

BEFORE ALLAN L. MCVEY, INSURANCE COMMISSIONER  
OF THE STATE OF WEST VIRGINIA

**Andrew Smith,**

Complainant,

v.

Administrative Proceeding No. 25-IC-184944

**West Virginia Counties Group Self-Insurance Risk Pool, Inc,**

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
ORDER DENYING REQUEST FOR A HEARING

This matter came before the Insurance Commissioner of West Virginia (hereinafter, "Commissioner"), on Andrew Smith's (hereinafter, "Complainant") request for a hearing on his third-party administrative complaint filed against West Virginia Counties Group Self-Insurance Risk Pool, (hereinafter, "Respondent"). After consideration of the Complainant's hearing request, the undersigned Commissioner proceeded to make the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. According to the Complainant, on June 15, 2025, he suffered property damage related to severe flooding and sewage discharge in Westover, West Virginia.
2. The City of Westover is a member of the Respondent.
3. Complainant filed a claim with the Respondent for the property damage.
4. On October 30, 2025, the Complainant filed a complaint with the Commissioner against the Respondent.
5. The Complainant alleged that the Respondent had failed to acknowledge, investigate, or adjust his property damage claim related to the June 15, 2025, incident in a timely manner.

6. The Complainant requested the Commissioner to investigate the Respondent for violations of the West Virginia Unfair Trade Practices Act, W. Va. Code § 33-11-4, as well as any other violations of West Virginia insurance law.

7. On November 5, 2025, the Commissioner issued a letter informing the Complainant that the Respondent was not recognized as an insurance company in West Virginia and was not regulated by the Commissioner. In particular, the Commissioner noted that W. Va. Code R. § 114-65-3 exempted the Respondent from regulation as insurance and that W. Va. Code § 33-11-4 did not apply to the Respondent.

8. On November 10, 2025, the Complainant filed a demand for a hearing, asserting that the Commissioner's determination was factually and legally flawed.

9. The Complainant's demand included four issues for hearing: 1) Whether the Respondent and its administrators are functioning as unlicensed insurers or administrators under Chapter 33 of the West Virginia Code; 2) Whether the Commissioner has a statutory duty to regulate the Respondent's activities, in light of its representations, governance structure, and claims-handling functions; 3) Whether the Respondent's partnership with associations such as "WVACo [West Virginia Association of Counties], WVML [West Virginia Municipal League], and CCAWV [County Commissioners' Association of West Virginia]" creates an indirect, unregulated insurance network operating outside Chapter 33 oversight; 4) Whether the use of "self-insured risk pools" by municipalities constitutes an unfair trade practice when employed to deny legitimate public claims.

#### CONCLUSIONS OF LAW

1. W. Va. Code §33-2-13 states, in pertinent part, "the commissioner may call and hold hearings for any purpose deemed necessary by him for the performance of his duties."

2. Further, W.Va. Code R. § 114-13-3.3 states:

3.3 Hearing on written demand ~ When the commissioner is presented with a demand for a hearing as described in subsections 3.1 and 3.2 of this section, he or she shall conduct a hearing within forty-five (45) days of receipt by him or her of such written demand, unless postponed to a later date by mutual agreement. However, if the commissioner shall determine that the hearing demanded:

a. Would involve an exercise of authority in excess of that available to him or her under the law; or

b. Would serve no useful purpose, the commissioner shall, within forty-five (45) days of receipt of such demand, enter an order refusing to grant the hearing as requested, incorporating therein his or her reasons for such refusal. Appeal may be taken from such order as provided in W.Va. Code §33-2-14.

3. W. Va. Code § 29-12A-16(b)(1)(A) authorized political subdivisions to establish and maintain a self-insurance program relative to its potential liability and that of its employees for damages in civil actions for injury, death, or loss to persons or property allegedly caused by an act or omission of the political subdivision or any of its employees.<sup>1</sup>

4. W. Va. Code § 29-12A-16(b)(1)(B) further authorized “[a]ny group of two or more political subdivisions may establish and maintain a self-insurance pool relative to their collective potential liability and that of their collective employees for damages in civil actions for injury, death or loss to persons or property allegedly caused by an act or omission of the political subdivision or any of its employees.”

5. W. Va. Code § 29-12A-16(g) required the Commissioner to propose rules related to W. Va. Code § 29-12A-1, *et seq*, for legislative approval.

6. The Commissioner promulgated W. Va. Code R. § 114-65-1, *et seq*, entitled “Self-Insurance Pools for Political Subdivisions,” which became effective on April 19, 2011.

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<sup>1</sup>W. Va. Code § 12A-3 defines a “political subdivision” as “any county commission, municipality and county board of education.”

7. W. Va. Code R. § 114-65-2.10 defines a “pool” as a “self-insurance program organized by two or more political subdivisions for the purpose of providing joint or cooperative action relating to their financial and administrative resources and providing risk management and coverage for civil liability . . . for pool member and their employees.”

8. Critically, W. Va. Code R. § 114-65-3.3 specifically exempts “pools” from Chapter 33, providing that “[a] pool is not an insurance company, its operation does not constitute the transaction of insurance, and it is not subject the insurance laws of this State unless otherwise specifically stated herein [referring to W. Va. Code R. § 114-65-1, *et seq.*]”

9. W. Va. Code R. § 114-65-1, *et seq.*, does not provide that W. Va. Code § 33-11-1, *et seq.*, applies to self-insured risk pools.

10. The West Virginia Supreme Court of Appeals has held that the Unfair Trade Practices Act applies only to those persons or entities engaged in the business of insurance as defined by Chapter 33 of the West Virginia Code. *See* Syl. Pt. 2, *Hawkins v. Ford Motor Co.*, 211 W. Va. 487 (2002).

11. Further, the independent adjusters and/or third-party administrators retained by self-insured entities have no greater liability for bad faith claims than that of a self-insured entity. *See Wetzel v. Emplrs. Serv. Corp.*, 221 W. Va. 610 (2007).

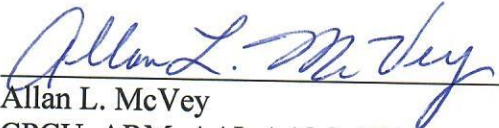
12. Accordingly, a hearing on this matter would serve no useful purpose because the Respondent is not subject to W. Va. Code § 33-11-1, *et seq.*

#### ORDER

Wherefore, since a hearing in this matter would serve no useful purpose, it is **ORDERED** that the Complainant’s request for a hearing is **DENIED**. Inasmuch as orders entered by the Commissioner are subject to judicial review in the Intermediate Court of Appeals as set forth in W.Va. Code §51-11-4(b)(4), any

person aggrieved by this Order may, within 30 days after the entry of the judgment being appealed, file an appeal as set forth in W.Va. Code §33-2-14 and W.Va. R.A.P., Rule 5(b).

ENTERED this the 2<sup>nd</sup> day of December, 2025.

  
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Allan L. McVey  
CPCU, ARM, AAI, AAM, AIS  
Insurance Commissioner