§ 7433. Proof and allowance of claims. (a) (1) A proof of claim shall consist of a written statement subscribed and affirmed by the claimant as true under the penalties of perjury, setting forth the claim, the consideration therefor, any securities held therefor, any payments made thereon, and that the sum claimed is justly owing from the insurer to the claimant.

(2) If a claim is founded upon an instrument in writing, such instrument, unless lost or destroyed, shall be filed with the proof of claim. After the filing of such instrument the superintendent may in his discretion permit the claimant to retain such instrument until final disposition of the claim. If such instrument is lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim.

(b) (1) Upon the liquidation of any domestic insurer or United States branch which has issued policies insuring the lives of persons, the superintendent shall, within thirty days after the last day set for filing claims, make a list of the persons who have not filed proofs of claim with him, to whom it appears to his entire satisfaction, from the records of the company, that there are owing amounts on such policies and he shall set opposite the name of each person such amount so owing to such person. Each person whose name shall appear upon such list shall be deemed to have duly filed, prior to the last day set for the filing of claims, a proof of claim for the amount set opposite his name.

(2) Upon the liquidation of any domestic insurer or United States branch which has issued property/casualty policies, the superintendent shall, within thirty days after the last day set for filing claims, make a list of all persons whose name appears on the books and records of the company as policyholders or claimants. Each person whose name appears upon such list shall be deemed to have duly filed a proof of claim prior to the last day set for the filing of claims.

(c) No contingent claim shall share in a distribution of assets of an insurer adjudicated to be insolvent by an order made pursuant to section seven thousand four hundred thirty-two of this article except that any such claim shall be considered if properly presented and may be allowed to share if:

(1) it becomes absolute against the insurer on or before the last day fixed for filing of proofs of claim, or

(2) there is a surplus and the liquidation is thereafter conducted upon the basis that such insurer is solvent.

(d) (1) Where a liquidation, rehabilitation or conservation order has been entered in a proceeding against an insurer under this article, any person who has a cause of action against an insured of such insurer under a liability insurance policy issued by such insurer, shall have the right to file a claim in the proceeding, even though the claim is contingent.

(2) The claim may be allowed:

(A) if it may be reasonably inferred from the proof presented that such person would be able to obtain a judgment upon such cause of action against such insured;

(B) if such person shall furnish suitable proof, unless the court for good cause shown shall otherwise direct, that no further valid claims against such insurer arising out of his cause of action other than those already presented can be made; and

(C) if the total liability of such insurer to all claimants arising out of the same act of its insured shall be no greater than its total liability would be were it not in liquidation, rehabilitation or conservation.

(3) No judgment against such an insured taken after the date of the entry of the liquidation, rehabilitation or conservation order shall be considered in the proceedings as evidence of liability or of the amount of damages. No judgment against an insured taken by default, inquest or collusion prior to the entry of a liquidation order shall be considered as conclusive evidence in the 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.

(e) Debts owing to a state, county, district or municipality, or any subdivision thereof, as a penalty or forfeiture, shall not be allowed except for the amount of the pecuniary loss sustained by the act, transaction or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby, and such interest as may have accrued thereon according to law.

(f) 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 section seven thousand four hundred five of this article, unless the claimant shall surrender his security to the superintendent in which event the claim shall be allowed in the full amount of its value.