

§ 58-48-55. Nonduplication of recovery.

(a) Any person having a right to a defense or a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his rights under such policy. Any amount payable on a covered claim under this Article shall be reduced by the amount of any recovery under that insurance policy. For purposes of this section, a claim under an insurance policy shall include a claim under or covered by any kind of insurance, whether it is a first-party or a third-party claim, and whether it is a policy covering the policyholder or another person liable to the claimant, and shall include, without limitation, policies of accident and health insurance, workers' compensation insurance, medical expense coverage, and all other coverage except for policies of an insolvent insurer.

(a1) Any person having a claim or legal right of recovery under any governmental insurance or guaranty program which is also a covered claim shall be required to exhaust first his right under such program. Any amount payable on a covered claim under this Article shall be reduced by the amount of any recovery under such program.

(b) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the policyholder except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property, and if it is a workers' compensation claim, he shall seek recovery first from the association of the residence of the claimant. Any recovery under this Article shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

(c) No claim held by an insurer, reinsurer, insurance pool, or underwriting association, whether the claim is:

- (1) based on an assignment, or
- (2) based on rights of subrogation or contribution, or
- (3) based on any other grounds,

nor any claim of lien, may be asserted in any legal action against a person insured under a policy issued by an insolvent insurer except to the extent the amount of such claim exceeds the obligation of the Association under G.S. 58-48-35(a)(1).

(d) Any person that has liquidated by settlement or judgment a claim against an insured under a policy issued by an insolvent insurer, which claim is a covered claim and is also a claim within the coverage of any policy issued by a solvent insurer, shall be required to exhaust first his rights under such policy issued by the solvent insurer before execution, levy, or any other proceedings are commenced to enforce any judgment obtained against or the settlement with the insured of the insolvent insurer. Any amount so recovered from a solvent insurer shall be credited against the amount of the judgment or settlement. (1971, c. 670, s. 1; 1985, c. 613, ss. 7, 8; 1989, c. 206, s. 6; 1991 (Reg. Sess., 1992), c. 802, s. 5; 2003-167, s. 3.)