WEST VIRGINIA CODE: §33-38-7

§33-38-7. Required contract provisions; reinsurance intermediary-managers.

(a) Transactions between a reinsurance intermediary-manager and the reinsurer it represents in that capacity may only be entered into pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's board of directors. At least thirty days before such reinsurer assumes or cedes business through such producer, a true copy of the approved contract shall be filed with the commissioner for approval.

(b) Every contract required by this section shall, at a minimum, provide, that:

(1) The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may immediately suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

(2) The reinsurance intermediary-manager shall render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to the reinsurance intermediary-manager, and remit all funds due under the contract to the reinsurer on not less than a monthly basis.

(3) All funds collected for the reinsurer's account shall be held by the reinsurance intermediary-manager in a fiduciary capacity in a bank which is a qualified United States financial institution as defined herein. The reinsurance intermediary-manager may retain no more than three months estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager shall maintain a separate bank account for each reinsurer that it represents.

(4) For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, the reinsurance intermediary-manager shall keep a complete record for each transaction showing:

(A) The type of contract, limits, underwriting restrictions, classes of risks and territory;

(B) Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;

(C) Reporting and settlement requirements of balances;

(D) Rate used to compute the reinsurance premium;

(E) Names and addresses of reinsurers;

WV Legislature

(F) Rates of all reInsurance Commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager;

(G) Related correspondence and memoranda;

(H) Proof of placement;

(I) Details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted by subsection (d), section nine of this article, including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(J) Financial records, including, but not limited to, premium and loss accounts; and

(K) When the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer:

(i) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that such reinsurer has delegated binding authority to the representative.

(5) The reinsurer shall have access and the right to copy all accounts and records maintained by the reinsurance intermediary-manager related to its business in a form usable by the reinsurer.

(6) The contract cannot be assigned in whole or in part by the reinsurance intermediary-manager.

(7) The reinsurance intermediary-manager shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection or cession of all risks.

(8) Sets forth the rates, terms and purposes of commissions, charges and other fees which the reinsurance intermediary-manager may levy against the reinsurer.

(9) If the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer:

(A) All claims shall be reported to the reinsurer in a timely manner;

(B) A copy of the claim file shall be sent to the reinsurer at its request or as soon as it becomes known that the claim:

(i) Has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;

WV Legislature

(ii) Involves a coverage dispute;

(iii) May exceed the reinsurance intermediary-manager's claims settlement authority;

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

(v) Is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer;

(C) All claim files will be the joint property of the reinsurer and reinsurance intermediary-manager. However, upon an order of liquidation of the reinsurer these files shall become the sole property of the reinsurer or its estate. The reinsurance intermediary-manager shall have reasonable access to and the right to copy the files on a timely basis;

(D) Any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

(10) If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager that these interim profits may not be paid until one year after the end of each underwriting period for property business, and five years after the end of each underwriting period for casualty business, or a later period set by the commissioner for specified lines of insurance, and not until the adequacy of reserves on remaining claims has been verified pursuant to subsection (c), section nine of this article.

(11) The reinsurance intermediary-manager shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified public accountant.

(12) The reinsurer shall periodically, at least multiannually, conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary-manager.

(13) The reinsurance intermediary-manager shall disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with such insurer pursuant to this contract.

(14) Within the scope of its actual or apparent authority, the acts of the reinsurance intermediary-manager are deemed to be the acts of the reinsurer on whose behalf it is acting.

WV Legislature