WEST VIRGINIA CODE: §33-26-5

§33-26-5. Definitions.

As used in this article:

(1) “Account” means any one of the three accounts created by section six of this article.

(2) “Affiliate” means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with another person on December 31 of the year immediately preceding the date the insurer becomes an insolvent insurer.

(3) “Affiliate of the insolvent insurer” means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with an insolvent insurer on December 31 of the year prior to the date the insurer becomes an insolvent insurer.

(4) “Association” means the West Virginia Insurance Guaranty Association created under section six of this article.

(5) “Association similar to the association” means any guaranty association, security fund or other insolvency mechanism that affords protection similar to that of the association. The term shall also include any property and casualty insolvency mechanism that obtains assessments or other contributions from insurers on a preinsolvency basis.

(6) “Claimant” means any insured making a first party claim or any person instituting a liability claim, provided that no person who is an affiliate of the insolvent insurer may be a claimant.

(7) “Commissioner” means the Insurance Commissioner of West Virginia.

(8) “Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact.

(9) (A) “Covered claim” means an unpaid claim, including one for unearned premiums, submitted by a claimant, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this article applies issued by an insurer, if the insurer becomes an insolvent insurer after the effective date of this article and:

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(i) The claimant or insured is a resident of this state at the time of the insured event: Provided, That for entities other than an individual, the residence of a claimant, insured or policyholder is the state in which its principal place of business is located at the time of the insured event; or

(ii) The claim is a first party claim for damage to property with a permanent location in this state.

(B) "Covered claim" does not include:

(i) Any amount awarded as punitive or exemplary damages;

(ii) Any amount sought as a return of premium under any retrospective rating plan;

(iii) Any amount due any reinsurer, insurer, insurance pool, underwriting association, health maintenance organization, hospital plan corporation, professional health service corporation or self-insurer as subrogation recoveries, reinsurance recoveries, contribution, indemnification or otherwise. No such claim for any amount due any reinsurer, insurer, insurance pool, underwriting association, health maintenance organization, hospital plan corporation or self-insurer may be asserted against a person insured under a policy issued by an insolvent insurer other than to the extent such claim exceeds the association obligation limitations set forth in section eight of this article;

(iv) Any first party claim by an insured whose net worth exceeds $25 million on December 31 of the year next preceding the date the insurer becomes an insolvent insurer: Provided, That an insured's net worth on that 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 exclusion does not apply to any claim for benefits under a workers' compensation insurance policy required by chapter twenty-three of this code;

(v) Any third party claim relating to a policy of an insured whose net worth exceeds $25 million on December 31 of the year next preceding the date the insurer becomes an insolvent insurer: Provided, That an insured's net worth on that 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 exclusion does not apply to:

(I) Third party claims against the insured where the insured has applied for or consented to the appointment of a receiver, trustee or liquidator for all or a substantial part of its assets, filed a voluntary petition in bankruptcy, filed a petition or an answer seeking a reorganization or arrangement with creditors or to take advantage of any insolvency law, or if an order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating the insured bankrupt or insolvent or approving a petition seeking reorganization of the insured or of all or substantial part of its assets; or

(II) Any claim for benefits under a workers' compensation insurance policy required by

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chapter twenty-three of this code;

(vi) Any claim that would otherwise be a covered claim but is an obligation to, or on behalf of a, person who has a net worth greater than that allowed by the insurance guaranty association law of the state of residence of the claimant at the time specified by that law and which association has denied coverage to that claimant on that basis: Provided, That this exclusion does not apply to any claim for benefits under a workers' compensation insurance policy required by chapter twenty-three of this code;

(vii) Any first party claims by an insured which is an affiliate of the insolvent insurer;

(viii) Any fee or other amount relating to goods or services sought by, or on behalf of, any attorney or other provider of goods or services retained by the insolvent insurer or an insured prior to the date it was determined to be insolvent;

(ix) Any fee or other amount sought by, or on behalf of, any attorney or other provider of goods or services retained by any insured or claimant in connection with the assertion or prosecution of any claim, covered or otherwise, against the association; or

(x) Any claims for interest.

(10) "Insolvent insurer" means an insurer licensed to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against whom a final order of liquidation has been entered with a finding of insolvency by a court of competent jurisdiction in the insurer's state of domicile.

(11) "Member insurer" means any person who: writes any kind of insurance to which this article applies under section three of this article, including farmers' mutual fire insurance companies and the exchange of reciprocal or interinsurance contracts; and is licensed to transact insurance in this state. An insurer shall cease to be a member insurer effective on the day following the termination or expiration of its license to transact the kinds of insurance to which this article applies, however the insurer shall remain liable as a member insurer for any and all obligations, including obligations for assessments levied prior to the termination or expiration of the insurer's license and assessments levied after the termination or expiration, which relate to any insurer which became an insolvent insurer prior to the termination or expiration of the insurer's license.

(12) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this article applies, less return premiums on the policies and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(13) "Person" means any individual or legal entity, including governmental entities.

(14) "Receiver" means receiver, liquidator, rehabilitator or conservator as the context may require.

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(15) “Self-insurer” means a person that covers its liability through a qualified individual or group self-insurance program or any other formal program created for the specific purpose of covering liabilities typically covered by insurance.

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