

Title

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~~WEST VIRGINIA~~ LEGISLATIVE RULE
INSURANCE COMMISSIONER OF WEST VIRGINIA

~~Chapter 33-12~~
Series ~~XXe 20~~
(1984) ~~e~~

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 4/11/84
Administrative Law Division

Subject: Regulation Relating to Excess Line Brokers.

Section 1. General

1.01. Scope - This legislative rule establishes certain requirements for the licensing and regulation of excess line brokers pursuant to Chapter 33, Article 12 of the Code of West Virginia of 1931, as amended.

1.02. Authority - This legislative rule is issued under the authority of Chapter 33, Article 2, Section 10 of the Code of West Virginia of 1931, as amended.

1.03. Filing Date - This legislative rule was promulgated on the eleventh day of April, 1984, and was filed on the eleventh day of April, 1984, in the Office of the Secretary of State.

1.04. Effective Date - This legislative rule becomes effective on the first day of July, 1984.

Section 2. Definitions

2.01. Commissioner means the insurance commissioner of West Virginia.

2.02. Evidence of Insurance means written or printed statements evidencing the applicability and effectiveness of insurance coverages, including but not limited to policy forms, certificates, cover notes, binders, and other traditionally acceptable evidences of insurance.

2.03. Excess Line Insurer means an insurer not licensed by the commissioner to do insurance business, and considered to be a non-admitted insurer, in the State of West Virginia.

2.04. Excess Line Broker means an individual licensed pursuant to the provisions of this regulation and West Virginia Code § 33-12-13, for the purposes of placing insurance of risks resident, located or to be performed in this State, with an excess line insurer.

2.05. Excess Line Market means the entire scope of insurance business on risks resident, located or to be performed in this State, to be placed with an excess line insurer.

2.06 Insolvent Insurer means any insurer which is determined to be insolvent in accordance with the provisions of Chapter 33 of the Code of West Virginia of 1931, as amended, or any insurer which is determined to be insolvent by the commissioner of any other state.

2.07. Licensed Insurer means an insurer licensed by the commissioner to do insurance business in the State of West Virginia.

Section 3. Licensing of an Excess Line Broker; Revocation,
Suspension or Refusal to Renew License, and
Penalty in Lieu Thereof

3.01. Licensing Requirements - Any applicant for an
excess line broker's license issued or renewed under the
provisions of West Virginia Code § 33-12-13:

A. Shall be a duly licensed West Virginia resident
agent holding a current and valid license for the type(s) of
insurance which the applicant expects and intends to export
to the excess line market; and,

B. Shall have held for at least three consecutive years
immediately preceding the date of application a valid agent's
license for the type(s) of insurance the applicant expects and
intends to export to the excess line market, and shall have
held a valid West Virginia resident agent's license for such
type(s) of insurance for at least one of those three years.
The commissioner, in his discretion, may waive this require-
ment if the applicant otherwise demonstrates the necessary
trustworthiness and competence by education, experience or
other relevant factors; and,

C. Shall satisfactorily complete an examination admin-
istered by the office of the commissioner or its designated
agent. The commissioner shall not require an examination for

any person who holds a current and valid excess line broker's license in West Virginia on the effective date of this regulation; and,

D. Shall pay the required license fee as established by the provisions of West Virginia Code § 33-12-13; and,

E. Shall file with the commissioner and thereafter maintain in force for so long as the license or any renewal thereof remains in effect, a bond in favor of the State of West Virginia in the penal sum as established by the provisions of West Virginia Code § 33-12-13, with an authorized corporate surety approved by the commissioner, conditioned that he shall conduct business under his license in accordance with this regulation and the West Virginia Code. No bond shall be terminated unless at least thirty-days' prior written notice thereof is filed with the commissioner; and,

F. Shall be deemed trustworthy for the purpose of conducting insurance business as an excess line broker, as required by the provisions of West Virginia Code § 33-12-13; and,

G. Shall satisfy any other criteria reasonably established by the commissioner.

3.02 Revocation, Suspension or Refusal to Renew License -

Whenever, after notice and hearing, the commissioner is satisfied that any excess line broker has violated any provisions of

any administrative regulation of the commissioner or any provisions of Chapter 33 of the Code of West Virginia of 1931, as amended, or is incompetent or untrustworthy, he shall revoke, suspend or refuse to renew the license of such excess line broker as required by the provisions of West Virginia Code § 33-12-25. In lieu of revoking, suspending or refusing to renew such license, the commissioner, in his discretion, may order such licensee to pay to the State of West Virginia a penalty in a sum not to exceed one hundred dollars for each violation, and upon failure of such licensee to pay such penalty by delivery of such sum to the commissioner within thirty days of notice thereof, the commissioner shall revoke, suspend or refuse to renew such license.

