27 States or any state or jurisdiction to authorize or effect a
28 judicial sale of real property of the insurer within any county
29 in any state shall not be impaired by the pendency of such a
30 proceeding unless the copy is recorded in the county prior to

1 the consummation of the judicial sale.

2 (b) After a petition for rehabilitation or liquidation and
3 before either the receiver takes possession of the property of
4 the insurer or an order of rehabilitation or liquidation is
5 granted:

6 (1) A transfer of any of the property of the insurer, other
7 than real property, made to a person acting in good faith shall
8 be valid against the receiver if made for a present fair
9 equivalent value, or, if not made for a present fair equivalent
10 value, then to the extent of the present consideration actually
11 paid therefor, for which amount the transferee shall have a lien
12 on the property so transferred.

13 (2) A person indebted to the insurer or holding property of
14 the insurer may, if acting in good faith, pay the indebtedness
15 or deliver the property, or any part thereof, to the insurer or
16 upon his order, with the same effect as if the petition were not
17 pending.

18 (3) A person having actual knowledge of the pending
19 rehabilitation or liquidation shall be deemed not to act in good
20 faith.

21 (4) A person asserting the validity of a transfer under this
22 section shall have the burden of proof. Except as elsewhere
23 provided in this section, no transfer by or in behalf of the
24 insurer after the date of the petition for liquidation by any
25 person other than the liquidator shall be valid against the
26 liquidator.

27 (c) Nothing in this article shall impair the negotiability
28 of currency or negotiable instruments.

29 Section 530. Voidable Preferences and Liens.--(a) A
30 preference is a transfer of any of the property of an insurer to

1 or for the benefit of a creditor, for or on account of an
2 antecedent debt, made or suffered by the insurer within one year
3 before the filing of a successful petition for liquidation under
4 this article the effect of which transfer may be to enable the
5 creditor to obtain a greater percentage of this debt than
6 another creditor of the same class would receive. If a
7 liquidation order is entered while the insurer is already
8 subject to a rehabilitation order, then transfers otherwise
9 qualifying shall be deemed preferences if made or suffered
10 within one year before the filing of the successful petition for
11 rehabilitation or within two years before the filing of the
12 successful petition for liquidation, whichever time is shorter.

13 Any preference may be avoided by the liquidator, if (i) the
14 insurer was insolvent at the time of the transfer; (ii) the
15 transfer was made within four months before the filing of the
16 petition; (iii) the creditor receiving it or to be benefited
17 thereby or his agent acting with reference thereto had, at the
18 time when the transfer was made, reasonable cause to believe
19 that the insurer was insolvent or was about to become insolvent;
20 or (iv) the creditor receiving it was an officer, any employee or
21 attorney or other person who was in fact in a position of
22 comparable influence in the insurer to an officer whether or not
23 he held such position, or any shareholder holding directly or
24 indirectly more than five per centum of any class of any equity
25 security issued by the insurer, or any other person, firm,
26 corporation, association, or aggregation of persons with whom
27 the insurer did not deal at arm's length. Where the preference
28 is voidable, the liquidator may recover the property or, if it
29 has been converted, its value from any person who has received
30 or converted the property, except where a bona fide purchaser or

1 lienor has given less than fair equivalent value, he shall have
2 a lien upon the property to the extent of the consideration
3 actually given by him. Where a preference by way of lien or
4 security title is voidable, the court may on due notice order
5 the lien or title to be preserved for the benefit of the estate,
6 in which event the lien or title shall pass to the liquidator.

7 (b) A transfer of property other than real property shall be
8 deemed to be made or suffered when it becomes so far perfected
9 that no subsequent lien obtainable by legal or equitable
10 proceedings on a simple contract could become superior to the
11 rights of the transferee.

12 A transfer of real property shall be deemed to be made or
13 suffered when it becomes so far perfected that no subsequent
14 bona fide purchaser from the insurer could obtain rights
15 superior to the rights of the transferee.

16 A transfer which creates an equitable lien shall not be
17 deemed to be perfected if there are available means by which a
18 legal lien could be created.

19 A transfer not perfected prior to the filing of a petition
20 for liquidation shall be deemed to be made immediately before
21 the filing of the successful petition.

22 The provisions of this subsection apply whether or not there
23 are or were creditors who might have obtained liens or persons
24 who might have become bona fide purchasers.

25 (c) A lien obtainable by legal or equitable proceedings upon
26 a simple contract is one arising in the ordinary course of such
27 proceedings upon the entry or docketing of a judgment or decree,
28 or upon attachment, garnishment, execution, or like process,
29 whether before, upon, or after judgment or decree and whether
30 before or upon levy. It does not include liens which under

1 applicable law are given a special priority over other liens
2 which are prior in time.

3 A lien obtainable by legal or equitable proceedings could
4 become superior to the rights of a transferee, or a purchaser
5 could obtain rights superior to the rights of a transferee
6 within the meaning of subsection (b), if such consequences would
7 follow only from the lien or purchase itself, or from the lien
8 or purchase followed by any step wholly within the control of
9 the respective lienholder or purchaser, with or without the aid
10 of ministerial action by public officials. Such a lien could
11 not, however, become superior and such a purchase could not
12 create superior rights for the purpose of subsection (b) through
13 any acts subsequent to the obtaining of such a lien of
14 subsequent to such a purchase which require the agreement or
15 concurrence of any third party or which require any further
16 judicial action, or ruling.

17 (d) A transfer of property for or on account of a new and
18 contemporaneous consideration which is deemed under subsection
19 (b) to be made or suffered after the transfer because of delay
20 in perfecting it does not thereby become a transfer for or on
21 account of an antecedent debt if any acts required by the
22 applicable law to be performed in order to perfect the transfer
23 as against liens or bona fide purchasers' rights are performed
24 within twenty-one days or any period expressly allowed by the
25 law, whichever is less. A transfer to secure a future loan, if
26 such a loan is actually made, or a transfer which becomes
27 security for a future loan, shall have the same effect as a
28 transfer for or on account of a new and contemporaneous
29 consideration.

30 (e) If any lien deemed voidable under the second paragraph

1 of subsection (a) has been dissolved by the furnishing of a bond
2 or other obligation, the surety on which has been indemnified
3 directly or indirectly by the transfer of or the creation of a
4 lien upon any property of an insurer before the filing of a
5 petition under this article which results in a liquidation
6 order, the indemnifying transfer or lien shall also be deemed
7 voidable.

8 (f) The property affected by any lien deemed voidable under
9 subsections (a) and (e) shall be discharged from such lien, and
10 that property and any of the indemnifying property transferred
11 to or for the benefit of a surety shall pass to the liquidator,
12 except that the court may on due notice order any such lien to
13 be preserved for the benefit of the estate and the court may
14 direct that such conveyance be executed as may be proper or
15 adequate to evidence the title of the liquidator.

