

510.5 Required contract provisions — limitations.

1. A person acting in the capacity of a managing general agent shall not place business with an insurer unless a written contract is in force between the parties which sets forth the responsibilities of each party. If both parties share responsibility for a particular function, the contract must specify the division of such responsibilities, and must contain, at a minimum, all of the following provisions:

a. The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of a managing general agent during the pendency of any dispute regarding the cause for termination. The insurer shall advise the commissioner of a termination or a suspension pursuant to this paragraph.

b. A managing general agent shall render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.

c. All funds collected for the account of an insurer shall be held by a managing general agent in a fiduciary capacity in a bank which is a member of the federal reserve system. This account shall be used for all payments on behalf of the insurer. A managing general agent may retain no more than three months' estimated claims payments and allocated loss adjustment expenses.

d. Separate records of business written by a managing general agent shall be maintained. An insurer shall have access and a right to copy all accounts and records related to the insurer's business in a form usable by the insurer and the commissioner shall have access to all books, bank accounts, and records of a managing general agent in a form usable by the commissioner. Such records shall be retained at least until after completion by the insurance division of the next examination of the insurer.

e. Appropriate underwriting guidelines including but not limited to the following:

- (1) The maximum annual premium volume.
- (2) The basis of the rates to be charged.
- (3) The types of risks which may be written.
- (4) Maximum limits of liability.
- (5) Applicable exclusions.
- (6) Territorial limitations.
- (7) Policy cancellation provisions.
- (8) The maximum length or duration of the policy period.

The insurer may cancel or refuse to renew any policy of insurance produced or underwritten by a managing general agent, subject to the applicable laws and rules concerning the cancellation and nonrenewal of insurance policies.

2. Permissible provisions in a contract and their requirements include the following:

a. If the contract permits a managing general agent to settle claims on behalf of the insurer all of the following requirements apply:

(1) All claims reported must be reported by the managing general agent to the insurer in a timely manner.

(2) A copy of the claim file must be sent to the insurer at its request or as soon as the managing general agent knows that the claim meets one or more of the following conditions:

(a) The claim has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the insurer, whichever is less.

(b) The claim involves a coverage dispute.

(c) The claim may exceed the claims settlement authority of the managing general agent.

(d) The claim is open for more than six months.

(e) The claim is closed by payment of an amount set by the commissioner or an amount set by the insurer, whichever is less.

(3) All claim files shall be the joint property of the insurer and the managing general agent. However, upon an order of liquidation of the insurer the files become the sole property of the insurer or its estate. The managing general agent shall have reasonable access to and the right to copy the files on a timely basis.

(4) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination

of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

b. If electronic claims files are in existence, the contract must address the timely transmission or transfer of the data contained in the files.

c. If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of interim profits by establishing loss reserves, by controlling claim payments, or by determining the amount of interim profits in any other manner, interim profits shall not be paid to the managing general agent until one year after they are earned for property insurance business and five years after they are earned for casualty insurance business, and not until the interim profits have been verified pursuant to section 510.6.

3. A managing general agent shall not do any of the following:

a. Bind reinsurance or retrocessions on behalf of the insurer, except that a managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

b. Commit the insurer to participate in insurance or reinsurance syndicates.

c. Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which the producer is appointed.

d. Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which exceeds one percent of the policyholder's surplus of the insurer as of December 31 of the previous calendar year.

e. Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded by the managing general agent to the insurer.

f. Permit its subproducer to serve on the insurer's board of directors.

g. Jointly employ an individual who is employed by the insurer.

h. Appoint a submanaging general agent.

91 Acts, ch 26, §4; 2008 Acts, ch 1123, §19

Referred to in §510.10

[P] Contracts; see also §510.2