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BULLETIN 2024-05

The following Bulletin is to advise the reader of the current position of the Kentucky Department of Insurance ("Department"), on the specified issue.

THIS BULLETIN IS FOR INFORMATIONAL PURPOSES ONLY. IT DOES NOT AMEND OR INTERPRET PROVISIONS OF THE KENTUCKY REVISED STATUTES OR THE KENTUCKY ADMINISTRATIVE REGULATIONS.

TO: ALL INSURERS AND LICENSEES LICENSED TO DO BUSINESS IN KENTUCKY

FROM: SHARON P. CLARK, COMMISSIONER

RE: NEW PREMIUM RATES FOR THE MINE SUBSIDENCE INSURANCE PROGRAM

DATE: July 17, 2024

Purpose

Pursuant to KRS 304.44-020(4), the Administrator of the Mine Subsidence Insurance Program has established new premium rates for mine subsidence insurance which shall become effective January 1, 2025. The new rates are set forth in this Bulletin and shall be charged for the appropriate amount of coverage.

Effective Date

This bulletin shall take effect on January 1, 2025.

Background

On April 4, 2024 Governor Beshear signed HB 371 amending KRS 304.44-030. HB 371 will go into effect on January 1, 2025. HB 371 increases the maximum total insured value eligible to be reinsured by the mine subsidence fund per structure from three hundred thousand dollars

(\$300,000.00) to five hundred thousand dollars (\$500,000.00). Additionally, HB 371 provides the Commissioner with the regulatory authority to amend the threshold if deemed necessary in the future.

REGULATORY GUIDANCE

KRS 304.44-020 authorizes the Administrator of the Mine Subsidence Fund to establish the premium rates for mine subsidence insurance. Accordingly, the rates set forth in this bulletin shall be charged for the appropriate amount of coverage beginning on January 1, 2025.

In addition to amendments to the premium rates and maximum total reinsured value limits, the additional living expense limit referenced in KRS 304.44-030(2) is increasing to fifty thousand dollars (\$50,000.00). The additional living expense covers living expenses reasonably and necessarily incurred by the owner of a residence who has been temporarily displaced as the direct result of damage to the residence caused by mine subsidence.

Furthermore, all insurers doing business in Kentucky will need to re-execute reinsurance agreements with the Department due to the change in the total insured value eligible for reinsurance. The new reinsurance agreement attached to this bulletin shall be executed by all insurers providing mine subsidence coverage by January 1, 2025.

Policies in effect on January 1, 2025 may remain at their current rate and coverage limit until renewal of the policy. The new reinsured value limits and corresponding premium rates reflected in this bulletin shall be implemented at the renewal of existing policies.

Any questions should be addressed in writing to the Department's Property and Casualty Division at DOI.PropertyCasualty@ky.gov.

COMMONWEALTH OF KENTUCKY

COAL MINE SUBSIDENCE RATES

Mine Subsidence Limits/Structures	Calculated Premium Residential	Calculated Premium Commercial
Up to \$50,000	16.33	21.33
\$50,001 to \$60,000	18.90	23.90
\$60,001 to \$70,000	21.28	26.28
\$70,001 to \$80,000	23.48	28.48
\$80,001 to \$90,000	25.52	30.52
\$90,001 to \$100,000	27.40	32.40
\$100,001 to \$110,000	29.15	34.15
\$110,001 to \$120,000	30.76	35.76

Mine Subsidence Limits/Structures	Calculated Premium Residential	Calculated Premium Commercial
\$120,001 to \$130,000	32.25	37.25
\$130,001 to \$140,000	33.63	38.63
\$140,001 to \$150,000	34.91	39.91
\$150,001 to \$160,000	36.09	41.09
\$160,001 to \$170,000	37.19	42.19
\$170,001 to \$180,000	38.20	43.20
\$180,001 to \$190,000	39.13	44.13
\$190,001 to \$200,000	40.00	45.00
\$200,001 to \$210,000	40.80	45.80
\$210,001 to \$220,000	41.54	46.54
\$220,001 to \$230,000	42.23	47.23
\$230,001 to \$240,000	42.86	47.86
\$240,001 to \$250,000	43.45	48.45
\$250,001 to \$260,000	43.99	48.99
\$260,001 to \$270,000	44.50	49.50
\$270,001 to \$280,000	44.96	49.96
\$280,001 to \$290,000	45.39	50.39
\$290,001 to \$300,000	45.79	50.79
\$300,001 to \$310,000	46.16	51.16
\$310,001 to \$320,000	46.50	51.50
\$320,001 to \$330,000	46.82	51.82
\$330,001 to \$340,000	47.11	52.11
\$340,001 to \$350,000	47.38	52.38
\$350,001 to \$360,000	47.63	52.63
\$360,001 to \$370,000	47.86	52.86
\$370,001 to \$380,000	48.07	53.07
\$380,001 to \$390,000	48.27	53.27

