



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Risk And Insurance Management TITLE-SERIES: 115-01
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 115-01 Mine Subsidence Insurance

PRIMARY CONTACT

NAME: West Virginia Board of Risk and Insurance Management
ADDRESS: 1124 Smith Street Suite 4300
Charleston, WV 25301
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CITE STATUTORY AUTHORITY: 33-30-15

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code § 33-30-15 authorizes BRIM to promulgate and adopt such rules and regulations relating to mine subsidence insurance as are necessary to effectuate the provisions of this article. This rule implements a statutory requirement that insurers licensed to sell fire policies in the state make mine subsidence insurance available to our citizens. The rule establishes processes under which the program operates, the rates for the coverage, the policy forms, and the reinsurance agreement form that insurers must execute to participate in this required program. After BRIMs close monitoring of claims activity, it determined premiums exceed projected mine subsidence losses. BRIM believes the premium rates can be reduced by approximately 20%.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 7/9/2020

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 8/8/2020

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

None

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The rule implements a statutory requirement that insurers licensed to sell fire policies in the state make mine subsidence insurance available to our citizens. The reinsurance program administered by BRIM under this rule is authorized by W. Va. Code § 33-30-15. The rule establishes the processes under which the program operates, the rates for the coverage, the policy forms, and the reinsurance agreement form that insurers must execute to participate in this required program

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The rule was last amended to increase rates as a result of a 2016 bill that increased the reinsurance limits from \$75,000 to \$200,000. The increase in insured values up to \$200,000 and the current rate schedule for mine subsidence insurance went into effect on October 1, 2016. BRIM has carefully monitored claims activity since that time. The 2016 increase in premium has exceeded the projected mine subsidence losses that have occurred subsequent to the changes. BRIM believes the premium rates can now be reduced by approximately 20%. The premium is charged by the carriers for mine subsidence coverage provided to consumers, and the rate reduction will be beneficial to the consumers purchasing the coverage. The rates in the rule should be amended to further assist consumers. BRIM, in consultation with its actuary, has determined that the rates may be reduced. The West Virginia Offices of the Insurance Commissioners Rates and Forms Division will need to review and approve the rates. Also, at the request of OIC, to ease the market conduct exam process, language was added to require insurance companies to retain waiver documentation for five years.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

\$850,000 decrease

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

\$850,000 decrease

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

None

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues	850,000	850,000	850,000

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

The increase in insured values up to \$200,000 and the current rate schedule for mine subsidence insurance went into effect on October 1, 2016. The resulting increase of the premium has exceeded the projected mine subsidence losses that have occurred subsequent to the October 1, 2016 changes. Proposed revised rate schedule reduces the amount of premium collected by insurance carriers by approximately 20%. The premium is charged by the carriers for mine subsidence coverage provided to consumers.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Misty Peal -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 115
LEGISLATIVE RULES
STATE BOARD OF RISK AND INSURANCE MANAGEMENT

SERIES 1
MINE SUBSIDENCE INSURANCE

§115-1-1. General.

1.1. Scope. -- This rule applies to all insurance companies licensed by the Insurance Commissioner of West Virginia to write on a direct basis fire insurance on the State of West Virginia and, with the express permission of the "Board", to "Self Insurance Pools" as defined in Title 114, Series 65 of West Virginia Legislative Rules: Self Insurance Pools for Political Subdivisions: Provided, however, That Farm Mutual Insurance Companies authorized to transact insurance by the provisions of article twenty-two, chapter thirty-three of the West Virginia Code of 1931, as amended, may participate in the program on an optional basis.

1.2. Authority. -- W. Va. Code §33-30-15.

1.3. Filing Date. -- ~~April 24, 2017.~~

1.4. Effective Date. -- ~~May 1, 2017.~~

1.5. Sunset Provision: This rule shall terminate and have no further force or effect on ~~May 1, 2022.~~

§115-1-2. Definitions.

2.1. "Board" or "BRIM" means the West Virginia Board of Risk and Insurance Management.

2.2. "Mine subsidence" means loss to a structure caused by lateral or vertical movement, including collapse which results therefrom, of structures from collapse of man-made underground coal mines. It does not include loss caused by earthquake, landslide, volcanic eruption or collapse of storm and sewer drains and rapid transit tunnels.

2.3. "West Virginia Mine Subsidence Insurance Fund" or "Fund" means the fund established within the office of the West Virginia Board of Risk and Insurance Management.

2.4. "Policy" means a contract of insurance providing mine subsidence insurance.

2.5. "Premiums" means the gross rate charged policyholders for insurance provided by this rule.

2.6. "Structure" means any dwelling, building or fixture permanently affixed to realty located in West Virginia, including basements, footings, foundations, septic systems, and underground pipes directly servicing the dwelling or building, but does not include driveways, sidewalks, parking lots, land, trees, plants, crops, or agricultural field drainage tile.

§115-1-3. Implementation of Insurance Coverage.

3.1. Date coverage to be offered. – On and after the effective date of this rule, all insurance policies issued in the State of West Virginia by insurance companies subject to this rule which provide fire

insurance on structures eligible for mine subsidence insurance shall include coverage for mine subsidence insurance unless such insurance is waived by the insured. The waiver shall conform to the requirements of Section 3.10 of this rule.

3.2. Amount of insurance. – Each policy issued pursuant to this rule shall provide up to two hundred thousand dollars (\$200,000) of mine subsidence insurance in an amount not to exceed the amount of fire insurance on the structure.

3.3. Premium rate. – The premium rate schedule established by the Board is attached hereto as Appendix C. For the purpose of selecting rates a non-dwelling structure is defined as a building not used principally for residential purposes or which houses more than four (4) family units.

