WEST VIRGINIA CODE CHAPTER 33 ARTICLE 37

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§33-37-1. Definitions.

For the purposes of this article:

(a) "Actuary" means a person who is a member in good standing of the American academy of actuaries.

(b) "Home state" means the District of Columbia or any state or territory of the United States in which a managing general agent is incorporated or maintains its principal place of business. If neither the state in which the managing general agent is incorporated, nor the state in which the managing general agent maintains its principal place of business has adopted this article or a substantially similar law governing managing general agents, the managing general agent may declare another state in which it conducts business to be its "home state".

(c) "Insurer" means any person, firm, association or corporation duly licensed in this state as an insurance company pursuant to article three of this chapter. Insurer includes, but is not limited to, any domestic insurer as defined in section six, article one of this chapter and any foreign insurer as defined in section seven of said article, including any stock insurer, mutual insurer, reciprocal insurer, farmers' mutual fire insurance company, fraternal benefit society, hospital service corporation, medical service corporation, dental service corporation, health service corporation, health care corporation, health maintenance organization, captive insurance company or risk retention group.

(d) "Managing general agent" (MGA) means any person, firm, association or corporation who:

(1) Manages all or part of the insurance business of an insurer (including the management of a separate division, department or underwriting office); and

(2) Acts as an agent for such insurer whether known as a managing general agent, manager or other similar term who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following activities related to the business produced:

(A) Adjusts or pays claims in excess of $10,000 per claim; or

(B) Negotiates reinsurance on behalf of the insurer.

(3) Notwithstanding the above, the following persons are not considered managing general agents for the purposes of this article:

(A) An employee of the insurer;

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(B) A U.S. manager of the United States branch of an alien insurer;

(C) An underwriting manager which, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, subject to the holding company regulatory act, and whose compensation is not based on the volume of premiums written; and

(D) The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange under powers of attorney.

(e) "Person" means an individual or a business entity.

(f) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

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§33-37-2. Licensure.

(a) No domestic, foreign or alien insurer may permit a person to act, and no person may act, in the capacity of a managing general agent for an insurer in this state unless the person is licensed in this state to act as a managing general agent.

(b) No person may act in the capacity of a managing general agent with respect to risks located in this state for an insurer licensed in this state unless the person is a licensed insurance producer in this state.

(c) The commissioner may license as a managing general agent any individual or business entity that has complied with the requirements of this article and any related rules. The commissioner may refuse to issue a license if he or she believes the applicant, any person named on the application, or any member, principal, officer or director of the applicant is not trustworthy or competent to act as a managing general agent, or that any of the foregoing persons has given cause for revocation or suspension of the license or has failed to comply with any prerequisite for issuance of the license.

(d) Any person seeking a license pursuant to this section shall apply for the license in a form prescribed by the commissioner and pay a nonrefundable application fee of $500. Each license issued pursuant to this section expires on June 30 following issuance, except that a license initially issued in May or June expires on June 30 of the following year. In order to renew a license, a licensed managing general agent shall submit to the commissioner at least one month prior to expiration a renewal application in a form prescribed by the commissioner and a renewal fee of $200: Provided, That a managing general agent that fails to timely renew a license may reinstate the license, retroactive to its expiration date, upon submission of the renewal application form prior to June 1 following the expiration date and payment of a renewal fee of $400. All fees shall be paid into the State Treasury to the credit of the special revenue account created in subsection (b), section thirteen, article three of this chapter.

(e) The commissioner may require a bond in an amount acceptable to him or her for the protection of the insurer.

(f) The commissioner may require a managing general agent to maintain an errors and omissions policy that is acceptable to the commissioner.

(g) The submission of an application for license pursuant to this section constitutes an appointment by the applicant of the Secretary of State as the agent for service of process on the applicant in any action or proceeding, including administrative actions instituted by the commissioner, arising in this state out of or in connection with the application for or exercise of the license. The appointment of the Secretary of State as agent for service of process shall be irrevocable during the period within which a cause of action against the applicant may arise out of transactions with respect to subjects of insurance in this state. Service of process on the Secretary of State shall conform to the provisions of section twelve, article

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four of this chapter.

(h) A person seeking licensure shall provide evidence, in a form acceptable to the commissioner, of its appointments or contracts as a managing general agent. The commissioner may refuse to renew the license of a person that has not been appointed by, or otherwise authorized to act for, an insurer as a managing general agent.

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§33-37-3. Required contract provisions.

No person, firm, association or corporation acting in the capacity of a managing general agent may place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party and where both parties share responsibility for a particular function, specifies the division of such responsibilities and which contains the following minimum provisions:

(a) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination.

(b) The managing general agent will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.

(c) All funds collected for the account of an insurer will be held by the managing general agent in a fiduciary capacity with an FDIC-insured financial institution. This account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than three months' estimated claims payments and allocated loss adjustment expenses.

(d) Separate records of business written by the managing general agent shall be maintained. The insurer shall have access and right to copy all accounts and records related to its business in a form usable by the insurer. The commissioner shall have access to all books, bank accounts and records of the managing general agent in a form usable to the commissioner.

(e) The contract may not be assigned, in whole or part, by the managing general agent.

(f) The contract shall contain appropriate underwriting guidelines including:

(1) The maximum annual premium volume;

(2) The basis of the rates to be charged;

(3) The types of risks which may be written;

(4) Maximum limits of liability;

(5) Applicable exclusions;

(6) Territorial limitations;

(7) Policy cancellation provisions; and

(8) The maximum policy period.

The insurer shall have the right to cancel or nonrenew any policy of insurance subject to the

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applicable laws and rules concerning the cancellation and nonrenewal of insurance policies.