Mine Subsidence Limits/Structures	Calculated Premium Residential	Calculated Premium Commercial
\$390,001 to \$400,000	48.45	53.45
400,001 to \$410,000	48.62	53.62
\$410,001 to \$420,000	48.78	53.78
\$420,001 to \$430,000	48.92	53.92
\$430,001 to \$440,000	49.06	54.06
\$440,001 to \$450,000	49.18	54.18
\$450,001 to \$460,000	49.30	54.30
\$460,001 to \$470,000	49.40	54.40
\$470,001 to \$480,000	49.50	54.50
\$480,001 to \$490,000	49.59	54.59
\$490,001 to \$500,000	49.68	54.68

Sharon P. Clark

Sharon P. Clark, *Commissioner*
Kentucky Department of Insurance

July/17/2024

Date



KENTUCKY MINE SUBSIDENCE REINSURANCE AGREEMENT

This reinsurance agreement is entered into between

("The insurer")

and the **KENTUCKY MINE SUBSIDENCE INSURANCE FUND** ("the Fund").

This agreement is effective as of _____.

I. DEFINITIONS. As used in the agreement:

1. "Department" means the Department of Insurance of the Commonwealth of Kentucky.
2. "Commissioner" means the Commissioner of the Department of Insurance of the Commonwealth of Kentucky.
3. "Mine Subsidence Insurance Fund" or "Fund" means the fund established by this subtitle and administered as determined by the Department. KRS 304.44-010(3).
4. "Administrator" means the organization designed by the Commissioner of the Department to operate the fund. KRS 304.44-010(7).
5. "Mine Subsidence" means the collapse of underground coal mines resulting in damage to a structure. It does not include loss caused by earthquake, landslide, water seepage, volcanic eruption or collapse of storm and sewer drains. KRS 304-44-010(2).
6. "Structure" means any dwelling, building or fixture permanently affixed to realty, but does not include land, trees, plants or crops. KRS 304.44-010-(6).
7. "Permanently affixed to realty" as used in the statutory definition of "structure" means that the dwelling, building or fixture was assembled or constructed at its present location upon a permanent foundation. It does not include any dwelling, building or fixture designed to be mobile or portable from location regardless of foundation type.
8. "Insurer" means any insurance company authorized by the Commissioner under any provision of KRS Chapter 304 to write property insurance in this state. Insurer does not mean a surplus lines carrier.
9. "Policy" means a contract of insurance providing mine subsidence insurance. KRS 304.44-010(4).
10. "Contract of insurance" as used in the statutory definition of "policy" includes an endorsement for attachment to a "policy."
11. "Basic property insurance" means the coverage against the peril of fire for direct loss

to structures permanently affixed to realty at a fixed location.

12. "Premium" means the gross rate charged policyholders for insurance provided by this subtitle. KRS 304.44-010(5)
13. "Gross rate" as used in the statutory definition of "premium" means only the applicable manual rate established by the Administrator for the risk insured and does not include any municipal premium taxes or state insurance surcharges established or required by other authority.
14. "Eligible locations" means those counties of this state, which have underground coal-bearing stratum. They are:

Bath, Bell, Boyd, Breathitt, Breckinridge, Butler, Caldwell, Carter, Christian, Clay, Clinton, Crittenden, Daviess, Edmonson, Elliott, Estill, Floyd, Grayson, Greenup, Hancock, Harlan, Henderson, Hopkins, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, McCreary, McLean, Madison, Magoffin, Martin, Menifee, Montgomery, Morgan, Muhlenberg, Ohio, Owsley, Perry, Pike, Powell, Pulaski, Rockcastle, Rowan, Union, Warren, Wayne, Webster, Whitley, Wolfe.

15. "Qualified locations," means those eligible locations or counties where the fiscal courts have certified to the Administrator approval of the availability of mine subsidence insurance within that county. They are:

Bell, Boyd, Breathitt, Butler, Carter, Christian, Clay, Daviess, Elliott, Edmonson, Floyd, Greenup, Hancock, Harlan, Henderson, Hopkins, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, McCreary, McLean, Martin, Morgan, Muhlenberg, Ohio, Owsley, Perry, Union, Webster, Whitley, Wolfe.

16. "Loss" or "mine subsidence insurance loss" is the amount paid or payable by the insurer to its policyholder for mine subsidence damage sustained within the scope of the statutory mine subsidence insurance coverage.
17. "Plan of Operation" refers to the formal operating procedures followed by the Fund and the insurer, as established by the Administrator and approved by the Commissioner of Insurance.
18. "Proof of reinsured claim" is the documentation required by the plan of operation to substantiate the fact that the loss in question was due to mine subsidence and was covered by the statutory mine subsidence insurance coverage.
19. "Statutory mine subsidence insurance coverage" is the coverage which the insurer makes available to policyholders on any permanent structure located in the state in accordance with Chapter 304, Subtitle 44 of the Kentucky Revised Statutes.
20. "Coal Mining Activity" - Pre-Aug. 3, 1977, means mined areas abandoned prior to Aug. 3, 1977. Post-Aug. 3, 1977, means active mines and mined areas abandoned after Aug. 3, 1977.