3.4. Coverage form. – Each policy issued pursuant to this rule shall include only those coverage forms for mine subsidence insurance which have been approved by both the Board and the Insurance Commissioner of West Virginia [coverage Form WVMS-1 (most current edition) Coal Mine Subsidence Coverage Part (Dwelling Structure) or coverage Form WVMS-2 (most current edition), Coal Mine Subsidence Coverage Part (Non-Dwelling Structure)]. Refer to Appendix A and B respectively, for coverage part wording. These forms may be reproduced under the name of the issuing insurance company.

3.5. Structures eligible for mine subsidence insurance. – Both dwelling structures and non-dwelling structures are eligible for mine subsidence insurance.

3.6. Exemption of certain mobile home forms. – Insurance companies whose mobile home policy forms currently provide subsidence insurance are exempt from the provisions of this rule: Provided, however, that this exemption applies only to mobile home policy forms.

3.7. Loss deductible. – The sum of two hundred fifty dollars (\$250) shall be deducted from each loss caused by mine subsidence.

3.8. Ceding commission. – A ceding commission of thirty percent (30%) of the gross premium shall be assessed.

3.9. Reinsurance agreement. – Each insurance company subject to this rule shall enter into a reinsurance agreement with the Board. Refer to Appendix F for the wording of the Reinsurance Agreement.

3.10. Waivers. – All insurance policies subject to this rule, written after February 28, 1983, shall include mine subsidence insurance UNLESS waived in writing by the policy holder. Insurance Companies shall retain a copy of each signed waiver for a period of five years from the date of the waiver. The Board recommends the following waiver clause be used:

WAIVER OF INSURANCE

I (we) do not desire Coal Mine Subsidence Insurance coverage and hereby waive any right to such coverage, under this policy or any future policy concerning my (our) interest in the property described in the policy (in the application), unless I (we) request Coal Mine Subsidence Insurance coverage, in writing, at some future date.

Signature of Named Insured(s)

Policy Number (If Renewal)
Date Signed

3.11. Exclusion. – Insurance companies holding a signed waiver under the date of the previous rule, April 1, 2007, will not be required to obtain a new waiver, and waivers shall not be required on property located in the following fifteen (15) counties:

Berkeley, Cabell, Calhoun, Hampshire, Hardy, Jackson, Jefferson, Monroe, Morgan, Pendleton, Pleasants, Ritchie, Roane, Wirt or Wood.

3.12. Waiting period. – Mine subsidence insurance becomes effective no earlier than thirty (30) calendar days after the application date.

§115-1-4. Miscellaneous Provisions.

4.1. Administration of claims. – All mine subsidence claims shall be reported to the Board for assignment to qualified independent adjusting firms in accordance with claim procedures as outlined on Appendix D. The selected adjusting firm will send all reports simultaneously to the insurer and the Board with all settlement authority, coverage questions and related matters being resolved by the Board. The Board will reimburse the insurer for all sums expended in accordance with the provisions of the reinsurance agreement.

4.2. Fund reporting. – Quarterly, each insurance company subject to this rule shall complete the West Virginia Mine Subsidence Fund Report. Refer to Appendix E for report format. The following information is required:

4.2.a. Policy count by county;

4.2.b. The amount of gross premiums less cancellations during the quarter rounded to the nearest dollars;

4.2.c. The net premiums due the state.

The completed report, along with the net premiums due the state, if any, shall be returned to the Board within forty-five (45) days after the quarter ends. The Board has the authority to audit any reporting insurance company so as to verify the authenticity and accuracy of the mine subsidence policy information submitted by such company to the Board.

Appendix A

**COAL MINE SUBSIDENCE COVERAGE PART
(DWELLING STRUCTURE)**

**FORM: WVMS-1
(Ed. 04-2016)**

In consideration of an additional premium, the STRUCTURES are insured against direct loss which occurs within the effective policy dates caused by underground COAL MINE SUBSIDENCE for the limit of liability stated in the policy declarations applicable to COAL MINE SUBSIDENCE insurance.

COAL MINE SUBSIDENCE means loss to a STRUCTURE caused by lateral or vertical movement, including collapse which results therefrom, of STRUCTURES from collapse of man-made underground coal mine.

PROPERTY COVERED. This coverage applies to:

STRUCTURE, meaning any dwelling building or fixture permanently affixed to realty located in West Virginia, including:

- (1) Cost of excavations, grading or filling; and
- (2) Basements, footings, foundations, septic systems; and
- (3) Underground pipes directly servicing the STRUCTURE.

PROPERTY NOT COVERED. This coverage does not apply to the following:

- (1) Driveways, sidewalks, parking lots, land; and
- (2) Trees, plants, crops or agricultural field drainage tile.

LIMIT OF LIABILITY. The limit of liability for loss under this coverage part shall not exceed the smallest of the following amounts (1), (2), (3), (4) or (5):

- (1) The Limit of Liability stated in the policy declarations applicable to COAL MINE SUBSIDENCE INSURANCE;
- (2) The replacement cost of the STRUCTURE or any part thereof identical with such STRUCTURE on the same premises and the same occupancy and use;
- (3) The amount actually and necessarily expended in repairing or replacing said STRUCTURE or any part thereof intended for the same occupancy and use;
- (4) The amount of fire insurance on the STRUCTURE; or
- (5) The amount available in the West Virginia Mine Subsidence Insurance Fund to reimburse the company.

SUPPLEMENTAL COVERAGE. The insured may apply up to 10% of the amount of COAL MINE SUBSIDENCE insurance applicable to the dwellings covered under this policy to cover loss to buildings located on the premises used exclusively for private purposes; provided however, that structures rented or leased to other than a tenant and structures used in whole or in part for business purposes are excluded.

PERILS NOT INSURED AGAINST. The insurance afforded by this coverage part does not insure against loss caused by:

Appendix A

COAL MINE SUBSIDENCE COVERAGE PART
(DWELLING STRUCTURE)FORM: WVMS-1
(Ed. 04-2016)

(1) Earthquake, landslide, volcanic eruption, collapse of storm and sewer drains and rapid transit tunnels or earth movement other than underground COAL MINE SUBSIDENCE;

(2) Any ensuing loss covered by the policy to which this coverage part is attached.

