

§ 58-30-71. Immunity and indemnification of the receiver and employees.

(a) Persons entitled to protection under this section are:

- (1) All receivers responsible for the conduct of a delinquency proceeding under this Article, including present and former receivers; and
- (2) All of the receiver's employees, meaning all present and former special deputies and assistant special deputies appointed by the Commissioner, staff assigned to the delinquency proceeding employed by the Attorney General's Office, and all persons whom the Commissioner, special deputies, or assistant special deputies have employed to assist in a delinquency proceeding under this Article.
- (3) All of the receiver's contractors, meaning all persons who are retained by the receiver or the receiver's employees as independent contractors to assist in a delinquency proceeding under this Article, including attorneys, accountants, auditors, and other professional persons or firms and their employees.

(b) The receiver, the receiver's employees, and the receiver's contractors shall have official immunity and are immune from suit and liability, both personally and in their official capacities, for any claim for damage to or loss of property or personal injury or other civil liability caused by or resulting from any alleged act, error, or omission of the receiver or any employee arising out of or by reason of any of the following:

- (1) Their duties or employment.
- (2) Any matters that have been subject to review by the Court after notice and opportunity to be heard, provided that the alleged act, error, or omission was not disapproved or disallowed by the Court.

Provided, however, that nothing in this section holds the receiver, the receiver's employees, or the receiver's contractors immune from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of the receiver, the receiver's employees, or the receiver's contractors or for any bodily injury caused by the operation of a motor vehicle.

(c) If any legal action is commenced against the receiver or any employee, whether against him personally or in his official capacity, alleging property damage, property loss, personal injury, or other civil liability caused by or resulting from any alleged act, error, or omission of the receiver or any employee arising out of or by reason of their duties or employment, the receiver and any employee shall be indemnified from the assets of the insurer for all expenses, attorneys' fees, judgments, settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in the defense of such legal action; unless it is determined upon a final adjudication on the merits that the alleged act, error, or omission of the receiver or employee giving rise to the claim did not arise out of or by reason of his duties or employment, or was caused by intentional or willful and wanton misconduct.

(d) Attorneys' fees and all related expenses incurred in defending a legal action for which immunity or indemnity is available under this section shall be paid from the assets of the insurer, as they are incurred, before the final disposition of the action, upon receipt of any agreement by or on behalf of the receiver or employee to repay the attorneys' fees and expenses if it is ultimately determined upon a final adjudication on the merits that the receiver or employee is not entitled to immunity or indemnity under this section.

(e) Any indemnification for expense payments, judgments, settlements, decrees, attorneys' fees, surety bond premiums, or other amounts paid or to be paid from the insurer's assets under this section shall be an administrative expense of the insurer.

(f) In the event of any actual or threatened litigation against a receiver or any employee for which immunity or indemnity may be available under this section, a reasonable amount of funds, that in the judgment of the Commissioner may be needed to provide immunity or

indemnity, shall be segregated and reserved from the assets of the insurer as security for the payment of indemnity until all applicable statutes of limitation have run, all actual or threatened actions against the receiver or any employee have been completely and finally resolved, and all obligations of the insurer and the Commissioner under this section have been satisfied.

(g) In lieu of segregation and reserving of funds, the Commissioner may, in his discretion, obtain a surety bond or make other arrangements that will enable the Commissioner to fully secure the payment of all obligations under this section.

(h) If any legal action against an employee for which indemnity may be available under this section is settled before final adjudication on the merits, the insurer must pay the settlement amount on behalf of the employee, or indemnify the employee for the settlement amount, unless the Commissioner determines:

- (1) That the claim did not arise out of or by reason of the employee's duties or employment; or
- (2) That the claims were caused by the intentional or willful and wanton misconduct of the employee.

(i) In any legal action in which the receiver is a defendant, that portion of any settlement relating to the alleged act, error, or omission of the receiver is subject to the approval of the court before which the delinquency proceeding is pending. The court shall not approve that portion of the settlement if it determines:

- (1) That the claim did not arise out of or by reason of the receiver's duties or employment; or
- (2) That the claim was caused by the intentional or willful and wanton misconduct of the receiver.

(j) Nothing in this section deprives the receiver, the receiver's employees, or the receiver's contractors of any immunity, indemnity, benefits of law, rights, or any defense otherwise available.

(k) Subsection (b) of this section applies to any suit based in whole or in part on any alleged act, error, or omission that occurs on or after October 1, 1993.

(l) No legal action shall lie against the receiver or any employee based in whole or in part on any alleged act, error, or omission that occurred before October 1, 1993, unless suit is filed and valid service of process is obtained within 12 months after October 1, 1993.

(m) Subsections (c), (h), and (i) of this section apply to any suit that is pending on or filed after October 1, 1993, without regard to when the alleged act, error, or omission took place. (1993, c. 452, s. 40; 2019-179, s. 3(a)-(c).)