21. "Deductible" means two percent (2%) of the policy's total insured value, but at no time shall the deductible be less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500).

II. REINSURANCE

As of the effective date of this agreement, the insurer agrees to cede, and the fund agrees to accept, a 100 percent quota share of all mine subsidence coverage written up to the maximum liability limit referenced in KRS 304.44-050 and as set forth in KRS 304.44-030¹ for each risk assumed. The maximum liability limit includes \$500,000 for structures and \$50,000 for "additional living expense." Cessions made by the insurer within the coverage limits shall relieve the insurer of all liability for losses stemming from claims made by its policyholders under such policies of mine subsidence insurance.

Acceptance of such cessions by the administrator shall not create any legal liability. The fund alone shall be liable for the ceded coverage, and it alone shall be entitled to any profits earned and shall bear any losses incurred from such coverage. The fund shall pay insurers for losses which occurred in qualified locations, and in no event shall the fund have any liability to the insurer for any losses occurring in exempt locations or in locations which are not qualified locations.

Claims supervision and handling shall be subject to the supervision and approval of the "insurer." The insurer shall retain a licensed professional civil engineer to investigate all mine subsidence claims on their behalf. Refer to **Exhibit 3** in the "Plan of Operation."

The "Mine Subsidence Insurance Fund" may retain a contractor to audit claims processing. When a contractor is retained, the fund may from time-to-time review:

- (1) the performance of company claims adjusting methods;
- (2) the procedures and standards used by the insurers' engineers for claims processing, and;
- (3) the application of those procedures and standards to the claims of insureds.

In order for the fund to be liable to an insurer for reinsurance of a mine subsidence claim, the insurer must provide the mine subsidence insurance coverage using policy and endorsement forms approved by the administrator as being in compliance with this plan.

A ceding commission of 30 percent will be allowed only on the gross rate portion of the premium charged policyholders. Any portion of the premium attributed to municipal taxes or state premium surcharge shall be subject to the rules and regulations otherwise governing such transactions.

Accounting for premiums and losses arising from business written by the insurer and

¹ The maximum liability limit may be \$500,000.00 as referenced in KRS 304.44-030 or a different amount established by the Department of Insurance in compliance with KRS 304.44-030(1)(d)(2.).

ceded to the fund shall be reported to the Fund as prescribed by the administrator.

An insurer may, but is not required to, write mine subsidence coverage in excess of the limits provided by the fund. The fund shall have no liability to the insurer or its insured for any amount of coverage written in excess of its statutory authority.

In the event of loss under a policy providing excess coverage, the insurer shall be liable under the terms of its policy to its insured for any covered excess portion, regardless of whether or not the primary portion of the loss (within the limits of liability of the fund) is collectible from the fund.

III. ESTABLISHMENT OF REASONABLE RULES AND PROCEDURES

The fund shall establish reasonable rules and procedures covering the content and timely submission of the following:

1. Reports of reinsured policies in force;
2. Premiums;
3. Proof of reinsured claims;
4. Periodic status reports on open claims;
5. Pleadings and other relevant documents regarding claims in litigation.

The fund shall establish reasonable rules and procedures governing the fund's reimbursement of insurers.

Such rules and procedures shall be contained either in the plan of operation or in periodic bulletins or circulars prepared by the fund. The plan of operation and all such bulletins and circulars shall be distributed to the insurers.

IV. CONDITIONS

The fund's obligations to provide reinsurance and to pay the insurer's losses and the authorized fees are conditioned upon the insurer's compliance with the following requirements, in accordance with the fund's plan of operation, bulletins and circulars:

1. Remittance to the fund of the mine subsidence insurance premiums collected from its policyholders, less its ceding commissions.
2. Timely submission of proofs of reinsured claims.
3. Timely submission of reports of its statutory mine subsidence insurance coverage.

4. Cooperation in the fund's examination and audit of the insurer's mines subsidence insurance books and records.
5. Assistance to the fund in the development of loss reserves for reported claims not yet paid or settled.
6. Timely submission of status reports on open claims.
7. Timely submission of pleadings and other relevant documents regarding claims in litigation.
8. Adjustment of insured's loss in the customary manner.

V. DISPUTE RESOLUTION

If the insurer disagrees with the administrator's determination of the fund's obligation to pay any reinsured claim or claims, the insurer may request an administrative hearing pursuant to KRS Chapter 13B.

This agreement shall terminate upon the repeal of the legislation authorizing the statutory mine subsidence insurance coverage.

INSURER: _____

By: _____ Date: _____
 Authorized Representative of the above-referenced Insurer

Printed Name: _____

Printed Title: _____

AND

By: _____ Date: _____
 Administrator of the Kentucky Mine Subsidence Fund

Printed Name: _____

Printed Title: _____