DEDUCTIBLE. The following deductible provisions apply:

(1) The sum of \$250 shall be deducted from each loss separately occurring to the STRUCTURES insured.

(2) No other deductible provision contained in the policy to which this coverage part is attached applies to loss caused by COAL MINE SUBSIDENCE.

ARBITRATION PROVISION.

(1) In the event that the Insured and the Company, through the West Virginia Board of Risk and Insurance Management (hereinafter BRIM), as called for by statute, are unable to reach agreement as to: (1) whether the insured STRUCTURE has sustained damage, in total and/or in part, during the effective policy dates, due to COAL MINE SUBSIDENCE; and/or (2) the cost of repair of COAL MINE SUBSIDENCE damage to the insured STRUCTURE; and/or (3) the method of repair of COAL MINE SUBSIDENCE damage to the insured structure; and/or (4) the materials necessary to effect repair of COAL MINE SUBSIDENCE damage to the insured STRUCTURE, then either the Insured or BRIM may request that such issues(s) in dispute will be submitted to binding arbitration.

(2) A request for binding arbitration shall be made in writing and dispatched to the other party via certified mail, return receipt requested. At such time as the parties have mutually indicated their written consent to binding arbitration of the issue(s) in dispute, the arbitration process shall thereby commence as provided for herein.

(3) If the Insured and BRIM mutually consent to binding arbitration, then both the Insured and BRIM shall agree to submit to the findings and decision of the QUALIFIED ARBITRATOR or QUALIFIED ARBITRATION PANEL. Any award in an arbitration initiated under this clause shall be limited to monetary damages for COAL MINE SUBSIDENCE in an amount not to exceed **two hundred thousand dollars (\$200,000)** dollars per insured STRUCTURE or an amount not to exceed the LIMIT OF LIABILITY as declared for COAL MINE SUBSIDENCE insurance coverage on the Policy Declarations, whichever is less. In no event can the QUALIFIED ARBITRATOR or QUALIFIED ARBITRATION PANEL award punitive damages, attorney fees, injunctive relief, consequential damages, incidental damages, and/or any other types or sorts of damages other than monetary damages for COAL MINE SUBSIDENCE to the insured structure. Moreover, each party shall bear its own costs and expenses and an equal share of the ADMINISTRATIVE FEES of arbitration, except that if the Insured is the prevailing party in the arbitration BRIM agrees to pay all of the ADMINISTRATIVE FEES of the arbitration; however in no circumstance shall BRIM pay the expenses, legal fees, or expert fees of the Insured. ADMINISTRATIVE FEES shall mean only those fees charged by the QUALIFIED ARBITRATOR or QUALIFIED ARBITRATION PANEL according to the fee schedule as mutually agreed to in writing by the parties at the time the QUALIFIED ARBITRATOR or QUALIFIED ARBITRATION PANEL is selected.

(4) Judgment upon the award rendered by the ARBITRATOR or QUALIFIED ARBITRATION PANEL shall be final and not appealable, but, if necessary, may be entered by the Circuit Court of Kanawha County, West Virginia as provided herein.

(5) Selection of an Arbitrator

Appendix A

**COAL MINE SUBSIDENCE COVERAGE PART
(DWELLING STRUCTURE)**

**FORM: WVMS-1
(Ed. 04-2016)**

(a) Within ten (10) days of their mutual written consent to binding arbitration, the Insured and BRIM shall select a QUALIFIED ARBITRATOR by mutual agreement to resolve the issue(s) in controversy between the parties. Said QUALIFIED ARBITRATOR shall be a professional registered engineer who can produce evidence of at least five (5) years experience in investigating and determining the existence of subsidence caused by underground coal mines, and if requested by mutual agreement of the parties, shall also be qualified to determine the cost of adequate repairs to structures damaged by COAL MINE SUBSIDENCE.

Appendix A

**COAL MINE SUBSIDENCE COVERAGE PART
(DWELLING STRUCTURE)****FORM: WVMS-1
(Ed. 04-2016)**

(b) If the parties are unable to agree upon a single QUALIFIED ARBITRATOR, then within thirty (30) days after the mutual written consent to binding arbitration, each party shall select one (1) QUALIFIED ARBITRATOR and the two (2) selected shall select a third QUALIFIED ARBITRATOR within ten (10) days of their appointment. Those three (3) QUALIFIED ARBITRATORS shall be hereinafter referred to as the QUALIFIED ARBITRATION PANEL and will resolve the issue(s) in controversy between the parties.

(c) Prior to the commencement of hearings, each of the QUALIFIED ARBITRATOR(S) appointed shall provide an oath or undertaking of impartiality.

(6) Applicable law

This arbitration agreement shall be governed by the laws of the state of West Virginia. Furthermore, the parties hereto consent to the personal jurisdiction and venue of the Circuit Court of Kanawha County, West Virginia and further consent that any process, notice of motion, or other application to the court or a judge thereof may be served outside the State of West Virginia by registered or certified mail or by personal service, provided that a reasonable time for appearance is allowed.

(7) Arbitration Mechanism

(a) Thirty (30) days after selection of a QUALIFIED ARBITRATOR or a QUALIFIED ARBITRATION PANEL, both the Insured and BRIM shall make written submissions to the QUALIFIED ARBITRATOR or a QUALIFIED ARBITRATION PANEL in which the respective party presents the facts of the case, with a copy to be provided to the other party. These written submissions may be made by the party or the party's designated representative.

(b) Upon receipt of these materials, the QUALIFIED ARBITRATOR or QUALIFIED ARBITRATION PANEL may request additional materials from either party. Any request for additional materials shall be made within thirty (30) days from the date the written submission, required by paragraph (7)(a), was made.

