WEST VIRGINIA CODE: §33-26-8

§33-26-8. Powers and duties of the association.

(a) The association shall:

(1) Be obligated to pay covered claims existing prior to the final order of liquidation, that arise within thirty days after the final order of liquidation or before the policy expiration date if the expiration date is less than thirty days after the final order of liquidation, or that arise before the insured replaces the policy or causes its cancellation, if the insured does so within thirty days of the final order of liquidation. This obligation shall be satisfied by paying to the claimant an amount as follows:

(A) The full amount of a covered claim for benefits under a workers' compensation insurance policy: Provided, That any covered claim for deliberate intention, including any action pursuant to section two, article four, chapter twenty-three of this code, may not exceed $300,000 per claim.

(B) An amount not exceeding $10,000 per policy for a covered claim for the return of unearned premium.

(C) An amount not exceeding $300,000 per claim for all other covered claims: Provided, That for purposes of this limitation, all claims of any kind whatsoever arising out of, or related to, bodily injury or death to any one person constitutes a single claim, regardless of the number of claims made, or the number of claimants.

In no event may the association be obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises. Notwithstanding any other provisions of this article, a covered claim may not include a claim filed with the association after the earlier of: (i) Twenty-five months after the date of the final order of liquidation; or (ii) the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.

Any obligation of the association to defend an insured on a covered claim shall cease upon the association's: (i) Payment, either by settlement releasing the insured or on a judgment, of an amount equal to the lesser of the association's covered claim obligation limit or the applicable policy limit; or (ii) tender of such amount.

(2) Be considered the insurer only to the extent of its obligation on the covered claims and to that extent, subject to the limitations provided in this article, have all rights, duties and obligations of the insolvent insurer as if the insurer had not become insolvent, including, but not limited to, the right to pursue and retain salvage and subrogation recoverable on paid covered claim obligations. The association may not be considered the insolvent insurer for any purpose relating to the issue of whether the association is amenable to the personal

WV Legislature

jurisdiction of the courts of any state.

(3) Allocate claims paid and expenses incurred among the three accounts separately, and assess member insurers separately for each account amounts necessary to pay the obligations of the association under subdivision (1) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of preparing any reports specified in section thirteen of this article and other expenses authorized by this article. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year prior to the assessment on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the calendar year prior to the assessment on the kinds of insurance in the account: Provided, That farmers mutual insurance companies that do not issue workers' compensation insurance policies may not be assessed to pay for the obligations of the association payable from the workers' compensation insurance account. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any one year on any account an amount greater than two percent of that member insurer's net direct written premiums for the calendar year preceding the assessment on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon after that as funds become available. The association shall pay claims in any order that it deems reasonable, including the payment of claims as they are received from the claimant or in groups or categories of claims. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect the amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance: Provided, however, That during the period of deferment, no dividends may be paid to shareholders or policyholders. Deferred assessments shall be paid when the payment does not reduce capital or surplus below required minimums. The payments shall be refunded to those companies receiving larger assessments by virtue of the deferment, or at the election of any such company, credited against future assessments.

(4) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims. The association may appoint and direct legal counsel retained under liability insurance policies for the defense of covered claims.

(5) Notify claimants in this state as determined necessary by the commissioner and upon the commissioner's request, to the extent records are available to the association.

(6) (A) Have the right to review and contest as set forth in this subsection settlements, releases, compromises, waivers and judgments to which the insolvent insurer or its insureds were parties prior to the entry of the final order of liquidation. In an action to enforce

settlements, releases and judgments to which the insolvent insurer or its insureds were parties prior to the entry of the final order of liquidation, the association may assert the following defenses, in addition to the defenses available to the insurer:

(i) The association is not bound by a settlement, release, compromise or waiver executed by an insured or the insurer, or any judgment entered against an insured or the insurer by consent or through a failure to exhaust all appeals, if the settlement, release, compromise, waiver or judgment was:

(I) Executed or entered within one hundred twenty days prior to the entry of a final order of liquidation and the insured or the insurer did not use reasonable care in entering into the settlement, release, compromise, waiver or judgment, or did not pursue all reasonable appeals of an adverse judgment; or

(II) Executed by or taken against an insured or the insurer based on default, fraud, collusion or the insurer's failure to defend.

(ii) If a court of competent jurisdiction finds that the association is not bound by a settlement, release, compromise, waiver or judgment for the reasons described in subparagraph (i), paragraph (A), subdivision (6) of this subsection, the settlement, release, compromise, waiver or judgment shall be set aside and the association may defend any covered claim on the merits. The settlement, release, compromise, waiver or judgment may not be considered as evidence of liability or damages in connection with any claim brought against the association or any other party under this article.

(iii) The association may assert any statutory defenses or other defenses or rights of offset against any settlement, release, compromise or waiver executed by an insured or the insurer, or any judgment taken against the insured or the insurer.

(B) As to any covered claims arising from a judgment under any decision, verdict or finding based on the default of the insolvent insurer or its failure to defend, the association, either on its own behalf or on behalf of an insured may apply to have the judgment, order, decision, verdict or finding set aside by the same court or administrator that entered the judgment, order, decision, verdict or finding and may defend the claim on the merits.

(7) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but the designation may be declined by a member insurer.

(8) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this article.

(9) Establish procedures for requesting financial information from insureds and claimants on a confidential basis for purposes of applying sections of this article concerning the net worth

WV Legislature

of first and third-party claimants, subject to that information being shared with any other association similar to the association and the liquidator for the insolvent company on the same confidential basis. If the insured or claimant refuses to provide the requested financial information and an auditor's certification of the same where requested and available, the association may consider the net worth of the insured or claimant to be in excess of $25 million at the relevant time.

(b) The association may:

(1) Employ or retain persons that are necessary to handle claims and perform other duties of the association.

(2) Borrow funds necessary to effect the purposes of this article in accord with the plan of operation.

(3) Sue or be sued, and the power to sue includes the power and right to intervene as a party as a matter of right before any court in this state that has jurisdiction over an insolvent insurer as defined by this article.

(4) Negotiate and become a party to contracts that are necessary to carry out the purpose of this article.

(5) Perform other acts that are necessary or proper to effectuate the purpose of this article.

(6) Refund to the member insurers in proportion to the contribution of each member insurer to an account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year.

WV Legislature