WEST VIRGINIA CODE: §33-10-26B

§33-10-26b. Recoupment from affiliates.

(a) If an order instituting a delinquency proceeding against an insurer authorized to do business in this state is entered under this article, the receiver appointed under the order has a right to recover on behalf of the insurer from any affiliate that controlled the insurer the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation, rehabilitation or conservation. This recovery is subject to the limitations of subsections (b) through (g), inclusive, of this section.

(b) No dividend is recoverable if the recipient shows that, when paid, the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect its solvency.

(c) The maximum amount recoverable under this section is the amount needed, in excess of all other available assets, to pay all claims under the receivership, reduced for each recipient by any amount the recipient has already paid to receivers under similar laws of other states.

(d) Any person who was an affiliate that controlled the insurer at the time the distributions were paid is liable up to the amount of distributions received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared is liable up to the amount of distributions the person would have received if the distributions had been paid immediately. If two or more persons are liable regarding the same distributions, they are jointly and severally liable.

(e) If any person liable under subsection (d) of this section is insolvent, all affiliates that controlled that person at the time the dividend was declared or paid are jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

(f) This section does not reduce the personal liability of a director under existing law.

(g) An action or proceeding under this section may not be commenced after the earlier of:

(1) Two years after the appointment of a liquidator pursuant to this article; or

(2) The date the rehabilitation or liquidation is terminated.

WV Legislature