(c) After due consideration of the facts, as presented by the parties, the ARBITRATOR or QUALIFIED ARBITRATION PANEL, by majority opinion, shall issue a written decision with regard to all of the issues presented by the parties. Upon receipt of the written decision, the parties shall have thirty (30) days to resolve the claim in accordance with the decision.

(8) Duration of Arbitration

The award of the ARBITRATOR or QUALIFIED ARBITRATION PANEL shall be made within nine (9) months of the filing of the notice of intention to arbitrate (demand), and each QUALIFIED ARBITRATOR shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the parties.

OTHER PROVISIONS.

(1) In the event of loss to any STRUCTURE insured by this coverage part in excess of the deductible amount, this company shall be liable for no greater proportion of such excess than the amount provided by this COAL MINE SUBSIDENCE coverage part shall bear to all COAL MINE SUBSIDENCE insurance, whether collectible or not.

Appendix A

**COAL MINE SUBSIDENCE COVERAGE PART
(DWELLING STRUCTURE)**

**FORM: WVMS-1
(Ed. 04-2016)**

(2) The insurance afforded by this coverage part shall not be subject to the provisions of West Virginia Code Section 33-17-9, commonly known as the West Virginia Valued Policy Law. It is further agreed that no co-insurance clause shall be applicable to this coverage part.

(3) All claims shall be paid within 120 days after Proof of Loss is presented to the company unless otherwise agreed by the company and the insured.

(4) The insurance afforded by this coverage part shall become effective no earlier than 30 calendar days after the application date.

(5) Acceptance by the Insured of payment from the Company shall be proof of the Insured's agreement with the Company and BRIM as to the extent and scope of any and all covered damages under this coverage part, and the repair thereof; further, any and all such repairs to the insured STRUCTURE required by the Company and BRIM must be completed not later than 12 months after issuance of the settlement check by the Company to the insured. Failure by the insured to comply with this policy condition shall result in the right of the Company or BRIM to deny any further claim for damage to the insured structure caused directly or indirectly by such failure to complete the agreed on repairs.

(6) In the event of any payment under this policy, the Company or BRIM shall be subrogated to all of the Insured's rights to recovery therefore against any person or organization and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing after loss to impair or prejudice such rights. At the request of the Company or BRIM, the Insured will bring suit or transfer those rights to the Company or BRIM and help the Company or BRIM enforce them.

(7) Except as modified by this coverage part, this insurance is subject to all the provisions of the policy to which the coverage part is attached except:

- (a) Coverage for additional living expense;
- (b) Coverage provided under any extensions of coverage;
- (c) Coverage for indirect or consequential loss.

Appendix B

**COAL MINE SUBSIDENCE COVERAGE PART
(NON-DWELLING STRUCTURE)**

**FORM: WVMS-2
(Ed. 04-2016)**

In consideration of an additional premium, the STRUCTURES are insured against direct loss which occurs within the effective policy dates caused by underground COAL MINE SUBSIDENCE for the limit of liability stated in the policy declarations applicable to COAL MINE SUBSIDENCE insurance.

COAL MINE SUBSIDENCE means loss to a STRUCTURE caused by lateral or vertical movement, including collapse which results therefrom, of STRUCTURES from collapse of man-made underground coal mine.

PROPERTY COVERED. This coverage applies to:

STRUCTURE, meaning any building or fixture permanently affixed to realty located in West Virginia, including:

- (1) Cost of excavations, grading or filling; and
- (2) Basements, footings, foundations, septic systems; and
- (3) Underground pipes directly servicing the STRUCTURE.

PROPERTY NOT COVERED. This coverage does not apply to the following:

- (1) Driveways, sidewalks, parking lots, land; and
- (2) Trees, plants, crops or agricultural field drainage tile.

LIMIT OF LIABILITY. The limit of liability for loss under this coverage part shall not exceed the smallest of the following amounts (1), (2), (3), (4) or (5):

- (1) The Limit of Liability stated in the policy declarations applicable to COAL MINE SUBSIDENCE INSURANCE;
- (2) The replacement cost of the STRUCTURE or any part thereof identical with such STRUCTURE on the same premises and the same occupancy and use;
- (3) The amount actually and necessarily expended in repairing or replacing said STRUCTURE or any part thereof intended for the same occupancy and use;
- (4) The amount of fire insurance on the STRUCTURE; or
- (5) The amount available in the West Virginia Mine Subsidence Insurance Fund to reimburse the company.

PERILS NOT INSURED AGAINST. The insurance afforded by this coverage part does not insure against loss caused by:

Appendix B

**COAL MINE SUBSIDENCE COVERAGE PART
(NON-DWELLING STRUCTURE)**

**FORM: WVMS-2
(Ed. 04-2016)**

- (1) Earthquake, landslide, volcanic eruption, collapse of storm and sewer drains and rapid transit tunnels or earth movement other than underground COAL MINE SUBSIDENCE;
- (2) Any ensuing loss covered by the policy to which this coverage part is attached.

DEDUCTIBLE. The following deductible provisions apply:

- (1) The sum of \$250 shall be deducted from each loss separately occurring to the STRUCTURES insured.
- (2) No other deductible provision contained in the policy to which this coverage part is attached applies to loss caused by COAL MINE SUBSIDENCE.

ARBITRATION PROVISION.

(1) In the event that the Insured and the Company, through the West Virginia Board of Risk and Insurance Management (hereinafter BRIM), as called for by statute, are unable to reach agreement as to: (1) whether the insured STRUCTURE has sustained damage, in total and/or in part, during the effective policy dates, due to COAL MINE SUBSIDENCE; and/or (2) the cost of repair of COAL MINE SUBSIDENCE damage to the insured STRUCTURE; and/or (3) the method of repair of COAL MINE SUBSIDENCE damage to the insured structure; and/or (4) the materials necessary to effect repair of COAL MINE SUBSIDENCE damage to the insured STRUCTURE, then either the Insured or BRIM may request that such issues(s) in dispute will be submitted to binding arbitration.