16 (g) The Commonwealth Court shall have summary jurisdiction
17 of any proceeding by the liquidator to hear and determine the
18 rights of any parties under this section. Reasonable notice of
19 any hearing in the proceeding shall be given to all parties in
20 interest, including the obligee of a releasing bond or other
21 like obligation. Where an order is entered for the recovery of
22 indemnifying property in kind or for the avoidance of an
23 indemnifying lien, the court, upon application of any party in
24 interest, shall in the same proceeding ascertain the value of
25 the property or lien, and if the value is less than the amount
26 for which the property is indemnity or than the amount of the
27 lien, the transferee or lienholder may elect to retain the
28 property or lien upon payment of its value, as ascertained by
29 the court, to the liquidator, within such reasonable times as
30 the court shall fix.

1 (h) The liability of a surety under a releasing bond or
2 other like obligation shall be discharged to the extent of the
3 value of the indemnifying property recovered or the indemnifying
4 lien nullified and avoided by the liquidator, or where the
5 property is retained under subsection (g) to the extent of the
6 amount paid to the liquidator.

7 (i) If a creditor has been preferred, and afterward in good
8 faith gives the insurer further credit without security of any
9 kind, for property which becomes a part of the insurer's estate,
10 the amount of the new credit remaining unpaid at the time of the
11 petition may be set off against the preference which would
12 otherwise be recoverable from him.

13 (j) If an insurer shall, directly or indirectly, within four
14 months before the filing of a successful petition for
15 liquidation under this article, or at any time in contemplation
16 of a proceeding to liquidate it, pay money or transfer property
17 to an attorney-at-law for services rendered or to be rendered,
18 the transaction may be examined by the court on its own motion
19 or shall be examined by the court on petition of the liquidator
20 and shall be held valid only to the extent of a reasonable
21 amount to be determined by the court, and the excess may be
22 recovered by the liquidator for the benefit of the estate
23 provided that where the attorney is in a position of influence
24 in the insurer or an affiliate thereof payment of any money or
25 the transfer of any property to the attorney-at-law for services
26 rendered or to be rendered shall be governed by the provision of
27 section 530(a)(iv).

28 (k) Every officer, manager, employe, shareholder, member,
29 subscriber, attorney, or any other person acting on behalf of
30 the insurer who knowingly participates in giving any preference

1 when he has reasonable cause to believe the insurer is or is
2 about to become insolvent at the time of the preference shall be
3 personally liable to the liquidator for the amount of the
4 preference. It is permissible to infer that there is reasonable
5 cause to so believe if the transfer was made within four months
6 before the date of filing of the successful petition for
7 liquidation.

8 Every person receiving any property from the insurer or the
9 benefit thereof as a preference voidable under subsection (a)
10 shall be personally liable therefor and shall be bound to
11 account to the liquidator.

12 Nothing in this subsection shall prejudice any other claim by
13 the liquidator against any person.

14 Section 531. Claims of Holders of Void or Voidable Rights.--

15 (a) No claims of a creditor who has received or acquired a
16 preference, lien, conveyance, transfer, assignment or
17 encumbrance, voidable under this article, shall be allowed
18 unless he surrenders the preference, lien, conveyance, transfer
19 assignment or encumbrance. If the avoidance is effected by a
20 proceeding in which a final judgment has been entered, the claim
21 shall not be allowed unless the money is paid or the property is
22 delivered to the liquidator within thirty days from the date of
23 the entering of the final judgment, except that the court having
24 jurisdiction over the liquidation may allow further time if
25 there is an appeal or other continuation of the proceeding.

26 (b) A claim allowable under subsection (a) by reason of the
27 avoidance, whether voluntary or involuntary, or a preference,
28 lien, conveyance, transfer, assignment, or encumbrance, may be
29 filed as an excused late filing under section 537 if filed
30 within thirty days from the date of the avoidance, or within the

1 further time allowed by the court under subsection (a).

2 Section 532. Setoffs and Counterclaims.--(a) Mutual debts
3 or mutual credits between the insurer and another person in
4 connection with any action or proceeding under this article
5 shall be set off and the balance only shall be allowed or paid,
6 except as provided in subsection (b).

7 (b) No setoff or counterclaim shall be allowed in favor of
8 any person where:

9 (1) the obligation of the insurer to the person would not at
10 the date of the filing of a petition for liquidation entitle the
11 person to share as a claimant in the assets of the insurer;

12 (2) the obligation of the insurer to the person was
13 purchased by or transferred to the person with a view to its
14 being used as a setoff;

15 (3) the obligation of the person is to pay an assessment
16 levied against the members or subscribers of the insurer, or is
17 to pay a balance upon a subscription to the capital stock of the
18 insurer, or is in any other way in the nature of a capital
19 contribution; or

20 (4) the obligation of the person is to pay premiums, whether
21 earned or unearned, to the insurer.

22 Section 533. Assessments.--(a) As soon as practicable but
23 not more than two years from the date of an order of liquidation
24 under ~~section 520~~ THIS ARTICLE of an insurer issuing assessable <—
25 policies, the liquidator shall make a report to the Commonwealth
26 Court setting forth:

27 (1) the reasonable value of the assets of the insurer;

28 (2) the insurer's probable total liabilities;

29 (3) the probable aggregate amount of the assessment
30 necessary to pay all claims of creditors and expenses in full,

1 including expenses of administration and costs of collecting the
2 assessment; and

3 (4) whether or not an assessment should be made and what
4 amount.

5 (b) Upon the basis of the report provided in subsection (a),
6 including any supplements and amendments thereto, the
7 Commonwealth Court may levy one or more assessments against all
8 members of the insurer who are subject to assessment. No member
9 shall be assessed for any loss that occurred when his policy was
10 not in effect. No assessment shall be made or collection
11 procedures begun after two years from the expiration date of a
12 policy. The maximum assessment against any member for each year
13 or part thereof in which a policy or policies issued to such
14 member were in effect shall not exceed one hundred per centum of
15 the average total annual premium during the life of the policy
16 as written in such policy or policies including any increase or
17 reduction in premium as the result of any endorsement thereto.

18 Subject to any applicable legal limits on assessability, the
19 aggregate assessment shall be for the amount that the sum of the
20 probable liabilities, the expenses of administration and the
21 estimated cost of collection of the assessment, exceeds the
22 value of existing assets, with due regard being given to
23 assessments that cannot be collected economically.

24 (c) After levy of assessment under subsection (b) the
25 commissioner shall issue an order directing each member who has
26 not paid the assessment pursuant to the order, to show cause why
27 the liquidator should not pursue a judgment therefor.

28 (d) The liquidator shall give notice of the order to show
29 cause by publication and by first class mail to each member
30 liable thereunder mailed to his last known address as it appears

1 on the insurer's records, at least twenty days before the return
2 day of the order to show cause.

3 (e) If a member does not appear and serve duly verified
4 objections upon the liquidator on or before the return day of
5 the order to show cause under subsection (c), the court shall
6 make an order adjudging the member liable for the amount of the
7 assessment against him and other indebtedness, pursuant to
8 subsection (c), together with costs, and the liquidator shall
9 have a judgment against the member therefor. If on or before
10 such return day, the member appears and serves duly verified
11 objections upon the liquidator, the commissioner may hear and
12 determine the matter or may appoint a referee to hear it and
13 make such order as the facts warrant. In the event that the
14 commissioner determines that such objections do not warrant
15 relief from assessment, the member may request the court to
16 review the matter and vacate the order to show cause.

