

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

In the Matter of:

FIDELITY & GUARANTY LIFE INSURANCE COMPANY

Administrative Proceeding No. 22-IC-02184

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ASSESSING PENALTY

FINDINGS OF FACT

1. Allan L. McVey is the Insurance Commissioner of the State of West Virginia (“Commissioner”) and is charged with enforcing the provisions of Chapter 33 of the West Virginia Code.

2. Fidelity & Guaranty Life Insurance Company (hereafter, “Fidelity”), an Iowa insurance company, is licensed to transact the business of insurance in the State of West Virginia, pursuant to *W. Va. Code* §§ 33-1-10(a) and 33-1-10(b) and under a Certificate of Authority issued by the Commissioner under Fidelity & Guaranty Life Insurance Company (NAIC 63274).

3. On or about April 22, 2022, Fidelity requested additional time to submit the 2021 MCAS stating that Fidelity was transforming the MCAS process in an effort to minimize the reliance on manual processes; dependency on select individuals; and risk of inaccurate or late filings. Fidelity further states that they were unable to complete all of the planned transformation procedure during the year-end of December 31, 2021, due to their inability to successfully recruit for the ill-timed resignation of employees with substantial involvement in the annual reporting process.

4. On April 25, 2022, the Commissioner approved the MCAS filing extension until May 13, 2022,

5. On May 16, 2022, an email was sent to Fidelity advising them that as of this date the MCAS Filing Status Report from the NAIC database was showing that the MCAS data was not submitted for the Life and Annuity lines of business in the State of West Virginia.

6. On May 19, 2022, an email was received from Fidelity requesting additional time to complete the MCAS filing until May 31, 2022.

7. On May 19, 2022, an email was sent to Fidelity advising them that West Virginia was not granting extensions beyond May 16, 2022, and therefore, Fidelity's filing was considered late and past due.

8. On June 1, 2022, Fidelity filed its Annuity MCAS data.

9. On June 6, 2022, Fidelity filed its Life MCAS data.

CONCLUSIONS OF LAW

1. The Insurance Commissioner has jurisdiction over the subject matter and the parties to this proceeding.

2. This proceeding is pursuant to and in accordance with *W.Va. Code* §§ 33-2-9 and 33-3-11.

3. The Insurance Commissioner is charged with the responsibility of verifying continued compliance with West Virginia Code and the West Virginia Code of State Rules by Fidelity as well as all other provisions of regulation that Fidelity is subjected to, by virtue of its Certificate of Authority to operate in the State of West Virginia.

4. Fidelity is subject to licensing under Article 3, Chapter 33 of the West Virginia Code and related legislative rules and the authority of the Commissioner, as a foreign insurance company.

5. The Commissioner is authorized by *W.Va. Code* §33-3-11 to refuse to renew, or may revoke or suspend the license of an insurer, or require the insurer to pay to the State of West Virginia a penalty in a sum not exceeding Ten Thousand Dollars (\$10,000.00), if an insurer has violated any provision of Chapter Thirty-Three of the West Virginia Code, failed to comply with any lawful rule, regulation or order of the commissioner, or is transacting insurance in an illegal, improper or unjust manner.

6. The Commissioner conducted a review of Fidelity pursuant to his statutory duty under *W.Va. Code* §33-2-9(c). Under the statute, the Commissioner or his examiners may conduct an examination of any company as often as the Commissioner in his discretion considers appropriate.

7. Pursuant to *W.Va. Code* §33-2-9(h), in addition to conducting an examination, the Commissioner or his examiners may, as the Commissioner considers necessary, analyze or review any phase of the operations or methods of doing business of an insurer transacting an insurance business in the State of West Virginia.

8. Under *W.Va. Code* §33-2-9(i)(1) in conducting examinations, examiners shall observe the guidelines and procedures set forth in the examiners' handbook adopted by the National Association of Insurance Commissioners. The Commissioner may also employ any other guidelines or procedures as the Commissioner may consider appropriate.

9. *W.Va. Code R. §114-15-4.1.c* states:

4.1. Examination, analysis and review activities shall include the following as they relate to the operation of entities, individuals or persons subject to the provisions of *W. Va. Code §33-2-9*:

c. Review of any statements, reports, or reviews of an entity, individual or person's financial condition, performance or market conduct practices including the review or development of any forecasts or projections or any type of filing made or intended to be made with the insurance commissioner. This review shall include but not be limited to the review or investigation of any audited financial report, compilation or review performed by a certified public accountant, actuarial statement or certification, documents submitted in application for licensure or registration in the state, or other matters or materials deemed necessary by the commissioner to fulfill his or her statutory obligations.

10. According to *W.Va. Code §33-4-14(d)* each domestic, foreign and alien insurer, organization or corporation shall annually, on or before March 1 each year, and forty-five days after the end of the first, second and third calendar quarters, file with the National Association of Insurance Commissioners a copy of its annual statement convention blank and the quarterly statement blanks, along with such additional filings as prescribed by the Commissioner. The MCAS is an additional filing as required under this code section and Fidelity's failure to timely file it is a violation of *W.Va. Code §33-4-14(d)*.

11. Under *W.Va. Code §33-2-9(i)(2)* every company or person from whom information is sought, its officers, directors and agents shall provide to the examiners timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the company being examined. The officers, directors, employees and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so.

12. Pursuant to *W.Va. Code* §33-2-9(i)(3) the refusal of any company, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension, revocation, refusal or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction.

13. Fidelity violated *W.Va. Code* §33-2-9(i)(3) by failing to comply with the reasonable written requests of the examiners relating to the filing of Fidelity's MCAS.

14. Pursuant to *W.Va. Code* §33-3-11(b) the Commissioner has the authority to order an insurer to pay a penalty in a sum not exceeding ten thousand dollars for violating any provision of Chapter 33 of the West Virginia Code or any lawful rule.

ORDER

It is accordingly ORDERED as follows:


1. It is ORDERED that Fidelity will CEASE AND DESIST from failing to comply with the Statutes, Rules and Regulations of the State of West Virginia and provide timely and complete required filings, including the MCAS.

2. It is further ORDERED that Fidelity shall ensure compliance with the West Virginia Code and the Code of State Rules. Fidelity shall continue to monitor its compliance with *W.Va. Code* §33-2-9 and *W.Va. Code* §33-4-14.

3. It is ORDERED that Fidelity shall pay an administrative penalty to the State of West Virginia in the amount of Ten Thousand Dollars (\$10,000.00) for non-compliance with the West Virginia Code as described herein. The payment of this administrative penalty is in lieu of any other regulatory penalty or remedy and is due within thirty days.

4. Upon the failure of Fidelity to pay the penalty set forth above to the Commissioner as required, the Commissioner may take other action against Fidelity, pursuant to *W. Va. Code* §33-3-11 or otherwise available provisions.

ENTERED this 12th day of August 2022.


Allan L. McVey
CPCU, ARM, AAI, AAM, AIS
Insurance Commissioner
State of West Virginia