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STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

August 17, 1992

Administrative Letter
1992-14

TO: All Insurance Companies Licensed in Virginia

RE: Licensing of Managing General Agents

On July 1, 1992, Chapter 18 of Title 38.2 of the Code of Virginia was amended to include Article 6 (§38.2-1858 et seq.) which requires the licensing of managing general agents.

Definitions

"Managing general agent" means any person (individual, partnership, or corporation) who:

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

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

(i) adjusts or pays claims in excess of $1,000; or

(ii) negotiates reinsurance on behalf of the insurer.

"Underwrite" means the authority to accept or reject risks on behalf of the insurer.

The following persons shall not be considered managing general agents:

1. An employee of the insurer;

2. A U.S. manager of the United States branch of an alien insurer;

3. An underwriting manager which manages all the insurance operations of the insurer, is under common control with the insurer, and whose compensation is not based on the volume of premiums written;

4. The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer.

License Requirements

Managing general agents who represent domestic insurers must be licensed in Virginia. Managing general agents who represent foreign or alien insurers must be licensed in Virginia unless the managing general agent is licensed in another state and that state has laws substantially similar to the provisions found in Article 6. The Bureau of Insurance has the authority to determine whether a managing general agent is subject to licensing in Virginia.

The law states that no insurer may continue to utilize the services of a managing general agent on and after October 1, 1992, unless such utilization is in compliance with this article. §38.2-1861 specifies the duties of insurers utilizing managing general agents, and §38.2-1860 sets forth the minimum provisions that must be contained in the contract between the insurer and the managing general agent. An insurer utilizing a managing general agent as defined in §38.2-1858 must comply with the provisions set forth in §38.2-1861 even if its managing general agent is exempt from licensing. Please note that the requirements of Article 6 may necessitate revision of existing contracts with managing general agents, regardless of whether Virginia licensing is required.

Appointment Procedures

Pursuant to §38.2-1861.E, each insurer that contracts with a managing general agent must notify the Bureau of Insurance within thirty (30) days of entering into or termination of such contract. Those insurers who already have a contractual relationship with a managing general agent subject to licensing in Virginia should submit an appointment form within 30 days after the managing general agent obtains a Virginia license. The methodology for such reporting will be similar to our current methodology for appointment of agents and appointment termination. A new appointment form for managing general agents is being developed. The same form will be used both for

notification of appointment and termination of appointment of a managing general agent. The $10 appointment fee will be billed to each appointing insurer as part of its regular quarterly billing, and the appointment will be subject to renewal as of July 1 of each year, just as it is for agent appointment renewals. The new form, designated PIN200B, will be available shortly. Insurers wishing to obtain copies of the new form should request them from the Bureau's Agents Licensing Section in the same manner as they request other licensing forms.

Licensing Procedures

Each insurer that uses the services of a managing general agent (as defined in §38.2-1858) that is subject to licensing in Virginia is responsible for notifying each of its managing general agents that they must request a license application package from the Bureau of Insurance. Such request must be made in writing and should be addressed to:

Agents Licensing Section
Bureau of Insurance
State Corporation Commission
P.O. Box 1157
Richmond, Virginia 23209

The initial license application must be accompanied by:

1. An application form;

2. A nonrefundable $500 application fee;

3. Proof of an acceptable fidelity bond for the protection of each insurer the managing general agent represents in an amount at least equal to 10% of the annual gross direct written premium produced by the managing general agent; and

4. Proof of an acceptable errors and omissions policy with limits set at $1,000,000 or 25% of the annual gross direct written premium produced by the managing general agent, whichever is greater.

This license will be good for up to two (2) years and will expire every other June 30. A renewal application form and renewal fee of $500 will have to be submitted by April 1 of the year in which the license will expire.