17 (f) The liquidator may enforce any order or collect any
18 judgment under subsection (e) by any lawful means.

19 Section 534. Reinsurer's Liability.--The amount recoverable
20 by the liquidator from reinsurers shall not be reduced as a
21 result of delinquency proceedings, regardless of any provision
22 in the reinsurance contract or other agreement. Payment made
23 directly to an insured or other creditor shall not diminish the
24 reinsurer's obligation to the insurer's estate except when the
25 reinsurance contract provided for direct coverage of an
26 individual named insured and the payment was made in discharge
27 of that obligation.

28 Section 535. Recovery of Premiums Owed.--(a) An insured,
29 agent, broker, premium finance company or any other person
30 responsible for the payment of a premium shall be obligated to

1 pay any unpaid premium for the full policy term due the insurer
2 at the time of the declaration of insolvency whether earned or
3 unearned as shown on the records of the insurer. The liquidator
4 shall also have the right to recover from such person any part
5 of an unearned premium that represents commission of such
6 person. Credits and/or setoff shall not be allowed to an agent,
7 broker or premium finance company on account of any credits
8 volunteered by such person.

9 (b) Upon satisfactory evidence of a violation of this
10 section, the Insurance Commissioner may, in his discretion,
11 pursue any one or more of the following courses of action:

12 (1) Suspend or revoke or refuse to renew the licenses of
13 such offending party or parties.

14 (2) Impose a penalty of not more than one thousand dollars
15 (\$1,000) for each and every act in violation of this section by
16 said party or parties.

17 Before the Insurance Commissioner shall take any action as
18 above set forth, he shall give written notice to the person,
19 company, association, or exchange accused of violating the law,
20 stating specifically the nature of the alleged violation, and
21 fixing a time and place, at least ten days thereafter, when a
22 hearing of the matter shall be held. After such hearing, or upon
23 failure of the accused to appear at such hearing, the Insurance
24 Commissioner shall impose such of the above penalties as he
25 deems advisable.

26 When the Insurance Commissioner shall take action in any or
27 all of the ways above recited, the party aggrieved may appeal
28 from said action to the Commonwealth Court.

29 Section 536. ~~Commissioner's~~ LIQUIDATOR'S Proposal to
30 Distribute Assets.--(a) Within one hundred twenty days of a

<—

1 final determination that an insurer is insolvent or in such
2 condition that its further transaction of business will be
3 hazardous to its policyholders, or to its creditors, or to the
4 public by a court of competent jurisdiction of this
5 Commonwealth, the ~~commissioner~~ LIQUIDATOR shall make application <—
6 to the Commonwealth Court for approval of a proposal to disburse
7 assets out of such company's marshalled assets, from time to
8 time as such assets become available, to any guaranty
9 association in the Commonwealth or in any other state having
10 substantially the same provision of law. The ~~commissioner~~ <—
11 LIQUIDATOR need not make application, as required above, in <—
12 instances where it is reasonable to conclude that the assets of
13 the insolvent insurer will not exceed the amounts necessary to
14 pay the costs of liquidation and the payment of claims of
15 creditors either secured or with a priority higher than the
16 claims of policyholders. A guaranty association shall have the
17 right to petition the Commonwealth Court to review an order of
18 the ~~commissioner~~ LIQUIDATOR concluding the assets will not <—
19 exceed such costs.

20 (b) The proposal shall at least include provisions for:

21 (1) Reserving amounts for the payment of expenses of
22 administration and the payment of claims of secured creditors to
23 the extent of the value of the security held and claims having a
24 priority higher than that of the claims of policyholders.

25 (2) Disbursement of assets marshalled to date and subsequent
26 disbursement of assets as they become available.

27 (3) Equitable allocation of disbursements to each of the
28 associations entitled thereto.

29 (4) The securing by the ~~commissioner~~ LIQUIDATOR, from each <—
30 of the associations entitled to disbursements pursuant to this

1 section, of an agreement to return to the ~~commissioner~~ <—
2 LIQUIDATOR such assets previously disbursed as may be required <—
3 to pay the claims of secured creditors, claims falling within
4 the priorities referred to in subsection (b)(1) and the
5 proportional share of the assets disbursed required by the
6 liquidator to make equivalent distribution to creditors of the
7 same class of priority as policyholders in the event that the
8 association may have received a disbursement of assets in excess
9 of that available to pay all creditors of the insolvent insurer
10 in the same class of priority as policyholders. An association
11 shall return such assets to the ~~commissioner~~ LIQUIDATOR when <—
12 needed upon its own initiative or upon demand of the
13 ~~commissioner~~ LIQUIDATOR together with any investment income <—
14 earned on the assets ~~disbursed~~ REIMBURSED. No bond shall be <—
15 required of any such association.
16 (5) The ~~commissioner~~ LIQUIDATOR may require reports to be <—
17 made by an association at such time and covering such matters as
18 he may determine. A full report shall be made by the association
19 to the ~~commissioner~~ LIQUIDATOR when assets received have been <—
20 disbursed or the obligation of an association to pay covered
21 claims of the insolvent insurer has been fulfilled accounting
22 for all assets so disbursed to the association, all
23 disbursements made therefrom, any interest earned by the
24 association on such assets and any other matter as the court may
25 direct.
26 (c) The ~~commissioner's~~ LIQUIDATOR'S proposal shall provide <—
27 for disbursements to the associations in amounts estimated to be
28 at least equal to the claim payments made or to be made thereby
29 for which such associations could assert a claim against the
30 ~~commissioner~~ LIQUIDATOR, and shall further provide that if the <—

1 assets available for disbursement from time to time do not equal
2 or exceed the amount of such claim payments made or to be made
3 by the associations then disbursements shall be in the amount of
4 available assets.

5 (d) Notice of such application shall be given to the
6 associations and to the commissioners of insurance of each of
7 the states where the company is licensed. Any such notice shall
8 be deemed to have been given when deposited in the United States
9 certified mails, first class postage prepaid, at least thirty
10 days prior to the submission of such application to the
11 Commonwealth Court. Action on the application may be taken by
12 the court provided the above required notice has been given and
13 provided further that the ~~commissioner's~~ LIQUIDATOR'S proposal <—
14 complies with subsection (b)(1) and (b)(4).

15 4. Claims

16 Section 537. Filing of Claims.--(a) Proof of all claims
17 shall be filed with the liquidator in the form required by
18 section 538 on or before the last day for filing specified in
19 the notice required under section 524, EXCEPT THAT PROOFS OF <—
20 CLAIM FOR CASH SURRENDER VALUES OR OTHER INVESTMENT VALUES IN
21 LIFE INSURANCE AND ANNUITIES NEED NOT BE FILED UNLESS THE
22 LIQUIDATOR EXPRESSLY SO REQUIRES.