Section 4. Placement of Excess Line Coverages

4.01. Due Diligence - In accordance with the provisions of West Virginia Code § 33-12-10(b), the insurance coverage written by an excess line insurer and placed by an excess line broker shall not be procurable from licensed insurers authorized to transact that kind of insurance in this State. The broker shall submit to the commissioner a sworn notarized statement, as provided in Section 4.04 of this regulation, that a diligent search has been made to place the risk with licensed insurers

authorized to write and actually writing the particular type of risk sought to be placed in the excess line market. This statement also shall include the reasons why the broker has been unable to place the risk with licensed insurers.

4.02. Notification - Each excess line insurance policy or evidence of insurance shall have printed or stamped in contrasting color on the front page the following statement:

THIS COMPANY IS NOT LICENSED TO DO
BUSINESS IN WEST VIRGINIA, AND IS
NOT SUBJECT TO THE WEST VIRGINIA
INSURANCE GUARANTY ACT.

4.03. Countersignature - In accordance with the provisions of West Virginia Code § 33-12-7, no contract of insurance covering a subject of insurance, resident, located or to be performed in this State, shall be executed, issued or delivered by an excess line broker unless the contract is signed or countersigned in writing by a duly licensed excess line broker. This section does not apply to: Reinsurance; credit insurance; any contract of insurance covering the rolling stock of any railroad or covering any vessel, aircraft or motor carrier used in interstate or foreign commerce, or covering any liability or other risks incident to the ownership, maintenance or operation thereof; any contract of insurance covering any property in interstate or foreign commerce, or any liability or risks incident thereto.

4.04. Excess Line Broker's Affidavit and Report - Each excess line broker shall execute and file with the commissioner, in accordance with the provisions of West Virginia Code § 33-12-11, the information requested on the Form Leb-3, as revised, attached to and made a part of this regulation. This report shall be filed under oath, and shall be received by the commissioner within forty-five days after the effective date of coverage, or within fifteen days after delivery of the policy or other acceptable evidence of insurance, whichever is sooner.

4.05. Records of Excess Line Broker - In accordance with the provisions of West Virginia Code § 33-12-15, each excess line broker shall keep in his office a full and true record of each excess line contract procured by him, and such records may be examined at any time thereafter by the commissioner. The records shall include the following items as they are applicable:

- A. Name and address of the excess line insurer; and,
- B. Name and address of the insured; and,
- C. Amount of insurance; and,
- D. Gross premium charged; and,
- E. Return premium paid, if any; and,
- F. Rate of premium charged on the several items of coverage; and,

- G. Effective date of the contract and the terms thereof; and,
- H. Brief general description of the risks insured against and the property insured.

4.06 Responsibilities of the Excess Line Broker -

Each licensed excess line broker who participates directly or indirectly in affecting any insurance contract on an excess line basis:

A. In no instance shall knowingly place any coverage in an insolvent insurer, in accordance with the provisions of West Virginia Code § 33-12-22; and,

B. May accept and place authorized excess line business from any insurance agent or broker licensed in this State for the kind of insurance involved, and may compensate such agent or broker thereof. The excess line broker shall have the right to receive from the excess line insurer the customary commission, in accordance with the provisions of West Virginia Code § 33-12-14; and,

C. In those instances in which excess line business is produced to an excess line broker by an agent or broker licensed in this State for the kind of insurance involved, it remains the excess line broker's responsibility to make the necessary filing of the Form Leb-3, as revised.

4.07. Excess Line Insurance Valid - In accordance with the provisions of West Virginia Code § 33-12-12, any insurance contract procured as excess line coverage from an excess line insurer shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect as like contracts issued by licensed insurers.

Section 5. Excess Line Premium Tax Annual Return and Report by Broker

5.01 Reporting of Premiums Placed and Taxed - Each excess line broker licensed in accordance with the provisions of this regulation and West Virginia Code § 33-12-13 shall make a return annually, under oath, on or before the first day of March, to the commissioner, of the gross amount of premium charged the insureds by excess line insurers for insurance procured by such licensee, including any so-called dividends on participating insurance policies applied in reduction of premiums, less premiums returnable for cancellation. Such return shall be reported by the completion of the Excess Line Broker's Annual Statement Form Leb-4, as revised, prepared and supplied by the commissioner.

5.02. Payment of Excess Line Premium Taxes - The annual tax required to be paid under the provisions of this regulation shall be a sum equal to that in accordance with

the provisions of West Virginia Code § 33-12-16 and § 33-12-16a, and shall be paid to the commissioner on or before the first day of March. All such taxes paid to the commissioner shall be paid by him into the State treasury for the benefit of the State fund, unless otherwise required by the Code of West Virginia of 1931, as amended.

Section 6. Separability

6.01. Partial Invalidity - If any provision of this regulation is held invalid, the remainder of this regulation shall not be affected thereby.