Insurers' Annual Renewal Packet

Each insurer will be required, as part of its license renewal, to submit along with its annual statement an exhibit providing the following information concerning each of its managing general agents:

1. Name;
2. Tax I.D. or Social Security Number;
3. Business Address;
4. Business Telephone Number;
5. State(s) where the managing general agent is licensed;
6. Certification that a contract exists between the insurer and the managing general agent and that the contract complies with the requirements of §38.2-1860;
7. Certification that the insurer has complied with all of the requirements of §38.2-1861 in its dealings with the managing general agent;
8. Certification that each managing general agent <u>licensed in Virginia</u> has a fidelity bond for the protection of the insurer in an amount at least equal to 10% of the annual gross direct written premium produced by the managing general agent;
9. Certification that each managing general agent <u>licensed in Virginia</u> has an errors and omissions policy with limits set at $1,000,000 or 25% of the annual gross direct written premium produced by the managing general agent, whichever is greater.

An appropriate form for furnishing the above information will be included with the license renewal packet provided to each licensed insurer in December of each year.

A copy of Article 6 has been enclosed for your review. If you have any questions, please contact the Agents Licensing Section of the Bureau of Insurance.

Sincerely,

Steven T. Foster
Commissioner of Insurance

examination by the Commission. The Commission shall have reasonable access to all books, bank accounts and records of the reinsurance intermediary in a form usable to the Commission.

B. In addition to examination pursuant to § 38.2-1809, a reinsurance intermediary manager may be examined, pursuant to Article 4 (§ 38.2-1317 et seq.) of Chapter 13 (§ 38.2-1300 et seq.) of this title, as if it were the reinsurer.

§ 38.2-1855. Penalties and liabilities; refusal or revocation of license.—A. If the Commission finds, after providing an opportunity to be heard that any person has violated any provisions of this article, the Commission may in addition to any other remedies authorized by this title, order the reinsurance intermediary to make restitution to the insurer, reinsurer, rehabilitator or liquidator or receiver of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to such violation.

B. The Commission may refuse to issue a reinsurance intermediary's license and, in addition to or in lieu of a penalty under § 38.2-218 of this title, may suspend or revoke the license of any licensed reinsurance intermediary whenever it finds such applicant or licensed reinsurance intermediary:

1. Has violated any provisions of any law of this Commonwealth applicable to insurance or reinsurance;

2. Has misappropriated any funds held in a fiduciary capacity;

3. Has misrepresented the provisions of any insurance or reinsurance contract;

4. Has engaged in fraudulent or dishonest practices;

5. Is not trustworthy or is not competent to transact business for which a license is applied for or held; or

6. Has been convicted of a felony.

C. If the Commission is of the opinion that any applicant for licensing pursuant to this article is not of good character or does not have a good reputation for honesty, it may refuse to issue the license, subject to the right of the applicant to demand a hearing on the application. The Commission shall not revoke or suspend an existing license until the licensee is given an opportunity to be heard before the Commission. If the Commission refuses to issue a new license or proposes to revoke or suspend an existing license, it shall give the applicant or licensee at least ten days' notice in writing of the time and place of the hearing, if a hearing is requested. The notice shall contain a statement of the objections to the issuance of the license, or the reason for its proposed revocation or suspension as the case may be. The notice may be given to the applicant or licensee by registered or certified mail, sent to the last known address of record pursuant to § 38.2-1857, or the last known business address if the address of record is incorrect, or in any other lawful manner the Commission prescribes. The Commission may summon witnesses to testify with respect to the applicant or licensee, and the applicant or licensee may introduce evidence in his or its behalf. No applicant to whom a license is refused after a hearing, nor any licensee whose license is revoked, shall again apply for a license until after the time, not exceeding two years, the Commission prescribes in its order.

D. Nothing contained in this article is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors or other third parties or confer any rights to such persons.

§ 38.2-1856. Change of address, name.—Each licensed reinsurance intermediary shall report any change in business or residence address or name within thirty days to the Commission and to any contracted insurer.

§ 38.2-1857. Effective date.—This article shall take effect on July 1, 1992. No insurer or reinsurer may continue to utilize the services of a reinsurance intermediary on and after October 1, 1992, unless utilization is in compliance with this article.

Article 6.

Licensing of Managing General Agents.

§ 38.2-1858. Definitions.—As used in this article:

"Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

"Insurer" means any person, duly licensed in the Commonwealth pursuant to Chapters 10, 11, 12, 25, 26, and 38 through 46, and 51 of this title.