23 (b) For good cause shown, the liquidator may permit a
24 claimant making a late filing to share in distributions, whether
25 past or future, as if he were not late, to the extent that any
26 such payment will not prejudice the orderly administration of
27 the liquidation. Good cause shall include but shall not be
28 limited to the following:

29 (1) that existence of claim was not known to the claimant
30 and that he filed his claim as promptly thereafter as reasonably

1 possible after learning of it;

2 (2) that a transfer to a creditor was avoided under sections
3 528 through 530, or was voluntarily surrendered under section
4 531, and that the filing satisfies the conditions of section
5 531;

6 (3) that valuation under section 543 of security held by a
7 secured creditor shows a deficiency, which is filed within
8 thirty days after the valuation; and

9 (4) that a claim was contingent and became absolute, and was
10 filed as soon as reasonably possible after it became absolute.

11 (5) That the claim was the claim of a guarantee association
12 for reimbursement of covered claims paid and/or expenses
13 incurred, subsequent to the last day for filing where such
14 payments were made and expenses incurred as a result of
15 requirements of law.

16 (c) The liquidator may consider any claim filed late which
17 is not covered by subsection (b), and permit it to receive
18 distributions which are subsequently declared on any claims of
19 the same or lower priority if the payment does not prejudice the
20 orderly administration of the liquidation. The late-filing
21 claimant shall receive, at each distribution, the same
22 percentage of the amount allowed on his claim as is then being
23 paid to other claimants of the same priority plus the same
24 percentage of the amount allowed on his claim as is then being
25 paid to claimants of any lower priority. This shall continue
26 until his claim has been paid in full.

27 Section 538. Proof of Claim.--(a) Proof of claim shall
28 consist of a statement signed by the claimant that includes all
29 of the following that are applicable:

30 (1) the particulars of the claim including the consideration

1 given for it;

2 (2) the identity and amount of the security on the claim;

3 (3) the payments made on the debt, if any;

4 (4) that the sum claimed is justly owing and that there is
5 no setoff, counterclaim or defense to the claim;

6 (5) any right of priority of payment or other specific right
7 asserted by the claimants;

8 (6) a copy of written instrument which is the foundation of
9 the claim;

10 (7) in the case of any third party claim based on a
11 liability policy issued by the insurer, a conditional release of
12 the insured pursuant to section 540(a); and

13 (8) the name and address of the claimant and the attorney
14 who represents him, if any.

15 No claim need be considered or allowed if it does not contain
16 all the foregoing information which may be applicable. The
17 liquidator may require that a prescribed form be used, and may
18 require that other information and documents be included.

19 (b) At any time the liquidator may request the claimant to
20 present information or evidence supplementary to that required
21 under subsection (a) and may take testimony under oath, require
22 production of affidavits or depositions, or otherwise obtain
23 additional information or evidence.

24 (c) No judgment or order against an insured or the insurer
25 entered after the date of filing of a successful petition for
26 liquidation, and no judgment or order against an insured or the
27 insurer entered at any time by default or by collusion need be
28 considered as evidence of liability or of quantum of damages.

29 (d) A claim of a guaranty association for reimbursement of
30 payments made for the payments of covered claims and for

1 expenses shall be in such form and contain such substantiation
2 as may be agreed to by the guaranty association and the
3 liquidator subject to review by the Commonwealth Court.

4 Section 539. Special Claims.--(a) The claim of a third
5 party which is contingent only on his first obtaining a judgment
6 against the insured shall be considered and allowed as if there
7 were no such contingency.

8 (b) Any claim that would have become absolute if there had
9 been no termination of coverage under section 521, and which was
10 not covered by insurance acquired to replace the terminated
11 coverage, shall be allowed as if the coverage had remained in
12 effect, unless at least ten days before the insured event
13 occurred either the claimant had actual notice of the
14 termination or notice was mailed to him as prescribed by section
15 524(A) OR 525(a). If allowed the claim shall share in
16 distributions under section 544(f).

17 (c) A claim may be allowed even if contingent, if it is
18 filed in accordance with section 537(b). It may be allowed and
19 may participate in all distributions declared after it is filed
20 to the extent that it does not prejudice the orderly
21 administration of the liquidation.

22 (d) Claims that are due except for the passage of time shall
23 be treated as absolute claims are treated, except that such
24 claims may be discounted at the legal rate of interest.

25 (e) The treasurer of this State in his capacity as custodian
26 of the workmen's compensation security funds may file a claim
27 with the liquidator for all sums paid or to be paid from those
28 funds.

29 Section 540. Special Provisions for Third Party Claims.--(a)
30 Whenever any third party asserts a cause of action against an

1 insured of an insurer in liquidation the third party may file a
2 claim with the liquidator. The filing of the claim shall operate
3 as a release of the insured's liability to the third party on
4 that cause of action in the amount of the applicable policy
5 limit, but the liquidator shall also insert in any form used for
6 the filing of third party claims appropriate language to
7 constitute such a release. The release shall be null and void if
8 the insurance coverage is avoided by the liquidator.

9 (b) Whether or not the third party files a claim, the
10 insured may file a claim on his own behalf in the liquidation.
11 If the insured fails to file a claim by the date for filing
12 claims specified in the order of liquidation or within sixty
13 days after mailing of the notice required by section 524(a),
14 whichever is later, he shall be deemed to be an unexcused late
15 filer.

16 (c) The liquidator shall make his recommendations to the
17 court under section 545 for the allowance of an insured's claim
18 under subsection (b) after consideration of the probable outcome
19 of any pending action against the insured on which the claim is
20 based, the probable damages recoverable in the action, and the
21 probable costs and expenses of defense. Such recommendations as
22 are not modified by the court within a period of sixty days
23 following submission by the liquidator shall be treated by the
24 liquidator as allowed recommendations, subject thereafter to
25 later modification or to rulings made by the court pursuant to
26 section 541. After allowance by the court, the liquidator shall
27 withhold any distributions payable on the claim, pending the
28 outcome of litigation and negotiation with the insured. Whenever
29 it seems appropriate, he shall reconsider the claim on the basis
30 of additional information and amend his recommendations to the

1 court. The court may amend its allowance as it thinks
2 appropriate. As claims against the insured are settled, the
3 claimant shall be paid from the amount withheld the same
4 percentage distribution as was paid on other claims of like
5 priority, based on the lesser of either: (i) the amount allowed
6 on the claims by the court, or (ii) the amount actually
7 recovered from the insured by action or paid by agreement plus
8 the reasonable costs and expenses of defense. After all claims
9 are settled, any sum remaining from the amount withheld shall
10 revert to the undistributed assets of the insurer. Delay in
11 final payment under this subsection shall not be a reason for
12 unreasonable delay of final distribution and discharge of the
13 liquidator.

14 (d) In the event several claims founded upon one policy are
15 filed, whether by third parties or as claims by the insured
16 under this section, and the aggregate allowed amount of the
17 claims to which the same limit of liability in the policy is
18 applicable exceeds that limit, then each claim as allowed shall
19 be reduced a proportionate amount so that the total equals the
20 policy limit. Claims by the insured shall be evaluated as in
21 subsection (c). If any insured's claim is subsequently reduced
22 under subsection (c), the amount thus freed shall be apportioned
23 ratably among the claims which have been reduced under this
24 subsection.