(2) A request for binding arbitration shall be made in writing and dispatched to the other party via certified mail, return receipt requested. At such time as the parties have mutually indicated their written consent to binding arbitration of the issue(s) in dispute, the arbitration process shall thereby commence as provided for herein.

(3) If the Insured and BRIM mutually consent to binding arbitration, then both the Insured and BRIM shall agree to submit to the findings and decision of the QUALIFIED ARBITRATOR or QUALIFIED ARBITRATION PANEL. Any award in an arbitration initiated under this clause shall be limited to monetary damages for COAL MINE SUBSIDENCE in an amount not to exceed two hundred thousand dollars (\$200,000) dollars per insured STRUCTURE or an amount not to exceed the LIMIT OF LIABILITY as declared for COAL MINE SUBSIDENCE insurance coverage on the Policy Declarations, whichever is less. In no event can the QUALIFIED ARBITRATOR or QUALIFIED ARBITRATION PANEL award punitive damages, attorney fees, injunctive relief, consequential damages, incidental damages, and/or any other types or sorts of damages other than monetary damages for COAL MINE SUBSIDENCE to the insured structure. Moreover, each party shall bear its own costs and expenses and an equal share of the ADMINISTRATIVE FEES of arbitration, except that if the Insured is the prevailing party in the arbitration BRIM agrees to pay all of the ADMINISTRATIVE FEES of the arbitration; however in no circumstance shall BRIM pay the expenses, legal fees, or expert fees of the Insured. ADMINISTRATIVE FEES shall mean only those fees charged by the QUALIFIED ARBITRATOR or QUALIFIED ARBITRATION PANEL according to the fee schedule as mutually agreed to in writing by the parties at the time the QUALIFIED ARBITRATOR or QUALIFIED ARBITRATION PANEL is selected.

Appendix B

COAL MINE SUBSIDENCE COVERAGE PART
(NON-DWELLING STRUCTURE)FORM: WVMS-2
(Ed. 04-2016)

(4) Judgment upon the award rendered by the ARBITRATOR or QUALIFIED ARBITRATION PANEL shall be final and not appealable, but, if necessary, may be entered by the Circuit Court of Kanawha County, West Virginia as provided herein.

(5) Selection of an Arbitrator

- (a) Within ten (10) days of the mutual written consent to binding arbitration, the Insured and BRIM shall select a QUALIFIED ARBITRATOR by mutual agreement to resolve the issue(s) in controversy between the parties. Said QUALIFIED ARBITRATOR shall be a professional registered engineer who can produce evidence of at least five (5) years experience in investigating and determining the existence of subsidence caused by underground coal mines, and, if requested by mutual agreement of the parties, shall also be qualified to determine the cost of adequate repairs to structures damaged by COAL MINE SUBSIDENCE.
- (b) If the parties are unable to agree upon a single QUALIFIED ARBITRATOR, then within thirty (30) days after the mutual written consent to binding arbitration, each party shall select one (1) QUALIFIED ARBITRATOR and the two (2) selected shall select a third QUALIFIED ARBITRATOR within ten (10) days of their appointment. Those three (3) QUALIFIED ARBITRATORS shall be hereinafter referred to as the QUALIFIED ARBITRATION PANEL and will resolve the issue(s) in controversy between the parties.
- (c) Prior to the commencement of hearings, each of the QUALIFIED ARBITRATOR(S) appointed shall provide an oath or undertaking of impartiality.

(6) Applicable law

This arbitration agreement shall be governed by the laws of the state of West Virginia. Furthermore, the parties hereto consent to the personal jurisdiction and venue of the Circuit Court of Kanawha County, West Virginia and further consent that any process, notice of motion, or other application to the court or a judge thereof may be served outside the State of West Virginia by registered or certified mail or by personal service, provided that a reasonable time for appearance is allowed.

(7) Arbitration Mechanism

- (a) Thirty (30) days after selection of a QUALIFIED ARBITRATOR or a QUALIFIED ARBITRATION PANEL, both the Insured and BRIM shall make written submissions to the QUALIFIED ARBITRATOR or a QUALIFIED ARBITRATION PANEL in which the respective party presents the facts of the case, with a copy to be provided to the other party. These written submissions may be made by the party or the party's designated representative.
- (b) Upon receipt of these materials, the QUALIFIED ARBITRATOR or QUALIFIED ARBITRATION PANEL may request additional materials from either party. Any request for additional materials shall be made within thirty (30) days from the date the written submission, required by paragraph (7)(a), was made.
- (c) After due consideration of the facts, as presented by the parties, the ARBITRATOR or QUALIFIED ARBITRATION PANEL, by majority opinion, shall issue a written decision with regard to all of the issues presented by the parties. Upon receipt of the written decision, the parties shall have thirty (30) days to resolve the claim in accordance with the decision.

(8) Duration of Arbitration

Appendix B

**COAL MINE SUBSIDENCE COVERAGE PART
(NON-DWELLING STRUCTURE)**

**FORM: WVMS-2
(Ed. 04-2016)**

The award of the ARBITRATOR or QUALIFIED ARBITRATION PANEL shall be made within nine (9) months of the filing of the notice of intention to arbitrate (demand), and each QUALIFIED ARBITRATOR shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the parties.

OTHER PROVISIONS.

(1) In the event of loss to any STRUCTURE insured by this coverage part in excess of the deductible amount, this company shall be liable for no greater proportion of such excess than the amount provided by this COAL MINE SUBSIDENCE coverage part shall bear to all COAL MINE SUBSIDENCE insurance, whether collectible or not.

