§ 7713. Miscellaneous provisions. (a) Nothing in this article shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

(b) The corporation shall maintain records of all negotiations and meetings in which the corporation or its representatives are involved to discuss the activities of the corporation in carrying out its powers and duties under section seven thousand seven hundred eight of this article, except to the extent otherwise provided by or pursuant to the plan of operation. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the corporation to render a report of its activities under section seven thousand seven hundred fourteen of this article.

(c) (1) During an article seventy-four rehabilitation proceeding, assets of the impaired or insolvent insurer which are determined by the superintendent to be currently available may be used to continue all covered policies, and pay all contractual obligations, of the impaired or insolvent insurer that would otherwise be covered by the corporation under section seven thousand seven hundred eight of this article. The corporation shall, subsequent to the termination of the article seventy-four rehabilitation proceeding and within a reasonable time after the commencement of a liquidation proceeding under article seventy-four of this chapter reimburse the estate of the impaired or insolvent insurer for such portion of the amount of assets so used to the extent necessary to pay class one, two and three claims pursuant to paragraph one, two or three of subsection (a) of section seven thousand four hundred thirty-five of this chapter. The corporation shall have a claim against the estate of the impaired or insolvent insurer equal to the full amount of such reimbursement, consistent with the provisions of paragraph four of subsection (a) of section seven thousand four hundred thirty-five of this chapter.

(2) During an article seventy-four rehabilitation proceeding, assets of the impaired or insolvent insurer which are determined by the

superintendent to be currently available may be used to continue covered policies, and pay contractual obligations, of the impaired or insolvent insurer, other than the covered policies and contractual obligations that are covered by the corporation under section seven thousand seven hundred eight of this article, if a corporation, association or other organization which performs or will perform functions similar to those of the corporation enters into an agreement satisfactory to the superintendent prior to such use of such assets to repay the amount of such assets subsequent to the termination of the article seventy-four rehabilitation proceeding and within a reasonable time after the commencement of a liquidation proceeding under article seventy-four of this chapter.

(d) In addition to the duties and powers enumerated elsewhere in this chapter, and subject to the limitations and exclusions contained in this and other sections of this chapter, upon the commencement of a proceeding under article seventy-four of this chapter with respect to any impaired or insolvent domestic insurer, the superintendent may request and receive from the corporation, and the corporation shall lend to the superintendent upon such request, an amount not to exceed five hundred thousand dollars as determined by the superintendent to be necessary on an emergency basis for use by the superintendent, as liquidator or rehabilitator, in the administration of the affairs of such impaired or insolvent insurer. To the extent it deems necessary or appropriate to carry out its duties under this section, the corporation may borrow such amount in accordance with subsection (h) of section seven thousand seven hundred eight of this article and may assess member insurers for the purpose of repaying such borrowing. Such assessments against each member insurer shall be in the proportion that the premiums received by such insurer on business in this state in all accounts for the calendar year preceding the assessment bear to such premiums received on business in this state in all accounts for such calendar year by all assessable member insurers. The corporation shall have a claim against the estate of such impaired or insolvent insurer equal to the amount loaned to the superintendent in accordance with this subsection, together with interest thereon at the maximum rate allowed by subdivision one of section 5-501 of the general obligations law, and such claim shall be treated as a class one claim under section seven

thousand four hundred thirty-five of this chapter.

(e) The corporation shall have a claim against the impaired or insolvent insurer for all amounts expended by the corporation for the purposes of carrying out its obligations under this article.

(f) (1) Prior to the termination of any proceeding under article seventy-four of this chapter, the court may take into consideration the contributions of the respective parties, including the corporation, the shareholders and policyholders of the impaired or insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such impaired or insolvent insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(2) No distribution to shareholders, if any, of an impaired or insolvent insurer shall be made, and no rehabilitation proceeding shall be terminated (except by a final order of liquidation), until and unless the total amount of valid claims of the corporation for all funds expended in carrying out its powers and duties under section seven thousand seven hundred eight of this article with respect to such insurer, together with interest thereon, have been fully recovered by the corporation or an arrangement satisfactory to the corporation has been made for their recovery. Such interest shall be at a rate which, in the opinion of the court, fairly compensates the corporation for the use of such funds, but in no event shall such rate be in excess of the maximum rate allowed by subdivision one of section 5-501 of the general obligations law at the time such funds were expended.

(g) (1) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, from any parent corporation or holding company or person who otherwise controlled the insurer, the amount of distributions (other than distributions of shares of the same class of stock) paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation, conservation or rehabilitation, as the case may be, subject to the limitations of paragraphs two, three and four of this subsection.

(2) No such distribution shall be recoverable if the insurer shows that when paid, such distribution was reasonable and that the insurer

did not know and could not reasonably have known that such distribution might adversely affect the ability of the insurer to fulfill its contractual obligations. Notice to the superintendent pursuant to subsection (a) of section four thousand two hundred seven of this chapter and the lack of a prior objection by the superintendent to such distributions shall not constitute evidence to support the showing of reasonableness which would prevent the recovery of such distribution.

(3) Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer at the time such distributions were paid shall be liable up to the amount of distributions such persons received. Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer at the time such distributions were declared shall be liable up to the amount of distributions he would have received if they had been paid immediately. If two or more persons are liable with respect to the same distribution, they shall be jointly and severally liable.

(4) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse the corporation for such payments and for all other claims the corporation may have pursuant to subsection (c) of this section.

(5) To the extent that any person liable under paragraph three of this subsection is insolvent or otherwise fails to pay claims due from it pursuant to such paragraph, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from such parent corporation or holding company or person who otherwise controlled it.