

**§4438. Powers and duties of the association****1. Powers and duties.** The association shall:

A. Be obligated to pay covered claims existing prior to the determination of the insolvency or arising within 30 days after the determination of insolvency, or before the policy expiration date if less than 30 days after the determination of insolvency, or before the insured replaces the policy or causes its cancellation, if within 30 days of the determination. The obligation must be satisfied by paying to the claimant:

- (1) Except as provided in this paragraph, the full amount of a covered claim for benefits, including interest and all penalties payable to a claimant under the Maine Workers' Compensation Act of 1992, or unearned premium under workers' compensation insurance coverage;
- (2) An amount not exceeding \$25,000 per policy for a covered claim for the return of an unearned premium; or
- (3) An amount not exceeding \$300,000 per claim for all other covered claims.

In no event is the association obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises. The association shall pay only that amount of unearned premium in excess of \$50. Notwithstanding any other provisions of this subchapter, a covered claim does not include any claim filed with the association after the earlier of 24 months after the date of the order of liquidation or the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer. The association, in its discretion, may accept a late filed claim as a covered claim when the claimant demonstrates good cause. The demonstration of good cause by a claimant includes showing that the existence of the claim was not known to the claimant prior to the bar date and that the claimant filed the claim within 60 days of learning of the claim; [PL 2009, c. 129, §1 (AMD); PL 2009, c. 129, §13 (AFF).]

A-1. Pay to the workers' compensation residual market pool the sum of \$1,538,039 on or before February 15th, May 15th, August 15th and November 15th of each year beginning August 15, 1996 and continuing for 40 consecutive calendar quarters. Each payment made under this paragraph must be treated as the payment of a covered claim except that the association may not seek reimbursement or recoupment from any source other than by assessments to member insurers. Member insurers are allowed to recognize assessments made pursuant to this paragraph in rates and premiums as provided in section 4447; [PL 1995, c. 289, §14 (NEW).]

B. Be deemed the insurer to the extent of its obligation on covered claims, and to such extent the association shall have all rights, duties and obligations of the insolvent insurer as if the insurer had not become insolvent; [PL 1969, c. 561 (NEW).]

C. Allocate claims paid and expenses incurred among the 3 accounts separately; and assess member insurers separately for each account in amounts necessary to pay:

- (1) The obligations of the association under paragraph A, subsequent to an insolvency, the obligations of the accounts for shortfalls under section 4440-A, and for preinsolvency assessments, if required by section 4440, subsection 3, paragraph B, and the obligations of the association under paragraph A-1;
- (2) The expenses of handling covered claims subsequent to an insolvency;
- (3) The cost of examinations under section 4445; and
- (4) Other expenses authorized by this subchapter; [PL 1995, c. 289, §15 (AMD).]

D. Investigate claims brought against the association and adjust, compromise, settle and pay covered claims to the extent of the association's obligation and deny all other claims. The association shall pay covered claims in any reasonable order, including the payment of claims as such are received from the claimants or in groups or categories of claims. The association may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested; [PL 1985, c. 279, §5 (AMD).]

E. Notify such persons as the superintendent directs under section 4441, subsection 2, paragraph A; [PL 1973, c. 585, §12 (AMD).]

F. Handle claims through its employees or through one or more insurers licensed in the State or other persons using employees licensed as adjusters in the State designated as servicing facilities. Designation of a servicing facility is subject to the approval of the superintendent, but designation of a member insurer as a servicing facility may be declined by such insurer; [PL 2009, c. 129, §2 (AMD); PL 2009, c. 129, §13 (AFF).]

G. Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association; [PL 1969, c. 561 (NEW).]

H. Pay the other expenses of the association authorized by this subchapter; and [PL 2009, c. 129, §3 (AMD); PL 2009, c. 129, §13 (AFF).]

I. Pay all penalties, sanctions, forfeitures and fines provided for under the Maine Workers' Compensation Act of 1992 including penalties payable to the Workers' Compensation Board and the General Fund, except the penalty provided for in Title 39-A, section 359, subsection 2. No penalty, fine, forfeiture, attorney's fees or other sanction may be imposed on the association if:

- (1) The Workers' Compensation Board finds that the association was prevented from complying with the Maine Workers' Compensation Act of 1992 because the association was unable in the exercise of reasonable diligence to obtain the records of the insolvent insurer; or
  - (2) The Workers' Compensation Board finds that the association was prevented from complying with the Maine Workers' Compensation Act of 1992 because of circumstances beyond its reasonable control. [PL 2009, c. 129, §4 (NEW); PL 2009, c. 129, §13 (AFF).]
- [PL 2009, c. 129, §§1-4 (AMD); PL 2009, c. 129, §13 (AFF).]

**2. Permission.** The association may:

A. Employ or retain such persons as are necessary to handle claims and perform other duties of the association; [PL 1969, c. 561 (NEW).]

B. Borrow funds necessary to effect the purposes of this subchapter in accord with the plan of operation; [PL 1969, c. 561 (NEW).]

C. Sue or be sued and may intervene as a party before any court in this State that has jurisdiction over an insolvent insurer as defined by this subchapter; [PL 2001, c. 478, §9 (AMD); PL 2001, c. 478, §11 (AFF).]

D. Negotiate and become a party to such contracts as are necessary to carry out the purpose of this subchapter; [PL 1969, c. 561 (NEW).]

E. Perform such other acts as are necessary or proper to effectuate the purpose of this subchapter; [PL 1969, c. 561 (NEW).]

F. Refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association in any account exceed

the liabilities of that account as estimated by the board of directors for the coming year. [PL 1969, c. 561 (NEW).]

[PL 2001, c. 478, §9 (AMD); PL 2001, c. 478, §11 (AFF).]

#### SECTION HISTORY

PL 1969, c. 561 (NEW). PL 1973, c. 585, §12 (AMD). PL 1981, c. 17 (AMD). PL 1985, c. 279, §§4,5 (AMD). PL 1987, c. 707, §8 (AMD). PL 1989, c. 67, §5 (AMD). PL 1989, c. 751, §4 (AMD). PL 1995, c. 289, §§14,15 (AMD). PL 2001, c. 478, §§8-9 (AMD). PL 2001, c. 478, §11 (AFF). PL 2005, c. 603, §1 (AMD). PL 2009, c. 129, §§1-4 (AMD). PL 2009, c. 129, §13 (AFF).

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