(g) If the contract permits the managing general agent to settle claims on behalf of the insurer:

(1) All claims must be reported to the company in a timely manner; and

(2) A copy of the claim file will be sent to the insurer at its request or as soon as it becomes known that the claim:

(A) Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the company, whichever is less;

(B) Involves a coverage dispute;

(C) May exceed the managing general agents claims settlement authority;

(D) Is open for more than six months; or

(E) Is closed by payment of an amount set by the commissioner or an amount set by the company, whichever is less.

(3) All claims files will be the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer, such files shall become the sole property of the insurer or its estate. The managing general agent shall have reasonable access to and the right to copy the files on a timely basis.

(4) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

(h) Where electronic claims files are in existence, the contract must address the timely transmission of the data contained in such files.

(i) If the contract provides for a sharing of interim profits by the managing general agent and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits will not be paid to the managing general agent until one year after they are earned for property insurance business and five years after they are earned on casualty business and not until the profits have been verified pursuant to section four of this article.

(j) The managing general agent may use only advertising material pertaining to the business issued by an insurer that has been approved in writing by the insurer in advance of its use.

(k) The managing general agent may not:

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(1) Bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules;

(2) Commit the insurer to participate in insurance or reinsurance syndicates;

(3) Appoint any individual insurance producer without assuring that the individual insurance producer is lawfully licensed to transact the type of insurance for which he or she is appointed;

(4) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one percent of the insurer's policyholder's surplus as of December 31, of the last completed calendar year;

(5) Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer;

(6) Except as provided in subsection (g), section four of this article, permit its subproducer to serve on the insurer's board of directors;

(7) Jointly employ an individual who is employed with the insurer; or

(8) Appoint a submanaging general agent.

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§33-37-4. Duties of insurers.

(a) The insurer shall have on file an independent audited financial statement or reports for the two most recent fiscal years that provide that the managing general agent has a positive net worth. If the managing general agent has been in existence for less than two fiscal years the managing general agent shall include financial statements or reports, certified by an officer of the managing general agent and prepared in accordance with generally accepted accounting procedures, for any completed fiscal years, and for any month during the current fiscal year for which financial statements or reports have been completed. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the following:

(1) Amounts shown on the consolidated audited financial report shall be shown on the worksheet;

(2) Amounts for each entity shall be stated separately; and

(3) Explanations of consolidating and eliminating entries shall be included.

(b) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary in a form consistent with the requirements for actuarial certifications as imposed upon the insurer by statute or rule of the commissioner attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. This required actuary's opinion is in addition to any other required loss reserve certification.

(c) The insurer shall at least semiannually conduct an on-site review of the underwriting and claims processing operations of the managing general agent.

(d) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer who shall not be affiliated with the managing general agent.

(e) Within thirty days of entering into or terminating a contract with a managing general agent, the insurer shall provide written notification to the commissioner. Notices of entering into a contract with a managing general agent shall include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act and any other information the commissioner may request.

(f) An insurer shall review its books and records each quarter to determine if any producer as defined by subsection (c), section one of this article has become, by operation of subsection (d) of said section, a managing general agent as defined in that subsection. If the insurer determines that a producer has become a managing general agent pursuant to the

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above, the insurer shall promptly notify the producer and the commissioner of such determination and the insurer and producer must fully comply with the provisions of this article within thirty days thereafter.

(g) An insurer shall not appoint to its board of directors an officer, director, employee, subproducer or controlling shareholder of its managing general agents. This subsection does not apply to relationships governed by the Insurance Holding Company Systems Regulatory Act or the Business Transacted with Producer Controlled Property/Casualty Insurer Act.

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§33-37-5. Examination authority.

The acts of a managing general agent are considered to be the acts of the insurer on whose behalf such agent is acting. A managing general agent may be examined as if it were the insurer pursuant to the provisions of section nine, article two of this chapter.

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§33-37-6. Penalties and liabilities.

(a) If the commissioner finds that the managing general agent or any other person has violated any provision of this article, or any rule or order promulgated thereunder, after a hearing conducted in accordance with section thirteen, article two of this chapter, the commissioner may order:

(1) For each separate violation, a penalty in an amount not exceeding $10,000;

(2) Revocation or suspension of the producer's license;

(3) Reimbursement by the managing general agent of the insurer, the rehabilitator or liquidator of the insurer for any losses incurred by the insurer and its policyholders and creditors caused by a violation of this article committed by the managing general agent; and

(4) If it was found that because of any such violation that the insurer has suffered any loss or damage, the commissioner may maintain a civil action brought by or on behalf of the insurer and its policyholders and creditors for recovery of compensatory damages for the benefit of the insurer and its policyholders and creditors or other appropriate relief.

(b) If an order of rehabilitation or liquidation of the insurer has been entered pursuant to article ten of this chapter and the receiver appointed under that order determines that the managing general agent or any other person has not materially complied with this article, or any rule or order promulgated thereunder, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

(c) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in this chapter.

(d) Nothing contained in this article is intended to or shall in any manner limit or restrict the rights of policyholders, claimants and creditors.

(e) The decision, determination or order of the commissioner pursuant to subsection (a) of this section shall be subject to judicial review pursuant to section fourteen, article two of this chapter.

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§33-37-7. Rules and regulations.

The commissioner is authorized to promulgate reasonable rules for the implementation and administration of the provisions of this article pursuant to chapter twenty-nine-a of this code.

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§33-37-8. Effective date.

This article shall take effect on July 1, 2004. No insurer may continue to use the services of a managing general agent on and after July 1, 2004, except in compliance with this article.

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