



AUGUST 2008

WEST VIRGINIA INFORMATIONAL LETTER

NO. 161

TO: All Workers' Compensation Insurance Companies Doing Business in the State of West Virginia.

RE: Procedures to Follow for Coverage Issues

Since the privatization of the workers' compensation market on 1/1/06, questions have arisen regarding proper procedures when a carrier believes no coverage exists in a particular workers' compensation claim. The purpose of this Informational Letter is to inform all workers' compensation insurance carriers doing business in West Virginia of the appropriate procedure to follow when coverage issues arise in workers' compensation claims.

When a claim for an occupational injury or occupational disease ("OD") is filed with a workers' compensation carrier and the carrier determines that no coverage existed **as a result of there being no policy in effect on the date of injury ("DOI") or last exposure ("DLE")**, the carrier is permitted to issue a letter to the claimant stating that there is no coverage with the carrier for that claim. This type of letter should **not** include language enabling the claimant to protest the decision to the Office of Judges, since the carrier is not accepting jurisdiction for the claim pursuant to W. Va. Code §23-5-1(a).

Prior to issuing a letter declining the claim for lack of coverage as described above, a carrier has a duty to make a reasonable investigation regarding the status of the employer to make sure no coverage existed with that carrier on the date of injury or last exposure. Secondly, a declination letter for lack of coverage must always include the following two statements: (1) a statement that the claimant should contact his or her employer to verify who its private carrier is; and (2) a statement that if the employer is unable to assist the claimant, he or she should contact the West Virginia Insurance Commissioner's Consumer Services Division by calling 1-888-TRY-WVIC.

To be clear, the non-protestable coverage denial letter discussed above may only be issued if there is **no** apparent factual dispute regarding the lack of an effective insurance policy on the DOI or DLE. If the insurer determines that "coverage" is lacking based upon any other factual findings made by the insurer, the insurer must take jurisdiction for the claim and issue a protestable decision pursuant to W. Va. Code §23-5-1(b)(1). In other words, if the carrier recognizes that a policy was in effect for the claimant's employer on the DOI or DLE, but for some other reason deems the claim not to be compensable, a protestable decision must be issued. Such instances include, but are not limited to:



- The carrier believes the injury did not occur in the scope of employment;
- The carrier believes that the claimant's DOI or DLE was not on the date which the claimant has alleged, but instead a different date on which no policy was in effect (would most commonly occur in OD claims in which the DLE is in dispute);
- In an OD claim, the carrier believes that there was no harmful exposure during the time when the employee was working for the carrier's insured employer; or
- In an OD claim, the carrier believes there was not a sufficient number of days of exposure for the insured employer to be responsible for the OD.

Any questions regarding this Informational Letter should be addressed to Mary Jane Pickens, General Counsel, at 304-558-0401 or mj.pickens@wvinsurance.gov.

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Insurance Commissioner