(2) The insurance afforded by this coverage part shall not be subject to the provisions of West Virginia Code Section 33-17-9, commonly known as the West Virginia Valued Policy Law. It is further agreed that no co-insurance clause shall be applicable to this coverage part.

(3) All claims shall be paid within 120 days after Proof of Loss is presented to the company unless otherwise agreed by the company and the insured.

(4) The insurance afforded by this coverage part shall become effective no earlier than 30 calendar days after the application date.

(5) Acceptance by the Insured of payment from the Company shall be proof of the Insured's agreement with the Company and BRIM as to the extent and scope of any and all covered damages under this coverage part, and the repair thereof; further, any and all such repairs to the insured STRUCTURE required by the Company and BRIM must be completed not later than 12 months after issuance of the settlement check by the Company to the insured. Failure by the insured to comply with this policy condition shall result in the right of the Company or BRIM to deny any further claim for damage to the insured structure caused directly or indirectly by such failure to complete the agreed on repairs.

(6) In the event of any payment under this policy, the Company or BRIM shall be subrogated to all of the Insured's rights to recovery therefore against any person or organization and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing after loss to impair or prejudice such rights. At the request of the Company or BRIM, the Insured will bring suit or transfer those rights to the Company or BRIM and help the Company or BRIM enforce them.

(6) Except as modified by this coverage part, this insurance is subject to all the provisions of the policy to which the coverage part is attached.

Appendix C

STATE OF WEST VIRGINIA
 COAL MINE SUBSIDENCE RATES
 EFFECTIVE ~~October 1, 2016~~

THE FOLLOWING ANNUAL PREMIUM RATES PER STRUCTURE HAVE BEEN APPROVED BY
 THE WEST VIRGINIA INSURANCE COMMISSIONER:

AMOUNT OF COAL MINE SUBSIDENCE INSURANCE ON THE STRUCTURE	PREMIUM DWELLING STRUCTURE	PREMIUM NON-DWELLING (1) STRUCTURE
\$10,000 or LESS	\$10.00	\$20.00
\$10,001 to \$15,000	\$11.00	\$22.00
\$15,001 to \$20,000	\$12.00	\$24.00
\$20,001 to \$25,000	\$13.00	\$26.00
\$25,001 to \$30,000	\$14.00	\$28.00
\$30,001 to \$35,000	\$15.00	\$30.00
\$35,001 to \$40,000	\$16.00	\$32.00
\$40,001 to \$45,000	\$17.00	\$34.00
\$45,001 to \$50,000	\$18.00	\$36.00
\$50,001 to \$55,000	\$19.00	\$38.00
\$55,001 to \$60,000	\$20.00	\$40.00
\$60,001 to \$65,000	\$21.00	\$42.00
\$65,001 to \$70,000	\$22.00	\$44.00
\$70,001 to \$75,000	\$23.00	\$46.00
\$75,001 to \$80,000	\$24.00	\$48.00
\$80,001 to \$85,000	\$25.00	\$50.00
\$8,001 to \$90,000	\$26.00	\$52.00
\$90,001 to \$95,000	\$27.00	\$54.00
\$95,001 to \$100,000	\$28.00	\$56.00
\$100,001 to \$105,000	\$29.00	\$58.00

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\$105,001 to \$110,000	\$30.00	\$60.00
\$110,000 to \$115,000	\$31.00	\$62.00
\$115,001 to \$120,000	\$32.00	\$64.00
\$120,001 to \$125,000	\$33.00	\$66.00
\$125,001 to \$130,000	\$34.00	\$68.00
\$130,001 to \$135,000	\$35.00	\$70.00
\$135,001 to \$140,000	\$36.00	\$72.00
\$140,001 to \$145,000	\$37.00	\$74.00
\$145,001 to \$150,000	\$38.00	\$76.00
\$150,001 to \$155,000	\$39.00	\$78.00
\$155,001 to \$160,000	\$40.00	\$80.00
\$160,001 to \$165,000	\$41.00	\$82.00
\$165,001 to \$170,000	\$42.00	\$84.00
\$170,001 to \$175,000	\$43.00	\$86.00
\$175,001 to \$180,000	\$44.00	\$88.00
\$180,001 to \$185,000	\$45.00	\$90.00
\$185,001 to \$190,000	\$46.00	\$92.00
\$190,001 to \$195,000	\$47.00	\$94.00
\$195,001 to \$200,000 (2)	\$48.00	\$96.00
<u>\$10,000 or LESS</u>	<u>\$ 5.00</u>	<u>\$10.00</u>
<u>\$10,001 to \$15,000</u>	<u>\$6.00</u>	<u>\$12.00</u>
<u>\$15,001 to \$20,000</u>	<u>\$7.00</u>	<u>\$14.00</u>
<u>\$20,001 to \$25,000</u>	<u>\$8.00</u>	<u>\$16.00</u>
<u>\$25,001 to \$30,000</u>	<u>\$9.00</u>	<u>\$18.00</u>
<u>\$30,001 to \$35,000</u>	<u>\$10.00</u>	<u>\$20.00</u>

