



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

**BOB WISE**  
Governor

**JANE L. CLINE**  
Insurance Commissioner

October, 2004

**WEST VIRGINIA INFORMATIONAL LETTER**

**No. 149**

**TO: All Insurance Companies Licensed to Do Business in the State of West Virginia, Insurance Trade Associations, Insurance Media Publications and All Other Interested Persons**

**RE: Complaint Record**

The purpose of this letter is to clarify the position of the Commissioner with respect to the complaint record required to be maintained by insurance companies pursuant to W. Va. Code § 33-11-4(10).

W, Va. Code § 33-11-4 contains a list of unfair methods of competition and unfair or deceptive acts and practices in the business of insurance. Subsection ten of that section mandates that an insurer must compile and retain a log of all complaints it received since the date of its last market conduct examination conducted by the Commissioner under W. Va. Code § 33-2-9. The log should include complaints directly received by the company as well as complaints that were received by the Insurance Commission and then forwarded to the company for response.

It is the Commissioner's opinion that the Legislature, when it enacted W. Va. Code § 33-11-4(10), did not intend to include what is traditionally recognized as a complaint used for purposes of initiating a civil proceeding within the purview of this particular subsection. The purpose of subsection ten is to allow the Commissioner's market conduct examiners to conveniently and expeditiously review an insurer's records to determine whether the insurer is responsive to complaints received from the public. The reference to W. Va. Code § 33-2-9 within W. Va. Code § 33-11-4(10) is indicative of the above-stated purpose.

The Examiners' Handbook developed by the National Association of Insurance Commissioners addresses this particular standard by setting forth the complaint handling procedure and the techniques to be employed in gaining access to the insurer's records.<sup>1</sup> The examiner is advised to look at both consumer direct complaints to the company and those filed with the Department of Insurance. No mention is made in the Examiners' Handbook of reviewing civil action complaints during the complaint review process.<sup>2</sup> Therefore, to require civil action complaints to be included on the log appears to broaden W. Va. Code § 33-11-4(10) beyond its intent.

Accordingly, it is the position of the Commissioner that civil action complaints do not need to be recorded on the complaint log that is required to be maintained pursuant to W. Va. Code § 33-11-4(10).

If you have any questions relating to this Informational Letter, you may contact Victor A. Mullins, Associate Counsel, Legal Division at 558-0401 ext. 146.

ss:/Jane L. Cline  
Jane L. Cline  
INSURANCE COMMISSIONER

---

<sup>1</sup> The Commissioner's market conduct examiners are required to follow the provisions of the Examiners' Handbook pursuant to W. Va. Code § 33-2-9(e).

<sup>2</sup> Civil actions filed against the company are, however, reviewed by the examiner during the claims review process.