WEST VIRGINIA CODE: §33-26-11

§33-26-11. Effect of paid claims.

(a) Any person recovering under this article is considered to have assigned the person's rights under the policy to the association to the extent of the person's recovery from the association. Every insured or claimant seeking the protection of this article shall cooperate with the association to the same extent as that person would have been required to cooperate with the insolvent insurer. The association has no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if the sums had been paid by the insolvent insurer and except as provided in subsection (b) of this section. In the case of an insolvent insurer operating on a plan whereby insurance policies with assessment liability have been issued to insureds, payments of claims by the association may not operate to reduce the liability of the insureds to the receiver, liquidator or statutory successor for unpaid assessments.

(b) The association may recover from the following persons all amounts paid by the association on behalf of the person, whether for indemnity or defense or otherwise:

(1) Any insured whose net worth on December 31 of the year immediately preceding the date the insurer becomes an insolvent insurer exceeds $25 million: Provided, That an insured's net worth on such date shall be considered to include the aggregate net worth of the insured and all of its subsidiaries and affiliates as calculated on a consolidated basis: Provided, however, That this provision may not apply to any claim for benefits under a workers' compensation insurance policy required by chapter twenty-three of this code; and

(2) Any person who is an affiliate of the insolvent insurer.

(c) The association and any association similar to the association in another state shall be recognized as claimants in the liquidation of an insolvent insurer for any amounts paid by them on covered claims obligations as determined under this article or similar laws in other states and shall receive dividends and any other distributions at the priority set forth in section nineteen-a, article ten of this chapter. The receiver, liquidator or statutory successor of an insolvent insurer shall be bound by determinations of covered claim eligibility under this article and by settlements of claims made by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that to which the claimant would have been entitled, in the absence of this article, against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the receiver's expenses.

(d) The association shall periodically file with the receiver or the liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims against the association which shall preserve the rights of the association against the assets of the insolvent insurer.

WV Legislature