25 Section 541. Disputed Claims.--(a) When a claim is denied
26 in whole or in part by the liquidator, written notice of the
27 determination shall be given to the claimant and his attorney by
28 first class mail at the address shown in the proof of claim.
29 Within sixty days from the mailing of the notice, the claimant
30 may file his objections with the court. If no such filing is

1 made, the claimant may not further object to the determination.

2 (b) Whenever objections are filed with the liquidator, the
3 liquidator shall ask the court for a hearing as soon as
4 practicable and give notice of the hearing by first class mail
5 to the claimant or his attorney and to any other persons
6 directly affected, not less than ten nor more than thirty days
7 before the date of the hearing. The matter may be heard by the
8 court or by a court-appointed referee who shall submit findings
9 of fact along with his recommendation.

10 Section 542. Claims of Surety.--Whenever a creditor whose
11 claim against an insurer is secured, in whole or in part, by the
12 undertaking of another person, fails to prove and file that
13 claim, the other person may do so in the creditor's name, and
14 shall be subrogated to the rights of the creditor, whether the
15 claim has been filed by the creditor or by the other person in
16 the creditor's name, to the extent that he discharges the
17 undertaking. In the absence of an agreement with the creditor to
18 the contrary, the other person shall not be entitled to any
19 distribution, however, until the amount paid to the creditor on
20 the undertaking plus the distributions paid on the claim from
21 the insurer's estate to the creditor equals the amount of the
22 entire claim of the creditor. Any excess received by the
23 creditor shall be held by him in trust for such other person.
24 The term "other person," as used in this section is not intended
25 to apply to a guaranty association.

26 Section 543. Secured Creditor's Claims.--The value of any
27 security held by a secured creditor shall be determined in one
28 of the following ways, as the court may direct:

29 (1) by converting the same into money according to the terms
30 of the agreement pursuant to which the security was delivered to

1 such creditor; or

2 (2) by agreement, arbitration, compromise or litigation
3 between the creditor and the liquidator.

4 The determination shall be under the supervision and control
5 of the court with due regard for the recommendation of the
6 liquidator. The amount so determined shall be credited upon the
7 secured claim, and any deficiency shall be treated as an
8 unsecured claim. If the claimant shall surrender his security to
9 the liquidator, the entire claim shall be allowed as if
10 unsecured.

11 Section 544. Order of Distribution.--The order of
12 distribution of claims from the insurer's estate shall be in
13 accordance with the order in which each class of claims is
14 herein set forth. Every claim in each class shall be paid in
15 full or adequate funds retained for such payment before the
16 members of the next class receive any payment. No subclasses
17 shall be established within any class.

18 (a) Debts due to employes for services performed to the
19 extent that they do not exceed one thousand dollars (\$1,000) and
20 represent payment for services performed within one year before
21 the filing of the petition for liquidation. Officers and
22 directors shall not be entitled to the benefit of this priority.

23 Such priority shall be in lieu of any other similar priority
24 which may be authorized by law as to wages or compensation of
25 employes.

26 (b) The costs and expenses of administration, including but
27 not limited to the following; the actual and necessary costs of
28 preserving or recovering the assets of the insurer; compensation
29 for all services rendered in the liquidation; any necessary
30 filing fees; the fees and mileage payable to witnesses;

1 reasonable attorney's fees; the expenses of a guarantee
2 association in handling claims.

3 (c) All claims under policies for losses WHEREVER incurred, <—
4 including third party claims, and all claims against the insurer
5 for liability for bodily injury or for injury to or destruction
6 of tangible property which are not under policies, shall have
7 the next priority. All claims under life insurance and annuity
8 policies, whether for death proceeds, annuity proceeds, or
9 investment values shall be treated as loss claims. That portion
10 of any loss, indemnification for which is provided by other
11 benefits or advantages recovered by the claimant, shall not be
12 included in this class, other than benefits or advantages
13 recovered or recoverable in discharge of familial obligations of
14 support or by way of succession at death or as proceeds of life
15 insurance, or as gratuities. No payment made by an employer to
16 his employe shall be treated as a gratuity.

17 (d) Claims under nonassessable policies for unearned premium
18 or other premium refunds and claims of general creditors.

19 (e) Claims of the Federal or any state or local government.
20 Claims, including those of any governmental body, for a penalty
21 or forfeiture shall be allowed in this class only to the extent
22 of the pecuniary loss sustained from the act, transaction, or
23 proceeding out of which the penalty or forfeiture arose, with
24 reasonable and actual costs occasioned thereby. The remainder of
25 such claims shall be postponed to the class of claims under
26 subsection (g).

27 (f) The following claims:

28 (1) Claims under section 539(b), to the extent that such
29 claims were disallowed under that section.

30 (2) Claims filed late.

1 (3) Claims or portions of claims, payment of which is
2 provided by other benefits or advantages recovered by the
3 claimant.

4 (g) Surplus or contribution notes, or similar obligations,
5 and premium refunds on assessable policies. Payments to members
6 of domestic mutual insurance companies shall be limited in
7 accordance with law.

8 (h) The claims of shareholders or other owners.

9 5. Settlement of the Estate

10 Section 545. Liquidator's Recommendations to the Court.--(a)
11 The liquidator shall review all claims duly filed in the
12 liquidation and shall make such further investigation as he
13 shall deem necessary. He may comport, compromise or in any other
14 manner negotiate the amount for which claims will be recommended
15 to the court. Unresolved disputes shall be determined under
16 section 541. As soon as practicable, he shall present to the
17 court a report of the claims against the insurer with his
18 recommendations. The report shall include the name and address
19 of each claimant, the particulars of the claim, and the amount
20 of the claim finally recommended, if any.

21 (b) The court may approve, disapprove, or modify, the report
22 on claims by the liquidator, except that the liquidator's
23 agreements with other parties shall be final and binding on the
24 court to the extent permitted by law. Such recommendations as
25 are not modified by the court within a period of sixty days
26 following submission by the liquidator shall be treated by the
27 liquidator as allowed recommendations, subject thereafter to
28 later modification or to rulings made by the court pursuant to
29 section 541. No claim under a policy of insurance shall be
30 allowed for an amount in excess of the applicable policy limits.

1 Section 546. Distribution of Assets.--Under the direction of
2 the court, the liquidator shall pay distributions in a manner
3 that will assure the proper recognition of priorities and a
4 reasonable balance between the expeditious completion of the
5 liquidation and the protection of unliquidated and undetermined
6 claims, including third party claims. Distribution of assets in
7 kind may be made at valuations set by agreement between the
8 liquidator and the creditor and approved by the court.

9 Section 547. Unclaimed and Withheld Funds.--(a) All
10 unclaimed funds subject to distribution remaining in the
11 liquidator's hands when he is ready to apply to the court for
12 discharge, including the amount distributable to any creditor,
13 shareholder, member or other person who is unknown or cannot be
14 found, shall be deposited with the State Treasurer. Any amount
15 on deposit not claimed within six years from the discharge of
16 the liquidator shall be deemed to have been abandoned and shall
17 be escheated without formal escheat proceedings and be deposited
18 with the General Fund. Any amounts barred shall become the
19 property of the Commonwealth, and the State Treasurer shall at
20 the end of each fiscal year transfer the amount so barred to the
21 General Fund for the use and operation of liquidation
22 proceedings.

