

§ 58-30-195. Special claims.

(a) No contingent claim shall share in a distribution of the assets of an insurer that has been adjudicated to be insolvent by an order made pursuant to G.S. 58-30-105; except that such claims shall be considered, if properly presented, and may be allowed to share where:

- (1) Such claim becomes absolute against the insurer on or before the last day fixed for filing of proofs of claim against the assets of such insurer, or
- (2) There is a surplus and the liquidation is thereafter conducted upon the basis that such insurer is solvent.

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

- (1) If it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and
- (2) If such person furnishes suitable proof, unless the Court for good cause shown otherwise directs, that no further valid claims against such insurer arising out of his cause of action other than those already presented can be made; and
- (3) If the total liability of such insurer to all claimants arising out of the same act of its insured is no greater than its total liability would be were it not in liquidation.

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

(c) No claim of any secured claimant shall be allowed at a sum greater than the difference between the value of the claim without security and the value of the security itself as of the date of entry of the order of liquidation or such other date set by the Court for fixation of rights and liabilities as provided in G.S. 58-30-105 unless the claimant surrenders his security to the Commissioner, in which event the claim shall be allowed in the full amount for which it is valued.

(d) Claims that are due but for the passage of time, including any structured settlements or judgments involving periodic payments, shall be treated the same as absolute claims, except that such claims may be discounted at the legal rate of interest.

(e) Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers, are limited to payment for services rendered prior to the issuance of any order of rehabilitation or liquidation under this Article. (1989, c. 452, s. 1.)