"Managing general agent" means any person who (1) manages all or part of the insurance business of an insurer, including the management of a separate division, department or underwriting office; and (2) acts as an agent for such insurer whether known as a managing general agent, manager or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or exceeding five

termination.

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

3. All funds collected for the account of an insurer will be held by the managing general agent in a fiduciary capacity in a bank which is a qualified U.S. financial institution. This account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than three months' estimated claims payments and allocated loss adjustment expenses. The managing general agent shall maintain a separate bank account for each insurer it represents.

4. Separate records of business written by the managing general agent will be maintained. The insurer shall have reasonable access to and the right to copy all accounts and records related to its business in a form usable by the insurer, and the Commission shall have access to all books, bank accounts and records of the managing general agent in a form usable by the Commission. Such records shall be retained in order to accomplish the purpose of subdivision 9 of this section but in no case for a period of less than five years.

5. The contract may not be assigned in whole or part by the managing general agent.

6. Appropriate underwriting guidelines including:

a. The maximum annual premium volume;

b. The basis of the rates to be charged;

c. The types of risks which may be written;

d. Maximum limits of liability;

e. Applicable exclusions;

f. Territorial limitations;

g. Policy cancellation provisions; and

h. The maximum policy period.

The insurer shall have the right to cancel or nonrenew any policy of insurance subject to the applicable laws and regulations.

7. If the contract permits the managing general agent to settle claims on behalf of the insurer:

a. All claims must be reported to the insurer in a timely manner.

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

1. Has the potential to exceed one percent of the insurer's surplus to policyholders as of December 31 of the last completed calendar year, an amount set by the company, or any other amount deemed appropriate by the Commission, whichever is less;

2. Involves a coverage dispute;

3. May exceed the managing general agent's claims settlement authority;

4. Is open for more than six months; or

5. Is closed by payment of an amount exceeding one percent of the insurer's surplus to policyholders as of December 31 of the last completed calendar year, an amount set by the company, or any other amount deemed appropriate by the Commission, whichever is less.

c. All claim files will be the joint property of the insurer and the managing general agent. However, upon entry of an order of liquidation or the appointment of a receiver for the liquidation of an insurer, such files shall become the sole property of the insurer or its estate; the managing general agent shall have reasonable access to and the right to copy the files on a timely basis.

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

8. Where electronic claims files are in existence, the contract must address the timely transmission of the data.

9. If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits will not be paid to the managing general agent until the profits have been verified pursuant to subsection B of § 38.2-1861 of this article (i) one year after they are earned for property insurance business and health insurance business and (ii) five years after they are earned on casualty insurance business.

10. The managing general agent shall not:

percent of the surplus to policyholders of the insurer as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following: (i) adjusts or pays claims in excess of an amount determined by the Commission or (ii) negotiates reinsurance on behalf of the insurer.

Notwithstanding the above, the following persons shall not be considered as managing general agents for the purposes of this article:

1. An employee of the insurer;

2. A U.S. manager of the United States branch of an alien insurer;

3. An underwriting manager which, pursuant to contract, manages all the insurance operations of the insurer, is under common control with the insurer, subject to Article 5 (§ 38.2-1322 et seq.) of Chapter 13 or Article 2 (§ 38.2-4230 et seq.) of Chapter 42 of this title, and whose compensation is not based on the volume of premiums written;

4. The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer.

"Qualified United States financial institutions" means an institution that:

1. Is organized or, in the case of a United States office of a foreign banking organization, licensed, under the laws of the United States or any state thereof;

2. Is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

3. Has been determined by either the Commission, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commission.

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

§ 38.2-1859. Licensure.—A. No domestic insurer shall permit a person to act, and no person shall act, in the capacity of a managing general agent for an insurer domiciled in this Commonwealth unless such person is licensed in this Commonwealth to act as a managing general agent.

B. No foreign or alien insurer shall permit a person to act, and no person shall act, in the capacity of a managing general agent representing such an insurer unless such person is licensed (i) in this Commonwealth to act as a managing general agent or (ii) in another state under laws which are substantially similar to the provisions of this article.