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<u>\$35,001 to \$40,000</u>	<u>\$11.00</u>	<u>\$22.00</u>
<u>\$40,001 to \$45,000</u>	<u>\$12.00</u>	<u>\$24.00</u>
<u>\$45,001 to \$50,000</u>	<u>\$13.00</u>	<u>\$26.00</u>
<u>\$50,001 to \$55,000</u>	<u>\$14.00</u>	<u>\$28.00</u>
<u>\$55,001 to \$60,000</u>	<u>\$15.00</u>	<u>\$30.00</u>
<u>\$60,001 to \$65,000</u>	<u>\$16.00</u>	<u>\$32.00</u>
<u>\$65,001 to \$70,000</u>	<u>\$17.00</u>	<u>\$34.00</u>
<u>\$70,001 to \$75,000</u>	<u>\$18.00</u>	<u>\$36.00</u>
<u>\$75,001 to \$80,000</u>	<u>\$19.00</u>	<u>\$38.00</u>
<u>\$80,001 to \$85,000</u>	<u>\$20.00</u>	<u>\$40.00</u>
<u>\$85,001 to \$90,000</u>	<u>\$21.00</u>	<u>\$42.00</u>
<u>\$90,001 to \$95,000</u>	<u>\$22.00</u>	<u>\$44.00</u>
<u>\$95,001 to \$100,000</u>	<u>\$23.00</u>	<u>\$46.00</u>
<u>\$100,001 to \$105,000</u>	<u>\$24.00</u>	<u>\$48.00</u>
<u>\$105,001 to \$110,000</u>	<u>\$25.00</u>	<u>\$50.00</u>
<u>\$110,000 to \$115,000</u>	<u>\$26.00</u>	<u>\$52.00</u>
<u>\$115,001 to \$120,000</u>	<u>\$27.00</u>	<u>\$54.00</u>
<u>\$120,001 to \$125,000</u>	<u>\$28.00</u>	<u>\$56.00</u>
<u>\$125,001 to \$130,000</u>	<u>\$29.00</u>	<u>\$58.00</u>
<u>\$130,001 to \$135,000</u>	<u>\$30.00</u>	<u>\$60.00</u>
<u>\$135,001 to \$140,000</u>	<u>\$31.00</u>	<u>\$62.00</u>
<u>\$140,001 to \$145,000</u>	<u>\$32.00</u>	<u>\$64.00</u>
<u>\$145,001 to \$150,000</u>	<u>\$33.00</u>	<u>\$66.00</u>
<u>\$150,001 to \$155,000</u>	<u>\$34.00</u>	<u>\$68.00</u>
<u>\$155,001 to \$160,000</u>	<u>\$35.00</u>	<u>\$70.00</u>

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<u>\$160,001 to \$165,000</u>	<u>\$36.00</u>	<u>\$72.00</u>
<u>\$165,001 to \$170,000</u>	<u>\$37.00</u>	<u>\$74.00</u>
<u>\$170,001 to \$175,000</u>	<u>\$38.00</u>	<u>\$76.00</u>
<u>\$175,001 to \$180,000</u>	<u>\$39.00</u>	<u>\$78.00</u>
<u>\$180,001 to \$185,000</u>	<u>\$40.00</u>	<u>\$80.00</u>
<u>\$185,001 to \$190,000</u>	<u>\$41.00</u>	<u>\$82.00</u>
<u>\$190,001 to \$195,000</u>	<u>\$42.00</u>	<u>\$84.00</u>
<u>\$195,001 to \$200,000 (2)</u>	<u>\$43.00</u>	<u>\$86.00</u>

NOTE: (1) A NON-DWELLING STRUCTURE IS DEFINED, FOR RATING PURPOSES, AS A BUILDING THAT IS NOT USED PRINCIPALLY FOR RESIDENTIAL PURPOSES OR WHICH HOUSES MORE THAN FOUR FAMILY UNITS.

(2) \$200,000 IS THE MAXIMUM AMOUNT OF INSURANCE REINSURED BY THE WEST VIRGINIA COAL MINE SUBSIDENCE FUND.

APPENDIX D

STATE OF WEST VIRGINIA - BOARD OF RISK AND INSURANCE MANAGEMENT
COAL MINE SUBSIDENCE INSURANCE

The following procedures apply to the handling of Coal Mine Subsidence claims:

- 1) The insured should report the possibility of Coal Mine Subsidence damage directly to the Company or his/her Authorized Agent.
- 2) Upon notice of a potential Coal Mine Subsidence claim, the Company shall immediately forward a completed ACCORD claim form (or other appropriate Company claim form) to the Board at the address provided on the Board's website at <http://www.brim.wv.gov/>.

In addition to the claim form, the Company is required to furnish the Board with a copy of the policy declaration page or other documentation showing the amount of Coal Mine Subsidence Insurance purchased by the insured applicable to the damaged structure.

- 3) The board will then assign the claim to an independent adjusting firm for investigation. The adjusting cost of the independent firm will be paid directly by the Board.
- 4) The adjusting firm will report directly back to the Board with copies of all correspondence to the Company.
- 5) All payment authorizations will come from the Board. No reinsurance will be available for claims paid by the Company without prior approval from the Board.
- 6) After the Company has made an authorized payment to its insured, the Company should remit to the Board a copy of the draft and settlement papers, including subrogation receipt, if available, for reimbursement from the West Virginia Coal Mine Subsidence fund.

APPENDIX E

(SAMPLE)

WEST VIRGINIA MINE SUBSIDENCE FUND REPORT
CALENDAR QUARTER ENDING _____

(SAMPLE)

THIS REPORT MUST BE COMPLETED AND RETURNED EVEN IF NO MINE SUBSIDENCE PREMIUMS TRANSACTED DURING THE REPORTING PERIOD. CHECKS SHOULD BE MADE OUT TO THE WEST VIRGINIA BOARD OF RISK AND INSURANCE MANAGEMENT" AND MAILED ALONG WITH A SIGNED COPY OF THIS REPORT TO THE ADDRESS PROVIDED ON THE BOARD'S WEBSITE AT [HTTP://WWW.BRIM.WV.GOV](http://www.brim.wv.gov). REPORT IS DUE BY

NAIC CO. # :

QUARTER # :

GROUP # :

PART I-POLICY COUNT BY COUNTY-INDICATE IN THE APPROPRIATE BLOCKS THE NUMBER OF POLICIES ISSUED DURING THE REPORTING PERIOD WITH MINE SUBSIDENCE COVERAGE.

