WEST VIRGINIA CODE: §33-11-4A

§33-11-4a. Complaints by third-party claimants; elimination of private cause of action.

(a) A third-party claimant may not bring a private cause of action or any other action against any person for an unfair claims settlement practice. A third-party claimant's sole remedy against a person for an unfair claims settlement practice or the bad faith settlement of a claim is the filing of an administrative complaint with the Commissioner in accordance with subsection (b) of this section. A third-party claimant may not include allegations of unfair claims settlement practices in any underlying litigation against an insured.

(b) A third-party claimant may file an administrative complaint against a person for an alleged unfair claims settlement practice with the Commissioner. The administrative complaint shall be filed as soon as practicable but in no event later than one year following the actual or implied discovery of the alleged unfair claims settlement practice.

(1) The administrative complaint shall be on a form provided by the Commissioner and shall state with specificity the following information and such other information as the Commissioner may require:

(A) The statutory provision, if known, which the person allegedly violated;

(B) The facts and circumstances giving rise to the violation;

(C) The name of any individual or other entity involved in the violation; and

(D) Reference to specific policy language that is relevant to the violation, if known.

(2) If the administrative complaint is deficient, the Commissioner shall contact the third-party claimant within fifteen days of receipt of the complaint to obtain the necessary information.

(3) Upon receipt of a sufficiently complete administrative complaint, the Commissioner must provide the person against whom the administrative complaint is filed written notice of the alleged violation.

(4) If the person against whom the administrative complaint was filed substantially corrects the circumstances that gave rise to the violation or offers to resolve the complaint in a manner found reasonable by the Commissioner within sixty days after receiving the notice from the Commissioner pursuant to subdivision (3) of this subsection, the Commissioner shall close the complaint and no further action shall lie on the matter, either by the Commissioner or by the third party.

(5) The person that is the recipient of a notice from the Commissioner pursuant to

WV Legislature

subdivision (3) of this subsection shall report to the Commissioner on the disposition of the alleged violation within fifteen days of the disposition but no later than sixty days from receipt of notice of the complaint from the Commissioner.

(c) If the third-party claim is not resolved within the sixty-day period described in subdivision (4), subsection (b) of this section through either the person's substantial correction of the circumstances giving rise to the alleged violation or an offer from the person to resolve the administrative complaint that is found to be reasonable by the Commissioner, the Commissioner shall conduct any investigation he or she considers necessary to determine whether the allegations contained in the administrative complaint are meritorious.

(d) Following the time period and investigation provided in subsection (c) of this section, if the Commissioner finds that merit exists for a complaint and the complaint has not been resolved, the Commissioner shall forward a complete copy of the complaint to the Office of Consumer Advocacy and, if at his or her discretion, may order further investigation and hearing to determine if the person has committed an unfair claims settlement practice with such frequency as to constitute a general business practice. Notice of any hearing shall be provided to all parties. The Commissioner shall assign a time and place for a hearing and shall notify the parties of the hearing by written notice at least ten days in advance thereof. The hearing shall be held within ninety days from the date of filing the complaint unless the complaint has been successfully resolved pursuant to subdivision (4), subsection (b) of this section or continued by agreement of all parties or by the Commissioner for good cause. The Commissioner shall cause hearings to be conducted in the geographical region of the state where the complainant resides. The Commissioner may promulgate rules pursuant to article three, chapter twenty-nine-a of this code necessary, pursuant to the authority of this chapter, to establish procedures to conduct hearings pursuant to this section and chapter.

(e) If the Commissioner finds that the person has committed the unfair claim settlement practice with such frequency as to constitute a general business practice, the Commissioner may proceed to take administrative action he or she considers appropriate in accordance with section six of this article or as otherwise provided in this chapter. If the Commissioner finds that the person engaged in any method of competition, act or practice that involves an intentional violation of subdivision (9), section four of this article, and even though it has not been established that the person engaged in a general business practice, the Commissioner may proceed to take administrative action he or she considers appropriate in accordance with subsection (b), section six of this article. The person is entitled to notice and hearing in connection with the administrative proceeding.

(f) A finding by the Commissioner that the actions of a person constitute a general business practice may only be based on the existence of substantially similar violations in a number of separate claims or causes of action.

(g) A good faith disagreement over the value of an action or claim or the liability of any party to any action or claim is not an unfair claims settlement practice.

WV Legislature

(h) The Commissioner, pursuant to article three, chapter twenty-nine-a of this code, may promulgate by emergency rule standards for subsection (9), section four of this article.

(i) Nothing in this section in any way limits the rights of the Commissioner to investigate and take action against a person which the Commissioner has reason to believe has committed an unfair claims settlement practice or has consistently resolved administrative complaints by third-party claimants within the sixty-day period set forth in subdivision (4), subsection (b) of this section.

(j) Definitions:

(1) "Third-party claimant" means any individual, corporation, association, partnership or any other legal entity asserting a claim against any individual, corporation, association, partnership or other legal entity insured under an insurance policy or insurance contract for the claim in question.

(2) "Unfair claims settlement practice" means a violation of subsection (9), section four of this article.

(3) "Underlying litigation" means a third-party claimant's lawsuit involving a claim against an insured.

(4) "Underlying claim" means the claim by a third-party claimant against an insured.

WV Legislature