

## Form #2

FILED

2006 JUN 16 P 3:59

~~OFFICE WEST VIRGINIA~~  
~~SECRETARY OF STATE~~

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

*Charles E. Jones Jr*  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

115 CSR 1

TITLE 115  
BOARD OF RISK AND INSURANCE MANAGEMENT

SERIES 1  
RULES AND REGULATIONS GOVERNING MINE SUBSIDENCE INSURANCE

STATEMENT OF CIRCUMSTANCES REQUIRING THIS RULE

In 1982, the West Virginia Legislature determined that property owners in this State had suffered great loss of home, shelter and property due to the effects of underground coal mine subsidence. As a result, the Legislature passed W. Va. Code §33-30-1, *et seq.* in order to make underground coal mine subsidence insurance available in a reasonable and equitable manner to all residents of this State through the office of the Board of Risk and Insurance Management. This rule is now being filed in accordance to W. Va. Code § 33-30-15.

115 CSR 1

TITLE 115

BOARD OF RISK AND INSURANCE MANAGEMENT

SERIES 1

MINE SUBSIDENCE INSURANCE

BRIEF SUMMARY OF PROPOSED RULE

The purpose of this proposed modification to the existing rule is to provide additional language making mine subsidence insurance available for those insureds with "Self Insurance Pools," as defined in Title 114, Series 65 of West Virginia Legislative Rules: Self Insurance Pools for Political Subdivisions. Additionally, on Page1 of Appendix B, paragraph 4, in the definition of "STRUCTURE, an "o" has been inserted before the "r" between the words building and fixture.

TITLE 115  
LEGISLATIVE RULES  
STATE BOARD OF RISK AND INSURANCE MANAGEMENT

SERIES 1  
MINE SUBSIDENCE INSURANCE

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FILED

TITLE 115  
LEGISLATIVE RULES  
STATE BOARD OF RISK AND INSURANCE MANAGEMENT  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SERIES 1  
MINE SUBSIDENCE INSURANCE

§115-1-1. General.

- 1.1. Scope. --This regulation shall apply 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 – May 8, 2002
- 1.4. Effective Date – May 8, 2002

§ 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 regulation.
- 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 regulation 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. Such waiver shall conform to the requirements of Section 3.10 of this rule.
- 3.2. Amount of insurance. – Each policy issued pursuant to this regulation shall provide up to seventy five thousand dollars (\$75,000) 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 regulation 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. – In establishing permanent regulations, the Board has determined that 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 these regulations: 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. – The Board has established a ceding commission of thirty percent (30%) of the gross premium as is required by section nine of the mine subsidence law (W. Va. Code § 33-30-9).
- 3.9. Reinsurance agreement. – Each insurance company subject to this regulation 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 written after the effective date of this rule, and subject to this regulations shall include mine subsidence insurance UNLESS waived in writing by the policy holder. 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 previous law 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 regulation shall complete the West Virginia Mine Subsidence Fund Report. Refer to Appendix E for report format. The following information will be 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. 3-01)

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

## APPENDIX A

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

FORM: WVMS-1  
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- (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:

- (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

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

FORM: WVMS-1  
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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 seventy-five thousand and 00/100 (\$75,000.00) 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
  - (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

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

FORM: WVMS-1  
(Ed. 3-01)

#### 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

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

FORM: WVMS-1  
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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.
- (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

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

FORM: WVMS-1  
(Ed. 3-01)

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.

COAL MINE SUBSIDENCE COVERAGE PART  
(NON-DWELLING STRUCTURE)

FORM: WVMS-2  
Ed. 6-06 3-04)

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

Appendix B

COAL MINE SUBSIDENCE COVERAGE PART  
(NON-DWELLING STRUCTURE)

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reimburse the company.

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

- (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.

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COAL MINE SUBSIDENCE COVERAGE PART  
(NON-DWELLING STRUCTURE)

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- (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 seventy-five thousand and 00/100 (\$75,000.00) 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
  - (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.

Appendix B

COAL MINE SUBSIDENCE COVERAGE PART  
(NON-DWELLING STRUCTURE)

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- (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.

## Appendix B

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

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- (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.
- (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

Appendix B

COAL MINE SUBSIDENCE COVERAGE PART  
(NON-DWELLING STRUCTURE)

FORM: WVMS-2  
(Ed. 6-06 ~~3-04~~)

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.

## Appendix C

### STATE OF WEST VIRGINIA COAL MINE SUBSIDENCE RATES EFFECTIVE JULY 1, 1985

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

| AMOUNT OF COAL MINE<br>SUBSIDENCE INSURANCE<br>ON THE STRUCTURE | PREMIUM<br>DWELLING<br>STRUCTURE | PREMIUM<br>NON-DWELLING (1)<br>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 (2)                                        | \$23.00                          | \$46.00                                  |

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) \$ 75,000 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 CLAIM PROCEDURES

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 following address:

West Virginia Board of Risk & Insurance Management  
Suite 203  
90 MacCorkle Avenue, SW  
South Charleston, WV 25303  
Phone: 304 766-2646  
Fax: 304 766-2653

In addition to the claim form, the Company is required to furnish the Board with a copy of the policy declaration page 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 Company with copies of all correspondence to the Board.
- 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, 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 90 MACCORKLE AVENUE, SW, SUITE 203, SOUTH CHARLESTON, WV 25303. 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<br># NAME | #<br>POLICIES | # NAME | CO COUNTY<br># NAME                   | #<br>POLICIES | # NAME | CO COUNTY<br># NAME | #<br>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 | _____         |        |                     | _____         |

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 \$75,000 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

APPENDIX F

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:

- (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 superceded 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: \_\_\_\_\_

## Appendix F

Note: Please verify proper spelling of Company Name, 'NAIC' number and 'GROUP' number if applicable. Return one copy of signed agreement to:

WV Board of Risk & Insurance Management  
90 MacCorkle Avenue, SW  
Suite 203  
South Charleston, WV 25303  
Telephone: 304-766-2646

## APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Mine Subsidence Insurance

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Board of Risk & Insurance Management

Address: 90 MacCorkle Avenue, SW, Suite 203  
South Charleston, WV 25303

Phone Number: 304.766.2646 Email: cjones@wvadmin.gov

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The difficulty in estimating the fiscal impact as a result of this rule modification lies in the inability to predict the additional number of members of a self insurance pool that obtains mine subsidence coverage, and ultimately presents claims of up to \$75,000 damage. The maximum annual premium the current fund may charge is \$23.00 for dwellings and \$46.00 for non-dwelling structures. Consequently, the potential risk is great.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

| FISCAL YEAR                 |                                           |                                        |                                           |
|-----------------------------|-------------------------------------------|----------------------------------------|-------------------------------------------|
| Effect of Proposal          | Current<br>Increase/Decrease<br>(use "-") | Next<br>Increase/Decrease<br>(use "-") | Fiscal Year<br>(Upon Full Implementation) |
| 1. Estimated Total Cost     |                                           |                                        |                                           |
| Personal Services           |                                           |                                        |                                           |
| Current Expenses            |                                           |                                        |                                           |
| Repairs & Alterations       |                                           |                                        |                                           |
| Assets                      |                                           |                                        |                                           |
| Other                       |                                           |                                        |                                           |
| 2. Estimated Total Revenues |                                           |                                        |                                           |

Rule Title: \_\_\_\_\_

Rule Title:

Mine Subsidence Insurance

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

### MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: 6-13-06

Signature of Agency Head or Authorized Representative

Charles E. Jones