CO COUNTY # NAME	# POLICIES	CO COUNTY # NAME	# POLICIES	CO COUNTY # NAME	# POLICIES
01 BARBOUR	_____	02 BERKELEY	_____	03 BOONE	_____
04 BRAXTON	_____	05 BROOKE	_____	06 CABELL	_____
07 CALHOUN	_____	08 CLAY	_____	09 DODDRIDGE	_____
10 FAYETTE	_____	11 GILMER	_____	12 GRANT	_____
13 GREENBRIER	_____	14 HAMPSHIRE	_____	15 HANCOCK	_____
16 HARDY	_____	17 HARRISON	_____	18 JACKSON	_____
19 JEFFERSON	_____	20 KANAWHA	_____	21 LEWIS	_____
22 LINCOLN	_____	23 LOGAN	_____	24 MCDOWELL	_____
25 MARION	_____	26 MARSHALL	_____	27 MASON	_____
28 MERCER	_____	29 MINERAL	_____	30 MINGO	_____
31 MONONGALIA	_____	32 MONROE	_____	33 MORGAN	_____
34 NICHOLAS	_____	35 OHIO	_____	36 PENDLETON	_____
37 PLEASANTS	_____	38 POCAHONTAS	_____	39 PRESTON	_____
40 PUTNAM	_____	41 RALEIGH	_____	42 RANDOLPH	_____
43 RITCHIE	_____	44 ROANE	_____	45 SUMMERS	_____
46 TAYLOR	_____	47 TUCKER	_____	48 TYLER	_____
49 UPSHUR	_____	50 WAYNE	_____	51 WEBSTER	_____
52 WETZEL	_____	53 WIRT	_____	54 WOOD	_____
55 WYOMING	_____	99 POLICIES WITH MORE THAN ONE COUNTY	_____		_____

APPENDIX E

PART II-PREMIUM TRANSACTIONS - COMPLETE FOR PREMIUM TRANSACTIONS OCCURRING DURING THE REPORTING QUARTER. ROUND TO NEAREST DOLLAR. INDICATE "0" IF NO TRANSACTIONS.

_____ PREPARED BY (PLEASE PRINT)	ADJUSTING GROSS PREMIUMS \$ _____ (THE AMOUNT OF GROSS PREMIUMS LESS CANCELLATIONS)
_____ TITLE	LESS CEDING COMMISSION \$ _____ (30%)
_____ SIGNATURE	PREMIUMS DUE STATE \$ _____
_____ DATE PREPARED	

APPENDIX F

WEST VIRGINIA BOARD OF RISK AND INSURANCE MANAGEMENT
AS MANAGER AND TRUSTEE OF THE
WEST VIRGINIA MINE SUBSIDENCE FUND

REINSURANCE AGREEMENT

INSURANCE COMPANY:

NAIC #:

GROUP #:

ASSURED: Various provided with Mine Subsidence Coverage on or in connection with policies issued or renewed on or after the date of this Reinsurance Agreement.

REINSURANCE DATE:

AMOUNT: 100% - but not to exceed \$200,000 per loss plus allocated loss adjustment expense.

In consideration of the provisions and stipulations herein or added hereto, and of premiums ceded by the above named insurance company, the West Virginia Board of Risk and Insurance Management (hereinafter BRIM), as Manager and Trustee of the West Virginia Mine Subsidence Fund (hereinafter Fund) and not otherwise, does reinsure, for all West Virginia mine subsidence losses and allocated loss adjustment expense reasonably incurred, the above-named insurance company, for coverages provided pursuant to W.Va. Code § 33-30-1, et seq.

It is understood and agreed that BRIM shall reimburse the named insurance company from the Fund for all amounts paid policyholders for claims resulting from subsidence and shall pay from the Fund all costs of administration incurred by BRIM; however no such reimbursement will be made by BRIM from the Fund for claims paid by the named insurance company without the expressed consent and approval of BRIM. The named insurance company is not required to pay any claim for any loss insured under the Mine Subsidence Insurance Law, except to the extent that the amount available in the Fund is sufficient to reimburse the insurer for such claim under this section, and without moral obligation.

It is further understood and agreed that the above-named insurance company shall charge and obtain premiums from all its insureds who request mine subsidence insurance under the West Virginia Mine Subsidence Insurance Law in accordance with rates approved by the West Virginia Insurance Commissioner and shall deposit such premiums with BRIM as Manager and Trustee of the Fund, less 30 percent of such premiums, which amounts shall be retained by the above-named insurance company as a ceding commission. Such deposits shall be made in accordance with the directions of BRIM as promulgated from time to time.

It is further understood and agreed that any and all claims by the above-named insurance company for reinsurance hereunder shall be made in accordance with the directions of BRIM as promulgated from time to time.

This agreement shall remain in effect unless and until terminated by one of the following:

APPENDIX F

- (1) It may be terminated, upon written notice thereof by the above-named insurance company, accompanied by written approval of the West Virginia Insurance Commissioner.
- (2) It may be terminated, upon sixty days written notice, by BRIM pursuant to an opinion of the West Virginia Attorney General that any future amendments to the West Virginia Mine Subsidence Insurance Law require or make desirable such cancellation.
- (3) It will terminate upon repeal of the West Virginia Mine Subsidence Insurance Law; provided, however, that the obligations hereunder will continue as to any coverages provided under the West Virginia Mine Subsidence Insurance Law.

Any prior Reinsurance Agreement shall be superseded as of the effective date of this Reinsurance Agreement.

WEST VIRGINIA BOARD OF RISK AND INSURANCE MANAGEMENT, AS MANAGER AND TRUSTEE OF THE WEST VIRGINIA MINE SUBSIDENCE FUND.

By: _____ Date: _____
Title: Executive Director, West Virginia Board of Risk and Insurance Management

(NAME OF INSURANCE COMPANY)

By: _____ Date: _____

Title:

Note: Please verify proper spelling of Company Name, 'NAIC' number and 'GROUP' number if applicable. Return one copy of signed agreement to the address provided on the Board's website at <http://www.brim.wv.gov>.