C. The Commission may license as a managing general agent any person who has complied with the requirements of this article and any regulations concerning licensure which may be promulgated by the Commission. The Commission may refuse to issue a license, subject to the right of the applicant to demand a hearing on the application, if the Commission believes the applicant, any person named on the application, or any member, principal, officer or director of the applicant is not trustworthy to act as a managing general agent, or that any of the foregoing has given cause for revocation or suspension of such license, or has failed to comply with any prerequisite for issuance of such license.

D. Any person seeking a license pursuant to subsection A or B (i) of this section shall apply for such license in a form acceptable to the Commission, and shall pay to the Commission a nonrefundable application fee in an amount prescribed by the Commission. Such fee shall be not less than $500 and not more than $1,000. Every licensed managing general agent shall pay to the Commission a nonrefundable biennial renewal fee in an amount prescribed by the Commission. Such fee shall be not less than $500 and not more than $1,000. Each license shall expire on June 30 of the appropriate year. Prior to April 1 of the renewal year, each licensed managing general agent shall submit to the Commission a renewal application form and fee in the manner and form prescribed by the Commission.

E. The Commission may require that the managing general agent be bonded in a manner acceptable to the Commission for the protection of the insurer.

F. The Commission may require a managing general agent to maintain an errors and omissions policy.

§ 38.2-1860. Required contract provisions.—No insurer shall retain or act through a managing general agent unless there is in force a written contract between said insurer and its managing general agent which sets forth the responsibilities of each party and where both parties share responsibility for a particular function, specifies the division of such responsibilities, and which contains the following minimum provisions:

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

a. Bind reinsurance contracts or similar risk sharing arrangements, except that a managing general agent which acts on behalf of a ceding insurer may bind facultative reinsurance contracts by placing individual risks pursuant to obligatory facultative agreements provided that the contract between the insurer and the managing general agent contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules;

b. Commit the insurer to participate in insurance or reinsurance syndicates;

c. Appoint any agent unless (i) the agent is lawfully licensed to transact the type of insurance for which he is appointed and (ii) the insurer has notified the Commission, in writing, of the managing general agent's authorization to appoint agents on its behalf;

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

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

f. Permit any agent appointed by the managing general agent to serve on the insurer's board of directors;

g. Jointly employ an individual who is employed with the insurer; or

h. Utilize or engage a submanaging general agent.

§ 38.2-1861. Duties of insurers utilizing managing general agents.—A. The insurer shall annually obtain a copy of the current financial statement, which shall be certified by an independent public accountant and in a form acceptable to the Commission, of each managing general agent with which it transacts business.

B. If the managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. This is in addition to any other required loss reserve certification.

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

D. Binding authority for participation in insurance syndicates or reinsurance syndicates shall rest with an officer of the insurer, who shall not be affiliated with the managing general agent.

E. Within thirty days of entering into or termination of a contract with a managing general agent, the insurer shall provide, in a form acceptable to the Commission, written notification of such appointment or termination to the Commission. The notice of appointment of a managing general agent shall include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the Commission may request.

F. An insurer shall review its books and records each quarter to determine if any agent as defined by § 38.2-1800 has become a managing general agent as defined in § 38.2-1858. If the insurer determines that an agent has become a managing general agent pursuant to the above, the insurer shall promptly notify the agent and the Commission of such determination, and the insurer and agent must fully comply with the provisions of this article within thirty days.

G. An insurer shall not appoint to its board of directors an officer, director, employee, agent or controlling shareholder of its managing general agent. This subsection shall not apply to relationships governed by Article 5 (§ 38.2-1322 et seq.) of Chapter 13 or Article 2 (§ 38.2-4230 et seq.) of Chapter 42 of this title.

H. The insurer shall not delegate to any person, other than one of its officers, the authority to enter into or bind any reinsurance agreement by which the insurer agrees to cede any risk to a reinsurer, except that an insurer may delegate the specific authority to bind facultative reinsurance contracts by placing individual risks pursuant to the provisions of subdivision 1 of § 38.2-1852 or subdivision 10 of § 38.2-1860.

