

WEST VIRGINIA INFORMATIONAL LETTER

No. 71

May 1990

TO: ALL AGENTS LICENSED IN THE STATE OF WEST VIRGINIA

RE: PERSONAL LIABILITY OF AGENTS

It has come to the attention of the Insurance Commissioner that agents are marketing products for companies that are not authorized to transact business in this State.

The purpose of this Informational Letter is to inform all agents of their personal liability under West Virginia Code 33- 12-2 1, which states, "Any agent who participates directly or indirectly in effecting any insurance contract, except authorized reinsurance, upon any subject of insurance resident, located or to be performed in this State, shall be personally liable upon such contract as though such agent was the insurer thereof. This section shall not apply to excess line insurance procured in the manner provided in sections ten to seventeen, inclusive, of this article, not to ocean marine insurance or marine protection or indemnity insurance. (1957, c. 97.)"

It should particularly be noted that this statutory section applies to "any insurance" contract. This includes not only insurance products offered through unlicensed insurance companies, but also unlicensed trusts, multiple employer trusts (MET's), multiple employer welfare arrangements (MEWA's), associations and TPA's. While many of these entities claim exemption from West Virginia law under the Federal ERISA legislation, few are entitled to this exemption. Caution is advised.

If an agent is uncertain as to the licensing status of a particular company, the Department encourages the agent to contact us at (304) 348-3386 or 1-800-642-9004.

Hanley C. Clark
Insurance Commissioner