WEST VIRGINIA CODE: §33-26-12

§33-26-12. Exhaustion of other coverage; deductible reimbursement.

(a) Any person having a claim under an insurance policy, whether or not it is a policy issued by a member insurer, and the claim under such other policy arises from the same facts, injury, or loss that gave rise to the covered claim against the association, shall first exhaust all coverage provided by any such policy. Any amount payable on a covered claim under this article shall be reduced by the full applicable limits stated in such other insurance policy and the association shall receive a full credit for such stated limits or, where there are no applicable stated limits, the claim shall be reduced by the total recovery. Notwithstanding the foregoing, no person may be required to exhaust any right under the policy of an insolvent insurer.

(1) A claim under a policy providing liability coverage to a person who may be jointly and severally liable with or a joint tortfeasor with the person covered under the policy of the insolvent insurer that gives rise to the covered claim is considered to be a claim arising from the same facts, injury or loss that gave rise to the covered claim against the association.

(2) A claim under an insurance policy shall also include, for purposes of this section:

(A) A claim against a health maintenance organization, a hospital plan corporation or a professional health service corporation; and

(B) Any amount payable by or on behalf of a self-insurer.

(3) To the extent that the association's obligation is reduced by the application of this section, the liability of the person insured by the insolvent insurer's policy for the claim shall be reduced in the same amount.

(b) Any person having a claim which may be recovered under more than one Insurance Guaranty Association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, he or she shall seek recovery first from the association of the location of the property, and if it is a workers' compensation claim, the person shall seek recovery first from the association of the residence of the claimant. Any recovery under this article shall be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent.

(c) To the extent the association pays any deductible claim for which the insurer would have been entitled to reimbursement from the insured, the association is entitled to the full amount of the reimbursement and available collateral as provided under this subsection to the extent necessary to reimburse the association. Reimbursements paid to the association pursuant to this subsection may not be treated as distributions or as early access payments.

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To the extent that the association pays a deductible claim that is not reimbursed either from collateral or by insured payments, or incurred expenses in connection with large deductible policies that are not reimbursed under this subsection, the association has an exclusive cause of action against the insured, including the right to enforce against the insured the rights of the insurer with respect to any obligation of the insured to reimburse the insurer for deductibles or pay claims within a deductible. Further, the fund is vested with a first lien in any collateral provided by the insured to the insolvent insurer to secure the insured's performance, to the extent of claims paid by the association, which lien can be perfected by notice to the liquidator. Nothing in this subsection limits any rights of the association that may otherwise exist under applicable law to obtain reimbursement from insureds for claims payments made by the association under policies of the insurer or for the association's related expenses.

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