1. The officer shall be a regular salaried employee of the insurer and shall not be affiliated with the managing general agent.

2. The insurer is not prohibited by the provisions of this subsection from delegating to its managing general agent the authority to enter into or bind an agreement to assume a risk provided the managing general agent is licensed to act as a reinsurance intermediary manager under the provisions of Article 5 (§ 38.2-1846 et seq.) of this chapter and the

authority to both cede and assume a given risk is not simultaneously vested in the same intermediary.

§ 38.2-1862. Examination authority.—The acts of a managing general agent are considered to be the acts of the insurer on whose behalf it is acting. In addition to examination pursuant to § 38.2-1809, a managing general agent may be examined pursuant to Article 4 (§ 38.2-1317 et seq.) of Chapter 13 of this title as if it were the insurer.

§ 38.2-1863. Penalties and liabilities; refusal or revocation of license.—A. If the Commission finds, after providing an opportunity to be heard, that any person under its jurisdiction has violated any provision of this article, the Commission may, in addition to any other remedies authorized by this title, order the managing general agent to reimburse the insurer, the rehabilitator or liquidator, or the receiver of the insurer for any losses incurred by the insurer caused by a violation of this article committed by the managing general agent.

B. The Commission may refuse to issue a managing general agent's license and, in addition to or in lieu of a penalty under § 38.2-218, may suspend or revoke the license of any licensee under its jurisdiction whenever it finds such applicant or licensee:

1. Has violated any provisions of any law of this Commonwealth applicable to insurance;

2. Has misappropriated any funds held in a fiduciary capacity;

3. Has misrepresented the provisions of any insurance contract;

4. Has been guilty of twisting the contracts of other insurers where "twisting" means misrepresenting a policy for the purpose of inducing a policyholder to terminate an existing policy to take a new policy;

5. Has been guilty of rebating. For the purposes of this section, "rebating" shall include reducing the fee or compensation provided for in § 38.2-1837 for the purpose of inducing a client or potential client to purchase a policy;

6. Has engaged in fraudulent or dishonest practices;

7. Is not trustworthy or is not competent to transact the insurance business for which a license is applied for or held; or

8. Has been convicted of a felony.

C. If the Commission is of the opinion that any applicant for a managing general agent's license is not of good character or does not have a good reputation for honesty, it may refuse to issue the license, subject to the right of the applicant to demand a hearing on the application. The Commission shall not revoke or suspend an existing license until the licensee is given an opportunity to be heard before the Commission. If the Commission refuses to issue a new license or proposes to revoke or suspend an existing license, it shall give the applicant or licensee at least ten days' notice in writing of the time and place of the hearing, if a hearing is requested. The notice shall contain a statement of the objections to the issuance of the license, or the reason for its proposed revocation or suspension as the case may be. The notice may be given to the applicant or licensee by registered or certified mail, sent to the last known address of record pursuant to § 38.2-1864, or the last known business address if the address of record is incorrect, or in any other lawful manner the Commission prescribes. The Commission may summon witnesses to testify with respect to the applicant or licensee, and the applicant or licensee may introduce evidence in his or its behalf. No applicant to whom a license is refused after a hearing, nor any licensee whose license is revoked, shall again apply for a license until after the time, not exceeding two years, the Commission prescribes in its order.

D. Nothing contained in this article is intended to or shall in any manner limit or restrict the rights of policyholders, claimants and auditors.

§ 38.2-1864. Change of address, name.—Each licensed managing general agent shall report within thirty days to the Commission and to any contracted insurer any change in business or residence address or name.

§ 38.2-1865. Effective date.—This article shall take effect on July 1, 1992. No insurer may continue to utilize the services of a managing general agent on and after October 1, 1992, unless such utilization is in compliance with this article.

§ 38.2-3127.1. Actuarial opinion of reserves.—A. Effective December 31, 1992, every life insurer doing business in this Commonwealth shall annually submit an actuarial opinion that complies with the provisions of this section. Such an opinion shall be rendered by a qualified actuary and shall state whether the reserves and related actuarial items held in support of designated policies and contracts, are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this Commonwealth. The Commission shall