23 (b) All funds withheld under section 540 and not distributed
24 shall upon discharge of the liquidator be deposited with the
25 State Treasurer and paid by him in accordance with section 540.
26 Any sums remaining which under section 540 would revert to the
27 undistributed assets of the insurer shall be transferred to the
28 State Treasurer and become the property of the Commonwealth
29 under subsection (a), unless the commissioner in his discretion
30 petitions the court to reopen the liquidation under section 549.

1 Section 548. Termination of Proceedings.--(a) When all
2 assets justifying the expense of collection and distribution
3 have been collected and distributed under this article, the
4 liquidator shall apply to the court for discharge. The court may
5 grant the discharge, and make any other orders deemed
6 appropriate, including an order to transfer any remaining funds
7 that are uneconomic to distribute as may be deemed appropriate.

8 (b) Any other person may apply to the court at any time for
9 an order under subsection (a). If the application is denied, the
10 applicant shall pay the costs and expenses of the liquidator in
11 resisting the application, including a reasonable attorney's
12 fee.

13 Section 549. Reopening Liquidation.--After the liquidation
14 proceeding has been terminated and the liquidator discharged,
15 the commissioner or other interested party may at any time
16 petition the Commonwealth Court to reopen the proceedings for
17 good cause, including the discovery of additional assets. If the
18 court is satisfied that there is justification for reopening, it
19 shall so order.

20 Section 550. Disposition of Records During and After
21 Termination of Liquidation.--Whenever it shall appear to the
22 commissioner that the records of any insurer in process of
23 liquidation or completely liquidated are no longer useful, he
24 may recommend to the court what records should be retained for
25 future reference and what should be destroyed.

26 Section 551. External Audit of the Receiver's Books.--The
27 Commonwealth Court may, as it deems desirable, cause audits to
28 be made of the books of the commissioner relating to any
29 receivership established under this article, and a report of
30 each audit shall be filed with the commissioner and with the

1 court. The books, records, and other documents of the
2 receivership shall be made available to the auditor at any time
3 without notice. The expense of each audit shall be considered a
4 cost of administration of the receivership.

5 Section 552. Federal receivership.--(a) Whenever in the
6 commissioner's opinion, liquidation of a domestic insurer or an
7 alien insurer domiciled in this State would be facilitated by a
8 Federal receivership, and when any ground exists upon which the
9 commissioner might petition the court for an order of
10 rehabilitation or liquidation under section 514 or section 519,
11 or if an order of rehabilitation or liquidation has already been
12 entered, the commissioner may request another commissioner or
13 other willing resident of another state to petition any
14 appropriate Federal District Court for the appointment of a
15 Federal receiver. The commissioner shall have power to intervene
16 in any such action to support or oppose the petition, and shall
17 have power to accept appointment as the receiver if he is so
18 designated. So much of this act shall apply to the receivership
19 as can be made applicable and is appropriate. Upon motion of the
20 commissioner, the Commonwealth Court shall relinquish all
21 jurisdiction over the insurer for purposes of rehabilitation or
22 liquidation.

23 (b) If the commissioner is appointed receiver under this
24 section, he shall comply with any requirements necessary to give
25 him title to and control over the assets and affairs of the
26 insurer.

27 (d) Interstate Relations

28 Section 553. Conservation of Property of Foreign or Alien
29 Insurers Found in This State.--(a) If a domiciliary liquidator
30 has not been appointed, the commissioner may apply to the

1 Commonwealth Court by verified petition for an order directing
2 him to conserve the property of an alien insurer not domiciled
3 in this Commonwealth or a foreign insurer on any one or more of
4 the following grounds:

5 (1) any of the grounds in section 514;

6 (2) that any of its property has been sequestered by
7 official action in its domiciliary state, or in any other state;

8 (3) that enough of its property has been sequestered in a
9 foreign country to give reasonable cause to fear that the
10 insurer is or may become insolvent; or

11 (4) that (i) its certificate of authority to do business in
12 this Commonwealth has been revoked or that none was ever issued,
13 and (ii) there are residents of this Commonwealth with
14 outstanding claims or outstanding policies.

15 (b) The court may issue the order in whatever terms it shall
16 deem appropriate. The filing or recording of the order with the
17 recorder of deeds of Dauphin County shall impart the same notice
18 as a deed, bill of sale or other evidence of title duly filed or
19 recorded with that recorder of deeds would have imparted.

20 (c) The conservator may at any time petition for and the
21 court may grant an order under section 554 to liquidate the
22 assets of a foreign or alien insurer under conservation, or, if
23 appropriate, for an order under section 556, to be appointed
24 ancillary receiver.

25 (d) The conservator may at any time petition the court for
26 an order terminating conservation of an insurer. If the court
27 finds that the conservation is no longer necessary, it shall
28 order that the insurer be restored to possession of its property
29 and the control of its business. The court may also make such
30 finding and issue such order at any time upon motion of any

1 interested party.

2 Section 554. Liquidation of Property of Foreign or Alien
3 Insurers Found in This State.--(a) If no domiciliary receiver
4 has been appointed, the commissioner may apply to the
5 Commonwealth Court by verified petition for an order directing
6 him to liquidate the assets found in this Commonwealth of a
7 foreign insurer or an alien insurer not domiciled in this
8 Commonwealth, on any of the following grounds:

9 (1) any of the grounds in section 514; or

10 (2) any of the grounds in section 553.

11 (b) If it shall appear to the court that the best interests
12 of creditors, policyholders and the public require, the court
13 may issue an order to liquidate in whatever terms it shall deem
14 appropriate. The filing or recording of the order with the clerk
15 of the Commonwealth Court shall impart the same notice as a
16 deed, bill of sale, or other evidence of title duly filed or
17 recorded with that recorder of deeds would have imparted.

18 (c) If a domiciliary liquidator is appointed in a reciprocal
19 state while a liquidation is proceeding under this section, the
20 liquidator under this section shall thereafter act as ancillary
21 receiver under section 556. If a domiciliary liquidator is
22 appointed in a nonreciprocal state while a liquidation is
23 proceeding under this section, the liquidator under this section
24 may petition the court for permission to act as ancillary
25 receiver under section 556.

26 (d) On the same grounds as are specified in subsection (a),
27 the commissioner may petition any appropriate Federal district
28 court to be appointed receiver to liquidate that portion of the
29 insurer's assets and business over which the court will exercise
30 jurisdiction, or any lesser part thereof that the commissioner

1 deems desirable for the protection of the policyholders and
2 creditors in this Commonwealth. The commissioner may accept
3 appointment as Federal receiver if another person files a
4 petition.

