WEST VIRGINIA CODE: §33-27-6

§33-27-6. Examination; power of commissioner; access to books and records; use of consultants; expenses; compelling production, contempt and payment of fees, mileage and actual expenses.

(a) Power of commissioner. -- Subject to the limitation contained in this section and in addition to the powers which the commissioner has under other provisions of this chapter relating to the examination of insurers, the commissioner has the power to examine any insurer registered under section four of this article and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

(b) Access to books and records. –

(1) The commissioner may order any insurer registered under section four of this article to produce such records, books or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to determine compliance with this chapter.

(2) To determine compliance with this chapter, the commissioner may order any insurer registered under section four of this article to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations, or other method. In the event the insurer cannot obtain the information requested by the commissioner, the insurer shall provide the commissioner a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. Whenever it appears to the commissioner that the detailed explanation is without merit, the commissioner may, after notice and hearing, require the insurer to pay a penalty of up to $10,000 for each day's delay, may suspend or revoke the insurer's license, or both impose a penalty and revoke or suspend the insurer's license.

(c) Use of consultants. -- The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (a) of this section. Any person so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

(d) Expenses. -- Each registered insurer producing for examination records, books and papers pursuant to subsection (a) of this section is liable for and shall pay the expense of such examination in accordance with applicable laws of this state.

(e) Compelling Production. –- In the event the insurer fails to comply with an order, the commissioner may examine the affiliates to obtain the information. The commissioner may

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also issue subpoenas, to administer oaths, and examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition any circuit court and, upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court. Every person is obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. He or she is entitled to the same fees and mileage, if claimed, as a witness in the circuit court of the county in which attendance is required, which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company being examined.

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