5 Section 555. Foreign Domiciliary Receivers in Other
6 States.--(a) When a domiciliary liquidator is appointed for an <—
7 insurer domiciled in a reciprocal or nonreciprocal state, the
8 commissioner of this Commonwealth shall be vested by operation
9 of law with the title to all of the property, contracts and
10 rights of action, and all of the books, accounts and other
11 records of the insurer located in this Commonwealth, at the same
12 time that the domiciliary liquidator is vested with title in the
13 domicile. The commissioner of this Commonwealth may petition for
14 a conservation or liquidation order under section 553 or section
15 554, or for an ancillary receivership under section 556, or may
16 transfer title to the domiciliary liquidator of a reciprocal
17 state, as the interests of justice and the equitable
18 distribution of the assets shall require, or after approval by
19 the Commonwealth Court may make such similar transfer of title
20 to the domiciliary liquidator of a nonreciprocal state. (A) THE <—
21 DOMICILIARY LIQUIDATOR OF AN INSURER DOMICILED IN A RECIPROCAL
22 STATE SHALL BE VESTED BY OPERATION OF LAW WITH THE TITLE TO ALL
23 OF THE PROPERTY, CONTRACTS AND RIGHTS OF ACTION, AND ALL OF THE
24 BOOKS, ACCOUNTS AND OTHER RECORDS OF THE INSURER LOCATED IN THIS
25 COMMONWEALTH. THE DATE OF VESTING SHALL BE THE DATE OF THE
26 FILING OF THE PETITION, IF THAT DATE IS SPECIFIED BY THE
27 DOMICILIARY LAW FOR THE VESTING OF PROPERTY IN THE DOMICILIARY
28 STATE. OTHERWISE, THE DATE OF VESTING SHALL BE THE DATE OF ENTRY
29 OF THE ORDER DIRECTING POSSESSION TO BE TAKEN. THE DOMICILIARY
30 LIQUIDATOR SHALL HAVE THE IMMEDIATE RIGHT TO RECOVER BALANCES

DUE FROM AGENTS AND TO OBTAIN POSSESSION OF THE BOOKS, ACCOUNTS
AND OTHER RECORDS OF THE INSURER LOCATED IN THIS COMMONWEALTH.
HE ALSO SHALL HAVE THE RIGHT TO RECOVER THE OTHER ASSETS OF THE
INSURER LOCATED IN THIS COMMONWEALTH, SUBJECT TO SECTION 556.

(B) IF A DOMICILIARY LIQUIDATOR IS APPOINTED FOR AN INSURER
NOT DOMICILED IN A RECIPROCAL STATE, THE COMMISSIONER OF THIS
COMMONWEALTH SHALL BE VESTED BY OPERATION OF LAW WITH THE TITLE
TO ALL OF THE PROPERTY, CONTRACTS AND RIGHTS OF ACTION, AND ALL
OF THE BOOKS, ACCOUNTS AND OTHER RECORDS OF THE INSURER LOCATED
IN THIS COMMONWEALTH, AT THE SAME TIME AND THAT THE DOMICILIARY
LIQUIDATOR IS VESTED WITH TITLE IN THE STATE OF DOMICILE. THE
COMMISSIONER OF THIS COMMONWEALTH MAY PETITION FOR A
CONSERVATION OR LIQUIDATION ORDER UNDER SECTION 553 OR 554, OR
FOR AN ANCILLARY RECEIVERSHIP UNDER SECTION 556, OR AFTER
APPROVAL BY THE COMMONWEALTH COURT, MAY TRANSFER TITLE TO THE
DOMICILIARY LIQUIDATOR, AS THE INTERESTS OF JUSTICE AND THE
EQUITABLE DISTRIBUTION OF THE ASSETS REQUIRE.

~~(b)~~ (C) Claimants residing in the Commonwealth may file
claims with the liquidator or ancillary receiver, if any, in
this Commonwealth, or with the domiciliary liquidator, if the
domiciliary law permits. The claims must be filed on or before
the last date fixed for the filing of claims in the domiciliary
liquidation proceedings.

~~(c)~~ (D) Subject to the provisions of this section, the
ancillary receiver and his deputies shall have the same powers
and be subject to the same duties with respect to the
administration of assets as a liquidator of an insurer domiciled
in this Commonwealth.

~~(d) When a domiciliary liquidator has been appointed in this
Commonwealth, ancillary receivers appointed in reciprocal states~~

~~shall have, as to assets and books, accounts and other records located in their respective states, corresponding rights and powers to those prescribed in subsection (c) for ancillary receivers appointed in this Commonwealth.~~

Section 556. Ancillary Formal Proceedings.--(a) If a domiciliary liquidator has been appointed for an insurer not domiciled in this Commonwealth, the commissioner may file a petition with the Commonwealth Court requesting appointment as ancillary receiver in this Commonwealth:

(1) if he finds that there are sufficient assets of the insurer located in this Commonwealth to justify the appointment of an ancillary receiver;

~~(2) if ten or more person resident in this Commonwealth having claims against the insurer file a petition with the commissioner requesting appointment of an ancillary receiver; or~~

(2) if the protection of creditors or policyholders in this Commonwealth so requires.

(b) The court may issue an order appointing an ancillary receiver in whatever terms it shall deem appropriate. The filing or recording of the order with the recorder of deeds of Dauphin County shall impart the same notice as a deed, bill of sale or other evidence of title duly filed or recorded with that recorder of deeds would have imparted.

~~(c) When a domiciliary liquidator has been appointed in a reciprocal state, then the ancillary receiver appointed in this Commonwealth under subsection (a) shall have the sole right to recover all the assets of the insurer in this Commonwealth not already recovered by the domiciliary liquidator. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured~~

~~claims which are proved and allowed in the ancillary proceedings
in this Commonwealth, and shall pay the necessary expenses of
the proceedings. He shall thereafter transfer all remaining
assets to the domiciliary liquidator as he shall see fit.~~

(C) WHEN A DOMICILIARY LIQUIDATOR HAS BEEN APPOINTED IN A
RECIPROCAL STATE, THEN THE ANCILLARY RECEIVER APPOINTED IN THIS
COMMONWEALTH UNDER SUBSECTION (A) SHALL HAVE THE SOLE RIGHT TO
RECOVER ALL THE ASSETS OF THE INSURER IN THIS COMMONWEALTH NOT
ALREADY RECOVERED BY THE DOMICILIARY LIQUIDATOR. THE ANCILLARY
RECEIVER SHALL, AS SOON AS PRACTICABLE, LIQUIDATE FROM THEIR
RESPECTIVE SECURITIES THOSE SPECIAL DEPOSIT CLAIMS AND SECURED
CLAIMS WHICH ARE PROVED AND ALLOWED IN THE ANCILLARY PROCEEDINGS
IN THIS COMMONWEALTH, AND SHALL PAY THE NECESSARY EXPENSES OF
THE PROCEEDINGS. HE SHALL PROMPTLY TRANSFER ALL REMAINING
ASSETS, BOOKS, ACCOUNTS AND RECORDS TO THE DOMICILIARY
LIQUIDATOR. SUBJECT TO THIS SECTION, THE ANCILLARY RECEIVER AND
HIS DEPUTIES SHALL HAVE THE SAME POWERS AND BE SUBJECT TO THE
SAME DUTIES WITH RESPECT TO THE ADMINISTRATION OF ASSETS AS A
LIQUIDATOR OF AN INSURER DOMICILED IN THIS COMMONWEALTH.

(D) WHEN A DOMICILIARY LIQUIDATOR HAS BEEN APPOINTED IN THIS
COMMONWEALTH, ANCILLARY RECEIVERS APPOINTED IN RECIPROCAL STATES
SHALL HAVE, AS TO ASSETS AND BOOKS, ACCOUNTS, AND OTHER RECORDS
IN THEIR RESPECTIVE STATES, CORRESPONDING RIGHTS, DUTIES AND
POWERS TO THOSE PROVIDED IN SUBSECTION (C) FOR ANCILLARY
RECEIVERS APPOINTED IN THIS COMMONWEALTH.

Section 557. Ancillary Summary Proceedings.--The
commissioner in his sole discretion may institute proceedings
under sections 510 through 513 at the request of the appropriate
insurance official of the domiciliary state of any foreign or
alien insurer having property located in this State.

1 Section 558. Claims of Nonresidents Against Insurers

2 Domiciled in This State.--(a) In a liquidation proceeding begun
3 in this Commonwealth against an insurer domiciled in this
4 Commonwealth, claimants residing in foreign countries or in
5 states not reciprocal states must file claims in this
6 Commonwealth, and claimants residing in reciprocal states may
7 file claims either with the ancillary receivers, if any, in
8 their respective states, or with the domiciliary liquidator. In
9 reciprocal states, where an ancillary receiver has been
10 appointed, a guaranty association of that state must file its
11 claims with the ancillary receiver. Claims must be filed on or
12 before the last dates fixed for the filing of claims in the
13 domiciliary liquidation proceeding.

14 (b) Claims belonging to claimants residing in reciprocal
15 states may be proved either in the liquidation proceeding in
16 this Commonwealth as provided in this article, or in ancillary
17 proceedings, if any, in the reciprocal states. If notice of the
18 claim and opportunity to appear and be heard is afforded the
19 domiciliary liquidator of this Commonwealth as provided in
20 section 559(b) with respect to ancillary proceedings in this
21 Commonwealth, the final allowance of claims by the courts in
22 ancillary proceedings in reciprocal states shall be conclusive
23 as to amount and as to priority against special deposits or
24 other security located in such ancillary states, but shall not
25 be conclusive with respect to priorities against general assets
26 under section 544.

27 Section 559. Claims of Residents Against Insurers Domiciled
28 in Reciprocal States.--(a) In a liquidation proceeding in a
29 reciprocal state against an insurer domiciled in that state,
30 claimants against the insurer who reside within this

1 Commonwealth may file claims either with the ancillary receiver,
2 if any, in this Commonwealth, or with the domiciliary
3 liquidator. Claims must be filed on or before the last dates
4 fixed for the filing of claims in the domiciliary liquidation
5 proceeding.

6 (b) Claims belonging to claimants residing in this
7 Commonwealth may be proved either in the domiciliary state under
8 the law of that state, or in ancillary proceedings, if any, in
9 this Commonwealth. If a claimant elects to prove his claim in
10 this Commonwealth, he shall file his claim with the liquidator
11 in the manner provided in sections 537 and 538. The ancillary
12 receiver shall make his recommendation to the court as under
13 section 545. He shall also arrange a date for hearing if
14 necessary under section 541 and shall give notice to the
15 liquidator in the domiciliary state, either by certified mail or
16 by personal service at least forty days prior to the date set
17 for hearing. If the domiciliary liquidator, within thirty days
18 after the giving of such notice, gives notice in writing to the
19 ancillary receiver and to the claimant, either by certified mail
20 or by personal service, of his intention to contest the claim,
21 he shall be entitled to appear or to be represented in any
22 proceeding in this Commonwealth involving the adjudication of
23 the claims. The final allowance of the claim by the courts of
24 this Commonwealth shall be accepted as conclusive as to amount
25 and as to priority against special deposits or other security
26 located in this Commonwealth.

27 Section 560. Attachment, Garnishment and Levy of
28 Execution.--During the pendency in this or any other state of a
29 liquidation proceeding, whether called by that name or not, no
30 action or proceeding in the nature of an attachment, garnishment

1 or levy of execution shall be commenced or maintained in this
2 Commonwealth against the delinquent insurer or its assets.

3 Section 561. Interstate Priorities.--(a) In a liquidation
4 proceeding in this Commonwealth involving one or more reciprocal
5 states, the order of distribution of the domiciliary state shall
6 control as to all claims of residents of this and reciprocal
7 states shall be given equal priority of payment from general
8 assets regardless of where such assets are located.

9 (b) The owners of special deposit claims against an insurer
10 for which a liquidator is appointed in this or any other state
11 shall be given priority against the special deposits in
12 accordance with the statutes governing the creation and
13 maintenance of the deposits. If there is a deficiency in any
14 deposit, so that the claims secured by it are not fully
15 discharged from it, the claimants may share in the general
16 assets, but the sharing shall be deferred until general
17 creditors, and also claimants against other special deposits who
18 have received smaller percentages from their respective special
19 deposits, have been paid percentages of their claims equal to
20 the percentage paid from the special deposit.

21 (c) The owner of a secured claim against an insurer for
22 which a liquidator has been appointed in this or any other state
23 may surrender his security and file his claim as a general
24 creditor, or the claim may be discharged by resort to the
25 security in accordance with section 543, in which case the
26 deficiency, if any, shall be treated as a claim against the
27 general assets of the insurer on the same basis as claims of
28 unsecured creditors.

29 ~~Section 3. This act shall take effect immediately.~~

30 SECTION 562. SUBORDINATION OF CLAIMS FOR NON-COOPERATION.--

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1 IF AN ANCILLARY RECEIVER IN ANOTHER STATE OR FOREIGN COUNTRY,
2 WHETHER CALLED BY THAT NAME OR NOT, FAILS TO TRANSFER TO THE
3 DOMICILIARY LIQUIDATOR IN THIS COMMONWEALTH ANY ASSETS WITHIN
4 HIS CONTROL OTHER THAN SPECIAL DEPOSITS, DIMINISHED ONLY BY THE
5 EXPENSES OF THE ANCILLARY RECEIVERSHIP, IF ANY, THE CLAIMS FILED
6 IN THE ANCILLARY RECEIVERSHIP, OTHER THAN SPECIAL DEPOSIT CLAIMS
7 OR SECURED CLAIMS, SHALL BE PLACED IN THE CLASS OF CLAIMS UNDER
8 SECTION 544(F).

9 SECTION 563. CONSTITUTIONALITY.--IF ANY PROVISION OR CLAUSE
10 OF THIS ARTICLE OR THE APPLICATION THEREOF TO ANY PERSON OR
11 SITUATION IS HELD INVALID, SUCH INVALIDITY SHALL NOT AFFECT
12 OTHER PROVISIONS OR APPLICATIONS OF THE ARTICLE WHICH CAN BE
13 GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND
14 TO THIS END THE PROVISIONS OF THIS ARTICLE ARE DECLARED TO BE
15 SEVERABLE.

16 SECTION 3. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.